

Fighting Terror Selectively: Washington and Posada

Bush cries terror where there is none. Meanwhile, he protects the real terrorists in our midst.

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Since the 9/11 attacks, the Bush administration has made the “war on terror” the centerpiece of its domestic and foreign policy. Bush cries terror where there is none – as in Iraq and in the communications of ordinary Americans. Meanwhile, he protects the real terrorists in our midst.

Luis Posada Carriles is a Cuban-born terrorist who has accurately been called the Osama bin Laden of the Western hemisphere. He boasted of helping to detonate deadly bombs in Havana hotels 10 years ago. Declassified FBI and CIA documents at the National Security Archive reveal that Posada was the mastermind of a 1976 bombing of a civilian Cuban airplane that killed 73 people. He escaped from a Venezuelan prison where he was being tried for his role in the first in-air bombing of a commercial airliner. Posada then played a central role in the illegal Iran-Contra scandal.

Posada entered the United States in March 2005 using false papers and was charged in El Paso with lying to Immigration and Customs officials. FBI agent Thomas Rice swore in a June 2005 affidavit that “the FBI is unable to rule out the possibility that Posada Carriles poses a threat to the national security of the United States .” Yet on April 19, 2007 Posada was released on bail despite being a flight risk.

This stranger-than-fiction story has a logical explanation. Posada has a long history of ties to the U.S. government. He became a CIA agent in 1961. The U.S. government claims his CIA service ended in 1976. But on April 30, Posada filed a motion in federal court declaring that he continued to work for the CIA for more than 25 years. That puts him on the CIA’s payroll when he engineered the terrorist airline bombing. In his motion, Posada asserted the right to present evidence of his CIA work as a defense to the perjury charges. The specter of Posada revealing the dirty deeds committed by the CIA when George H.W. Bush was director of the CIA was intolerable to Washington .

The government was caught between a rock and a hard place. There had been intense pressure to try Posada for his terrorist crimes, as required by Security Council resolution 1373 and three international treaties. Resolution 1373, passed in the wake of the September 11, 2001 attacks, mandates that all countries deny safe haven to those who commit terrorist acts, and ensure that they are brought to justice. These provisions of resolution 1373 are mandatory, as they were adopted under Chapter VII of the UN Charter. The treaties require the United States to extradite Posada to Venezuela for trial or try him in U.S. courts for offenses committed abroad. The Department of Justice elected instead to charge him with perjury for lying about how he entered the United States in 2005.

But the government could not take the risk that Posada might sing like a canary. On Tuesday, U.S. District Court Judge Kathleen Cardone dismissed all charges against Posada. In her ruling, Cardone wrote that “the Government engaged in fraud, deceit, and trickery” by using a “routine” immigration interview to investigate possible criminal charges against Posada. But questions about Posada’s prior criminal conduct were relevant to the moral character determination at the immigration interview. Posada is not a “routine” guy and his lawyer was present throughout the interview to protect him against self-incrimination. Cardone found the government’s tactics “grossly shocking and so outrageous as to violate the universal sense of justice.” She then disingenuously claimed, “This Court’s concern is not politics; it is the preservation of justice.”

It is shocking and outrageous that Luis Posada Carriles, whose crimes rival those of al Qaeda, is now walking free in Miami . And Cardone’s decision is deeply political.

Rep. William Delahunt has called for a congressional hearing to examine the U.S. government’s role in promoting impunity in the Posada case. Delahunt sent a letter to Attorney General Alberto Gonzales requesting an explanation as to why the Justice Department did not invoke the USA Patriot Act to declare Posada a terrorist and detain him, stating, “The release of Mr. Posada puts into question our commitment to fight terrorism.”

That commitment is also belied by the way Washington has dealt with the Cuban Five. These men peacefully infiltrated criminal exile groups in Miami to prevent terrorism against Cuba . The Five turned over the results of their investigation to the FBI. But instead of working with Cuba to fight terrorism, the U.S. government arrested the five Cubans and tried and convicted them of conspiracy-related offenses. A three-judge panel of the U.S. Circuit Court of Appeals in Atlanta reversed their convictions, finding they could not receive a fair trial in Miami . In August 2006, a majority of the full circuit rejected the earlier ruling and sent the matter back to the panel where further appeals are pending. The U.S. media has been irresponsibly silent on the case of the Cuban Five and the irregularities of the trial.

The Los Angeles Times, however, showed singular insight on April 20 when it said the release of Posada “exposed Washington to legitimate charges of hypocrisy in the war on terror.” The editorial criticized the U.S. for holding men at Guantánamo without due process while releasing Posada. “The U.S. government has done many odd things in 46 years of a largely failed Cuba policy,” the Times said, “but letting a notorious terrorist walk stands among the most perverse yet.”

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