

M A R T I N
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A S S O C I A T E S
| Barristers

May 22, 2014

Commission for the Control of Interpol's Files
200 quai Charles de Gaulle
69006 Lyon
France

Dear Sir or Madam:

RE: CCF/86/R133.12/C544.13 – Mr. Napoleon Gomez Urrutia

I hesitate to write to you again but I do so as a result of recent public statements made by the Mexican Vice Attorney General for Legal and International Affairs of the Republic of Mexico to the effect that Mexico has reapplied, yet again, to Interpol for the issuance of a red notice related to Mr. Gomez Urrutia.

Attached as Exhibit "A" to this letter is a newspaper report in Spanish and English recording public statements made by Mexican Vice Attorney General Benitez on May 12, 2014 to the effect that Mexico had now obtained a "final" arrest warrant for Mr. Gomez Urrutia and that based upon that warrant it was re-approaching Interpol for the re-issuance of a Red Notice.

Your files will reflect that on February 20, 2014 I forwarded to you the affidavit of Professor Clemente Valdez Sanchez which describes the current legal proceedings in Mexico against Mr. Gomez Urrutia as in violation of the principle of *no bis in idem* in light of the multiplicity of Mexican judicial pronouncement that he has committed no crime. Importantly, Professor Valdez Sanchez correctly indicates that Mexico's repeated appeals from rulings by Mexican Courts quashing any residual arrest warrants has reached "an absurd and juridically incomprehensible point".

It does not overstate to submit to you that the public statements made by Mexico's Vice Attorney General on May 12, 2014 are both a continuation of Mexico's "absurd" course of conduct and that the statement is "politically motivated".

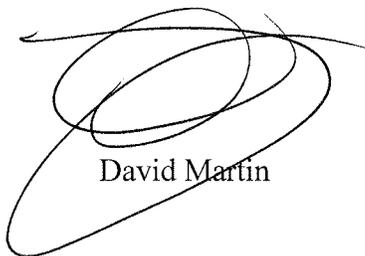
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The further affidavit of Marco Del Toro, attached as Exhibit “B” hereto, describes the Mexican Vice Attorney General’s public statement that Mexico now holds a “final” warrant as “absolutely inaccurate”. In effect, Mr. Del Toro is in the trenches fighting against Mexico’s effort to continue its politically motivated and abusive prosecution of Mr. Gomez Urrutia on a daily basis. Hopefully at some point a senior Mexican Court will tell Mexico “enough is enough” but that has not yet occurred.

In sum, if Mexico does in fact reapply to Interpol for the re-issuance of a Red Notice I would respectfully ask you to reject that application and to find, consistent with your February 26, 2014 finding, that:

1. no new substantive element has been provided by Mexico justifying Interpol to revisit its March 29, 2013 and February 26, 2014 decisions to initially delete Mexico’s red notice and then to refuse to reconsider that deletion;
2. Mexico’s additional reapplication for the issuance of a Red Notice is a mere continuation of what you have already found to be the “predominant political character of the suits brought by Mexico against Mr. Gomez Urrutia”.

Yours truly,



David Martin

EXHIBIT "A"

Pide PGR a Interpol ficha roja contra 'Napo'

La dependencia espera que en los siguientes días la organización internacional defina si se emite o no la pesquisa.

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RUBÉN MOSSO 12/05/2014 01:26 PM

Ciudad de México

La Procuraduría General de la República (PGR) solicitó a Interpol emitir una ficha roja contra el líder del sindicato minero, Napoleón Gómez Urrutia, debido a que la orden de aprehensión que un tribunal federal libró en su contra es válida y ejecutable.

Mariana Benítez Tiburcio, subprocuradora Jurídica y de Asuntos Internacionales, dijo que también realizan los trámites necesarios con el gobierno de Canadá, para lograr la extradición de Gómez Urrutia, nación de la que mencionó "ha dado buenas señales".

"Hemos recibido muy buenas señales del gobierno de Canadá, nos hemos reunido varias veces, nos han pedido información y nosotros en el marco de nuestras atribuciones hemos dado toda la información que nos ha pedido", explicó.

El pasado 22 de abril el Primer Tribunal Unitario en Materia Penal del Primer Circuito con residencia en el Distrito Federal confirmó la orden de aprehensión contra Gómez Urrutia, quien en 2006 escapó a Canadá para evitar ser detenido, luego de que se le acusó de un desvío por 55 millones de dólares.

Entrevistada en el Instituto Nacional de Ciencias Penales (Inacipe), donde inauguró un foro sobre el Código Nacional de Procedimientos Penales, Mariana Benítez manifestó que también entregaron información a Interpol en el sentido de que la orden de aprehensión es ejecutable, por lo que en cuestión de días se definirá si se emite o no la ficha roja.

"Hay una orden de aprehensión ejecutable válida y que solamente entiendo que era (el juicio en el tribunal) un refuerzo de inconformidad respecto del cumplimiento de una sentencia de amparo que promovió la defensa del señor Gómez Urrutia, pero lo que hoy es cierto es que hoy es plenamente ejecutable la orden de aprehensión que tiene en su contra el señor Napoleón Gómez", dijo.

