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Asylum Now: The awful case of a splendid man

By Jay Nordlinger

People can't talk about this case without referring to Kafka. It is, indeed, Kafkaesque: a nightmare of injustice. "Laughable," they also say. The case would be laughable if it weren't so serious — especially for Andrés Felipe Arias and his family.

He is a Colombian political prisoner, in effect. He currently sits in the federal detention center here in Miami. He has asked the United States for asylum but has not been granted a hearing. Instead, a U.S. federal magistrate judge has ordered that he be sent back to Colombia.

Hang on a second: a Colombian political prisoner? That's a contradiction in terms, isn't it? Colombia is a democratic country. It's not like one of its eastern neighbors, Venezuela. Colombia's current president, Juan Manuel Santos, won the Nobel Peace Prize last year (for negotiating a peace deal with the FARC, Colombia's longstanding guerrilla army and drug cartel). His predecessor, Álvaro Uribe, was a close ally of George W. Bush — who hung the Presidential Medal of Freedom around his neck. A Colombian political prisoner?

These are strange times in Colombia. Jared Genser is one of the lawyers representing Arias. Genser is well-known in the human-rights field, having represented four Nobel peace laureates and countless dissidents. He says that he finds it incredible that "the international community has totally ignored" what President Santos has done — apart from his Nobel work, so to speak.

The story of Andrés Felipe Arias is long and multifaceted, and I will sketch it out.

He was born in 1973, and was a whiz kid. In 2002, he earned a Ph.D. in economics from UCLA. He sums up his economic thinking in an email he sent me from prison: "I believe in free markets, free trade, and private investment as the engine of economic growth and poverty-reduction."

His friends say that he could have made millions on Wall Street. Instead, he took a job with the Uribe government — in the ministry of finance. Soon, Uribe made him vice minister of

agriculture. In this capacity, Arias helped negotiate the free-trade agreement with the United States. In short order, Uribe made him minister of agriculture.

Let's pause for a moment for the personal. In 2007, Arias married Catalina Serrano, who has been his rock through this whole ordeal. (Their shared ordeal.) She has degrees from two Colombian universities: a bachelor's in business administration and a master's in international business. She has worked at a number of financial institutions.

Catalina and Andrés Felipe met in an extraordinary way. Something out of a romantic comedy, possibly. She had a long-term boyfriend, who did not want to marry her. One day, he left her for another woman. This other woman, in turn, left her boyfriend: Andrés Felipe. Catalina and Andrés Felipe had never met. But they did, and were married eight months later.

The other couple? They lasted the blink of an eye. The original boyfriend wanted back with Catalina, and the original girlfriend wanted back with Andrés Felipe. Too late. "We are twin souls," says Catalina, of herself and her husband.

They have two children — Eloísa (age nine) and Juan Pedro (age six). This family is out of Central Casting, frankly: attractive, conscientious, religious, and utterly devoted to one another. It makes you burn all the more about what has happened to them.

Back to politics. A presidential election was coming in 2010, and Uribe wanted Arias to succeed him. To critics, Arias was "Uribito," or "little Uribe." They regarded this young man as an upstart — arrogant, too big for his britches. And all too smart. In any case, Arias indeed ran for president. Others wanted the job too, of course. They included Juan Manuel Santos, Uribe's defense minister. He is from a powerful old family, prominent in politics and the media (which intertwine).

Suddenly, the name of Andrés Felipe Arias was all over the media, and not in a positive way: It was engulfed in scandal. Uribistas claim that Santos, through his connections, blackened his young rival's name. In any event, what was the ruckus about?

The ministry of agriculture had a program that included subsidies for farmers: farmers large and small (especially small). The subsidies were for irrigation technologies, developed mainly in the United States and Israel. The program was administered, not by the agriculture ministry itself, but by an arm of the Organization of American States. This had been standard practice in Colombia.

More than 385,000 families benefited from the program. A handful of wealthy families tried to scam it. They did so by dividing up their farms and then applying for separate subsidies. Caught, they pleaded guilty. According to their testimony — and according to that of Arias — they had nothing to do with the agriculture minister, nor he with them.

Yet his name was besmirched as corrupt. His enemies said that he was in cahoots with the rich farmers, to fund his political career and advance their interests. Catalina remembers that the family was at lunch in a restaurant one day. The people at the next table got up and left, saying

they would not eat in the presence of such corrupt people. Another time, the family was in a shopping mall, and a man started screaming at them: “Look at that family! They stole from the poor farmers to give to the rich ones, and now they are spending the money!”

The scandal tanked the Arias campaign; Santos was elected president.

Upon inauguration, something remarkable happened: Santos turned against the policies of the president he had served — Uribe — and embraced his neighbor, the Venezuelan strongman Hugo Chávez (“my new best friend,” Santos called him). He sought a deal with the FARC, a deal that Uribe, Arias, and everyone else in that camp strongly opposed. As uribistas tell it, Santos made a kind of war against them, using the justice system to do it.

