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Extradited Defendant Gets Life Sentence Despite Government's Promise

By David Zapp

On November 14, 2003 a Federal Court of Appeals decided that neither the Extradition Treaty between the United States and Colombia nor the United States Attorneys office could prevent a Federal judge from sentencing an extradited Colombian to life imprisonment. In previous cases, the United States government pledged that it would not allow extradited defendants to receive life sentences. But yet in 2002 Alex Restrepo was sentenced to life imprisonment in the Southern District of New York after being extradited from Colombia for his participation in several robberies, one of which resulted in the death of a retired police detective. Before Colombia granted Restrepo's extradition, they sought assurances that their national would not be subject to a life sentence. The United States responded by issuing this diplomatic note:

"Should Mr. Restrepo be convicted of the offenses for which extradition has been granted, the United States executive authority (the prosecutor), will not seek a penalty of life imprisonment at the sentencing proceedings in this case. The government of the United States also assures the government of Colombia that should the competent United States judicial authority nevertheless impose a sentence of life imprisonment against Mr. Restrepo, the United States executive authority (the prosecutor) will take appropriate action to formally request that the court commute such sentence to a term of years."

On the strength of that "assurance" Colombia authorized Mr. Restrepo's extradition. But in truth, a prosecutor cannot prevent a federal judge from sentencing a defendant to life in prison. The reason for this is because the U.S. is composed of three separate branches of government. Each branch operates independently and is often at odds with another. The United States Attorneys (the prosecutors) are part of the executive branch and the courts (the judges) are part of the judicial branch. So if the prosecutor, or "executive authority," requests that a judge impose a non-life sentence, there can be no guarantee that this is what will happen, despite what Colombian law requires.

When Restrepo appealed his life sentence, he argued that the diplomatic note constituted an "absolute assurance" that he would not be sentenced to a life term. But the Court of Appeals determined that the note only said the prosecutor would do what it could to have a life sentence reduced to a term of years. A small consolation, less a guarantee.

This is an instructive case for Colombians fighting extradition. It clearly demonstrates that Colombian lawyers should be consulting U.S. defense attorneys while their clients are still in Colombia. Any U.S. criminal defense attorney would have known that the diplomatic note did not guarantee a non-life sentence. Colombian lawyers must argue that

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their government will not allow extraditions to take place until the U.S. proves that their “assurance” is absolute.

Unfortunately, President Uribe’s government cannot express surprise by the turn of events in Alex Restrepo’s case. There was a representation made by the prosecutor that the Colombian Government knew that the “assurance” was not actually a guarantee. If Columbia does not want its citizens to get life, they need to take a harder line on this condition.

One way the United States can guarantee that it will not impose a life sentence upon extradited Colombians is by indicting defendants with a narcotics charge that carries a maximum of forty years imprisonment. Such a charge exists, and a maximum of forty years would give the United States government the pound of flesh it seeks while also providing the Colombian government with the guarantee that it seeks. Unfortunately this will not help Alex Restrepo.

Retain a Lawyer Sooner Than Later

By David Zapp

Go to Panama

For Colombians who are wanted in the United States and would like to face the charges rather than running from them, I have one thing to say: go to Panama.

If you can manage to get to Panama, or even another country like neighboring Ecuador, you can surrender to a DEA agent who will see to it that you get to the United States quickly and safely. Even if you have to go through deportation proceedings (not necessarily) you will be in and out in a matter of days and on your way to the U.S. At all times you will be treated with respect, and an extra measure of it because you came in voluntarily. The preferable way to do this is to retain an attorney and let him speak to all of the appropriate people. This will greatly facilitate the process of surrendering.

If you decide to surrender in Colombia, DEA agents may be required to turn you over to the Colombian government where you will go through a time consuming and lengthy extradition process. In Colombia, extradition can take eight months to a year and a half, during which time you will be taking cold showers at dawn and having an overall terrible experience. Some extraditions have taken as long as two years, which is a disgrace. There is simply no excuse for this, especially for those who are willing to consent to their extradition. American authorities would prefer to have you in the United States sooner rather than later.

Retain a U.S. Lawyer

If you formally retain a U.S. lawyer, he or she can go to the court where you are wanted and demand that the evidence against you is produced while you are still being detained in Colombia. Now, the prosecutor will most likely object to such a request on the grounds that the defendant has not been extradited to the U.S., although some prosecutors may simply consent, more than you might imagine. The prosecutor may also oppose the request because revealing evidence could potentially compromise the government's investigation. But that rationale can exist even when a defendant is already in the U.S.

(such an objection is decided on a case by case basis and ultimately a defendant in the United States is never denied his or her discovery, or "evidence"). But a large number of judges would feel it is unfair to keep the evidence from the defendant, especially when the lengthy and inexcusable delay in extradition is not the defendant's fault. The judge would then direct the government to turn over the evidence immediately.

A defendant in custody should have the opportunity to prepare his defense at the earliest moment possible. Therefore, extraditees should retain lawyers before they get to the U.S. in order to open the doors of communication between the prosecutor and the lawyer, and the lawyer and the court. This will allow you to be better prepared and more effective in assisting your counsel. You will also have the unique opportunity to evaluate your lawyer's performance during the initial stages of your case. You do not have to keep the lawyer you retain if you feel that he or she is not doing a good job.

In the end, the United States should ask the government of Colombia to process these extradition cases much, much more quickly. There is no reason for an extradition to take longer than 60-90 days, especially where the extraditee waives his right to contest the extradition. But as long as Colombian detained defendants are unaware of how helpful a U.S. lawyer can be, little can be done to change the situation.

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