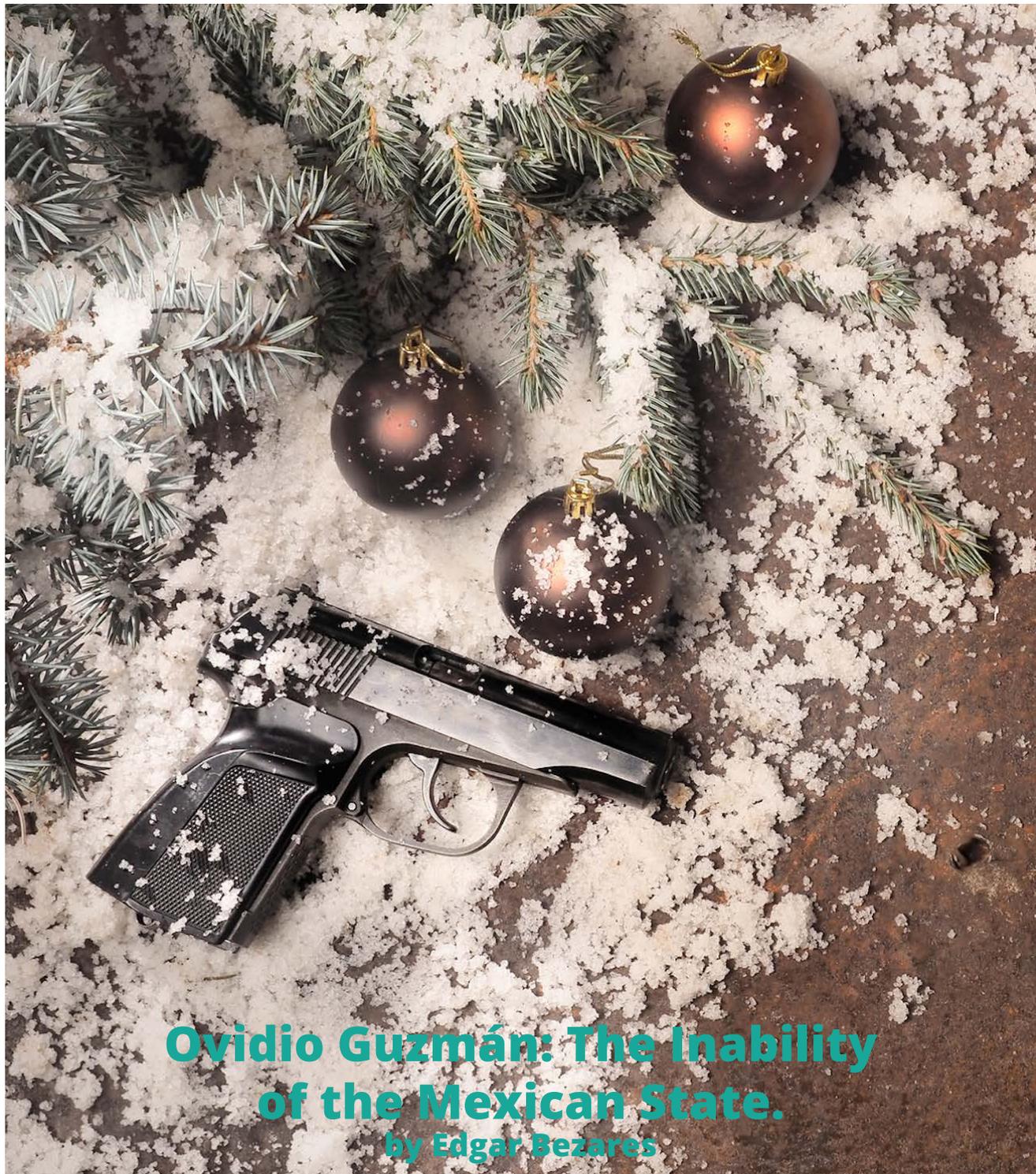


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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”



Ovidio Guzmán: The Inability of the Mexican State.

by Edgar Bezares

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Ovidio Guzmán: The Inability of the Mexican State.

by Edgar Bezares*.

