



Statement of the New York City Bar Association on the Guarantees of Judicial Independence in Colombia

The New York City Bar Association, through its Task Force on the Independence of Lawyers and Judges, Inter-American Affairs Committee, and International Human Rights Committee, expresses serious concerns about threats to the independence of the Colombian judiciary that have arisen in reaction to the pretrial detention and investigation of former President Alvaro Uribe on charges of witness tampering and obstruction of justice. Specifically, former President Uribe and his supporters, including the current President of Colombia, have publicly questioned the impartiality of the Court overseeing his case and have proposed reforms to the judiciary, both in response to Uribe's pretrial detention and in opposition to the ongoing investigation.

The present case arises from an action commenced in the Supreme Court of Justice by former President Uribe¹ and his attorney Diego Cadena, denouncing allegations made by Senator Ivan Cepeda in a September 2014 Senate debate. Cepeda alleged that Uribe had founded and helped train paramilitary groups that engaged in massacres in the Antioquia Department when Uribe previously served there as Governor.² To support his accusations, Senator Cepeda presented several testimonial declarations from former paramilitaries.³ In response, Senator Uribe submitted a claim to the Supreme Court, which has jurisdiction over members of the Congress, accusing Senator Cepeda of searching Colombian prisons for former paramilitaries to serve as false witnesses against him.⁴

The Supreme Court investigated Uribe's claim for several years, in an investigation that included thousands of pages of transcripts of secretly recorded calls and conversations, and that culminated in testimony by Cepeda and Uribe and other witnesses.⁵ On February 16, 2018, the Colombian Supreme Court of Justice dismissed the accusations against Cepeda, and opened a criminal investigation into Uribe for alleged offenses of bribing witnesses and "procedural fraud" (obstruction of justice).⁶ It is alleged that during the investigation, Uribe's lawyer, Diego Cadena, offered bribes to former paramilitary fighters⁷ to change their testimony in order to disprove or obscure Uribe's role in establishing paramilitary groups responsible for committing massacres.⁸

On August 4, 2020, the Special Instruction Chamber of the Colombian Supreme Court of Justice Criminal Chamber concluded that the over fifteen-hundred page record of evidence (including Uribe's own testimony) sufficiently demonstrated serious crimes against the judiciary, and ordered Uribe's pretrial detention via house arrest.⁹ The Supreme Court justified the decision based on "testimonial evidence, judicial inspections, filming records and telephone interceptions that apparently indicate the presumed participation as a determiner of the crimes of bribery of witnesses and procedural fraud," and "risks of obstruction of justice."¹⁰ At the same time, Uribe's lawyer, Diego Cadena, was detained pending trial on the same charges for his role in the alleged crimes.¹¹

Following the ruling, politicians aligned with Uribe's political party, the *Centro Democrático*, began protesting his house arrest. Uribe's supporters praised his accomplishments as President

and launched political and public attacks claiming, despite the evidence, that the judges were not basing decisions on the facts and the law but, rather, on ideological or political grounds.¹² Further, in an address to the nation on August 4th, current Colombian President Ivan Duque, a member of *Centro Democrático*, publicly supported Uribe and attacked the Supreme Court. President Duque called for Uribe's release from pre-trial detention and stated that Uribe was an exemplary public servant who upheld the highest dignity of the State and should be allowed to defend himself in freedom and under the presumption of innocence.¹³

The same day, the *Centro Democrático* issued a press release reviving an old proposal to amend the constitution to completely change the upper levels of the judiciary, with the ostensible aim to "depoliticize justice."¹⁴ Senator Paloma Valencia from *Centro Democrático* stated that the reform would include replacing all chambers of the Supreme Court as well as the Constitutional Court with a single new court. In an August 16th interview in the weekly magazine *Semana*, Uribe said that calling for a referendum process to reform the Constitution to depoliticize the justice system was easier than having the Congress approve the constitutional reform.¹⁵

Uribe promptly resigned from the Senate, in an apparent attempt to deny the Supreme Court jurisdiction over his case, a move he attempted in 2018 when it was first reported that the Supreme Court was investigating him but which he then withdrew. After this second resignation, the Supreme Court turned his case over to the Prosecutor General and a judge ordered Uribe's release from pretrial detention, which has since been upheld by an appeals court.¹⁶ In resigning, Uribe called for reforming the process of appointing judges.¹⁷

