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Panama High Court Reverses Pardon of Luis Posada Carriles,

by LADB Staff

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Luis Posada Carriles, an admitted assassin and terrorist, wanted in Venezuela for blowing up a Cuban airliner in 1976 and killing 73 people, should not have been released from a Panama prison by decree of then President Mireya Moscoso (1999-2004); it was all a mistake. And so were the pardons of some 183 other prisoners named in three separate decrees Moscoso issued in August 2004 (see NotiCen, 2004-09-03). So said a unanimous decision of the Corte Suprema de Justicia (CSJ).

The court's decision overturned the pardons of Posada's three henchpersons, Gaspar Jimenez, Guillermo Novo, and Pedro Remon, as well. Moscoso signed the decrees at the end of her term. Along with Posada and his men, who had been imprisoned since 2000 for allegedly planning to assassinate Cuba's then President Fidel Castro by blowing up an event at which he was to speak, Moscoso freed 60 journalists accused of several different crimes.

At the time, Panama's attorney general Jose Antonio Sossa, Panama City mayor Juan Carlos Navarro, and prosecutor Gerardo Solis all declared the pardons illegal and sued. The substance of the suit was that a pardon vacates a conviction or obviates a sentence and therefore cannot be given to someone awaiting trial or who has not been convicted or sentenced. Those set free were, for the most part, in summary or pretrial stages of the process.

Posada lost no time in fleeing Panama and soon turned up in Miami, possibly the safest place in the world for a former CIA operative and would-be Castro assassin. The US declined to extradite him to Venezuela where he was wanted to face charges for the downing of the Cuban airliner, and, after a period of incarceration on immigration charges, he was free once again in Miami.

Posada's Panama lawyer, Rogelio Cruz, now says Panama may ask for a do-over and request extradition from the US. "Given the good relations between President [Martin] Torrijos and the Cuban government, I have no doubt that Panama will ask for the four anti-Castro militants to be extradited from the US," he said. When reporters asked for confirmation of this from the government, Foreign Minister Samuel Lewis Navarro, who is also President Torrijos' vice president, told them, "We will fulfill our duty under the Constitution and the law."

Attorney General Ana Matilde Gomez called the CSJ's decision a "vindication of the Constitution," as she prepared to set about determining what to do, not only with the high-profile Posada and company but also with the other liberated individuals. She told The Miami Herald, "I will have to review the pardons case by case to see in what step of the judicial process those cases were at." As for the biggest fish, "I need to review the decision to see if it applies to him," she said. The court's decision was retroactive, ordering the return of all the cases to their status prior to Moscoso's pardons and vacating any subsequent judgments or orders attendant on the pardons.

The likelihood of Posada's return is small, say most analysts. They point to the US Justice Department's refusal to charge him with crimes other than minor immigration violations, which it prosecutes in the most cursory manner. They also cite the heroic status he enjoys in South Florida. Rodolfo Frometa, a Miamian member of Comandos F-4, an organization poised for war against the Castros, told the press, "The United States is not simply going to ship off to Panama a man who has fought for the liberty of Cuba and of this country as a member of the CIA. It would be a betrayal of freedom and democracy."

Posada's Miami lawyer Arturo Hernandez agrees with that line of thought. He said the decision "may be largely symbolic and may not have a direct impact" on his 80-year-old client's quality of life. As the fate of all those set free is mulled and studied, it appears certain that one perpetrator, Mireya Moscoso, will get off unscathed.

Former CSJ magistrate Edgardo Molina Mola explained that, while the ex-president violated the Constitution, "lamentably" there is no penalty to apply. "This is an outrage. Here there is no civil or penal sanction against officials who violate the Constitution," he said. The basis of the suit against her was clearly correct. Article 184 says unambiguously that "the pardon shall be for those condemned for political, not common, crimes."

The last question to be answered is why all this took so long. Molina Mola said that was a violation of the law, too. The magistrates did not comply with a law that stipulates 58 days for the return of a decision on a question of constitutionality. "I regret that there is not a rule that sanctions judicial officials for bad conduct who don't respect time limits or decide within the terms established by law."

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