On October 17, 2019, it was breaking news not only in Mexico, but in the whole world that Ovidio “El Ratón” Guzmán, son of Joaquín “El Chapo” Guzmán Loera, both members of the Sinaloa Cartel, was arrested in Culiacan for only a few minutes by the National Guard and military forces of Mexico, and then released by those who intended to enforce an extradition order from a judge of the United States.

The release of such an infamous person, according to the Mexican authorities, was due to the fact that his arrest caused an outbreak of violence in Culiacan, Sinaloa, so if they had not released him from custody, “it would have cost the life, security and peace of many innocent people”. Because the reaction of the members of the “Sinaloa Cartel”, when they knew the capture of Ovidio, was to block avenues of the city, burn buses and start indiscriminate shootings, resulting in the dead of eight innocent people and sixteen more wounded, as well as an atmosphere of terror for all citizens that day.

“...the real reason for which Ovidio Guzman was released is evident: the absolute incompetence and inability of the Federal Government to act efficiently in security operations and tasks of immense importance such as the one in question”.

However, contrary to the official version, the real reason for which Ovidio Guzman was released is evident: the absolute incompetence and inability of the Federal Government to act efficiently in security operations and tasks of immense importance such as the one in question.

As reported by the Minister of Home Security, Alfonso Durazo, the operation in charge of the National Guard was in order to complete an extradition order requested by a federal criminal judge of Washington D.C., United States, which entailed the corresponding arrest warrant against Ovidio Guzmán in charge of the Mexican government, which was issued by a District Judge in Criminal Matters according to the Bilateral Extradition Treaty between the two countries and the Mexican International Extradition Law.

Likewise, in accordance with the statement made by Alfonso Durazo, the failure in the capture operation was due to “a hasty action”, which is reflected in a double aspect: 1) strategic, because the Mexican Federal Prosecution Office requested the support of four military groups to achieve the apprehension of “El Raton”, but only one of those groups went into action, joined with the fact that the operation was absurdly executed in the afternoon and not, as usual, after midnight to use the surprise factor and avoid collateral damages; and 2) jurisdictional, because knowing that the capture of this individual would be done at his home, the security forces were ordered to start the capture operation without having a search warrant that would allow them to enter his house to capture Ovidio, so the members of the National Guard had to wait exposed around the house while the federal judge order was processed, losing discretion and the surprise factor.

By the time the National Guard had the search warrant to enter Ovidio’s home and arrested him, Culiacan was already in total chaos, because violence had taken over the city, so according to the Secretary of National Defense, General Luis Crescencio Sandoval, at 7:49 p.m., the orders to cancel the operation and release “El Ratón” were given, so the security forces moved off humiliated. This was endorsed by President Andrés Manuel López Obrador, who said that “... the war was not waged, the confrontation, and the life of the people was taken care of, which is the most valuable ...”, this statement reflects its absurd policy of “hugs, not bullets” that keeps the country in a crisis of greater insecurity.

* IN COLABORATION WITH PABLO ARANDIA.

In accordance with article 21, ninth and subsequent paragraphs, of the Political Constitution of the United Mexican States, public security is a function of the state that aims to safeguard the life, heritage, freedom and integrity of persons, as well as generate and preserve public order and social peace, for which public security institutions, as mentioned before, must act with professionalism and legality, including, of course, the National Guard.

“...the elements that participated in the operation, failed to comply with the purposes inherent to public safety, since the worthless planning of their strategy of action put in risk the life and integrity of the citizens...”

These purposes were reasserted by articles 6 and 8 of the National Guard Law, which in article 9, sections XIV and XXII, establishes as an obligation of the National Guard to comply with the arrest warrants assigned to them. Then, it is notorious that who had the leadership of the operation in question and, in general, the elements that participated in the operation, failed to comply with the purposes inherent to public safety, since the worthless planning of their strategy of action put in risk the life and integrity of the citizens of Culiacan, proving their zero professionalism and training, despite the fact that they are required by law to act upon high standards.

