

# EXTRADITING THE TRUTH:

## Transformations in the public, legal and political debate in Colombia

ESTADOS UNIDOS



UNITED STATES

again,

DAIRO USUGA-DAVID  
Defendant

TRANSCRIPT OF CRIMINAL PROCEEDINGS  
BEFORE THE HONORABLE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A P P

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EASTERN DISTRICT OF NEW YORK  
27  
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Country of Issuance Colombia

Date of Birth 1/05/2022

Sex COL

Expiration Date 1/05/2068

Number of Entries MULT

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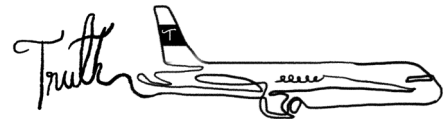
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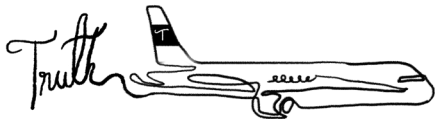


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At least since the 1970s, the operation of the various links in the illicit drug market has been ensured through territorial control<sup>1</sup>, which has involved a violent dispute over the State's legitimate monopoly on the use of force. This has meant selective and collective assassinations, displacements, massacres, threats, sexual violence, and, in general, a whole insane repertoire of forms of victimization that has fanned the flames of the -already complex- dynamics of state-building and democratization in Colombia. In addition to these human rights violations, there are the systemic grievances suffered by regions producing crops declared to be illicit, as well as the stigmatization (lethal and non-lethal) resulting from the prohibitionist narrative.

This leads us to conclude with a negative balance of the drug prohibition policy in that, as a direct or indirect consequence of its global mandate, serious human rights violations have been unleashed.

Under this logic, Elementa promotes research, advocacy, and strategic communication processes to link drug policy with truth, justice, and reparation principles. Our institutional objective focuses on using these principles, which are typical of transitional justice studies, in the current debates about the effects and consequences generated by the prohibition policy in Colombia.

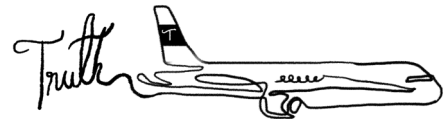
With this in mind, this research, which is still in progress, seeks to investigate the obstacles and opportunities that extradition and judicial proceedings in the United States for drug-related offenses pose in terms of truth and justice for victims of serious human rights violations.

This document presents the first developments of our analysis in this regard, organizing the text as follows. The first part presents the socio-political context of extradition in Colombia, including 1) the beginning of the public debate on extradition, 2) the changes in the "profile" of extradited persons, 3) the negotiation of the extradition treaty with the United States, and 4) an account of the relevance of extradition in the relationship between the Colombian and U.S. governments.

In the second part, the legal context of the subject is discussed, mainly related to 1) the application of the extradition treaty with the United States, 2) the current jurisprudence and the parties involved, as well as 3) the configuration adopted by the Special Jurisdiction for Peace [JEP] on the subject and the line of case-law issued by the Constitutional Court.

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<sup>1</sup> Territorial control is understood as the capacity of an actor to offer and regulate rules, goods, and services. This includes aspects of daily life, such as the use of public space, as well as economic interactions or even limitations to political rights.



The third part details two emblematic cases that show the obstacles that extradition represents for the Truth processes: the trajectory of “Otoniel” and “Jorge 40”. The fourth part presents the efforts made by different victims’ groups and Colombian institutions to avoid extraditions or, once they have been carried out, to continue the processes of contributing to the Truth from the United States. The text closes with a summary of the findings and recommendations made by the Truth Commission on extradition and explaining how Elementa took part in this investigative and advocacy agenda.

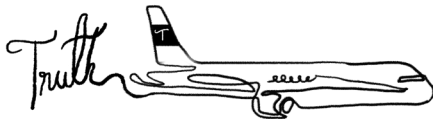
## 1 . SOCIO - POLITICAL CONTEXT

### 1.1. From “legal anti-imperialism” to “gringo justice for *narcos*”: 1979-2000

Before the Treaty of Extradition between the United States and Colombia, signed in 1979, extradition was regulated by international treaties, and there was no in-depth debate about it. There was a predominant interpretation of the “natural judge”, according to which Colombians should be prosecuted in their own country and by their own nationals. After the introduction of the treaty between the two countries, extradition became a national discussion, with greater chances of success for those who were against it.

However, the history of extradition in Colombia is divided by a circumstantial event that changed the approach that the executive, the judicial branch and, in general, public opinion had towards the mechanism: the assassination of the Minister of Justice, Rodrigo Lara Bonilla, in 1984.

Prior to this event, drug trafficking groups had been lobbying, with relative success, in different spheres of public life to outlaw the practice. This translated into alliances with regional and national political and economic elites, a media campaign against extradition, and even the threat, displacement, and assassination of anyone who defended the mechanism.



After Lara Bonilla's assassination, the position of President Belisario Betancur, who until then had taken an anti-extradition stance, changed radically, as demonstrated in the speech he gave at the funeral of the assassinated minister:

"Respecting the dignity of the human being, who has a natural right to be judged by the judges of his country, for philosophical reasons, for convictions about the sovereignty of peoples expressed in their legal structure, to place a barrier against Manichaeism, in short, for Christian arguments, he opposed the extradition of Colombians requested by other governments, because he considered and still considers that they should be judged and sentenced and acquitted by their own compatriots. But we are in an hour of reflection on what the homeland is, on what the Nation is, on what the word citizen means. And those concepts are being trampled by those who have created an empire without borders with a black flag as an ensign and indignity and death as their only purposes. Enemies of all humanity, stop right there. Colombia will hand over the criminals requested for the commission of offenses in other countries to be punished in an exemplary manner in this universal operation against an equally universal attack."<sup>2</sup>

Besides being a sample of the rhetoric that had been positioned within the framework of the "war on drugs," according to which prohibitionism is justified because consumption constitutes an affront to humanity itself, the president's speech also exemplifies the content of the opposing and pro-extradition stances and how the shift from one to the other took place. Those against extradition invoked debates regarding the natural judge of criminals and the encroachment on judicial (and thus national) sovereignty. Drug traffickers, such as Carlos Ledher, supported these lines of thought and ended up influencing politics indirectly or on their own behalf through nationalist, populist, and anti-imperialist discourses.<sup>3</sup>

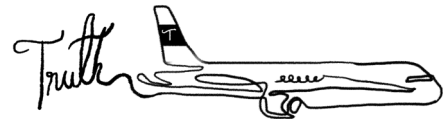
The pro-extradition position, which gained strength after 1984, raised arguments such as Colombia's insertion into a globalized society, the "transnationalization" of drug offenses, and, ultimately, the inability to apprehend and judge drug traffickers for offenses "against humanity".

With this first boom in defense of extradition, however, still timid in its scope and public manifestations, Colombia suffered an escalation of violence due to threats,

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2 Cardona, Duvario Piedrahita. *Colombia, entre guerra sucia y extradición*. Ciencia y Derecho, 1990. p. 98.

3 Palacios Roza, Marco Antonio. *Entre la legitimidad y la violencia: Colombia, 1875-1994*. 2nd edition, revised and expanded. Norma, 2003. p. 277.



terrorist attacks, and assassinations against judges, witnesses, and journalists, in what was imprinted in the collective memory of the country as the “bombas de los narcos” [drug traffickers’ bombs] of the late 1980s and early 1990s.

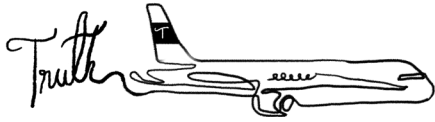
In that sense, extradition has been a constant in the country’s national debates, with radical changes in public opinion, depending on the period. On the one hand, from the late seventies to the early nineties, the matter became kind of a “taboo”, in which no one, including public officials and even those who were part of the 91’ Constituent Assembly, could speak in favor of the procedure.<sup>4</sup> After the National Constituent Assembly, and with the death of Pablo Escobar, the matter was once again in the political discussion, now censuring the positions against it. This is how the then magistrate Carlos Gaviria described it:

The topic of extradition was included among those banned for a different, but quite obvious reason: the drug trafficking organizations (the “cartels”) had demonstrated ad nauseam that their terrorist power was devastating and that it definitely exceeded the capacity of the State to protect the life and property of individuals and, particularly, of the officials who had in their hands the investigative and repressive function. At that time, the decision to stop talking about an issue that terrified and exasperated drug traffickers was taken. But now, when, due to diverse circumstances that are not worth mentioning, the terrorist activity of the “narcos ” has diminished considerably, it is the pressure from outside which brings the subject back to the table, to such an extent that suddenly what becomes taboo is its exclusion from the official discourses.<sup>5</sup>

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4 Garcés Lloreda, María Teresa. “La extradición como instrumento de lucha contra los delitos de carácter internacional”. In: *Revista Derecho Colombiano*. No. 34. T, 74/417. Santafé de Bogotá: 1996. p. 205.

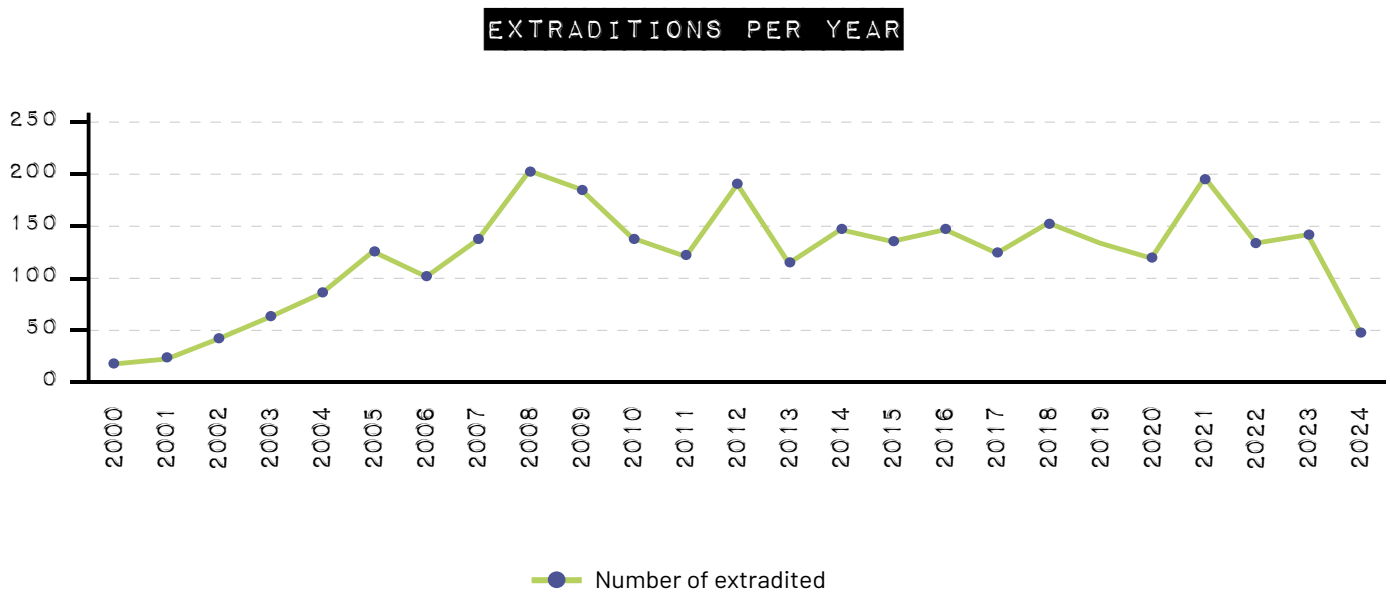
5 Gaviria, Carlos, Adolfo Salamanca, y Carlos Alonso Lucio. “¡De eso no se habla!” *Análisis Político*, No. 28 (1996): 92-98. p. 92



## 1.2. From the great “Capos” to the Use of Extradition in War: 2000 – 2024

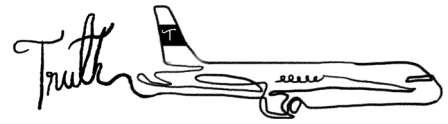
After the shift in public opinion, extradition began to be used timidly during the late 1990s and early 2000s. With the entry into force of “Plan Colombia,” extradition became a pressure mechanism<sup>6</sup> against armed groups and became a fundamental part of peace negotiations and humanitarian agreements.

Between 2000 and 2024 (as of April), Colombia extradited 3024 people. During the first years of this series, the number of extradited persons grew exponentially until 2008, when it reached a historic peak of 203 persons. Since then, extraditions have steadily surpassed 100 persons per year.

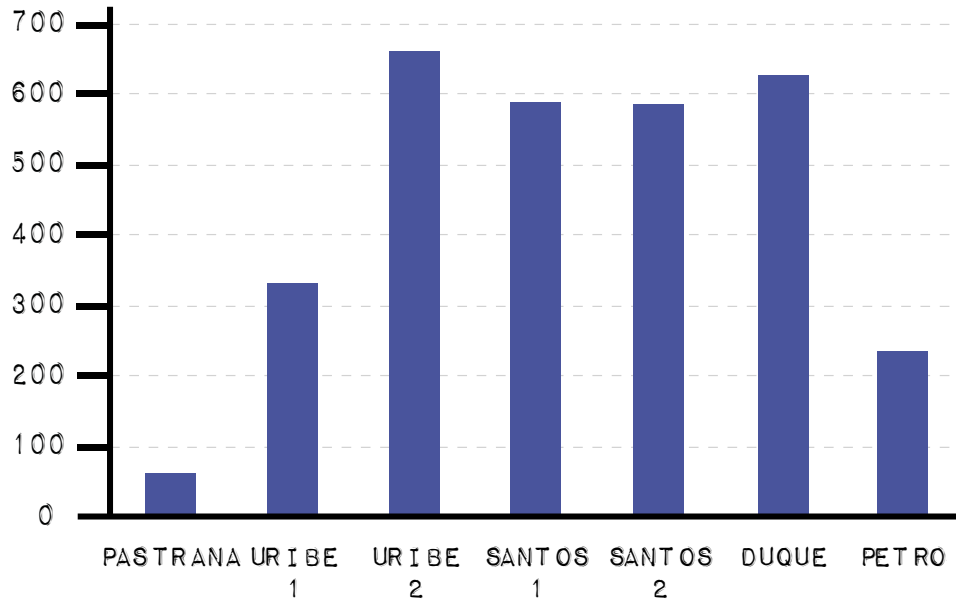


6 Ideas for Peace Foundation [FIP](2009). Use and abuse of extradition in the war on drugs. Policy Brief No. 1/ April 20, 2009

