

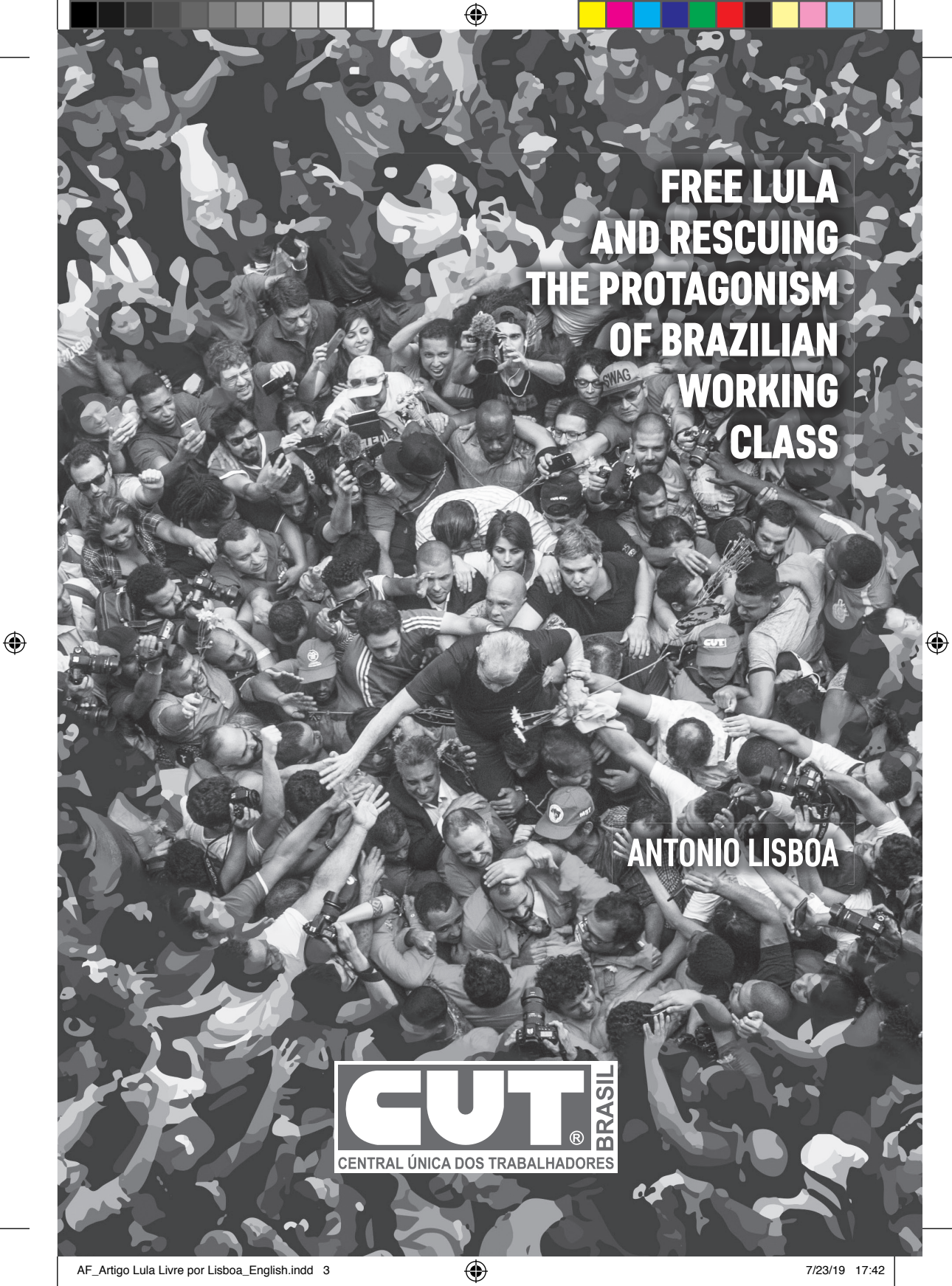


FREE LULA AND RESCUING THE PROTAGONISM OF BRAZILIAN WORKING CLASS

ANTONIO LISBOA

CUT BRASIL
CENTRAL ÚNICA DOS TRABALHADORES





FREE LULA AND RESCUING THE PROTAGONISM OF BRAZILIAN WORKING CLASS

ANTONIO LISBOA

CUT BRASIL
CENTRAL ÚNICA DOS TRABALHADORES





On April 7, a year was completed that former President Luiz Inácio Lula da Silva is unjustly imprisoned - charged and convicted of a non-existent crime. Lula, one of the world's greatest popular leaders, was the victim of an illegal and illegitimate trial that, far from representing any attempt to obtain justice, served from the outset as a procedural fraud aimed at preventing him from competing in presidential elections last year - in which he appeared as a frank favorite in all opinion polls. Lula represents a development model that distributes income and promotes social justice.

The coup of 2016 - an impeachment without a crime of responsibility - against President Dilma Rousseff's mandate, the rule of law and democracy in Brazil was, above all, a coup against that model of development and, later, to implement an ultraliberal model to withdrawal of rights. In 12 years, 20 million jobs were created, 32 million people left misery and the Brazilian GDP was multiplied by five. The coup and attacks on democracy began even in 2014 when the national

right did not accept the result of the election and proceeded to attack and destabilize the legitimately elected government. Since then, the left, the trade union movement and social movements have been targets of media attacks, legislative and legal. They persecute organizations, leaders, social rights, labor rights and even human rights. The fraudulent and illegal imprisonment of former President Lula is the continuity of this process - which reached its apex in the electoral victory of Jair Bolsonaro.

Jair Bolsonaro has been known throughout his almost 28 years of parliamentary activity in systematically attacking human rights, especially labor rights, and uttering an endless series of sexist, misogynist, racist and LGBT-phobic statements. On human rights and the UN, Bolsonaro even said that, if elected president, Brazil would leave the UN Human Rights Council, because the institution "is of no use." The criticisms are not of today. In 2016, Bolsonaro posted on a social network that human rights are "the dung of criminality". This right wing