Therefore, the security forces did not acted with legality, because, in the last precept mentioned it is established as an obligation of the National Guard to comply with the arrest warrants issued by the jurisdictional authorities, which must be carried out in a compulsory manner and cannot be suspended or avoided based on arbitrary decisions. It is forbidden by law, any defiance of security forces to the jurisdictional authorities and is an obligation to apply the force of the state to achieve its mission or task.

We must be aware that the execution of the arrest warrant, ordered initially by a foreign judge and then confirmed through the extradition process by a Mexican judge, necessarily implies the arrest of the accused by the corresponding police forces, in this case, the National Guard, who mandatorily had the obligation to capture Ovidio and make him appear immediately before judicial authority. This means that if the arrest of Ovidio Guzman had been already consummated by the National Guard and, despite that, for legally unjustifiable reasons, the person in charge of such execution gave the order to release him and breach the arrest warrant, the responsible of the operation committed the crime of evasion of an accused, which is typified by article 150 of the Federal Criminal Code, establishing a penalty of 8 months to 12 years in prison (for being a public servant), plus the dismissal of his position and the disqualification to exercise public charges. This means that observing judicial orders is not discretionary but mandatory to security forces or by everyone, including the President of the country, that is the Rule of Law.

On the other hand, another disastrous failure of the said operation, came out of the lack of foresight and analysis from the Mexican Federal Prosecution Office, who expected serving the extradition order by simply asking the District Judge in Criminal Matters for the arrest warrant against Ovidio Guzmán, as stated in article 13 of the Extradition Treaty and articles 21 and 22 of the Mexican International Extradition Law. However, such institution ignored the evident necessity of entering the house or place where “*El Ratón*” was hidden at the moment of the execution.

According to the article 16, eleventh paragraph, of the Mexican Constitution, and the articles 141, 143 y 283, section III, of the National Code of Criminal Proceedings, the persons' home address is impenetrable, so it is not possible to enter into it without a previous judicial order that allows it, this is known as a search warrant, so the Federal Prosecution Office had to request the judge not only the arrest warrant, but also the search

warrant of Ovidio's home address, so that he could be efficiently captured by the National Guard. This omission was decisive for not having a successful operation, because due to the absence of the search warrant, the National Guard and the army elements who would execute the capture, had to stay in broad daylight out of the home address of "El Ratón", meanwhile the prosecuting attorneys hurried to obtain the said judicial order, giving enough time for the Sinaloa Cartel members to react in defense of its earlier most important leader's son.

"... the Office of the Attorney General of the Republic failed to comply with its guiding principles, which led not only to the failure to apprehend a criminal, but also to the instability of peace and order in the city of Culiacán..."

In this case, the Office of the Attorney General of the Republic failed to comply with its guiding principles of legality, efficiency and professionalism, as required by Article 3 of its Organic Law and Article 7, Section V, of the General Law of Administrative Responsibilities, since its lack of adherence to the law resulted in its null efficiency as a result of its technical and legal ineptitude, which led not only to the failure to apprehend a criminal, but also to the instability of peace and order in the city of Culiacan, which is why, in terms of the last mentioned law, the corresponding liability procedure must be initiated against the prosecutor and agents of the Public Prosecutor's Office involved in this serious omission and neglect in order for them to be sanctioned.

As it has been appreciated, the Mexican government's saying that the cause of Ovidio Guzmán's release was to avoid an outbreak of violence that claimed more lives is not correct, but that the cause of his release was both the terrible strategic planning of the operation required for it by the national security forces and the ineptitude of the Attorney General's Office of the Republic to have taken all the necessary orders to achieve the efficient apprehension of a person with such criminal power, for this reason, all those who formed part of this failed attempt at apprehension should be punished. However, the person who ordered the release of Ovidio Guzmán and the cancellation of the operation has a higher degree of responsibility, because he decided to disregard the judge who issued the arrest warrant, which had to be accomplished necessarily despite his personal opinion, breaking the rule of law and risking the national security. Action which must be penalized according to the Mexican law.