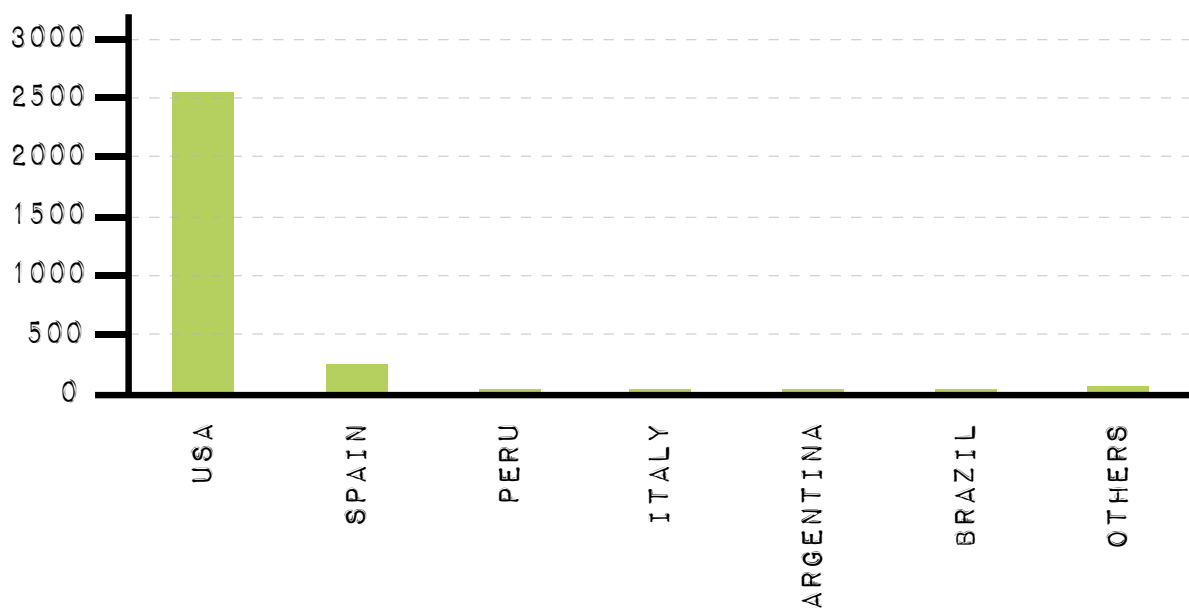


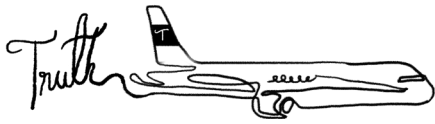


## EXTRADITIONS PER PRESIDENTIAL TERM

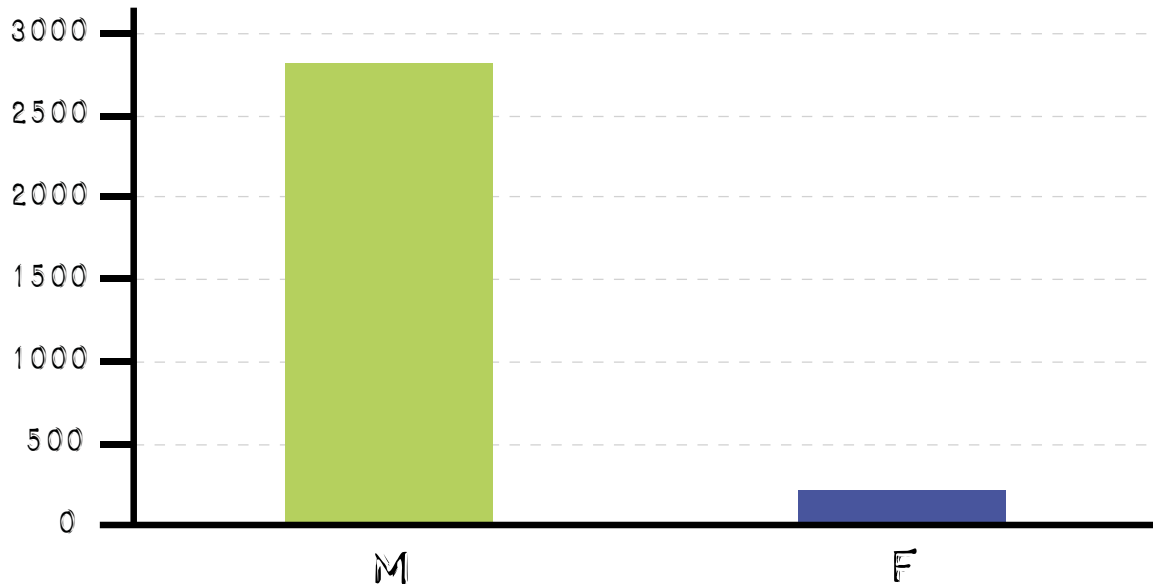


## EXTRADITED PEOPLE BY COUNTRY





## EXTRADITED BY SEX



Number of people extradited from Colombia by year, presidential term, requesting country, and by sex of the extradited person. Based on data provided by the Ministry of Justice.<sup>7</sup>

Although we do not have official figures for the period before 2000, some authors indicate that between 1984, the year of the first extradition under the formal use of the Treaty between Colombia and the United States, and 1990, 33 Colombians were extradited.<sup>8</sup> In other words, an average of more than five persons were extradited annually. This contrasts with the subsequent increase from 2000 onwards, which is mainly related to the overlap between the anti-drug policy and the anti-insurgency policy of Plan Colombia.<sup>9</sup>

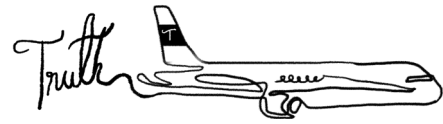
Before 2000, the only extradited persons were leaders of drug trafficking organizations. After that year, extradition began to be used as a bargaining chip in the framework of the internal armed conflict, for which reason members of

<sup>7</sup> Ministry of Justice. Response to the Right of Petition with file number MJD-OFI24-0019375-GEX-10100 dated May 7, 2024.

<sup>8</sup> Mejía Azuero, Jean Carlo. *La extradición pasiva de nacionales a los Estados Unidos y la constitución colombiana*. Grupo editorial Ibáñez. Bogotá: 2012.

Camargo, Pedro Pablo. "La extradición". In: *Revista de derecho penal*. 1, February - March. Bogotá: 2000.

<sup>9</sup> Truth Commission. Case "Cien años de injerencia acordada entre Colombia y Estados Unidos. Una mirada desde la asistencia militar y policial". Historical Narrative Chapter. 2022.



armed organizations started to leave the country under this mechanism. In the case of the United Self-Defense Forces of Colombia [AUC], extradition was a cornerstone of negotiations with the government. However, pressure from the United States meant that, despite their political vocation, the paramilitaries were not exempt from being sent and judged for their deep involvement in the drug trafficking chain.

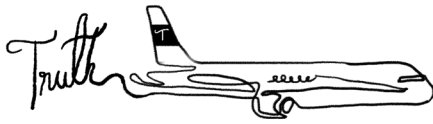
With the guerrillas, and especially with the Revolutionary Armed Forces of Colombia [FARC], extradition was used as a pressure mechanism for the establishment of unilateral ceasefires or humanitarian exchanges. The most emblematic case in this regard is that of aka "Simón Trinidad", who, following the FARC's refusal to release kidnapped members of the security forces, was sent to the United States and is serving a sentence of more than 60 years for offenses related to drug trafficking and kidnapping.

With the major heads of the extinct AUC and the Post-Demobilization Armed Groups [GAPD], extradition eventually ensured the dismantling of the strongest criminal groups, causing their "atomization" into smaller groups and, therefore, the armed dispute for territorial control<sup>10</sup>, a scenario of violence that prevailed in Colombia from the end of the 2000s until 2016, a period in which a readjustment of forces began as a result of the demobilization of the FARC.

From August 2018 to April 2024, 851 Colombians have been extradited. Without certainty about the profile of these individuals and given the impossibility of extraditing FARC ex-combatants who have entered into the agreement, we suspect that extradition has been consolidated as a strategy to try to ensure the dismantling of criminal organizations that are much smaller in scope and the exercise of violence, but whose leaders can continue to lead from prison. With this in mind, the medium-term research agenda consists of describing more clearly the profiles of those extradited, particularly over the last few years, to clarify the motives for extradition and the specific implications in terms of human rights violations.

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10 National Centre for Historical Memory [CNMH]. Grupos Armados Posdesmovilización (2006 - 2015). Trayectorias, rupturas y continuidades. CNMH. Bogotá, 2016. CNMH. Paramilitarismo. Balance de la contribución del CNMH al esclarecimiento histórico. CNMH. Bogotá, 2018.



### 1.3. Extradition treaty: *Narcos* in the middle of the international stage

Despite attempts to achieve equitable bilateralism, and in principle based on “good faith” between twinned countries, extradition between Colombia and the United States is based on an unequal relationship, in which political and economic pressure ensure collaboration in judicial requests.<sup>11</sup> As for the 1979 Treaty, six months after its signature, the U.S. Congress ratified the Vasquez-Saccio Treaty, with which the United States recognized Colombian sovereignty over the Roncador, Quitasueño, and Serrana cays, disputed by Nicaragua. In addition, in an atmosphere of uncertainty over the integration of the treaty into the Colombian legal corpus, the flower export quotas and the existing credits became a source of blackmail for the northern country.<sup>12</sup>

In that sense, we understand the legal mechanism of extradition and its materialization through the 1979 Treaty as the result of a disadvantageous negotiation in which Colombia was pressured to collaborate with the United States criminal policy in exchange for some kind of benefit.

This inequality had two major consequences. On the one hand, all the stages, from negotiation to ratification, were completely secret. The negotiation, which took place between 1978 and 1979, was conducted behind closed doors and its contents were not made public.<sup>13</sup> Even its signature was not advertised, nor did it appear in the press, to the point that when the ratification was under debate in Congress, its terminology was unknown.<sup>14</sup> This eliminated the possibility of a public debate on it, as well as the possibility of a judicious accountability about the new model and its consequences.

On the other hand, the treaty was “narcotized” from the beginning. Born in the midst of efforts to combat the *bonanza marimbera* [Marijuana Boom]<sup>15</sup>, the

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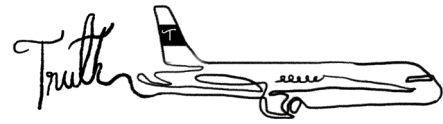
11 Other authors characterize this series of pressures as “coercive diplomacy” from the United States: achieving changes at the internal level of a country, favorable to the U.S. national strategy, through instruments of pressure, threat, and sanction, without the use of force. See: Tokatlian, Juan Gabriel. “Condicionalidad y drogas: el caso de Colombia” In: *Colombia internacional*. 2017.

12 Orejuela Díaz, Libardo. *Narcotráfico & extradición. Telaraña del silencio y la mentira*. Atípicos Editores. Bogotá: 1997.

13 Mejía Azuero, Jean Carlo. *La extradición pasiva de nacionales a los Estados Unidos y la constitución colombiana*. Grupo editorial Ibáñez. Bogotá: 2012.

14 Rincón, Fabio. *La extradición: comentarios, apuntes, notas y documentos sobre el tratado*. Marchar. Bogotá: 1984.

15 Regarding the *bonanza marimbera*, Britto defines the *marimberos* and the phenomenon as follows: “Popularly known as *marimberos*, these pioneers of the drug trade came from the Guajira peninsula and the neighboring Sierra Nevada de Santa Marta, two areas in the northernmost section of the country’s Caribbean coast that were



agreement was designed to provide legal tools to U.S. criminal policy to “hunt” drug traffickers. Proof of this is the series of parallel conversations that took place and the actors involved in the negotiation, as well as the drafting of the document itself. Regarding the first point, the negotiating parties and even some of the signatories to the agreement were representatives of the State Department focused on drug-related issues, such as the head of Narcotics, Mathea Faleo.<sup>16</sup> Furthermore, while the negotiation of the treaty was taking place, in April 1979, the U.S. Select Committee on Narcotics Abuse and Control met in Colombia. After the signature of the treaty, an agreement on assistance in the fight against drugs was signed.<sup>17</sup> Several analysts at the time read these agreements as pre- and post-agreement economic and political pressure to ensure their signing and implementation.

Regarding the second point, the treaty has several paragraphs that, without being explicit, leave between the lines the “anti-narco” vocation of the agreement. In the first place, the text contemplates the freedom of each country to deny or grant extradition. However, it “corrects” itself in the very next line, stating that the countries will grant extradition under two grounds: the commission of the offense in both countries, to consummate the offense in the requesting country, or if it is the case that the requesting State has already imposed or is in the process of imposing a sentence. With this, the freedom of the countries to decide on the extradition of their nationals becomes symbolic since any extradition request falls under one of these two grounds, especially those related to offenses that were “perfected” in the United States: drug offenses, money laundering, etc. Ultimately, the treaty “was basically oriented towards the passive extradition of drug traffickers”<sup>18</sup>.

Moreover, the emphasis given to certain types of offenses reveals the intentionality of the agreement. Such is the case, that offenses related to conspiracy to commit an offense, transportation of persons or property, and interstate commerce are mentioned directly in the articles (Article 2) and not

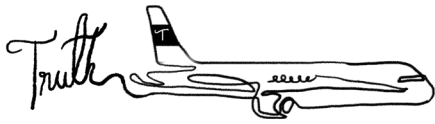
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considered as barely belonging to the nation-state. Although marimberos made Colombia the main supplier of the trendy drug to the US drug markets, and later became the first targets of the US-led “war on drugs” in South America, the boom they brought to life is a forgotten chapter of the innocent era before the cocaine industry car-bombed the country.” Britto, L. (2022). *Marijuana Boom: The Rise and Fall of Colombia’s First Drug Paradise*. University of California Press.

16 Moyano Bonilla, César. *La extradición con los Estados Unidos y el derecho interno colombiano*. Ediciones Jurídicas Gustavo Ibáñez. Bogotá: 1997.

17 Orejuela Díaz, Libardo. *Narcotráfico & extradición. Telaraña del silencio y la mentira*. Atípicos Editores. Bogotá: 1997.

18 Mejía Azuero, Jean Carlo. *La extradición pasiva de nacionales a los Estados Unidos y la constitución colombiana*. Grupo editorial Ibáñez. Bogotá: 2012. p. 263.



only in the appendix containing the list of offenses for which extradition may be invoked. Additionally, within this appendix, 14 of the 31 offenses invoked are related to economic offenses, conspiracy to commit an offense or transportation of goods. Added to the two offenses that are explicitly linked to drugs<sup>19</sup>, more than half of the offenses contemplated in the treaty (16 of 31) appear to be related to drug trafficking.

Another example of the guarantees taken by the United States to ensure its ability to extradite narcos is found in the clarification to the *non bis in idem*<sup>20</sup>, of Article 5, which allows that when a State decides not to prosecute an offense, the requesting State may still ask for the extradition of the person in question. The above, as a counterpart to the negotiations or arrangements with the justice system that the narcos have since then been proposing to the Colombian State to avoid extradition. With the inclusion of this article, regardless of the agreements that may have been reached, these would not prevent them from being subject to extradition.

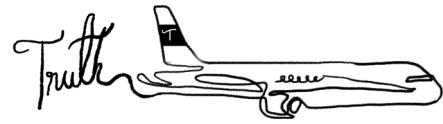
The abovementioned allows us to conclude that, from its inception, the treaty 1) privileged the criminal policy interests of the United States and 2) did not consider the Colombian national reality, characterized by a violent dispute over the legitimate monopoly of force by drug traffickers to control the illicit drug market, and the human rights violations resulting from that dispute.

The predominant emphasis on drug-related offenses displaced the spotlight that could have been placed on human rights violations also committed by the individuals subject to extradition. Although the treaty includes offenses such as murder, sexual violence or kidnapping, these are not the core of the agreement and their wording is vague, thus preventing them from being linked to serious human rights violations. An example of this is offense 3 as defined in the treaty: "Malicious wounding; inflicting grievous bodily harm", which, although it could be understood as torture, the way in which it was drafted in the final text makes it difficult to apply.

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19 Offense 21 "[...] against the law relating to the trafficking, possession, production or manufacture of narcotic drugs [...]" and Offense 22 "against public health, such as the illicit manufacture of or traffic in chemical products or substances injurious to health". Extradition Treaty.

20 It refers to a Procedural Law guarantee, included in Article 29 of the Political Constitution, according to which no person shall be tried twice for the same act. In Ruling C-521/09, the Constitutional Court ruled on the limits of the *non bis in idem* principle, stating that it is possible to be tried several times depending on the applicability of different punitive orders. On this matter, see: Constitutional Court. Ruling C-521/09. Retrieved from: <https://www.corteconstitucional.gov.co/RELATORIA/2009/C-521-09.htm#:~:text=Nadie%20podr%C3%A1%20ser%20juzgado%20ni,procedimiento%20penal%20de%20cada%20pa%C3%ADs.%E2%80%9D>



The following is an assessment of U.S.-Colombian relations, focusing on drug policy and the use of the notion of extradition, organized according to each of the different presidential quadrenniums. The foregoing allows us to demonstrate the conclusions drawn about an extradition treaty favorable to the United States, as well as the transformation that the mechanism underwent, from a process of judicial support between countries to its use as political pressure in the framework of the armed conflict.