that conspired openly against the president-elect's mandate and who actively contributes to the election of a protofascist president is the direct heir of the centuries-old slave-owning and reactionary past that marks national history.

Sérgio Moro, the same judge who participated in the investigations, criminal proceedings and who unconstitutionally tried and convicted former President Lula, is the current Minister of Justice and Public Security of President Jair Bolsonaro. The same judge who leaked to the media illegally intercepted phone calls between Lula and then-President Dilma Rousseff, his family and his lawyers, hurting not only the Brazilian Constitution but also International Treaties such as the UN International Covenant on Civil and Political Rights. The unlawful disclosure of the wiretaps was crucial for the former president not to assume the Home Office of former President Dilma Rousseff - weakening the government and later contributing to the parliamentary coup against his mandate.

The unproven condemnation of former President Lula, a typical procedural piece of authoritarian regimes, by a lower court judge who acted from the outset as an agitator of the parliamentary coup against President Dilma Rousseff and who became prime minister the beneficiary of its decisions is further evidence that democracy in Brazil has become mere fiction. Moro, while a judge, publicly congratulated the crowds who protested against the Dilma government and called for Lula's arrest - Sergio Moro used his toga to play party politics and benefit his current boss, President Jair Bolsonaro.

The "Lula case" is a intriguing tangle of illegalities, disrespect for the constitution and legal and political opportunism. Even before the conviction in the "triplex case", a series of arbitrary judicial measures, required by the Lava Jato Prosecutors, and authorized by former judge Sérgio Moro, were practiced. In March 2016, Lula was a victim of "coercive driving" - in practice, was arrested for about 6 hours to give a testimony he had never refused to give, only to create an artificial atmosphere of guilt





before public opinion and society. At that moment, Lula's coercive conduct served to encourage and mobilize a demonstration in favor of the impeachment of former President Dilma Rousseff. "Coercive driving" was subsequently deemed unconstitutional by the Federal Supreme Court (STF) itself.