PGR (Attorney General of Mexico) asks Interpol to issue a Red Notice against 'Napo'

The authority hopes that in the next few days the international organization determines if the notice is issued or not

RUBEN MOSSO 12/05/2014 0:126 PM

Mexico City

The Attorney General of Mexico (*Procuraduría General de la República*) requested Interpol to issue a red notice against the mining union leader, Napoleon Gomez Urrutia, due to the fact that the arrest warrant issued by a federal court against him is valid and enforceable.

Mariana Benitez Tiburcio, assistant attorney general of International Affairs, said that they are also taking the necessary steps with the Canadian Government to achieve the extradition of Gomez Urrutia, country that she said has "given good signs".

"We have received very good signs from the Canadian Government, we have met several times, they have asked us for information and we, within our attributions, have given them all the requested information", she explained.

Last April 22 the First Unitary Court in Criminal Matters of the First Circuit located in Mexico City, confirmed the arrest warrant against Gomez Urrutia, who in 2006 escaped to Canada to avoid being arrested, after being accused of embezzling 55 million dollars.

During an interview in the National Institute of Criminal Science (*Inacipe* for its initials in Spanish), where she inaugurated a forum on the National Code for Criminal Procedure, Mariana Benitez stated that they also provided information to Interpol that their arrest warrant is enforceable, therefore in a few days it will be decided if the red notice is issued or not.

"There is a valid and enforceable arrest warrant and I believe that (the court trial) is a reinforcement of inconformity regarding the compliance of an *amparo* sentence filed by mister Gomez Urrutia's counsel, but the fact is that today the arrest warrant against Napoleon Gomez is completely enforceable ", she said.

EXHIBIT "B"

AFFIDAVIT OF MARCO DEL TORO

I, Marco Antonio Del Toro Carazo, being duly sworn, hereby depose and state:

1. I am a citizen of Mexico, and a resident of Guadalajara, Jalisco, Mexico.
2. I was licensed in 1995 to practice Law. Ever since then, I have worked as an attorney representing individuals and corporations in criminal cases, both as defence counsel and as representative of victims assisting the Public Prosecutor. I am a partner at "Del Toro & Asociados", a criminal Law Firm with permanent offices in Mexico City and Guadalajara. Alongside my professional activities, for many years I have also taught university and graduate level courses in criminal law in various universities and institutions of my Country, including the Federal Judiciary Institute sponsored by our Supreme Court of Justice.
3. Since October, 2006, I have personally been involved in representing Mr. Napoleón Gómez Urrutia (hereinafter "Mr. Gomez") in the different criminal and constitutional procedures that are currently open and in which our client is charged with fraud and conspiracy allegations.
4. As an Attorney of Law and University Professor, I have knowledge of federal criminal and constitutional laws and procedures in Mexico.
5. I have reviewed the public version of a statement made by the General Attorneys Office (PGR) regarding the situation of Napoleon Gomez Urrutia. Mariana Benitez, Vice General Attorney for Legal and International Affairs of PGR has stated that the decision of Judge Nuñez Sandoval issued the 22nd of April 2014 denying one aspect of an Amparo (constitutional trial) filed against the remaining case (out of 11 that have successfully been decided showing Napoleon Gomez Urrutia's complete innocence, all based in the same facts and conduct), is **final**. Her public position states that there is a valid and executable arrest warrant regarding a banking offense. She states as well, that Interpol is about to decide the issuance of a red notice

and that the Canadian Government has shown "good signs" with regard to responding to a further extradition request which she claims was filed by Mexico with Canada.

6. In my view the public statements of the PGR are absolutely inaccurate. First of all, Napoleon Gomez filed a constitutional trial (amparo) challenging the validity of an arrest warrant based upon the very same facts and conduct alleged in previous cases in which he has been acquitted. Said amparo decision was breached by Judge Nuñez Sandoval and therefore the Magistrates of the Fourth Collegiate Tribunal for Criminal Matters in Mexico City are about to decide a further legal challenge filed (INCONFORMIDAD), showing that a prior final decision of amparo was breached and therefore the "warrant" now said to be final is in fact subject to that pending decision. In parallel, the defense of Mr. Napoleon Gomez Urrutia filed an amparo (constitutional trial) with regard of the merits of said "warrant" and the fact that it breaches the double jeopardy principle. Said amparo case was heard precisely by the same Judge (Nuñez Sandoval), whose previous decision is also currently being analyzed by the Fourth Collegiate Tribunal for Criminal Matters in Mexico City due to his breach of an amparo granted to Mr. Gomez Urrutia. Judge Nuñez Sandoval in fact denied this last amparo trial on 22nd of April, but obviously it is not final. The defense filed a REVISION (amparo appeal), which has also been accepted for determination by the Fourth Collegiate Tribunal.

7. In summary: There are still two pending decisions presently before the Fourth Collegiate Tribunal which are about to be decided: A) *Inconformidad*: Based in a breach of an amparo that stated that there has been a breach of Mr. Gomez Urrutia's human rights and constitutional rights, B) *Revision* (amparo appeal), recently admitted, which will also be heard by the Fourth Collegiate Tribunal for Criminal Matters in Mexico City seeking the reversal of Judge Sandoval's April 22, 2014 decision.