#### **1.4. Relationship between the United States and Colombia: a view from extradition**

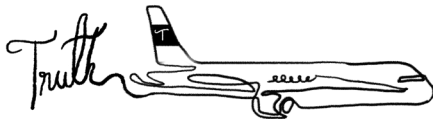


## **Belisario Betancur Cuartas (1982-1986)**

- **Ronald Reagan (1981-1989)**

Reagan based his anti-drug strategy on condemning producer countries and focused on eradicating cocaine and marijuana production directly from the source, making Colombia the first target. This resulted in the first timid application of the extradition treaty. In turn, Betancur changed his stance midway through his term in office. During the first part of his term, he used the argument that prevailed at the time regarding extradition: the defense of sovereignty. After the assassination of Rodrigo Lara Bonilla, he cleared the way for the extradition of drug traffickers.

Betancur's first stance, and his denial of the extradition of two persons sought for extradition, generated uneasiness in the White House: through statements made by the U.S. ambassador in Bogotá, pressure was exerted for "reciprocal" collaboration with the U.S. foreign policy on drugs, which included extradition. Bilateral relations were highly tense because of Betancur's first stance and



his intention to engage in dialogue with the insurgencies in clear opposition to President Reagan's approach.

Betancur's turnaround reduced his room for maneuver regarding the strategy to deal with drug traffickers and, in general, against drugs. However, it allowed for improved relations with the United States, and extradition became the linchpin of such a link.



## Virgilio Barco Vargas (1986–1990)

- **Ronald Reagan (1981–1989)**

During this period, the first great blow against the drug trafficking cartels was struck through the use of extradition: in February 1987, Carlos Ledher<sup>21</sup> was captured and extradited within a few hours. He had an extradition request since September 1983 and the approval of the Supreme Court of Justice; all that was missing was the authorization of President Barco, who was already under pressure from the United States to favor the action. Carles Redman, spokesman of the State Department in Washington, expressed Reagan's satisfaction with the extradition, pointing out, in addition, that with this action Colombia demonstrated that it was trying to be at the forefront of the fight against drug trafficking<sup>22</sup>. The director of the DEA and certain congressmen of that country also celebrated the extradition. That year, Jorge Luis Ochoa<sup>23</sup> was also captured and managed to get

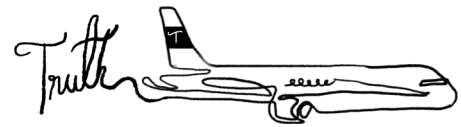
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21 Ledher was a member of the Medellín Cartel, from which he lobbied for the extradition ban. He founded the Movimiento Cívico Latino Nacional [National Latin American Civic Movement] as an attempt to consolidate populist and nationalist political platforms to attack extradition in Congress. He was released in 2020 after serving three quarters of his sentence and currently resides in Germany. Eltiempo.com (2023). *Carlos Ledher: lo que contó el excapo sobre su nueva vida en Alemania*. Retrieved from: <https://www.eltiempo.com/justicia/conflicto-y-narcotrafico/carlos-lehder-lo-que-conto-el-excapo-sobre-su-nueva-vida-en-alemania-745192>. DW (2020). *No morirá en prisión, porque ayudó a tumbar a un dictador*. Retrieved from: <https://www.dw.com/es/el-exnarcotraficante-carlos-lehder-no-morir%C3%A1-en-la-c%C3%A1rcel-gracias-a-que-ayud%C3%B3-a-tumbar-a-un-dictador/a-53850920>

22 Semana. 1987. "Cero y va Uno". *CERO Y VA UNO, Sección Nación, edición 249, Mar 9 1987 (semana.com)*

23 Founding member of the Medellín Cartel. Responsible for the distribution network in the United States. He





out of jail thanks to an habeas corpus appeal, which implied in terms of foreign policy an embargo on imports of flowers and obstacles for visas for Colombian tourists.<sup>24</sup>



## Cesar Augusto Gaviria Trujillo (1990-1994)

- **George H. W Bush (1989-1993)**

Relations between the Gaviria and Bush administrations became a bit more strained. Bush had recently created the Office of the Drug Czar, which would be in charge of keeping the countries targeted by U.S. international anti-drug policy in line. With Colombia, extradition was the backbone of cooperation in this area. In turn, Gaviria characterized the difference between narcoterrorism as a domestic problem and drug trafficking as an international problem that should be mediated through cooperation, which allowed him to implement a policy of bringing drug traffickers to justice that would trigger the prohibition of extradition in the new political constitution.

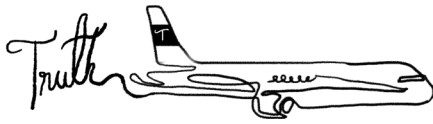
In the midst of the National Constituent Assembly, the strategy against drug traffickers was made more flexible and an attempt was made to encourage the bringing to justice of persons who had committed drug trafficking-related offenses. Decrees 2047 and 3030<sup>25</sup>, enacted within the framework of a state of siege [estado de sitio], allowed negotiation with drug traffickers, which was encouraged through non-extradition for offenses committed abroad. Even with

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adhered to the policy of submitting to justice in 1991 and was released after an effective 5-year prison term in Colombia. *Eltiempo.com* (1996). *Jorge Ochoa, libre por rebaja de penas*. Retrieved from: <https://www.eltiempo.com/archivo/documento/MAM-443739>

24 Thoumi, Francisco (1995) "Political economy and illegal drugs in Colombia". Quoted by García Pinzón, Viviana (2012) "Entre la cooperación y la coerción: las relaciones de Estados Unidos con Colombia y México en torno a las drogas ilícitas". In: Zavaleta, José (2012) "La inseguridad y la seguridad ciudadana en América Latina"

25 Decree 2047 of 1990. Retrieved from: <https://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Decretos/1390630>



opposition from Washington<sup>26</sup>, this policy of submission allowed the surrender of two major figures of the Medellín Cartel: Jorge Luis Ochoa and Fabio Ochoa<sup>27</sup>.

Despite these arrangements, the Medellín Cartel maintained its violent strategy in the run-up to the vote on extradition for the new constitution, which generated reactions from the United States, who from Washington expressed concern about the possibility that *"the Constituent Assembly would prohibit extradition, coerced by drug traffickers"*<sup>28</sup>.

On June 18, 1991, the new political constitution was voted on, the prohibition of extradition of nationals was voted in favor, and was included in Article 35 of the final text<sup>29</sup>. The next day, the leader of the Medellín Cartel turned himself in to Colombian authorities.

- **Bill Clinton (1993-2001)**

In Clinton's first two years in office, his strategy was torn between a prohibitionist approach and one that addressed the drug issue from a public health perspective. During the last years of the Gaviria administration, the United States became increasingly suspicious of the "effective" collaboration of some representatives of the Colombian State with the hard-line. A special case was that of Attorney General De Greiff, who was disqualified for his actions in suspending judicial collaboration and for his statements on the failure of the drug policy. U.S. Attorney General Janet Reno responded to his actions by stating that *"The United States intends to pursue [...] efforts that will ensure the aggressive pursuit, vigorous prosecution, and severe and appropriate punishment of [...] drug traffickers. Calls for cocaine legalization and clandestine discussions with cartel leaders will not, in our judgment, advance these objectives."*<sup>30</sup>

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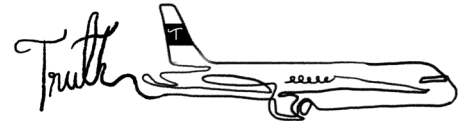
26 The Drug Czar stated that "extraditing and prosecuting them is our preferred way of dealing with these people, but the goal is to get justice, if Colombians think they can try them themselves, that's fine". Samper, María Elvira (2022) *Extradición: de Ledher y los Rodríguez a Otoniel - cincuenta años de 'guerra contra las drogas'*. Editorial Planeta. p 145.

27 EL TIEMPO. January 16, 1991. "JORGE L. OCHOA SE ENTREGÓ" Retrieved from: [JORGE L OCHOA SE ENTREGO - Archivo Digital de Noticias de Colombia y el Mundo desde 1.990 - eltiempo.com](#)

28 Samper, María Elvira (2022) *Extradición: de Ledher y los Rodríguez a Otoniel - cincuenta años de 'guerra contra las drogas'*. Editorial Planeta. p 170.

29 Lombo, Juan. El Espectador, June 18, 2021. "El debate por la extradición en la Constituyente de 1991." Retrieved from: [El debate por la extradición en la Constituyente de 1991 | EL ESPECTADOR](#)

30 Samper, María Elvira (2022) *Extradición: de Ledher y los Rodríguez a Otoniel - cincuenta años de 'guerra contra las drogas'*. Editorial Planeta. p 197.



# Ernesto Samper Pizano (1994–1998)

- **Bill Clinton (1993–2001)**

The Samper administration's relationship represented the tensest point in Colombia-U.S. relations. The controversy surrounding the financing of the president-elect's campaign, his public pronouncements (along with those of Attorney General De Greiff) in favor of the legalization of marijuana, as well as the distrust surrounding the prosecutions of drug trafficking organization leaders led to U.S. pressure on Colombia to demonstrate its willingness to align itself with the anti-drug policy.

This pressure translated into constraints on international cooperation and the cancellation of visas as preliminary measures. Despite the efforts in terms of fumigation of crops declared illicit and the capture or surrender of major Cali Cartel leaders, diplomatic tensions led to the decertification of the country<sup>31</sup>, as a sort of specific veto against the Samper government specifically.

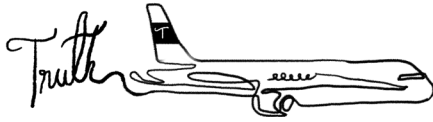
Although the president tried to evade the matter of extradition, stating that "the people do not want to send Colombians to be judged abroad [...] but rather exemplary justice",<sup>32</sup> in response to pressure from the United States, on December 16, 1997, the Legislative Act created by presidential initiative was approved, which modified Article 35 of the Political Constitution and revived extradition, although without retroactivity. In other words, only those who were proven to have committed offenses after December 17, 1997, could be extradited. According to María Elvira Samper, the various diplomatic punishments imposed by the United States were "a way of keeping him on a short leash [...] until the restoration of extradition is achieved, undoubtedly the ultimate purpose".<sup>33</sup>

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31 Samper, María Elvira (2022) *Extradición: de Ledher y los Rodríguez a Otoniel - cincuenta años de 'guerra contra las drogas'*. Editorial Planeta. p. 18.

32 El tiempo.com (1997). "El Sí pero NO de Samper en la extradición". Retrieved from: <https://www.eltiempo.com/archivo/documento/MAM-598870>

33 Samper, María Elvira (2022) *Extradición: de Ledher y los Rodríguez a Otoniel - cincuenta años de 'guerra contra las drogas'*. Editorial Planeta. p. 205.



# Andrés Pastrana Arango (1998-2002)

- **Bill Clinton (1993-2001)**

The stamp of peace that marked Pastrana's presidency was cross-cut by a transcendental twist in the development of the armed conflict in Colombia: the application of "Plan Colombia".

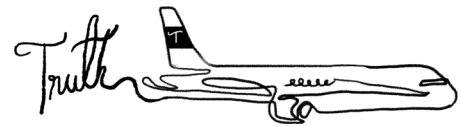
With the exponential growth of the guerrillas in financial and strategic matters during the 1990s, coupled with the deteriorated state of U.S.-Colombian relations inherited from Samper, came an overlap between the counterinsurgency war and the war on drugs that was the formula used to recompose relations between the two countries and gain U.S. support for negotiations with the FARC.

In 2000, the "Plan Colombia" program was launched, allocating more than US\$1.18 billion to the army and police for tasks related to combating guerrillas, interdiction of drug traffickers and crop eradication; and around US\$393 million to join efforts in the areas of judicial reform, displaced people, peace, and human rights.

Despite the failure of the Caguán negotiations, the already narcotized bilateral agenda ended up strengthening the link established between the anti-subversive fight and the war on drugs, which had impacts that persist in different state bodies, such as the design of public policy on drugs and even the territorial approach of the Army.<sup>34</sup>

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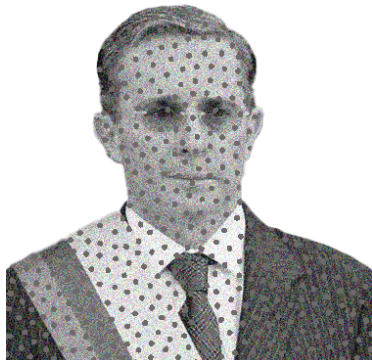
<sup>34</sup> One example of these impacts is the construction, under the supervision of the U.S. Federal Bureau of Prisons, of supermax prisons to hold high-profile drug traffickers. (See: de Dardel, J., & Söderström, O. (2015). *The Rise and Fall of Supermax: How the US Prison Model and Ultra Punitive Penal Policy Travelled to Colombia* (No. 3). Université de Neuchâtel), counterinsurgency combat training and the exchange of technologies for aerial operations and measurements of crops declared to be illicit with the U.S. Army.



- **George W. Bush (2001-2009)**

With Bush Jr. as head of the United States and the September 11 attacks, securitization deepened, the national security doctrine was revitalized, and U.S. international policy was re-militarized. Through Congress, Bush managed to extend the assistance for Colombia: his ambassador in the country pointed out that the strategy was to give Colombia the tools to fight terrorism and drug trafficking, two battles that became one; adding, close to the end, that the FARC and the paramilitaries functioned as drug cartels and that their members could be requested for extradition.<sup>35</sup>

Following the end of the dialogue table between the FARC and the outgoing Pastrana government, the armed conflict worsened. The United States was winning, since they had been proved right about the predominant armed route and had achieved the extradition of 78 Colombians for drug trafficking offenses.



## **Álvaro Uribe Vélez (2002-2010)**

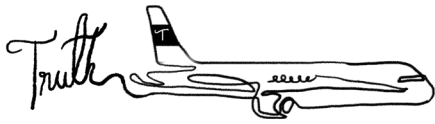
- **George W. Bush (2001-2009)**

Former President Uribe's democratic security policy was perfectly in tune with the line ordered by Washington. Colombia became the main recipient of U.S. assistance in the region, which isolated it from other countries in the region and curtailed the possibilities for diversifying the country's international relations.

For their part, the United Self-Defense Forces of Colombia [AUC] began their approach to the State for negotiations with a discourse based on being anti-subversive, and therefore political actors, a move that in theory would shield them from extradition. At this juncture, a bill that prohibited extradition in peace processes was presented, and although it was defeated, it was clear that

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35 Semana (2001). *El Gran Garrote*. Retrieved from: <https://www.semana.com/nacion/articulo/el-gran-garrote/48177-3/>



extradition was the critical point of the negotiation with the AUC and that it would be very difficult to overturn, since the United States was opposed to any kind of caveat that would prevent the paramilitary leaders from being sentenced in Colombia or acquitted.

After various tug-of-wars between the paramilitaries and the White House, and with a president who publicly denied the repeal of the extradition mechanism, but inwardly condescended to the requests of the AUC leaders, Uribe signed the resolution that conditioned the extradition of the negotiators to the fulfillment of the commitments acquired at the negotiating table. This mechanism ended up operating at presidential discretion.

Six months later, on July 25, 2005, the Justice and Peace Law was approved, the legal framework that would lay the groundwork for negotiations with the paramilitaries. This was criticized because it did not comply with the Treaty of Rome and the Constitutional Court norms and conceived of paramilitarism not as a criminal organization, but as political criminals for whom extradition was not appropriate. The United States also rained criticism and applause: the Senate opened the possibility of financing the demobilization, on the condition that Colombia maintained full cooperation with the extradition of leaders and members of terrorist organizations required by the justice system.