Additionally, on August 10, 2020, a group of twenty-one former presidents from Argentina, Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Paraguay, Spain, and Uruguay signed a statement by the Democratic Initiative of Spain and the Americas (IDEA) criticizing Uribe's house arrest, stating that "democracy and the rule of law are seriously compromised when the universal guarantee and protection of human rights is ideologized or manipulated."¹⁸ And United States Vice President Mike Pence tweeted on August 14, 2020: "We respect Colombia's institutions and independence.... But, as Former President Alvaro Uribe is under house arrest, we join all freedom loving voices around the world in calling on Colombian officials to let this Hero, who is a recipient of the US Presidential Medal of Freedom, defend himself as a free man."¹⁹

Human rights leaders have raised legitimate concerns about interference from Uribe's supporters and others that politicizes the judiciary. Jose Miguel Vivanco, Executive Director for the Americas Division of Human Rights Watch, issued a letter responding to the IDEA statement, stating that such communications do not help to strengthen the rule of law in Colombia but, rather, encourage ongoing attacks on judicial independence. Vivanco explained that the IDEA statement contains numerous factual and legal errors that feed into a narrative that undermines the independence of the judiciary in Colombia, including an erroneous comparison of Uribe's case to the release of former FARC commander, Jesus Santrich.²⁰ Vivanco notes that the Court ordered Santrich's release because the arrest and investigation were conducted by an entity that did not have proper jurisdiction over the case, whereas here Uribe has been investigated by the proper channels (i.e. the Supreme Court of Justice).²¹ The letter from Human Rights Watch also observes that Uribe was detained as part of an independent judicial investigation and that he has ample legal resources at his disposal to defend himself, beyond resorting to political pressure and intimidation. The United Nations Special Rapporteur on the Independence of Judges and

Lawyers Diego Garcia Sayán stated, "As Rapporteur, I must assert whenever there is a possible risk, threat or interference in the independence of the judiciary in Colombia and wherever necessary, so that international norms and standards in the administration of justice are respected."²² He added, "Consideration is expected in all the actions and in the public assessments that are issued. It is exclusively members of the judiciary - and no one else - who are responsible for deciding the course and destiny of the process."²³

Colombia is struggling to restore the rule of law in the aftermath of years of attacks by armed violent groups, and an independent judiciary is essential to that restoration process. This is not the first time that the Supreme Court has been attacked for alleged political bias, without evidence or legal support. For example, Colombian politicians attacked the Special Jurisdiction for Peace court (the "JEP"), which ordered the release of former FARC chief Jesús Santrich, whose extradition to the United States on drug trafficking charges both the U.S. and Colombia had requested. Neither the United States nor Colombia, however, could produce evidence repeatedly requested by the JEP establishing whether Santrich committed the alleged crimes before or after the 2016 Peace Accords with the FARC took effect.²⁴ Attempts to paint the judiciary as politically motivated have come from right-wing groups who denounce the Special Jurisdiction for Peace as an effort to give the former guerillas impunity.²⁵

Colombia and its government officials should adhere to its own domestic laws and key principles of international human rights, particularly the right to an independent and impartial judiciary. Statements by the President, as well as other Colombian and foreign public officials, present a direct threat to the rule of law and are contrary to the principle of judicial independence. According to article 201 of the Colombian Constitution,²⁶ President Duque must support judicial officials to make their decisions effective. In addition, the United Nations Basic Principles on the independence of the Judiciary²⁷ state that "it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary" to ensure that courts can decide "matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason." And the Inter-American Court of Human Rights has developed jurisprudence emphasizing the importance of an independent judiciary to guarantee the right to a fair trial.²⁸

The New York City Bar Association has long supported the rule of law in general and the independence of the judiciary in particular. We urgently call on the Colombian government and its elected officials, along with foreign parties and governments, to cease public statements and legislative efforts designed to favor a particular criminal defendant, even one as popular as former President Uribe, or to create impediments to impartial justice. No individual should be above the law, and former President Uribe deserves to have his innocence or guilt established in accordance with the evidence and the law, in accordance with due process and without external interference.