Lava Jato intercepted the telephones of former president Lula's lawyers' office. By monitoring, in this way, and in real time, the entire defense strategy established in favor of Lula by his lawyers. The recorded conversations were deposited by the Federal Police in the secretariat of the judicial body presided by former judge Sérgio Moro. None of those involved was punished and the criminal complaint filed by Lula against the former judge was summarily filed by the Federal Regional Court (TRF4). In the decision handed down on these telephone clamps, TRF4 used as justification the argument that Lava Jato "is undoubtedly an unprecedented situation, deserving an exceptional treatment".

In the first case in which he was convicted, Lula was "tried" for corruption and money laundering in connection with a triplex apartment that was allegedly "given" to him by construction company OAS in exchange for favors related to three contracts maintained by consortia integrated by OAS with Petrobras. And, in addition, that the resources that resulted in the cited triplex would have derived from these contracts. The testimony of the former president of the OAS José Adelmário Pinheiro Filho is centerpiece in the sentence of Sérgio Moro that condemned Lula. Pinheiro, who had been sentenced to more than 40 years in prison, had his sentence drastically reduced shortly after changing his initial testimony that he had cleared the former president for a false claim that Lula was the owner of the triplex. None of the 73 witnesses heard in the 23 hearings held in the case affirmed any fact that proves that Lula owns the property. All the expertise required by Lula's defense to prove that no Petrobras value was intended directly or indirectly to the





former president was dismissed by former judge Moro.

In technical terms, the crime of passive corruption presupposes that the public official practices an act of his competence and receives, on the other hand, an advantage because he has practiced or stopped practicing the specific act. However, the judge did not identify any specific act of former president Lula from which he would receive an undue advantage - in this case, the triplex apartment - treating in his sentence only "indeterminate acts." More than that, Moro does not establish the link between the denunciation offered by the Federal Public Ministry and the condemnation. Former President Lula is denounced for a set of acts that are absolutely disregarded in the sentence of the judge. The accusatory body, in the case the Federal Public Prosecutor, files a complaint, and the judge condemns the defendant by another. Moreover, Moro admits in a possible lapse that he would not be the natural judge of the case in answering the defense's attachment of the defense: "This judgment has never stated, in the sentence or anywhere,

that the values obtained by Construtora OAS in the contracts with Petrobras were used to pay the undue advantage to the former President. " The sentence of the former judge Sergio Moro in condemning Lula for the practice of "undetermined acts" used as reference the judgment of an intermediate court of the United States that defended the configuration of crime of corruption without the need of proof of an official act of the public agent. Besides the decision being absolutely foreign to the legal framework of the Brazilian State, the sentence has already been amended by a decision of the United States Supreme Court.

The second-instance trial was marked by the unacceptable combination of the outcome among the three federal judges, including in determining an increase in sentence - a maneuver intended to avoid prescribing the case. Although the "triplex" process brings together more than 250 thousand pages, Lula's appeal in the TRF4 proceeded in record time. In addition, the result was announced by the President of the TRF4 before the





accomplishment of the protocol of the appeal by the defense of Lula. During the course of the appeal addressed to TRF4, the defense of former president Lula presented new facts that were summarily scorned. Of note among these new facts are videos of ex-prosecutors from the United States admitting that they have helped informally - and therefore illegally - Lava Jato members to build the case against Lula and to convict the former president. Petrobras participated in the whole process of the "triplex" as an assistant prosecutor of the MPF, claiming to be a victim for the facts; in the United States, however, signed an agreement confessing to be guilty of the same facts.