At the same time, Uribe avoided the extradition of aka "Don Berna" as a sign of his willingness not to extradite, and to maintain the negotiating table. The promise not to extradite ended up collapsing on May 13, 2008, when 14 former paramilitary leaders were sent to the United States in a CIA plane, closing the door for them to continue their statements before Justice and Peace prosecutors and be held accountable for offenses against humanity and alliances with members of the congress and public officials. William Brownfield, who was the U.S. ambassador to Colombia at the time, welcomed the extradition and pointed out that this fact would not hinder the collaboration of the ringleaders with justice and the victims in the country.<sup>36</sup>

Despite various attempts at collaboration between the Supreme Court and the Department of Justice (DOJ), few agreements were reached in terms of information sharing and access to Colombian authorities for paramilitaries imprisoned in the United States. Of the 29 extradited individuals that the International Human Rights Law Clinic followed up on, 9 were sentenced, and for the other 12, information was unavailable, or their case records were sealed.<sup>37</sup>

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36 International Human Rights Law Clinic. (2010). *Truth behind bars: Colombian paramilitary leaders in US custody*. University of California, Berkeley. School of Law.

37 International Human Rights Law Clinic. (2010). *Truth behind bars: Colombian paramilitary leaders in US custody*. University of California, Berkeley. School of Law, pp. 12 -15.



# Juan Manuel Santos Calderón (2010-2018)

- **Barack Obama (2009-2017)**

With the arrival of Barack Obama, there was an opening to a more balanced approach in addressing the drug issue: consumption was considered a public health problem, not susceptible to police prosecution, and resources were allocated to harm reduction strategies. The change was due to a discursive shift in opinion sectors and in Congress, partly triggered by the decriminalization of the use of medical marijuana in certain states. In Colombia, the alignment with Washington's hard-line, predominant during the Uribe and Pastrana presidencies, was overcome, and the strategy in the face of the armed conflict shifted towards the search for a peace agreement with the armed groups. Obama supported the peace process and the de-narcotization of bilateral relations, although the slogan of confronting drug trafficking through military strategy was always maintained.

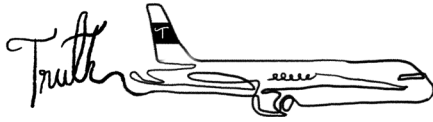
When it came to negotiating the demobilization and transition to civilian life, the specter of extradition returned: "The courts requested the FARC's leaders and it was clear to them that it was not feasible to lay down their arms if the end was a prison in the United States."<sup>38</sup> In this sense, any agreement between the FARC and the Colombian government should have the blessing of the United States, which should play the role of negotiator and not only of companion of the process<sup>39</sup>. Bernard Aronson, the U.S. delegate for the peace process, had assured that extradition was insurmountable. However, in the last year, Santos declared that "no one was going to hand over their weapons to go and die in a U.S. prison"<sup>40</sup>. As it was, the very next month, he denied the extradition of the finance chief of the

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38 Samper, María Elvira (2022) *Extradición: de Ledher y los Rodríguez a Otoniel - cincuenta años de 'guerra contra las drogas'*. Editorial Planeta. p. 418.

39 Borda, Sandra. Razón Pública. May 1, 2015. "El aterrizaje de Estados Unidos en el proceso de paz". Retrieved from: [El aterrizaje de Estados Unidos en el proceso de paz - Razón Pública \(razonpublica.com\)](http://razonpublica.com)

40 El Espectador. March 3, 2015. "Extradición, un tema obligado en el proceso de paz". Retrieved from: [Extradición, un tema obligado en el proceso de paz | EL ESPECTADOR](http://www.elspectador.com)



FARC's 10th Front, a nod to the continuation of the dialogues and a message that the agreement would guarantee non-extradition.

The agreement reached indicated that, thanks to the transitional justice system, drug trafficking would receive exceptional treatment and would be recognized as an offense connected to an offense of a political character: only persons who committed offenses after the signature of the peace agreement would be extradited. Even with national and international criticism, in the end, differences with the United States were ironed out and the U.S. approved, via Congress, a budget for the program of the plan *Paz Colombia* of 376 million for 2016 and 450 million for 2017.



## Iván Duque Márquez (2018-2022)

- **Donald Trump (2017-2021)**

The Duque administration embraced Donald Trump's policy without hesitation, so relations shifted back to a "narcotized" bilateralism. As coca cultivation increased, U.S. demands to crack down on the entire chain increased, focusing on crops declared illicit (rather than on interdiction of shipments and money laundering).<sup>41</sup>

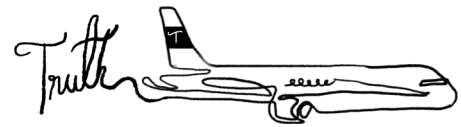
His government agenda was clear in his intentions to overthrow or hinder what had been agreed with the FARC guerrillas. One of his first acts was the proposal before Congress of a constitutional reform declaring that neither drug trafficking nor kidnapping would be recognized as an offense connected to an offense of a political character. Although it failed, it put the confidence of the peace signatories and the stability of the process at risk. It also set off alarm bells regarding the initiation of extradition proceedings.

Almost a year after his inauguration, Duque focused his efforts on making

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<sup>41</sup> See "Radiografía", Elementa DDHH. <https://elementaddhh.org/radiografia-politica-de-drogas-en-colombia-2018-2022/>





modifications to the Special Jurisdiction for Peace<sup>42</sup> (JEP), which put at risk what had been agreed regarding extradition. However, what was known as the Jesús Santrich *entrapment* dispelled the doubts about this mechanism in the framework of transitional justice, when the first extradition with the approval of the JEP took place, as a consequence of offenses (induced by the Prosecutor's Office<sup>43</sup> and committed after the signature of the peace process).

In the end, the Constitutional Court of Colombia frustrated most of the efforts to modify the JEP, and the atmosphere of high tension was heightened when Washington decided to cancel the visas of three magistrates, two from the Constitutional Court, which was also debating the restriction on the use of glyphosate, and one from the Supreme Court, which recognized for Santrich the guarantee of non-extradition. The United States continued to use, as in the nineties, the cancellation of visas to interfere in the decisions of the Colombian justice system.

The subsequent years passed along this path, with a Colombian government determined to wreck the Peace Accord and an agenda with the United States that was once again narcotized. At the same time, the United States was pushing for extradition and better results in crop reduction.



## **Gustavo Petro (2022-2026)**

- **Joe Biden (2021-2025)**

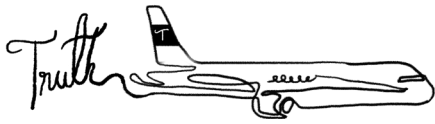
Petro's discourse has meant a change in the paradigm on extradition, as he

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42 Transitional justice institution responsible for investigating and judging the facts within the framework of the armed conflict.

43 Commission for the Clarification of Truth, Coexistence and Non-Repetition - CEV. (2022).

Case: "Los obstáculos para la continuidad de los procesos de paz en Colombia". Director General of Social Dialogue. Retrieved from: <https://www.comisiondelaverdad.co/caso-los-obstaculos-para-la-continuidad-de-los-procesos-de-paz-en-colombia>



has proposed a change in the approach to justice that allows legal benefits in exchange for redemption and non-recidivism<sup>44</sup>, thus ensuring the permanence of drug traffickers in the country. However, the materialization of this change has encountered difficulties, as he prioritized in his international agenda with the United States more relevant issues for his national policy, such as the war on drugs or climate change, extradition took a back seat and, for the time being, “everything remains the same”, as he warned moments before his meeting, in early 2023, with Joe Biden<sup>45</sup>.

The permanence of the current extradition policy reflects upon the fact that, since his tenure, 235 people have been extradited. The extraditions of three members of the AGC stand out in particular: Edinson Mosquera Ibargüen, alias Caminante; Cesar Levis García Machado, alias Galleta; and Vaby Medina Martínez, alias Flechas, who were captured in 2021 by the Prosecutor’s Office and subsequently requested for transfer by a court in Texas for drug trafficking-related offenses.<sup>46</sup>

Additionally, in early 2024, Petro signed the extradition of Don Mario’s son - Sebastián Meneses - after his capture in 2022, as he was the successor as the leader of the “Clan del Golfo”.<sup>47</sup>

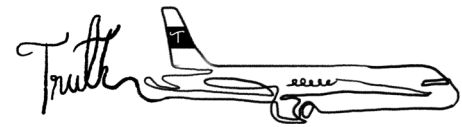
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44 CNN (August 25, 2022). “Petro propone a EE.UU. cambios en la política de extradición de narcotraficantes”. Retrieved from: <https://cnnespanol.cnn.com/2022/08/25/petro-extradicion-narcotraficantes-eeuu-legalizacion-drogas-orix/>

45 Elpais.com (April 20, 2023). “Petro no le planteará a Biden cambios en la extradición con EE.UU.: ‘todo sigue igual’”. Retrieved from: <https://www.elpais.com.co/politica/petro-no-le-planteara-a-biden-cambios-en-la-extradicion-con-ee-uu-todo-sigue-igual.html>

46 Semana (2023). Presidente Petro avaló la extradición a EE. UU. del círculo más cercano del exjefe del Clan del Golfo alias Otoniel; querían acogerse a la ‘paz total’. Retrieved from: <https://www.semana.com/politica/articulo/presidente-petro-avalo-la-extradicion-a-ee-uu-del-circulo-mas-cercano-del-exjefe-del-clan-del-golfo-alias-otoniel-querian-acogerse-a-la-paz-total/202309/>

47 El Espectador(2024). Gustavo Petro firmó extradición de Sebastián Meneses, hijo de Don Mario. Retrieved from: <https://www.elespectador.com/judicial/gustavo-petro-firmo-extradicion-de-sebastian-meneses-hijo-de-don-mario-noticias-hoy/>



## 2 . LEGAL FRAMEWORK

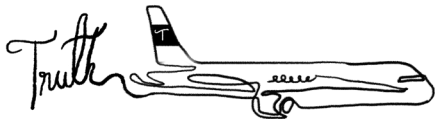
### 2.1. Extradition organizational engineering: parties involved

Although extradition in Colombia requires the articulated collaboration between the judicial and executive branches, the final word on any extradition request rests with the latter. To formalize the extradition request from a foreign country, the Ministry of Foreign Affairs receives a request for provisional detention for extradition purposes and sends it to the Attorney General's Office. With the formal request, the Attorney General's Office orders the capture of the person and the Ministry of Justice examines the compliance of the required documentation, which includes the sentence (or indictment resolution) of the foreign country and data to establish the identity of the sought person. Once endorsed by the Ministry of Justice, the file is sent to the Supreme Court of Justice to receive its opinion. The Court is responsible for confirming the identity of the person, that the act is considered a crime in Colombia, and that there is room for the defense of the person subject to extradition.

A negative assessment by the Court forces the denial of the request. However, if the assessment is favorable, it is at the government's discretion whether or not to grant the request, "according to national convenience" (Art. 501, Law 906 of 2004). If the government decides to grant the extradition, the Ministry of Foreign Affairs communicates the decision to the requesting country and the Attorney General's Office proceeds to surrender the person in question.

This procedure allows us to conclude that, even with an important participation of the judicial branch, focused on ensuring the procedural safeguards of the sought persons, the decision is ultimately made by the president, which imbues any decision with a political sense. This has been seen during the extradition negotiations of the 1990s with the heads of the Medellín and Cali cartels, as well as with the extradition of one of the FARC commanders, aka Simón Trinidad, whose departure from the country sealed the negotiating table with the United Self-Defense Forces of Colombia [AUC].

In this sense, the legal framework that has regulated the procedure has always been tied to the political context, not only because the paradigm of each moment was "generalized" (that is, there was a violent "consensus", to the point that to go against it implied stigmatization and death threats) but also because the jurisprudential development responded to the pressure of an external actor; namely the *narcos* in the first period, or the United States in the second.



This allows us to argue for a dual characterization of extradition. On the one hand, it is a legal mechanism resulting from developments in international criminal law, the extension of a global police policy, and collaboration between nations<sup>48</sup>. On the other hand, it is also a political mechanism, as it responds to the pressures of external actors (both international and national) and its design depends on the agency of the Executive Authority to grant it or not. The dual nature of extradition is fundamental for understanding the limits of the figure, the different situations in which its use is framed, as well as the legal arrangements that make it possible or constrain it.

The legal status of extradition in Colombia reflects precisely this duality between the legal and the political. Currently, extradition is based on the modification, by legislative act, of Article 35 of the Political Constitution of Colombia. In principle, extradition was not part of the Colombian legal framework, as a consequence of the violent “consensus” that prevented the few people who defended the figure from being able to discuss it in the negotiations of the Constituent Assembly. Even with the legal developments that advocated for procedural favorability, it was banned for most of the twentieth century: politics prevailed over law.

In 1997, by means of Article 01 of Legislative Act 01, once the political context was favorable, the Constitution was amended to include extradition in Colombian jurisprudence. Since then, the Criminal Procedure Code (Law 906 of 2004) regulates the entire extradition procedure described in previous paragraphs.

### **Extradition proceedings at the request of the U.S. government: the unburied corpse of Colombian diplomacy**

As a result of the image that had been created about Colombia as a “drug trafficking paradise”<sup>49</sup>, at the end of the 1970s the United States pushed for criminalizing cannabis growers and traffickers, while militarizing the northern region of the country, around La Guajira and the Sierra Nevada de Santa Marta<sup>50</sup>. This scenario was conducive to the introduction of the extradition treaty between the two countries, signed on September 14, 1979 and agreed by the then ambassador to

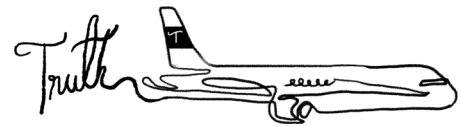
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48 Mejía Azuero, Jean Carlo. *La extradición pasiva de nacionales a los Estados Unidos y la constitución colombiana*. Grupo editorial Ibáñez. Bogotá: 2012.

49 TIME. (January 29, 1979). “The Colombian Connection. How a billion-dollar network smuggles pot and coke into the U.S.” Retrieved from: <https://content.time.com/time/subscriber/article/0,33009,912309,00.html>

50 Britto, L. (2022). *Marijuana Boom: The Rise and Fall of Colombia's First Drug Paradise*. University of California Press.

Orejuela Díaz, Libardo. *Narcotráfico & extradición. Telaraña del silencio y la mentira*. Atípicos Editores. Bogotá: 1997.



Washington and, years later, president of Colombia, Virgilio Barco<sup>51</sup>. Since then, the treaty has gone through different junctures that call into question its current validity in the legal body.

After it formally entered into force in 1982, through the exchange of instruments of ratification the Supreme Court of Justice ruled on six occasions on the treaty<sup>52</sup> due to different lawsuits that arose in the atmosphere against extradition that prevailed in the public opinion and among the country's jurists. In the first rulings, the Supreme Court of Justice affirmed that the revision of international treaties was not within its competence (what at the time was called the "thesis of absolute impossibility"), and therefore urged that the legislative branch make the decision.

After the assassination of the Minister of Justice, Rodrigo Lara Bonilla, President Betancur, who until then had been against extradition using the "violation of national autonomy" as an argument, changed his position on the matter. With this, judicial efforts were doubled before the Supreme Court of Justice to invalidate the Extradition Treaty, until the emergence of Decision No. 111 of December 12, 1986, which declared it unconstitutional due to formal defects.

Despite the foregoing, even though it cannot be applied domestically, the bilateral agreement has ended up shaping the way in which the extradition process takes place. Ultimately, the protocols, time frames, and offenses under which extradition operates between Colombia and the United States respond to the 1979 Treaty, regardless of the fact that, at the domestic level, they are legally grounded in the Criminal Procedure Code.