Furthermore, any reform to the justice system should not be introduced based on a political reaction to a particular case, but must consist of a transparent and broad participatory process including different sectors of society and guaranteeing that international principles supporting an independent judiciary are observed. Judicial reforms must reinforce the independence of the judiciary and the prompt, timely, and fair administration of justice.

The New York City Bar Association urges that the investigation of former President Uribe continue through the proper judicial channels without further politicization. We also urge the Colombian government to adhere to procedural rights and safeguards under Colombian legislation and international treaties, including the guarantee of transparency.

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¹ President of Colombia from 2002 to 2010, and Senator from July 2014 to August 2020.

² Santiago Torrado, *Una juez concede la libertad al expresidente colombiano Álvaro Uribe* (October 10, 2020), *El País*, Available at: <https://elpais.com/internacional/2020-10-10/una-juez-de-garantias-concede-la-libertad-al-expresidente-colombiano-alvaro-uribe.html>.

³ *Id.*

⁴ *Id.*

⁵ Luisa Gonzalez, *Corte Suprema de Colombia vincula formalmente a Álvaro Uribe al proceso por soborno de testigos* (October 9, 2019), *Actualidad Rt*, Available at <https://actualidad.rt.com/actualidad/329689-corte-suprema-colombia-vincular-formalmente-uribe>.

⁶ Corte Suprema de Justicia, “Sentencia en la que se ordena investigar a Álvaro Uribe por manipulación de testigos en el caso Cepeda” available at <http://www.derechos.org/nizkor/colombia/doc/uribe127.html>

⁷ In the 1980s right-wing paramilitary groups with links to the state military emerged as landowners organized to protect themselves from the guerrilla groups, including the Revolutionary Armed Forces of Colombia (FARC for its acronym in Spanish) and the National Liberation Army (ELN for its acronym in Spanish). Claire Felter & Danielle Renwick, *Colombia’s Civil Conflict* (January 11, 2017), Council on Foreign Relations, available at <https://www.cfr.org/backgrounder/colombias-civil-conflict>.

⁸ Fiscalía General de la Nación, Boletín 36397. “Fiscalía acusa a abogados Diego Cadena y Juan José Salazar por presunta manipulación de testigos” (October 30, 2020) available at <https://www.fiscalia.gov.co/colombia/noticias/fiscalia-acusa-a-abogados-diego-cadena-y-juan-jose-salazar-por-presunta-manipulacion-de-testigos/>.

⁹ In other cases of higher profile individuals, including those against a former Judge and a former Senator, the Supreme Court previously denied house arrest and order prison pre-trial detention. *El Espectador Corte Suprema se opuso a darle casa por cárcel al exsenador Iván Moreno Rojas* (May 20, 2020) available at <https://www.elespectador.com/noticias/judicial/corte-suprema-se-opuso-darle-casa-por-carcel-al-exsenador-ivan-moreno-rojas-articulo-920753/>; *El Herald* “Corte Suprema de Justicia niega libertad a magistrado Malo” (June 9, 2020) Available at <https://www.elheraldo.co/politica/corte-suprema-de-justicia-niega-libertad-magistrado-malo-733087>.

¹⁰ Corte Suprema de Justicia, “Corte Suprema ordena detención domiciliaria del senador Álvaro Uribe” (August 4, 2020), available at <https://cortesuprema.gov.co/corte/index.php/2020/08/04/corte-suprema-ordena-detencion-domiciliaria-del-senador-alvaro-uribe/>.

¹¹ Fiscalía General de la Nación, Boletín 36397. “Fiscalía acusa a abogados Diego Cadena y Juan José Salazar por presunta manipulación de testigos” (October 30, 2020) available at <https://www.fiscalia.gov.co/colombia/noticias/fiscalia-acusa-a-abogados-diego-cadena-y-juan-jose-salazar-por-presunta-manipulacion-de-testigos/>.

¹² Senadora Paloma Valencia, “Necesitamos una #ConstituyenteYa, donde se reforme la justicia. Una sola corte. No mas justicia politizada y no mas JEP” (August 4, 2020), Tweet, *available at* <https://twitter.com/PalomaSenadora/status/1290848108369317889?s=20>.