They joke, darkly, “We could hold our party convention in prison.” Alternatively, Florida.

Arias was arrested in July 2011. His indictment hearing was a farce and a spectacle. It was held in a theater, rather than the regular, more sober venue. The theater was packed with supporters of the attorney general, Viviane Morales. They cheered as at a soccer game. The hearing was broadcast live on television. And Morales did something very unusual — also cruel and dangerous: She divulged the personal information of the Arias family, including their address and phone number. This despite the fact that they were under the protection of state security, given the threats to Arias from narco-terrorists and the like.

Soon, Arias would be imprisoned. His family’s security detail would be significantly reduced. The family began receiving threatening phone calls and were robbed.

Viviane Morales is a story unto herself. (She is no longer attorney general, as her appointment was determined to have been illegitimate. She is in the senate.) Her husband, Carlos Alonso Lucio, is an ex-guerrilla who once found asylum in the Castros’ Cuba.

Arias was indeed imprisoned — held in “preventive detention,” and for almost a full two years. (Twenty-three months.) Three times, he was denied bail. Finally, it was granted, a year into his trial.

That trial was before the supreme court — which gave the justices a juicy opportunity. While president, Uribe had accused some of them of ties to the drug world. And now they had Uribito, his fair-haired boy, in their clutches. The trial dragged on and on, finally concluding in February 2014.

And yet the court kept delaying a verdict. Why? It’s useful to know that 2014 was an election year. The first round of voting was held on May 25. The uribista candidate, Oscar Ivan Zuluaga, led the incumbent, President Santos, by about four percentage points. But neither man won 50 percent, so the election went to a second round — scheduled for June 15. Two days before that election, the Supreme Court leaked some news: Arias would be convicted. This was, of course, a blow to Zuluaga and the uribistas, who were presented as corrupt. For whatever reason — and however cleanly — Santos won, by about six percentage points, on the 15th.

But back to the 13th. Arias decided that he would have to flee his country. He would go to Miami. And he did so with the blessing of the U.S. embassy, or at least a green light from them. He had been in touch with them all the while. They had renewed his visa. They knew that he, among others, was a victim of political persecution. On the 13th, after the leak from the supreme court, they confirmed to Arias that he and his family were free to enter the United States and seek asylum.

That very night, he left, by himself. He went to the airport in the company of Catalina's father, not his bodyguards. They were, frankly, untrustworthy. His own parents flew from Medellín to the Bogotá airport, to see him and say goodbye. Arias traveled light: T-shirt, jeans, and a book. (For the record, the book was a historical novel: Volume II of Santiago Posteguillo's Trajan trilogy. Arias reads a lot about ancient Rome. Right now, in prison — in the Miami detention center — he is researching a historical novel of his own, or one that he will co-write: about Germanicus, the Roman general who lived as B.C. was becoming A.D.)

Mind you, Arias did not want to leave his homeland. A Colombian patriot, he would never have dreamed of doing so. He felt he had to, however, because he perceived that he was a political pawn: used by the supreme court to exact revenge on Uribe, and to influence the 2014 presidential election.

Upon arriving in America, he told Catalina that she and the kids would have to come too, and quickly. Catalina had five days. She quit her job. (Her boss was very understanding, saying that they should have left a long time before.) She withdrew the kids from school. She sold the house, and all its belongings — for a song. Then, with the children, she arrived in Miami, carrying two suitcases.

True to its leak, the supreme court convicted Arias — convicted him in absentia. The charges were astounding: embezzlement in favor of third parties (i.e., the scamming farmers) and unlawful contract with the OAS (the kind of contract that had been standard practice). The court admitted that it had no witnesses or documentary evidence — an amazing admission — and that Arias had never profited by as much as a cent.

One of the justices voting against Arias had never even heard the case. She became a member of the court after the trial was over.

Another amazing fact: Five agencies of the Colombian government had looked into the Arias case — five — and determined that there was no wrongdoing.

Most amazing of all was the sentence. The justices sentenced Arias to 17 years and five months in prison, plus a fine of more than \$15 million. There are people in Colombia who believe that Arias was guilty of something (however vague). Almost no one believes the sentence is anything but crazy.

In America, the Arias family applied for asylum. The U.S. government — in the form of USCIS (United States Citizenship and Immigration Services) — scheduled a hearing for them. Eight

days before the scheduled hearing, USCIS canceled it. The government has never explained why, and the Arias family has never been granted a hearing.

Meanwhile, the family made a life for themselves. Andrés found work; Catalina would too. The kids entered elementary school not knowing a word of English. Eloísa is now in a gifted program. Both kids are so English-oriented, they balk at speaking Spanish. It has been three years.

August 24, 2016, was an interesting day — a very bad day for the Arias family. At 7 in the morning, federal marshals banged on the door, ferociously. Catalina opened. They asked for Andrés Felipe. They would take him away for extradition, though he had not been able to make his case for asylum. There were about seven marshals, says Catalina, with guns slung across their chests. While she took the kids to another room, they handcuffed Andrés Felipe and led him off. Ten minutes later, Catalina took the kids out to meet the schoolbus. There were still many police cars on the street. It was all very odd and upsetting.