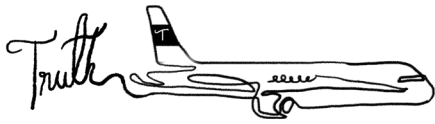
With all this in mind, the treaty can be summarized into the following points:

- Extradition is only possible in connection to offenses that are punishable in Colombia and the United States, even if domestic laws classify such offenses in different categories or use different terminology.
- Extradition shall also be granted for attempting to commit or participating in the commission of an offense, as well as for association or conspiracy to commit offenses.

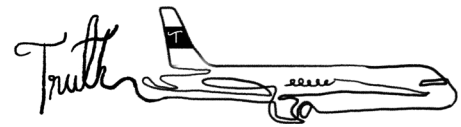
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51 In the words of María Elvira Samper "it was not just another treaty, but the first to break with the legal tradition [...] that prohibited the extradition of citizens to foreign governments." Samper, María Elvira (2022) *Extradición: de Ledher y los Rodríguez a Otoniel - cincuenta años de guerra contra las drogas*. Editorial Planeta. p 86.

52 Mejía Azuero, Jean Carlo (2012). "La extradición pasiva de nacionales a los Estados Unidos y la constitución colombiana". Grupo editorial Ibáñez. Bogotá.

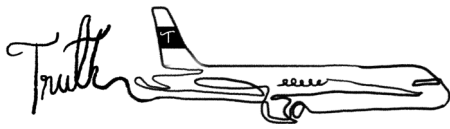


- Extradition is not permitted for offenses political in nature or offenses connected to political offenses, or when the person sought for extradition proves that he or she is being extradited for the sole purpose of being tried or convicted of such an offense.
- Extradition is not permitted when the offense for which extradition is requested is strictly military in nature.
- It is up to the Executive Authority of the requested State to decide whether to apply the article prohibiting extradition for political and military offenses.
- When the offense for which extradition is requested is punishable by death in the requesting State and the laws of the requested State do not permit such punishment for that offense, extradition may be refused unless, before extradition is granted, the requesting State gives such assurances as the requested State considers sufficient that the death penalty will not be imposed.
- **Extradition of nationals:** Although most of the treaty applies to the extradition of both nationals and foreigners, the treaty left, in Article 8, a series of special provisions for when the extradition of nationals of the requested State is sought:
  - » Neither party contracting to the treaty is obliged to deliver up its own nationals, but the Executive Authority may deliver them up if it deems it convenient and it complies with one of the following cases.
  - » If the offense involves acts that have been carried out in the territory of both States with the intent that they be consummated in the requesting State.
  - » Where the person whose extradition is requested has been convicted in the requesting State for the offense for which extradition is sought.
  - » If extradition is not granted for any of the above reasons, the requested State shall submit the case to its judicial authorities for investigation or prosecution, provided that it has jurisdiction over the offense.



- Once the extradition of a person has been granted, the requested State may defer his or her surrender, when the person is being proceeded against or is serving a sentence in the territory of the requested State for an offense other than that for which the extradition was requested, until the proceedings are concluded or until full execution of any punishment that person may be or may have been awarded.
- The extradited person may not be detained, tried or punished in the territory of the requesting State for an offense other than that for which extradition has been granted, nor be subject to extradition to a third State except in the following cases:
  - » If the person left the territory of the requesting State after that person's extradition and returned to it voluntarily.
  - » If the person has not left the territory of the requesting State within 60 days after being free to do so.
  - » If the Executive Authority of the requested State consents to that person's detention, trial, or punishment for another offense or to extradition to a third State, provided that the treaty's requirements are complied with.
- **There is no provision in the extradition treaty concerning the return of extradited persons once they have served their sentence in the requesting country, nor is there any provision concerning the assets surrendered in the requesting country.**

The following chart summarizes the different steps of the extradition procedure between Colombia and the United States.



# THE PROCESS OF EXTRADITION

FROM



TO




 submits to the  Ministry of Foreign Affairs the request for preventive detention for extradition purposes.

The Ministry of Foreign Affairs (MRE) sends a copy to the



The  **FISCALÍA** GENERAL DE LA NACION makes the arrest for extradition purposes and notifies the Ministries of Justice and Foreign Affairs.

MRE requests the  to formalize the request with the submission of evidence (it is not clear what kind of evidence and how conclusive it should be).



Once the formal extradition request is received, the MRE sends it to the Ministry of Justice and Law.

The Ministry of Justice and Law checks the documentation and sends it to the Supreme Court of Justice.

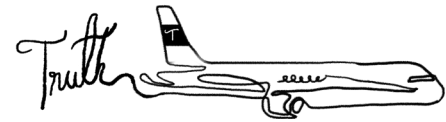
Favorable decision of the Supreme Court of Justice



The Ministry of Justice and Law transmits the executive resolution to the MRE which sends it to the .

Once accepted in the  the MRE notifies the Ministry of Justice and Law, which then transmits this information to the  **FISCALÍA** GENERAL DE LA NACION and the latter carries out the extradition.



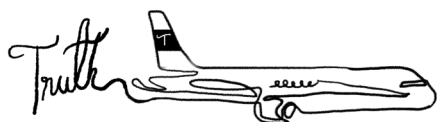


## 2.2. Pros and cons of extradition in Colombia

PROS	CONS
<p><b>Allows for defense:</b> There are stipulated times for the defense of the person to be extradited, once the case goes to the Supreme Court of Justice.</p>	<p><b>Excessively procedural:</b> The Court focuses more on ensuring the identity of the person (i.e., that the subject to be extradited is the same person who committed the offenses alleged by the requesting country) than on judging the defense's arguments.</p>
<p><b>Interference of different branches:</b> For the extradition to be approved, the approval of different units of the executive and judicial branches is required.</p>	<p><b>Executive Authority predominates:</b> Even with the judicial branch's veto power (if it considers that the evidence is not sufficient, the extradition is not approved), the executive branch predominates.</p>
<p><b>It is a political decision</b><sup>53</sup>: The final decision on whether to proceed with extradition rests with the president. This provides room for negotiation.</p>	<p><b>Subject to external pressures:</b> The leeway the president gets also makes him subject to U.S. pressures to approve extraditions.</p>
<p><b>Allows extradition to be deferred:</b> Both in the Extradition Treaty between Colombia and the United States (1979)<sup>54</sup> and in Article 504 of the Criminal Procedure Code (Law 906 of 2004), once the extradition of a person has been granted, the requested State may defer the surrender of the requested person, when that person is being proceeded against or is serving a sentence in the territory of the requested State for an offense different from the one for which extradition is sought, until the conclusion of the proceedings or full execution of any punishment that person may be or may have been awarded.</p>	<p><b>Little use of such possibility:</b> Deferred delivery has not been used in cases of great relevance for the Truth, Justice, and Reparation processes, and therefore, the existence of this guarantee has become purely symbolic.</p>

53 The positive or negative nature of the political use of extradition is a matter of debate. Some authors argue that the fact that it loses its legal character has consequences in its use to "settle political scores". In this regard, see: Ideas for Peace Foundation [FIP] (2009). "Use and abuse of extradition in the war on drugs". *Policy Brief No. 1*/April 20, 2009.

54 Both laws (Law 27 of November 3, 1980, and Law 68 of 1986) that were part of this treaty were declared unconstitutional by the Supreme Court of Justice. In this sense, even though Colombia cannot make use of this



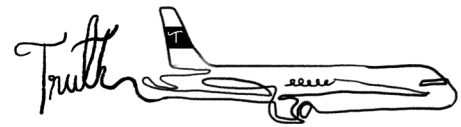
PROS	CONS
	<p><b>No obligation to return:</b> There is no provision in the extradition treaty concerning the return of extradited persons once they have served their sentence in the requesting country, nor concerning the assets surrendered in that country.</p>
<p><b>Extradition does not close the door to the truth:</b> There are procedures that allow the continuation of individual contributions from perpetrators in the truth processes.</p>	<p><b>But it discourages it:</b> Despite various public statements by U.S. officials, who assure that extradition will not be an obstacle for victims, in practice, the departure from the country has weakened the incentives (legal, security-related, and economic) for perpetrators to contribute to truth mechanisms, both transitional and criminal.<sup>55</sup></p>
<p><b>There are initiatives for improving access to information:</b> Even with major obstacles to following up on the legal processes of extradited persons, there are citizen initiatives and imperfect mechanisms<sup>56</sup> that allow some approaches.</p>	<p><b>No formal exchange of information:</b> Given the lack of transparency about the trials taking place in the United States, there are no bilateral mechanisms to inquire about the assets of extradited persons, which hinders the reparation processes. Attempts by various legal entities to obtain information on extradited persons have been thwarted.<sup>57</sup></p>

treaty to extradite persons to the United States, for which reason it must rely on national regulations and other treaties, the diplomatic relationship between the United States and Colombia, regarding extradition, continues to be governed by this document. .

55 International Human Rights Law Clinic. (2010). *Truth behind bars: Colombian paramilitary leaders in US custody*. University of California, Berkeley. School of Law.

56 One of the most relevant is the CVRA (Crime Victims Rights Act), which recognizes that non-U.S. citizens, victims of crimes committed outside the United States, may be recognized as such if the U.S. justice system is trying the perpetrator. In that sense, and in principle, victims are “eligible to collect compensation from Defendants and to inform the terms of a plea bargain and eventual sentence”. International Human Rights Law Clinic. (2010). *Truth behind bars: Colombian paramilitary leaders in US custody*. University of California, Berkeley. School of Law. P. 7.

57 “In a May 21, 2009, letter to a Colombian non-governmental organization, the Colombian Human Rights Unit identified fifty-four unanswered requests for judicial assistance.” (p. 7). International Human Rights Law Clinic. (2010). *Truth behind bars: Colombian paramilitary leaders in US custody*. University of California, Berkeley. School of Law.



### 2.3. Extradition in the Peace Accords: “No one is going to hand over their weapons to go and die in a U.S. prison”<sup>58</sup>

In the peace negotiations between the FARC and the National Government, extradition was one of the issues to be addressed. In fact, provision number 72 of the Justice section of point 5 of the agreements contains what has been agreed upon regarding extradition, text that would end up being transcribed almost integrally in transitory article 19 of Legislative Act 1 of 2017<sup>59</sup> and developed in Articles 149 to 154 of Law 1957 of 2019<sup>60</sup>.

These agreements create a legal figure that has been called a “non-extradition guarantee”. This guarantee is an absolute prohibition to extradite or carry out detention measures for extradition purposes concerning members of the FARC-EP (or persons accused of being members of this organization) and acts or conducts whose jurisdiction is in the Special Jurisdiction for Peace (with respect to conducts that occurred during the armed conflict until the signing of the peace agreements).

In other words, the application of this guarantee of non-extradition requires the confluence of 3 elements:

- **Personal element:** That the accused person is a member of the FARC-EP or is accused of belonging to this organization.
- **Temporal element:** The acts for which he is accused must have been committed before the signing of the peace agreements.
- **Material element:** That the facts for which the person is being accused fall within the jurisdiction of the JEP.

When it is alleged, with respect to a member of the FARC-EP or a person accused of being a member of said organization, that the conduct attributed in the extradition request occurred after the signing of the Final Agreement, the Review Chamber of the JEP will evaluate the attributed conduct in order to determine the precise date of its commission and decide on the appropriate procedure. For this purpose, the JEP will have 120 days, extendable only in justified cases that depend on the cooperation of other institutions.

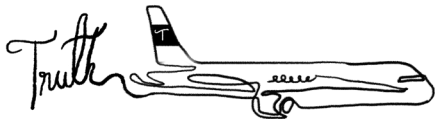
If it is found that the events occurred after the signing of the Final Agreement and

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58 Verdad Abierta (March 10, 2015). *Las opciones de ‘Simón Trinidad’*. Retrieved from: <https://verdadabierta.com/las-opciones-de-simon-trinidad/>

59 Declared constitutional in Ruling C-674 of 2017.

60 Declared constitutional in Ruling C-080 of 2018.



are not related to the process of the laying down of arms, this file will be sent to the competent judicial authority to be investigated and tried in Colombia, without excluding the possibility of extradition. Finally, the “non-extradition guarantee” also includes persons who are offering truth before the Comprehensive System for Truth, Justice, Reparations, and Non-Recurrence (SIVJNR) of whom extradition will not be granted.

## 2.4. Jurisprudential line of the Constitutional Court: Towards the internal regulation of extradition

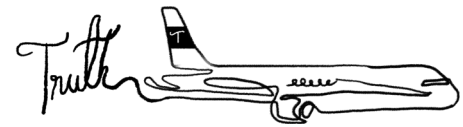
The Constitutional Court (and the body that had its functions before the Constitution of 1991, the Supreme Court) has swung between pronouncements against extradition, regulating the procedure, and in favor of it. With Legislative Act 1 of 1997, the article of the Constitution prohibiting extradition was eliminated, with which the proceedings of the Court began to form the legal understanding of the mechanism. The most relevant pronouncements are listed below:

### Acto Legislativo 1 de 1997:

- Ruling C-543/98: The Court declared the exequibility of Legislative Act 1 of 1997, which **would once again open the door to the extradition of Colombian nationals by birth to other countries**<sup>61</sup>. However, it only reviewed the existence of formal defects in the Legislative Act, since the doctrine of substitution of the constitution, which would allow for the review of substantive defects in this type of norms, would not be developed by this court until Ruling C-551/03, 5 years later.
- Ruling C-1106/00: Under the Legislative Act 1 of 1997, it **declared the exequibility of several articles of the Criminal Procedure Code of the time that allowed** extradition, recalling that extradition of foreigners cannot be granted for political or opinion offenses and that *“the surrender of a person in extradition to the requesting State, when in this State the death penalty exists for the offense that motivates it, shall only be made under the condition of the punishment’s commutation, as provided therein, and also on the condition that the extradited person shall not be subjected to forced disappearance, torture, or cruel, inhuman or degrading treatment or punishment, nor to the penalties*

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61 Constitutional Court. Ruling C-543/98. Retrieved from: <https://www.corteconstitucional.gov.co/relatoria/1998/C-543-98.htm>



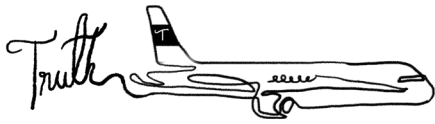
of banishment, life imprisonment and confiscation, in accordance with the provisions of Articles 11, 12 and 34 of the Constitution<sup>62</sup>.