Lula was arrested before even exhausted all the appeals in the second instance. However, the Federal Constitution ensures that the presumption of innocence can only be dismissed in the face of the existence of a definitive (final judgment) conviction, which does not exist in the case of the former president. If the conviction in the second instance has already been processed in record time - in order to make the

former president's participation unfeasible in the 2018 elections - the order of former judge Sergio Moro determining the arrest of the former president was signed exactly 19 minutes after the Federal Court of the 4th Region (TRF4) publish a letter that allowed for the enactment of the arrest.

Before that, Lula's arrest was only possible after a shameful maneuver in the Federal Supreme Court. The arrest in the second instance was allowed by a narrow and circumstantial majority of the Supreme Court in October 2016 - during the height of the punitive hate and disregard for due process and the extensive right of defense fomented by "Car Wash" Operation. However, since then, the composition and opinion of the STF ministers has been reversed and today, most likely, there is a majority formed for the Constitution to be respected and that the presumption of innocence can only be dismissed in the face of a final condemnatory decision.

To prevent the decision on the arrest in second instance was reformed - which would prevent





the arrest of former President Lula - the then president of the STF, Minister Carmen Lucia, maneuvered the agenda of the Supreme Court to prevent the review of jurisprudence on the subject. Carmen Lúcia prevented Lula's Habeas Corpus from becoming a judgment that could have general repercussions. With this, STF Minister Rosa Weber decided to vote in accordance with the STF's current understanding, which since 2016 allows the provisional execution of sentence. Rosa Weber is against the thesis of the arrest in the second instance and has already stated, on some occasions, that she will vote this way when discussing the merits of the matter. Regarding the former president's maneuver, another STF minister, Marco Aurélio Mello, said: "Strange times. I've been here for 28 years, and I've never seen manipulation of the agenda like this."

Even stranger was the interference of the Brazilian army in the discussion of the subject. The then army commander, General Eduardo Villas Bôas, confessed that there was a coordinated action by the leaders

of Armed Forces to pressure the Federal Supreme Court to keep former president Lula prisoner. In an interview with Folha de São Paulo newspaper, Villas Bôas said that acted "in the limit" when using Twitter on the eve of Lula's appeal to the STF in time to be read in the "Jornal Nacional", the country's main news television show.

So far - May 2019 - the debate on the second instance arrests did not take place in the STF plenary. The trial that should have happened on April 10 was removed from the agenda by the president of STF, minister Dias Toffoli, and there is no date to take place. In the press it is speculated that Toffoli's decision was motivated to wait until the appeal of former president Lula, against the conviction in the case of the triplex of Guarujá, was judged by the Superior Court of Justice (STJ).

In July 2018, new exceptional circumstances. The judge Rogério Favreto granted habeas corpus authorizing Lula to be released. Favreto called the provisional execution of the prisoner's punishment "illegal

10 Free Lula and rescuing the protagonism of Brazilian Working Class • *Antonio Lisboa*





and unconstitutional” and stated that he “can not deprive him of his political rights nor restrict the right to the acts inherent in pre-candidate status as President of the Republic.” Favreto also made a point of explaining the reason for Lula’s arrest: the refusal of Cármen Lúcia, president of the Federal Supreme Court, to rule on Declaratory Actions of Unconstitutionality 43 and 44, which question the prisons in second instance.

In face of the decision, former Judge Sérgio Moro, current Minister of Justice of Bolsonaro, who was in Portugal on vacation, demanded that the Federal Police not release Lula until a decision of the Eighth Section of the TRF-4. Judge João Pedro Gebran Neto, “Car Wash”’s rapporteur at TRF-4, who was in recess, then determined that Favreto’s decision was not fulfilled. Favreto then reiterated the determination. But the final word was up to the president of TRF-4, Thompson Flores, who decided to keep the imprisonment. Only the Lula case would be able to generate such dexterity of judges on vacation and recess - and in full weekend - to determine that

the routine decision of another judge should not be fulfilled.