¹³ Ivan Duque, “soy y sere siempre un creyente en la inocencia y honorabilidad de quien con su ejemplo se ha ganado un lugar en la historia de Colombia” (August 4, 2020), *available at* <https://twitter.com/IvanDuque/status/1290755832330813442>.

¹⁴ Press Release, Centro Democratico, *Comunicado a la opinion publica* (August 4, 2020), *available at* https://www.centrodemocratico.com/comunicados-de-prensa/comunicado-a-la-opinion-publica-41_13782#.X2Eu0RBKjIU.

¹⁵ Revista Semana, *Exclusiva: El Presidente Alvaro Uribe habla por primera vez desde su detencion*, (August 16, 2020), *available at* <https://youtu.be/9hgCljrIrRI>.

¹⁶ El Tiempo, *Juez mantiene libertad de Uribe y dice que ya fue imputado por soborno*, (November 7, 2020) *available at* <https://www.eltiempo.com/justicia/investigacion/alvaro-uribe-juez-mantiene-su-libertad-y-dice-que-ya-fue-imputado-por-soborno-547341>.

¹⁷ Alvaro Uribe Velez, “Renuncia al Senado” (August 18, 2020), *available at* <https://twitter.com/AlvaroUribeVel/status/1295820343060373510?s=20>.

¹⁸ Iniciativa Democratica de Espana y las Americas, *Declaracion de Solidaridad con el Expresidente Alvaro Uribe* (August 10, 2020), *available at* <https://static1.squarespace.com/static/5526d0eee4b040480263ea62/t/5f31a8e8f39b26512de152eb/1597090026301/IDEA+URIBE+2020.pdf>.

¹⁹ Vice President Mike Pence, “But as Former President @AlvaroUribeVel is under house arrest, we join all freedom loving voices around the world in calling on Colombian officials to let this Hero, who is a recipient of the U.S. Presidential Medal of Freedom, defend himself as a free man.” (August 14, 2020), *available at* https://twitter.com/Mike_Pence/status/1294384573959344131?s=20.

²⁰ Jose Miguel Vivanco, *Letter to former presidents regarding the house arrest of former Colombian president Alvaro Uribe* (August 21, 2020), *available at* https://www.hrw.org/news/2020/09/10/letter-former-presidents-regarding-house-arrest-former-colombian-president-alvaro#_ftn12.

²¹ *Id.*

²² Diego Garcia Sayan, “Como Relator debo pronunciarme, cada vez que existan un posible riesgo, amenaza o injerencia en la independencia de la judicature en Colombia y donde fuese necesario, de manera que se respeten normas y estandares internacionales en administracion de justicia” (august 18, 2020), *available at* <https://twitter.com/unindepjudges/status/1295722861810708480>.

²³ Diego Garcia-Sayan, *Colombia: independencia judicial sobre el tapete*, El Pais, (available at August 20, 2020), *available at* https://elpais.com/opinion/2020-08-20/colombia-independencia-judicial-sobre-el-tapete.html?ssm=TW_CC?event_log=go&o=cerrado.

²⁴ Dejusticia, *Santrich Case: Dejusticia Defends and Respects the Autonomy and Independence of the Special Jurisdiction for Peace (JEP)* (May 17, 2019), *available at* <https://www.dejusticia.org/en/santrich-case-dejusticia-defends-and-respects-the-autonomy-and-independence-of-the-special-jurisdiction-for-peace-jep/>.

²⁵ Ovidio Castro Medina, *Detencion de Uribe revive discusion sobre reformas a la justicia colombiana* (June 8, 2020), *available at* <https://www.lavanguardia.com/politica/20200806/482687812943/detencion-de-uribe-revive-discusion-sobre-reformas-a-la-justicia-colombiana.html>; Nestor Laso, *Alvaro Uribe y una justicia colombiana politizada* (August 6, 2020), *available at* https://www.elespanol.com/opinion/tribunas/20200806/alvaro-uribe-justicia-colombiana-politizada/510818917_12.html.

²⁶ Art. 201, Col. Const. (1995), https://www.constituteproject.org/constitution/Colombia_2005.pdf .

²⁷ Basic Principles on the Independence of the Judiciary (1985),
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

²⁸ Corte Interamericana de Derechos Humanos, *Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No. 12: Debido Proceso*, available at <https://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo12.pdf>