## The year 2000, the New Criminal Code and New Code of Criminal Procedure:

- Ruling C-431/01: Examination of a citizen's complaint against the Criminal Code, in which it is argued that the extradition process does not guarantee the right to due process enshrined in the Colombian Constitution or in international human rights treaties. In this regard, **the Court considered that there is no violation of these principles, since the extradition process** does not constitute a judicial process, and that in the process, which involves the judicial and executive branches, the only thing that is done is to verify compliance with the requirements for granting extradition according to the respective international treaty or domestic law.
- Ruling C-760/01: Through this ruling, the court reviews Law 600 of 2000, Code of Criminal Procedure, which in its article 527 stated that "*extradition shall not be granted when for the same act the person whose surrender is requested has been or is being tried in Colombia*". Such article was declared unenforceable since its text was not published in the Gazette No. 540 of 1999 before the second debate held during the Chamber of Representatives plenary session.
- Ruling SU 110/02: A year later, it unified its jurisprudence regarding extradition in Colombia, covering several important issues such as the recognition that, once a person is extradited, that person leaves the jurisdiction of the Colombian State and, therefore, **there is no longer the legal capacity to ensure his or her return**, so the only tool left is diplomatic in nature (as evidenced in the case of Simón Trinidad). Additionally, it declared the extradition inadmissible "*when prior to the extradition request there is an investigation or conviction in Colombia*" (Code of Criminal Procedure prior to Law 600 of 2000).
- Ruling T 612/03: In the same line, it reaffirmed that "*if by the time the request is received, for the same facts, there is already an investigation or conviction in Colombia concerning the requested person, extradition is not possible, and the Colombian criminal jurisdiction shall apply.*"

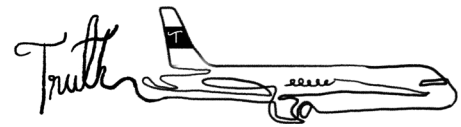
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62 Constitutional Court. Ruling C-1106/00. Retrieved from: <https://www.corteconstitucional.gov.co/relatoria/2000/C-1106-00.htm>



## The year 2004 and the New Code of Criminal Procedure:

- Rulings C-460-08 and C-243/09: In these two rulings the Court decides on constitutional complaints against the New Code of Criminal Procedure (Law 906 of 2004) and **reiterates its jurisprudence stating that extradition as established in this law does not violate the right to due process or judicial guarantees**, since this is an administrative and not a judicial process.
- Ruling T-919/12: This ruling has a detailed summary of the history of international relations between Colombia and the United States regarding extradition, making it clear that its position is that **there is no extradition treaty in force between Colombia and the United States, but that such procedure can be advanced by the provisions of the Code of Criminal Procedure** (Law 906 of 2004). After all, the Court granted the constitutional injunction [tutela] because the offense for which the defendants were requested for extradition does not exist in Colombia (in the United States they were charged for association and conspiracy to restrict competition, while in Colombia such action is known as *restrictive practices to free competition* and do not constitute an offense but administrative sanctions).
- Ruling C-112/19: As a response to a claim of unconstitutionality, in this ruling **the Court ruled in favor of guaranteeing greater tools for the Special Jurisdiction for Peace in relation to extradition**. To this end, it declared unconstitutional an article that sought to prevent the Jurisdiction from conducting tests to ensure that the actions for which extradition of a member of the FARC-EP is requested had been committed after the signing of the agreement. This was based on an understanding of the Final Agreement between the National Government and the FARC according to which the transitory guarantee of non-extradition was introduced to “ensure the achievement of peace, guarantee the rights of the victims of the internal armed conflict, and achieve compliance with the agreed commitments”.

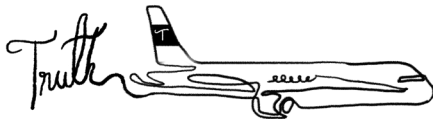


### 3. CASES: CHANGE IN THE U.S. PARADIGM WITH COLOMBIAN EXTRADITED PERSONS?

Based on the cumulative contextual and legal background outlined above, this section reviews the trajectory of two extradition cases that, although temporally separated, followed similar patterns: aka "Otoniel" and aka "Jorge 40". Both Dairo Úsuga and Rodrigo Tovar interrupted their contributions to the truth, through transitional mechanisms, as a consequence of extradition. Although there are mechanisms that would have allowed them to continue collaborating with truth and justice processes in Colombia, the experience of both reflects one of the first findings of this research: how extradition and the dynamics of criminal policy in the United States end up breaking the -already fragile- political, judicial, and economic incentives to collaborate with transitional and ordinary justice in Colombia.

In the particular cases of Úsuga and Tovar, their potential contribution to the truth could have been fundamental for the clarification of the relationship between paramilitaries, stateness, and civilian third parties; one of the phenomena that, despite the large body of information built up in Justice and Peace, still lacks sufficient information to establish patterns of non-repetition.

Despite the "continuities" that can be observed in their violent trajectories, the U.S. justice system has shown a differentiated understanding (hopefully an institutional learning process, as a result of the 10-year difference between the cases) of their offenses, which allows us to wonder about the possibility of a change in the U.S. paradigm regarding the contexts in which drug-related offenses are committed.



### 3.1. Otoniel

Dairo Antonio Úsuga, aka “Otoniel”, is the living example of *transfuguismo*<sup>63</sup>, a phenomenon that has made the internal armed conflict in Colombia more complex, favoring violent and organizational learning.

Before its demobilization, he began his involvement in the armed conflict as one of the last generations to join the Popular Liberation Army (EPL). He later joined the ranks of the Peasant Self-Defense Forces of Córdoba and Urabá (ACCU), as part of the integration made by the paramilitary group of former EPL combatants persecuted by the FARC. Later, as part of the United Self-Defense Forces of Colombia (AUC), he participated in the Mapiripán Massacre<sup>64</sup> and served as leader of the *Bloque Centauros* in the eastern plains, where he worked with *Don Mario*. Between Meta, Casanare, and Vichada, he took part in the bloody war between the *Bloque Centauros* and the Peasant Self-Defense Forces of Casanare [ACC] (also known as the “Buitragueños”), which left thousands of victims, among civilians and members of both groups<sup>65</sup>.

After the demobilization of the *Bloque Centauros*, led by Don Mario and his brother Juan de Dios Úsuga, they created the *Bloque Héroes de Castaño*, a sort of dissidence group from the negotiations with the AUC, which gathered troops, contacts, and weapons to operate in Urabá Antioquia<sup>66</sup>.

In 2009, Don Mario was captured in Necoclí, Antioquia, and aka *Giovanny* (Juan de Dios Úsuga) assumed the leadership of the organization, which had already been called by a multiplicity of names and ended up identifying itself as the Gaitanistas Self-Defense Forces of Colombia (AGC)<sup>67</sup>.

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63 *Transfuguismo* refers to the movement of combatants between different armed groups. The case of former members of the EPL who became part of the AUC is one of the most frequently mentioned, however, this phenomenon also includes members of the Colombian Army who joined paramilitary groups, and even FARC guerrillas who joined the ranks of the self-defense groups. In this regard, see: Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). *Tránsito intergrupala de combatientes en el conflicto*. Retrieved from: <https://www.comisiondelaverdad.co/caso-transfuguismo>

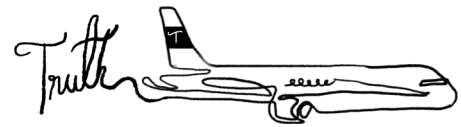
64 *Memorias De Una Guerra Por Los Llanos. Tomo I: De La Violencia A Las Resistencias Ante El Bloque Centauros De Las AUC*. National Centre for Historical Memory [CNMH]. 1st Ed. Bogotá: National Centre for Historical Memory, 2021.

65 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). Case: “Paramilitarismo En Los Llanos.” Territories Chapter: *Casos Colombia Adentro*. Retrieved from: <https://www.comisiondelaverdad.co/Caso-Paramilitarismo-En-Los-Llanos>

66 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). Case: “Autodefensas Gaitanistas de Colombia (AGC) o Clan del Golfo y las disputas con los denominados Caparros. Reconfiguración actual del conflicto armado en el Bajo Cauca antioqueño y sur de Córdoba.” Territories Chapter: *Casos Colombia Adentro*. Retrieved from: <https://www.comisiondelaverdad.co/caso-agc-caparros>

67 In a communiqué dated March 30, 2024, the *Autodefensas Gaitanistas de Colombia* (AGC) announced that they





However, *Giovanny* was killed, and Dairo Antonio took over command of the organization. Since then, he has been involved in multiple human rights and International Humanitarian Law (IHL) violations, such as homicides, kidnappings, displacement, confinement, illegal registration of personal information [empadronamientos], and sexual violence.

Dairo Antonio was captured in 2021 in Necoclí, Antioquia (other sources, including himself, state that it was a voluntary surrender and not a capture). Shortly after his capture, he began making contributions to the Comprehensive System for Truth, Justice, Reparations, and Non-Recurrence (SIVJNR), even when the Special Jurisdiction for Peace [JEP] had denied him the possibility of entering this court. Almost at the same time as his first voluntary contributions, the United States reiterated the extradition request (which was made through Note Verbale No. 1083, on June 30, 2015<sup>68</sup>) and it was approved in an “express” manner. Despite the precautionary measures (first approved and then rejected by the Council of State)<sup>69</sup> Otoniel was extradited to the United States in May 2022.

Although he only assumed the leadership of the organization in 2012, the indictment he received in the United States accuses him of *narcotics importation conspiracy*<sup>70</sup> since at least 2003, which implies that he is also being tried for offenses committed while he was a member of the AUC.

For the government of President Iván Duque, Otoniel’s extradition was a sign of the “strength and forcefulness of Colombian institutions” and the good shape of the relationship with the United States, as well as a positive balance of the joint work against transnational crime.<sup>71</sup> However, public opinion saw Otoniel’s extradition as a way to protect the military and public officials about whom the former criminal leader was giving information.<sup>72</sup>

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have changed their name to the *Ejército Gaitanista de Colombia* (EGC). The name change comes in the context of the Total Peace negotiations and is part of a series of attempts to gain political legitimacy. See: Ifm Noticias (2024). “Autodefensas Gaitanistas -AGC-cambian de nombre y ahora son Ejército Gaitanista de Colombia -EGC-”. Retrieved from: <https://ifmnoticias.com/autodefensas-gaitanistas-agc-cambian-de-nombre-y-ahora-son-ejercito-gaitanista-de-colombia-egc/>

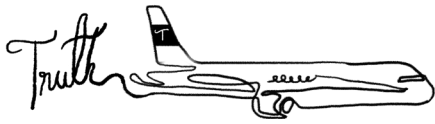
68 Ministry of Justice. Resolution 078 of April 08, 2022.

69 Council of State, 2022. *Consejo de Estado ordena suspender extradición de Dairo Antonio Úsuga, alias ‘Otoniel’*. Retrieved from: <https://consejodeestado.gov.co/news/29.3-abr-2022.htm>

70 While this is the main offense with which he is charged, his Indictment also includes *maritime narcotics conspiracy* and *continuing criminal enterprise* (CCE). See: Plea Agreement Dairo Antonio Úsuga David. Retrieved from: <https://www.courthousenews.com/wp-content/uploads/2023/01/usuga-david-plea-agreement-eastern-district-new-york.pdf>

71 El tiempo.com (April 8, 2022). “El mensaje de Duque con la extradición de ‘Otoniel’”. Retrieved from: <https://www.eltiempo.com/politica/gobierno/duque-firma-extradicion-de-otoniel-a-ee-uu-analisis-663968>

72 Elpais.com (April 15, 2022). “Las víctimas de Otoniel rechazan su extradición: ‘Necesitamos su verdad. ¿Quiénes daban las órdenes?’”. Retrieved from: <https://elpais.com/internacional/2022-04-16/las-victimas-de-otoniel-rechazan-su-extradicion-necesitamos-su-verdad-quienes-daban-las-ordenes.html>



Moreover, Dairo Antonio's case in the United States became *sui generis* because of the broad approach to his actions, which includes the repertoire of violence committed by the AGC to control the northeast of the country, based on homicides, kidnappings, threats, and displacements. This becomes even more relevant as the same Court judge who sentenced him links the violence generated by drug trafficking with drug trafficking itself. This was evidenced in a dialogue between one of Otoniel's defense lawyers and the judge:

**"MR. NALVEN (OTONIEL'S LAWYER):**

What I mean is that the background noise in this case seems to be more about the three generations of violence, the cycle of violence in Colombia; than about the drug trafficking, and I hope...

[Interrupting]

**THE COURT:**

I am sorry, but you cannot separate the violence from the drug trafficking, whether it is in Colombia, or whether you are talking about El Chapo and the Sinaloa Cartel in Mexico, or whether you are talking about the Bloods gang in New York, and the violence they engage in along with the drug trafficking.

There is abundant federal case-law in this circuit and in other circuits and in the Supreme Court that speaks to the fact that violence and drug trafficking go hand in hand.

This is not something that is limited to Colombia. Colombia is not alone in the world as the only country affected by this.<sup>73</sup>

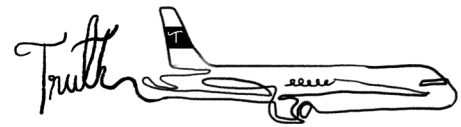
Even so, the indictment only includes offenses related to cocaine distribution: the use of violence was counted as an aggravating factor that added two years to each offense. In other words, of the 160 years of imprisonment (before reductions and adjustments) that he could be sentenced to, only 6 were a consequence of the use of violence.

After having been since January 2023 under the figure of *convicted pursuant to a guilty plea*<sup>74</sup>, in the last pronouncement in his presentence process, Dairo Antonio

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<sup>73</sup> Transcript of Criminal Cause for Sentencing. August 8, 2023.

<sup>74</sup> That is, awaiting the judge's resolution of his plea agreement, a moment in the process in which he pleads guilty and avoids an evidentiary hearing. See: Memorandum Of Law In Opposition To Defendant's Motion To Vacate Or Modify Special Administrative Measures. June 23, 2023.



requested the removal of the Special Administrative Measures (SAMs) that keep him in isolation (without contact with other persons deprived of liberty) and with restrictions to his external communications, from calls, contacts with his lawyer, and even letters via email.<sup>75</sup>

The United States District Court for the Eastern District of New York (the court to which the defendant's cases from the Southern District of Florida and the Southern District of New York were transferred<sup>76</sup>) denied his motion based on two arguments: 1) He did not fully complete the administrative mechanisms for these petitions through the Bureau of Prisons (BOP), and 2) that the conditions for which they were imposed on him, namely the risk that he may communicate with people abroad, give orders, or retaliate against possible witnesses, persist.

The argumentation for this second point is relevant because it is based on his "history" of human rights and IHL violations ("with his well-documented history of violence"<sup>77</sup>, among other expressions used) committed by Dairo Antonio as commander of the AGC. In that sense it was claimed that, based on his violent past, it is not possible to allow him to communicate with people through other people deprived of their liberty.

Finally, on August 8, 2023, he was sentenced to 45 years of intramural imprisonment and 5 years of probation.<sup>78</sup> The above, despite the request of Otoniel's team of lawyers asking for a sentence that took into account (very much in line with Common Law<sup>79</sup>) not only the offenses charged but also the particularities of Úsuga. Thus, his lawyers stated that a sentence of 25 years was fair in relation to the context in which he grew up:

But the Court should temper that punishment by considering that Mr. Usuga grew up in an impoverished environment where there was little opportunity for advancement, constant internecine violence, and a notable absence of the Colombian state in the most fundamental aspects of daily life. In that milieu, Marxist guerillas tormented Mr. Usuga's family and later forced him to fight as a child soldier in the internal conflict that divided Colombia over political ideology.<sup>80</sup>

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75 This request was reiterated in the sentencing hearing, without much success by Otoniel's defense lawyers.

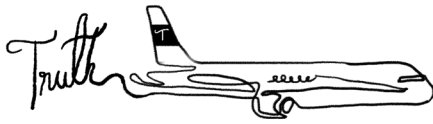
76 Plea Agreement Dairo Antonio Úsuga David. Retrieved from: <https://www.courthousenews.com/wp-content/uploads/2023/01/usuga-david-plea-agreement-eastern-district-new-york.pdf>

77 Memorandum Of Law In Opposition To Defendant's Motion To Vacate Or Modify Special Administrative Measures. June 23, 2023.

78 Criminal Cause for Sentencing. August 8, 2023

79 Federal Criminal Code, Section 3661, Retrieved from: <https://www.law.cornell.edu/uscode/text/18/3661#:~:text=No%20limitation%20shall%20be%20placed.of%20imposing%20an%20appropriate%20sentence>

80 July 31, 2023. Sentencing memorandum on behalf of Dairo Antonio Usuga David. United States District Court for the Eastern District of New York.



On the other hand, the delegated prosecutors for this case asked for a sentence of 45 years, which is based on three main aspects:

- The history of “violence and revenge” that characterized Úsuga’s leadership of the AGC<sup>81</sup>.
- The personal enrichment motives that prompted his actions. Contrary to the hypothesis put forward by Otoniel’s lawyers, who characterized him as a “pure paramilitary” who, in the midst of his military actions, ended up involved in the world of the illicit drug market.
- The fact that, had it not been for his capture, Otoniel would continue to commit offenses and has no intention of redemption: “Through the Colombian government’s Justice and Peace process, the defendant was afforded a generous and lawful means to demobilize. However, the defendant rejected the rule of law. Instead, the defendant briefly demobilized and decided that a peaceful, non-violent existence was not for him”<sup>82</sup>.