Also on the 24th, President Santos announced that he had reached a peace deal with the FARC (strongly opposed by Arias and the rest of the Uribe camp). The Santos government had requested the extradition of Arias more than a year and a half before. Yet it was launched only on this day. Was this a coincidence? Was it some kind of present from the Obama administration to the Santos government for the FARC deal? Uribistas suspect so.

Arias was in prison, or federal detention, for three months. He was then released on bail (and fitted with an ankle monitor). On September 28, 2017, he was back in prison — for the federal magistrate judge had cleared the way for his extradition. Curiously, the Colombian government recognizes no extradition treaty between itself and the United States. Bogotá has made this perfectly clear. The U.S., apparently, does recognize such a treaty. In the past, the Colombians have extradited criminals to the U.S., but not under a treaty.

Today, they are refusing to extradite criminals, including the murderers and kidnappers of Americans. The U.S. ambassador in Bogotá wrote the Colombian supreme court to protest; the justices slapped him down, sharply. Not only do the Colombians refuse to extradite, they let the murderers and kidnappers go free. At the same time, the United States is on track to send Andrés Felipe Arias back to Colombia — where he has been sentenced to 17 and a half years in prison.

This is one reason people say “Kafkaesque.”

It gets more so. In recent weeks, Colombia has been treated to a major scandal known as el cartel de la toga, or the gown cartel, or the cartel of the judicial robes: The U.S. Drug Enforcement Agency has caught Colombian judges taking bribes in exchange for favorable rulings. And these judges — wouldn’t you know? — include some of the very supreme-court justices who convicted Arias.

In an email, I ask Arias whether he takes any satisfaction in this. (It would be natural to do so, don’t you agree?) He answers, “No satisfaction at all. The corruption scandal in the Supreme Court of Colombia, uncovered by the DEA, is shameful for our country. It does, however, give

me some sense of relief because it ratifies my claim that the Court that convicted me was dishonest and politicized, and that it ruled unlawfully in my case.”

The justices want to save a little face, says Arias, through his extradition. They want to save some face by having his head as a trophy.

In America, his defense team has filed an appeal. They are appealing his extradition. And this is happening at what may be a turning point in U.S.–Colombian relations. In Colombia, the drug business — beaten back by Presidents Uribe and Bush — is flourishing again. Drugs from Colombia are pouring over U.S. borders. Washington may well decertify the Colombian government as an ally in the drug war.

Trying all options, Arias has appealed his case to the U.N. Human Rights Committee (always a dodgy body). But his immediate fate is in American hands. It is in the power of the U.S. government — of USCIS and the Department of Homeland Security, specifically — to grant him political asylum. This ought to be done as a simple matter of justice and the rule of law. It would also send a message to Bogotá about what the United States expects from an ally.

The truth is, Santos & Co. probably don’t care about Arias, personally. They care about discrediting, and defeating, all things Uribe. Arias, in the eyes of many of his admirers, and in the eyes of many of his detractors, is the cream of the Uribe crop. If you wanted to render him hors de combat — if you wanted to take him out of politics — you would do exactly what the current government in Colombia has done.

This does not mean that the United States should cooperate (to put it mildly).

I ask Arias, “How are your spirits?” He says, “I feel strong and at peace. Of course, every second I long for my home, my wife, and my kids. But I’ve learned to accept God’s will no matter how mysterious are His ways.”

Between Colombia and Miami, he has spent almost two and a half years in prison. I ask how he has kept his sanity. He says, in short, that God has seen to it. Moreover, Arias has a marvelous family, and many marvelous friends and supporters.

Another question: “How could a democratic country do this to a person?” The answer: “A real democratic country wouldn’t do this to a person. ... No matter how much ‘peace’ propaganda the Colombian government unleashes in the international arena, the plain truth is that democracy in Colombia is being undermined by corruption and political persecution stemming from its courts and executive branch.”

Still another question: “Has this nightmare affected your patriotism? Your sense of country?” Arias answers, “I can’t stop loving Colombia. At the end of the day, it’s the place where I was born, where I grew up, and where I lived so many joyous moments of my life. It’s where most of my family lives. It’s a beautiful country and its people are amazing. I truly believe that those who have inflicted this torture upon me are not the reflection of the real Colombia nor of the soul of its people. I will always love Colombia.”

More than a few men have emerged from prison to be the leader of their country — Václav Havel in Czechoslovakia, for example. I say, “Wouldn’t it be something if, after all this, you were president of Colombia one day?” He answers, “It would be something — but Catalina would kill me!”

Yes, she would. She shudders at the thought of further involvement in politics. Even at the thought of Colombia itself. Her faith in her homeland has faltered — but her faith in God has strengthened. “Justice is coming soon” she says. The sooner the better.