With the authorities that govern our country in these days, what future awaits us? Where is the rule of law? Will the so-called "war on drugs" continue or will the cartels be passively allowed? What all of us Mexicans can demand today: Andrés Manuel, it is time for you to be the president and act like one, because such "chain of errors" to apprehend "El Ratón", do not seem to be the mere coincidence of unfortunate circumstances.

The National Commission of Human Rights warns about the risk of childhood and adolescences of being victims of organized crime and the violation of their human rights.

The National Commission of Human Rights warns of the risk of children and adolescents, who make up a third of the population of the country, of suffering damages to their fundamental rights, ranging from death by the use of lethal force between criminal groups, the loss of their families, forced displacement, poverty, deprivation of liberty, exploitation and trafficking of persons, until their way of life is modified and their access to the right to education, health and safety is prevented. Such situations are not always visible to the State and its authorities, and their stories are often poorly heard or even ignored. According to the National Institute of Statistics and Geography data, between 2007 and 2017 the number of homicide victims of people between 0 and 19 tripled, from 1,002 to 2,858, and between 2016 and 2017 the number of homicides had its greatest increase, which was of 22.5% Comisión Nacional de Derechos Humanos. https://www.cndh.org.mx/sites/default/files/documentos/2019-11/COM_2019_439.pdf 07/11/2019.

Mexico Has a Productivity Problem.

Mexico's economy has grown at just 2.4% a year over the past 25 years, half the emerging-market average. This year is likely be worse, with a growth forecast of 1% or less. In order to reach growth rates anywhere near the 4% that President Andres Manuel Lopez Obrador is targeting, higher productivity is a must, says Manuel Molano, director of the Mexican Competitiveness Institute. As Molano said, in order to boost Mexico's productivity, we need institutions that appoint tax renovations, the strengthen of the rule of law and of course, make more resources available. <https://www.bloomberg.com/graphics/2019-new-economy-drivers-and-disrupters/mexico.html> 17/11/2019.

Mexico entered recession in early 2019, dealing blow to president.

Mexico's economy entered a mild recession during the first half of 2019 and was flat in the third quarter, revised data from the national statistics agency showed on Monday, handing a setback to the plans of President Andres Manuel Lopez Obrador. <https://www.reuters.com/article/us-mexico-economy-gdp/mexico-entered-recession-in-early-2019-dealing-blow-to-president-idUSKBN1XZ1JF> 25/11/2019.

Mexico banks on \$43bn infrastructure plan to build growth.

Mexico's government has disclosed an ambitious infrastructure programmed for 2020-24 intended to deliver annual growth of more than 4%, a day after new official data revealed the country's economy had fell into recession this year. Since, economists pointed out that the weakening of Latin America's second-biggest economy raised on the third quarter were the growth was zero after falls of 0.1% in the fourth quarter of 2018 and each of the first two quarters of 2019. Surrounded by business leaders like Carlos Slim at his morning conference, President Andrés Manuel López Obrador called the infrastructure programmed "hugely important because we need the private sector to participate in...growth". The identifies 72 projects for the following year, mostly in tourism, transport and telecoms. <https://www.ft.com/content/d7f11c7a-1067-11ea-a7e6-62bf4f9e548a> 25/11/2019.

Drug trafficking and terrorism.

The president of the United States announced in an interview with a former Fox News journalist, that drug cartels in Mexico would be designated by his government Foreign Terrorist Organizations. He made the announcement three weeks after six children and three mothers of the LeBarón family were killed and burned. What happens when a group is designated as a Foreign Terrorist Organization by the United States? Their assets are expropriated, their accounts are frozen, their partners are persecuted and their members are combated, wherever they are. The war against terrorism, thus conceived, knows no borders: it has an extraterritorial nature, since it opens the possibility to espionage and capture missions. Under the justification that a group is a terrorist, the United States, in "legitimate defense," could launch a military operation in Mexico. <https://www.milenio.com/opinion/carlos-tello-diaz/carta-de-viaje/narcotrafico-y-terrorismo> 28/11/2019.

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