In establishing the sentence, Judge Irizarry argued that she took into account Otoniel’s capacity to decide to commit criminal offenses. According to Irizarry, many people grow up in contexts of poverty and violence, however, it was in Otoniel’s hands to choose to join armed groups and traffic illegal substances. She added that he had the chance to get out of these violent cycles twice (referring to the demobilizations of the EPL and the AUC), yet he chose to reoffend. For these reasons, coupled with the harm caused in the United States through urban violence and health impacts on consumers, the Court sentenced him to 45 years. In the end, the prosecution’s arguments prevailed, and Otoniel has a lengthy sentence to serve, which has been read by the public as a “de facto life sentence” because of the detainee’s age<sup>83</sup>.

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80 July 31, 2023. Sentencing memorandum on behalf of Dairo Antonio Usuga David. United States District Court for the Eastern District of New York.

81 United States Attorney. Eastern District of New York. United States v. Dairo Antonio Usuga David Criminal Docket Nos. 14-625, 23-21 and 23-27 (DLI). p. 2.

82 United States Attorney. Eastern District of New York. United States v. Dairo Antonio Usuga David Criminal Docket Nos. 14-625, 23-21 and 23-27 (DLI). p. 7.

83 Eltiempo.com (August 11, 2023). “Esta es la infranqueable cárcel de EE.UU. en la que alias Otoniel purgará 45 años”. Retrieved from: <https://www.eltiempo.com/unidad-investigativa/alias-otoni-el-asi-es-la-tenebrosa-carcel-de-ee-uu-a-la-que-sera-enviado-795194>

### 3.2. Jorge 40



Rodrigo Tovar, aka “Jorge 40,” is an example of the adjacency between local elites and the paramilitary project. Born into a prestigious family from Valledupar, he was a member of the Peasant Self-Defense Forces of Córdoba and Urabá (ACCU), led by Salvatore Mancuso. Within this organization, he was a strategic ally for the organization’s expansion towards the north and northeast of the country.

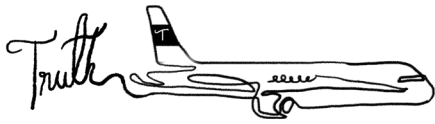
Tovar Pupo’s testimony is fundamental to understanding the interweaving of paramilitary groups and local political elites between the 1990s and early 2000s. As commander of the *Bloque Norte* [Northern Bloc] of the AUC, he designed a strategy to diversify finances, ensuring that the structure did not depend exclusively on cocaine dividends, but was also nourished by contracting fees in the main mayors’ and governors’ offices in the north of the country. He also made alliances with candidates for the Chamber of Representatives and the Senate, which allowed him to penetrate different branches of public power at different levels.

In addition to the parapolitics phenomenon, he is accused of human rights violations committed by the bloc he commanded, including the El Salado Massacre and the creation of the Juan Andrés Álvarez Front, a group dedicated exclusively to the vicinity of the coal mines exploited by Drummond, which was in charge of providing security for the multinational, as well as displacing the surrounding civilian population through homicides, massacres, and threats.

Prior to his extradition, he was deprived of his liberty for a year, a period during which he formed *La Banda de los 40*, a group in charge of maintaining territorial control and finances of the Northern Bloc. After his extradition in May 2008, along with 13 other paramilitary leaders<sup>84</sup>, he stopped collaborating with Justice and Peace, claiming that there were no guarantees for his family, as demonstrated by the murder of his brother. These extraditions, including that of Tovar, were read at the time as the final blow and the preamble to the failure of the Truth, Justice, Reparations [VJR] process derived from the Justice and Peace tribunals. The almost null collaboration received from former AUC commanders in the transitional justice processes confirmed this intuition.

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84 Elpais.com (May 13, 2008). “Colombia extradita a EEUU a los 14 principales jefes paramilitares.” Retrieved from: [https://elpais.com/diario/2008/05/14/internacional/1210716001\\_850215.html](https://elpais.com/diario/2008/05/14/internacional/1210716001_850215.html)



Even though the extradition meant Tovar's silence before Justice and Peace<sup>85</sup>, the composition of the Justice and Peace agreement was fundamental to his conviction in the United States. On the one hand, District Judge Reggie Walton for the District of Columbia, based his power to deprive Tovar of his liberty on Article 30 of the Justice and Peace Law:

35. The parties understand that if the defendant fulfills his obligations under the Justice and Peace Act ("Act") and is sentenced pursuant to Article 30 of the Act, "the sentence can be served in a country other than Colombia." If the defendant and the Colombian government agree that the defendant can serve his sentence imposed under the Act in the United States, the government will not object to the defendant serving his Colombian sentence concurrent to the sentence imposed in this case.<sup>86</sup>

On the other hand, the collaboration he had had until then with the Justice and Peace court, as well as the time he was deprived of liberty in Colombia, was recognized at the time of his conviction<sup>87</sup>. The limits of this recognition, and whether it was merely formal or accessory, are subject for another discussion. Basically, what is relevant is that his collaboration was mentioned in the Plea Agreement, which allows us to affirm that the U.S. justice system was aware of the VJR processes that Tovar had been carrying out in Colombia and that these were not respected or encouraged during the trial.

Furthermore, his participation is not minor. It responds to the need to fill with symbolic content the reparation that the victims may obtain through the admission of responsibility. This is because the information it could provide has already been extensively studied by the Justice and Peace courts, the ordinary justice system, as well as by external researchers and journalists.

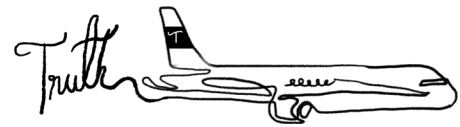
In 2020, he returned to Colombia after serving his sentence in the United States. He is currently being held in the Picalaña prison (Ibagué), where he is accused

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85 This fact led to his expulsion from the transitional tribunal in 2015, after 48 unsuccessful attempts for a voluntary statement in which the former paramilitary refused to participate. See: Elheraldo.com. (2015). "Expulsado 'Jorge 40' de Justicia y Paz por renuencia a colaborar". Retrieved from: <https://www.elheraldo.co/judicial/expulsado-jorge-40-de-justicia-y-paz-por-renuencia-colaborar-201249>

86 Plea Agreement. United States of America v. Rodrigo Tovar Pupo. p. 13. In this case, the court refers to Law 975 of 2005, the *Ley de Justicia y Paz* [Justice and Peace Law]. The Justice and Peace Law, Article 30, effectively allows the sentence to be "served abroad" (p. 18). However, Article 7 of the same law establishes that "Society, and especially the victims, have the inalienable, full, and effective right to know the truth about the crimes committed by organized illegal armed groups". The above translates into a convenient interpretation of the Justice and Peace Law and reflects the understanding that, at least for Tovar, the U.S. justice system had of his criminal record: one that weights drug-related crimes over human rights violations.

87 Plea Agreement. United States of America v. Rodrigo Tovar Pupo. p. 4.



of more than 180 criminal acts. Despite several attempts to enter the Special Jurisdiction for Peace, this entity considered that his contributions were not sufficient to access the benefits of transitional justice, and therefore his appearance was rejected.

### **3.3. Changes in U.S. trials: What changed from Jorge 40 to Otoniel?**

Based on the examination of documents from the trial in the United States, mainly Plea Agreements, as well as some Indictments and memorandums, a substantial difference can be detected in the judicial processes between Rodrigo Tovar Pupo and Dairo Úsuga: the recognition by the U.S. justice system of the human rights violations that the defendants have incurred to complete their drug-related offenses.

In Tovar's indictment there is no mention whatsoever of the acts committed by the Northern Block in the context of the armed conflict. Although there is recognition of his role as commander of the group, as well as a detailed reconstruction of the disputes and alliances with Hernán Giraldo<sup>88</sup>, in the documents reviewed there is no mention of the actions planned and executed by Tovar.

The opposite is the case of the indictment faced by Úsuga, in which, from the very first paragraphs, there is mention of the homicides, massacres, and displacements in which he was involved as head of the AGC to ensure cocaine trafficking<sup>89</sup>:

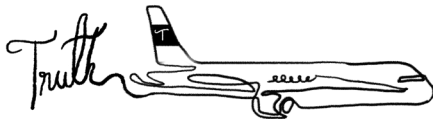
In this sense, it is possible to argue that there is a change in the understanding of offenses related to economies declared illicit, in which, although they are not part of the charges, the commission of violent offenses (even when they are not named as violations of human rights or IHL) is taken into account in the context as part of the criminal scaffolding that makes possible the "conspiracy to distribute cocaine internationally".

For the final sentencing of Usuga, the type and magnitude of violence employed by the AGC under his command was one of the aspects most highlighted by both the Court in the Plea agreement and the Attorney General's Office. Additionally, in the Department of Justice's (DOJ) statement on Otoniel's sentencing, U.S. Attorney Breon Peace for the Eastern District of New York made clear the U.S. intention

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88 Statement of facts, plea of guilty, 2009.

89 Indictment Dairo Úsuga, 2021.



to prosecute not only drug-related offenses, but also the violence necessary to ensure their success:

under the CDG's control. Specifically, the CDG charged a set fee for every kilogram of cocaine that was manufactured, stored or transported through areas controlled by the CDG.

3. The CDG also employed "sicarios," or hitmen, who carried out various acts of violence, including murders, assaults, kidnappings and assassinations. The CDG utilized these acts of violence for a variety of reasons, including:

(a) Promoting and enhancing the prestige, reputation and position of the CDG with respect to rival criminal organizations;

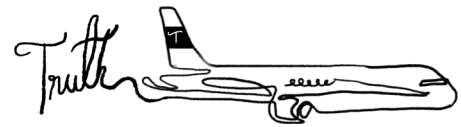
The human misery caused by the defendant's **incredibly violent, vengeful, and bloody reign** as leader of the Clan de Golfo drug trafficking organization may never be fully calculated due to its magnitude, but today's lengthy sentence delivers appropriate justice and sends a message to other paramilitary and cartel leaders that the United States will seek their arrest and extradition in order to hold them accountable in our courts of law.<sup>90</sup>

Even so, the court affirms that for this type of case no restitution mechanism is appropriate, since drug trafficking, in principle, does not have victims that must be restituted by a court order: "Although drug trafficking itself has victims in many different ways, restitution is something that would not have to be ordered by the Court in this case under the law".<sup>91</sup>

90 Department of Justice (August 8, 2023). "Former Leader of "Clan Del Golfo" Drug Trafficking Organization Sentenced to 45 Years in Prison for Operating a Continuing Criminal Enterprise and Related Charges". Emphasis added by authors. Retrieved from: <https://www.justice.gov/usao-edny/pr/former-leader-clan-del-golfo-drug-trafficking-organization-sentenced-45-years-prison>.

91 Transcript of Criminal Cause for Sentencing. Agosto 8 de 2023.





## 4. THE ROLE OF VICTIMS IN THE EXTRADITION PROCESS

In parallel to the development of the political and legal context described above, Colombia has gone through a series of cycles of disarmament, demobilization, and reintegration processes, in which the victims have played different roles. Unlike the peace processes carried out during the 1990s, whose emphasis was on guarantees of political rights and generalized amnesties, both the Justice and Peace process and the Havana Agreement have made more or less successful efforts to put victims at the center of post-conflict institutional efforts.

Far from a concession by the negotiators or “learning” from past mistakes, the victims have forged, through decades of organizational and investigative work, their centrality in the agreements between the Colombian State and armed actors: the same ones who, through violence, repeatedly opposed the work of visibility and defense that they carried out<sup>92</sup>.

In this regard, the active role that victims have played in demanding truth, justice, reparation, and guarantees of non-repetition has led some of the organizations that represent them to criticize extradition to the United States, particularly that of persons of special importance for the clarification of serious human rights violations that occurred in the framework of the illicit drug market. These criticisms have been translated into three courses of action: 1) efforts to stop the extradition; 2) legal actions in the United States; and 3) the search for direct access by victims and their representatives to the extradited persons in order to obtain relevant information for the transitional justice processes.<sup>93</sup>

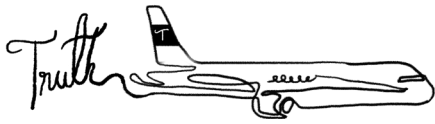
- **To stop extradition**

One of the first documented cases was the extradition of Carlos Mario Jiménez, aka “Macaco,” who was a commander of the AUC’s *Bloque Central Bolívar* and had a record of victimizing up to 14,000 people during the armed conflict. Macaco demobilized in mid-2005 as part of the agreement between the government of

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92 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). “Patrones de violencia, casos y responsables de victimización de defensores y defensoras de derechos humanos ocurridos en Colombia en el marco del conflicto armado.” Retrieved from: <https://www.comisiondelaverdad.co/caso-defensores-y-defensoras-de-ddhh>

93 Project Counselling Service, Comisión Intereclesial de Justicia y Paz, Colectivo de Abogados José Alvear Restrepo y Fundación Comité de Solidaridad con Presos Políticos (2014). “La Extradición: Aprendizajes y recomendaciones desde las víctimas”. Recuperado de: [https://issuu.com/cajar/docs/201410\\_extradicio\\_\\_n\\_-\\_final](https://issuu.com/cajar/docs/201410_extradicio__n_-_final)



Álvaro Uribe and the AUC, and under the recently approved Justice and Peace Law, he gave voluntary testimony for the clarification of the events that occurred in the framework of the armed conflict in which he had been involved.

In April 2008, his extradition to the United States was approved for offenses related to drug trafficking, which led the victims to file a *tutela* [constitutional injunction] to stop the extradition. At the time, the National Movement of Victims of State Crime (MOVICE), which represented the victims, argued that the extradition would impede the investigation of offenses against humanity committed by the *Bloque Central Bolívar* and the *Águilas Negras* under the command of aka “Macaco”, and therefore the extradition should be suspended “as long as the serious crimes committed are not judged, condemned and the corresponding punishment is not carried out in our country within the ordinary justice system”<sup>94</sup>. The *tutela* was overturned in the second instance under the argument that there was no irreparable harm to the victims and that the judicial cooperation agreements would allow the continuation of the open judicial proceedings in Colombia.

The defeat for the victims’ movements was twofold, as not only was the extradition of “Macaco” not stopped, but also the extradition of 14 other paramilitary leaders was speeded up. According to a WikiLeaks cable, presidential legal advisor Edmundo del Castillo told the U.S. Embassy that then President Uribe processed these extraditions in an expedited fashion “because he feared additional *tutelas* (injunctions) or court rulings would limit his extradition authority”<sup>95</sup>. Furthermore, although legal collaboration measures were enunciated to guarantee the victims’ access to the extradited persons<sup>96</sup>, these have not been clear nor have they been articulated with the Justice and Peace engineering, and therefore, such collaboration ended up depending on the will of the paramilitary leaders and not on the institutional arrangement.

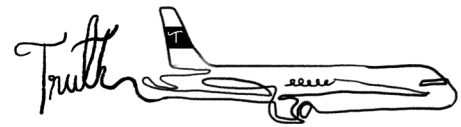
More recently, on November 25, 2021, the leader of the AGC, Dairo Úsuga, aka “Otoniel”, captured a month earlier, was requested by the United States. A group of victims’ organizations, recognized as such before the Special Jurisdiction for Peace, filed a *tutela* which sought to stop the extradition until he answered for the offenses committed in Colombia as a result of his participation in the armed conflict. Although at first, the extradition was stopped by means of a

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94 Project Counselling Service, Inter-Church Commission for Justice and Peace, José Alvear Restrepo Lawyers’ Collective (Cajar), and Committee for Solidarity with Political Prisoners Foundation (CSPP) (2014). *La Extradición: Aprendizajes y recomendaciones desde las víctimas*. P. 19. Retrieved from: [https://issuu.com/cajar/docs/201410\\_extradicio\\_n\\_-\\_final](https://issuu.com/cajar/docs/201410_extradicio_n_-_final)

95 WikiLeaks (2008). United States Embassy Cable, 2008. COLOMBIA EXTRADITES 14 EX-PARA LEADERS TO THE U.S. Retrieved from: [https://wikileaks.jcvignoli.com/cable\\_08BOGOTA1764](https://wikileaks.jcvignoli.com/cable_08BOGOTA1764).

96 Department of Justice - DOJ (2008). “14 Members of Colombian Paramilitary Group Extradited to the United States to Face U.S. Drug Charges.” Retrieved from: <https://www.justice.gov/archive/opa/pr/2008/May/08-opa-414.html>



precautionary measure while the tutela was being resolved, the second section of the Council of State declared it invalid<sup>97</sup>, and the extradition proceeded in record time. Against the clock, in the framework of transitional justice, it was possible to get him to make declarations, which were read by public opinion as the trigger for the government's desire to extradite him.

At the international level, the victims succeeded in getting the Inter-American Court of Human Rights to establish that the prosecution of serious human rights violations prevails over other offenses<sup>98</sup>. In addition, the Court also ruled on extradition and how it cannot be a mechanism of impunity and that judicial cooperation mechanisms must ensure that the extradited person continues to collaborate with the justice system<sup>99</sup>.

- **Legal actions in the United States**

Another advocacy strategy has been victims' actions in the United States. On the one hand, they have sought to intervene in criminal proceedings for drug trafficking on behalf of Colombian victims of human rights violations. On the other hand, they sought to prosecute extradited persons using Common law tools.

Participation was based on three major figures:

- Crime Victims' Rights Act (CVRA), which allows the acquisition of victim status for specific offenses (in this case, offenses related to drug trafficking), and grants rights such as notification of the criminal proceeding, the right not to be excluded from the proceeding, the right to intervene orally and to be heard, and the right to reparations.
- Alien Tort Statute Claims Act (ATS), which allows litigation by non-U.S. citizens to prosecute human rights violations.
- Torture Victim Protection Act (TVPA), which, similar to the ATS, allows for litigation by non-nationals focused on acts of torture and extrajudicial killings<sup>100</sup>.

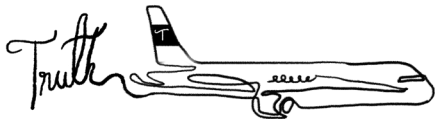
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97 Council of State, 2022. *Consejo de Estado levanta orden de suspensión de la extradición de alias 'Otoniel'*. Retrieved from: <https://consejodeestado.gov.co/news/04.2-may-2022.htm>

98 Inter-American Court of Human Rights, Case *Manuel Cepeda Vargas Vs. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of May 26, 2010. Series C No. 213.

99 Inter-American Court of Human Rights, Case *"Masacre de Mapiripán" Vs. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134.

100 Project Counselling Service, Comisión Intereclesial de Justicia y Paz, Colectivo de Abogados José Alvear Restrepo y Fundación Comité de Solidaridad con Presos Políticos (2014). "La Extradición: Aprendizajes y recomendaciones desde las víctimas". Recuperado de: [https://issuu.com/cajar/docs/201410\\_extradicio\\_\\_n\\_-\\_final](https://issuu.com/cajar/docs/201410_extradicio__n_-_final)



Different organizations in the United States took it upon themselves to use the CVRA to intervene in the criminal proceedings against aka “Don Berna” through the participation of the mother of a young man who disappeared after Operation Orion. The organizations argued that the drug trafficking offenses were linked to his paramilitary actions that had led to the disappearance of her son. They managed to get the judge in the case to give *Don Berna* 45 days to contribute to the Justice and Peace process in Colombia, however, he was not summoned to testify. By the end of the 45 days, the judge found no connection between the accused offenses and the offense suffered by the victim, so he dismissed the victim’s participation. However, the attempt led Berna to acknowledge during a hearing that Operation Orion was carried out jointly with the army and the police.

So far, the participation of victims has not been achieved in any process of extradition of persons extradited for drug trafficking, because the judges do not recognize the relationship between drug trafficking and the commission of serious human rights violations. Among others, also because of the high costs of the judicial actions, the risks for the victims, and the government’s opposition. It remains to be seen if this trend continues in the Dairo Úsuga case, whose trial (especially in the Indictment) constantly refers to the human rights violations incurred by the accused as part of the performance of the tasks necessary to ensure the flow of the different branches of drug trafficking.

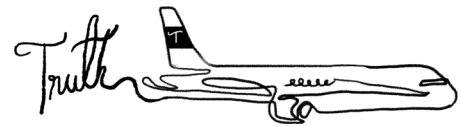
- **Collect information from extradited persons**

After the extradition of the paramilitary leaders, a mission of the victims and their representatives was carried out to gain direct access to their testimonies. Their objective was not to promote prosecution but to feed the investigations and judicial processes in Colombia. They also sought to clarify the truth about paramilitary operations and to uncover information about the third parties who had “conceived, trained, financed, and benefited from this criminal action, in order to support the complete dismantling of the phenomenon, thus contributing to the guarantee of non-repetition”<sup>101</sup>.

The precedent was set by then senators Piedad Córdoba and Rodrigo Lara who visited Salvatore Mancuso in the United States as part of the Senate’s Comisión Accidental [Accidental Commission] in charge of following up on the situation of the extradited persons. Mancuso sent a letter indicating his desire to tell the whole truth and invited other extradited paramilitaries to find common ground to

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101 Project Counselling Service, Inter-Church Commission for Justice and Peace, José Alvear Restrepo Lawyers’ Collective (Cajar), and Committee for Solidarity with Political Prisoners Foundation (CSPP) (2014). *La Extradición: Aprendizajes y recomendaciones desde las víctimas*. P. 27. Retrieved from: [https://issuu.com/cajar/docs/201410\\_extradicio\\_\\_n\\_-\\_final](https://issuu.com/cajar/docs/201410_extradicio__n_-_final)



avoid the stalemate and death of the Justice and Peace process.

During 2009, victims' representatives traveled four times and held nine meetings with extradited paramilitaries. It was found that the paramilitaries expected benefits in exchange for information: guarantees for their security and that of their relatives, visas for family members, and reduced sentences. The information obtained helped clarify the assassinations of Senator Manuel Cepeda and journalist Jaime Garzón, and the kidnapping of Piedad Córdoba.

After that year, the victims and their representatives could not enter U.S. prisons again: access was hindered by the unwillingness of the courts and the limitations of the U.S. authorities, who did not facilitate access to extradited persons. Ultimately, difficulties with the U.S. government and diplomatic apparatus thwarted the few routes that existed to obtain information from former paramilitary leaders.

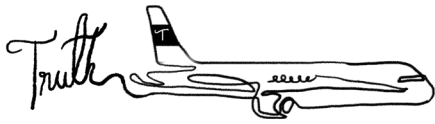
## 5 . RECOMMENDATIONS FROM CEV<sup>101</sup> : WHAT'S NEXT?

In the Chapter *No Matarás* of the Final Report of the Truth Commission, there is a section entitled "La verdad de las Víctimas" [The Victims' Truth], which ends with the following paragraph:

In May 2008, when the government had already taken a leap in the war against the FARC-EP and had the power and weapons to corner them in the confines of the country, fourteen of the most important former paramilitary leaders were surprisingly extradited to the United States. Some of them had been effectively contributing to unveiling the political and economic fabric behind their structures. This slowed down the process even more. This is what one of the judicial investigators who followed their versions told the Truth Commission: "There was a tremendous struggle to get to talk to the extradited people in the United States. We were listening to the paramilitary leaders and almost all of them, except for Jorge 40, Macaco, and Julián Bolívar, almost all of them were more or less cooperative. Some much more than others. But with the extradition, that channel was absolutely cut off [...]"<sup>101</sup>. Much

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<sup>101</sup> Commission for the Clarification of Truth, Coexistence and Non-Repetition (CEV).



of the truth sought by the victims remains in the dark<sup>102</sup>.

The above summarizes the position adopted by the CEV throughout its various chapters: extradition as an obstacle to victims' access to the truth and the impossibility of dismantling the intertwined relationship between illegal economies (and the armed actors behind them) and different levels of the State, mainly the Armed Forces and political elites. The chapter on *Hallazgos* [Findings]<sup>103</sup>, further deepens this perspective by affirming not only that extradition weakened progress in the fight against impunity for human rights violations<sup>104</sup>, but also that it became an additional resource for prosecuting drug traffickers.

With the above in mind and in matters of extradition, the CEV made several recommendations related to guaranteeing that the rights of victims are met. These may be affected by the departure from the country of those responsible for human rights violations. According to the Commission, the judicial mechanism must have a transformation that allows to overcome the "phenomena of criminality, human rights violations, infringements of IHL, and large-scale corruption, as well as reparation with seized assets or those arising from the investigation process"<sup>105</sup> before any request from a foreign country.

The general position taken by the CEV (both in its findings and recommendations) stems from a novel aspect of this Commission concerning previous similar efforts in Colombia and other parts of the world: the ability to include in its analysis the role of foreign policy in the internal armed conflict. In this particular case, the interference of the United States in the formation of a counterinsurgency doctrine<sup>106</sup>, in the project of nationhood put forward by the national and local

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102 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). *No Matarás: relato histórico del conflicto armado en Colombia*. p. 495 y 496, highlighted by the author. Retrieved from: <https://www.comisiondelaverdad.co/no-mataras>

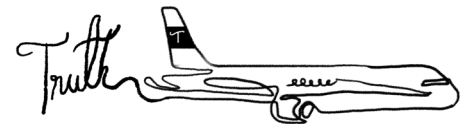
103 Which has become known as the "Final Report", as it gathers the investigative accumulations of the other chapters, as well as the cases that were carried out in the different directorates of the CEV.

104 United Nations High Commissioner for Human Rights (UNHCHR) office in Colombia, "Pronunciamiento sobre la extradición de 13 exjefes paramilitares y su impacto en la lucha contra la impunidad.", cited in: Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). *Hay Futuro si Hay Verdad: Hallazgos y recomendaciones de la Comisión de la Verdad de Colombia*. p. 452. Retrieved from: <https://www.comisiondelaverdad.co/hay-futuro-si-hay-verdad>

105 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). "Hay Futuro si Hay Verdad: Hallazgos y recomendaciones de la Comisión de la Verdad de Colombia." p. 679. Retrieved from: <https://www.comisiondelaverdad.co/hay-futuro-si-hay-verdad>

106 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). Chapter on Human rights violations and infringements of IHL. "La práctica de la tortura por parte de agentes del Estado durante el Estatuto de Seguridad (1978-1982)". Retrieved from: <https://www.comisiondelaverdad.co/caso-tortura-durante-el-estatuto-de-seguridad>

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elites<sup>107</sup>, as well as in the predominantly military approach to the different links in the drug trafficking economy<sup>108</sup>, allowed the Commission to demonstrate the central role that the allied country played in the development and transformations of the war in Colombia.

Along the same lines as the Truth Commission, one of the preliminary findings of our research at Elementa is that the system of incentives created by U.S. criminal policy - understood as one of the many extensions of the prohibition system - in the development and adaptation of illegal phenomena, causes great impacts in terms of human rights violations. In other words, the different approaches that the United States has taken concerning plea bargains and cooperation with justice, confiscation of assets, speedy trials of extradited persons, and, in general, the treatment of drug-related offenses with a greater or lesser degree of punitiveness, have had an impact in:

- The adaptations that the different armed actors in Colombia have had regarding extradition, as the CEV states in the chapter on findings: “[...] extradition had already entered into a different logic. Overnight, those accused of drug trafficking changed their slogan. The pure *narcos*, after years of offenses in Colombia, prefer to go to the United States, negotiate their sentences with the U.S. justice system and settle their accounts without taking responsibility for their outstanding debts with Colombia”<sup>109</sup>.
- The use of extradition, which ceased to be a routine mechanism of bilateral collaboration and became a political weapon in the development of the armed conflict.

Based on what the CEV has built, as well as on what was stated in previous sections, it is clear that there is a need to revitalize the -already forgotten- debate on the relevance and the basic minimums of the mechanism of extradition. Even though, contrary to the Commission’s assertion, extradition was not an

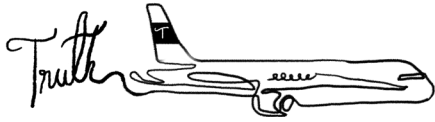
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107 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). Historical Narrative Chapter. “Cien años de injerencia acordada entre Colombia y Estados Unidos. Una mirada desde la asistencia militar y policial.” Retrieved from: <https://www.comisiondelaverdad.co/caso-injerencia-estados-unidos>

108 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). Findings Chapter. “De la guerra contra las drogas a la guerra en las drogas: Consumo y usuarios de drogas en las violencias y persistencias del conflicto armado colombiano” Retrieved from: <https://www.comisiondelaverdad.co/caso-guerra-en-las-drogas>

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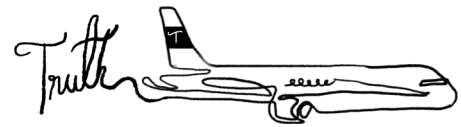
109 Commission for the Clarification of Truth, Coexistence and Non-Repetition – CEV. (2022). “Hay Futuro si Hay Verdad: Hallazgos y recomendaciones de la Comisión de la Verdad de Colombia.” p. 480. Retrieved from: <https://www.comisiondelaverdad.co/hay-futuro-si-hay-verdad>



obstacle that completely prevented the participation of extradited persons in the ordinary justice system or in the transitional justice mechanism of Justice and Peace, it is undeniable that the departure from the country and, especially, the lack of judicial collaboration between countries, undermines the credibility and importance of the incentives that transitional justice in Colombia brings for extradited persons, and undoubtedly hinders the processes of truth, justice and reparation, making their development unfeasible.

Elementa will continue to develop this research to offer elements for this debate, focused on problematizing the effect of U.S. criminal policy in Colombia and how to promote an articulation that responds to the interests of U.S. justice while at the same time privileging a human rights perspective and guarantees of non-repetition.





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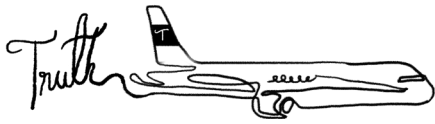
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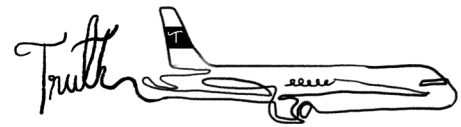
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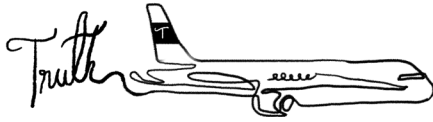
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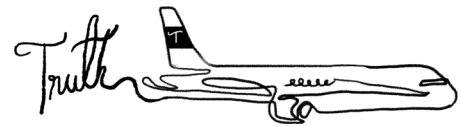
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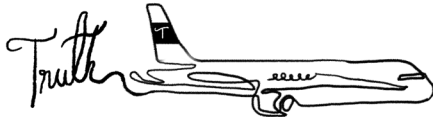
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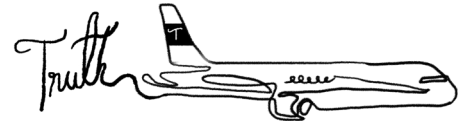
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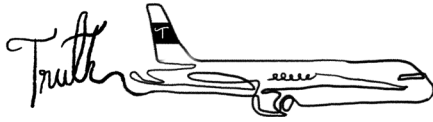
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