After the illegal imprisonment of former President Lula, the articulators of the coup against Brazilian democracy, still had to prevent his new candidacy for the presidency of the Republic. And they did, even if it was necessary to ignore the decision of the UN Human Rights Committee. The president’s candidacy was banned against the electoral law, jurisprudence and a determination of the UN Human Rights Committee to guarantee its political rights. The Committee determined that the Brazilian state should allow Lula’s candidacy until have been exhausted all judicial resources involving the conviction of the former president. The Brazilian court ignored the decision of the Committee and vetoed Lula’s candidacy.

The former judge and current right-wing government minister, Sergio Moro, negotiated his trip to Bolsonaro’s ministry during the election period - as revealed in an interview for the newspaper Valor Econômico, the vice president of Bolsonaro,





General Hamilton Mourão. After this negotiation and only six days of the 2018 election election, Moro, withdrew the secrecy of Antonio Palocci's plea bargaining with Federal Police. Without presenting any evidence, the collaboration was carried out by a imprisoned rapporteur and under pressure, who seeks to guarantee his freedom and parts of the revenues of corruption at any cost. Palocci has been arrested since 2016, sentenced to 12 years and two months in prison. Palocci began his attempts to offer an plea bargaining in mid-July 2017, still with the prosecution, but the agreement has not advanced. He later negotiated with the Federal Police. In an interview with Folha de S. Paulo at the end of July, Carlos Fernando Lima, Lava Jato's attorney, explains in detail that Palocci's allegation, in the opinion of the Public Ministry, is not valid due to lack of evidence. The disclosure of this allegation, with a series of unproven accusations against former President Lula and the Workers' Party, clearly intended to influence the presidential election and favor Bolsonaro -

with whom Moro had already negotiated his way to the Justice Ministry. According to Lula's defense: "Moro added to the process, on his own initiative (*"ex officio"*), testimony given by Mr. Antonio Palocci as an informant with the clear objective of trying to cause political effects for Lula and his allies, the judge himself acknowledges that he can't take such testimony into consideration in the criminal proceedings. Added to this is the fact that the deposition was denied by the Public Prosecution Service. In addition, the accusatory hypothesis was destroyed by the evidence constituted in the records, including by expert reports."

In February 2019, Judge Gabriela Hardt of the 13th Federal Court of Curitiba, substitute for the former judge and now Minister of Bolsonaro, Sergio Moro, sentenced former president Lula in the case of reforms at a ranch in Atibaia. According to Cristiano Zanin, Lula's lawyer, "Again, the Federal Court of Curitiba has assigned criminal responsibility to the former president on the basis of an accusation involving a property of which he is not the





owner, a "general cashier" and other accusations referenced only by generous beneficiaries. "Lula was accused by the Public Prosecutor's Office of owning the ranch, but the judge wrote:" It has already been narrated in this sentence that the ownership of the ranch is not discussed here. "

Hardt's decision follows the same line as the sentence passed by former judge Sergio Moro, who condemned Lula without having practiced any official act linked to the receipt of undue advantages. The decision dismissed the evidence of innocence presented by Lula's defense and went as far as to rebut some of these arguments by referring to "testimony given by employees and editors Leo Pinheiro and José Adelmário", as if they were different people - in fact it's the same informant, the former president of the OAS contractor, who changed his statements about Lula and had a considerable reduction in his sentence.

An expert's report at the request of the defense, in the decision of Judge Gabriela Hardt, pointed out that Hardt

altered the order of parts and used identical phrases and expressions used by Moro in the case of the triplex case. The report maintains that the judge took advantage of "the same text file" used by Moro. The magistrate copied, mainly, the section on dosimetry of sentence, in which an entire paragraph is identical to the one written by the former judge - reproducing, even, reference to an "apartment" - the triplex of Guarujá.

In another attack, the Judiciary forbade Lula to go to the wake of one of his brothers, who died in January 2019. Elder brother and very close to former President Lula, Vavá was 79 years old, and died in São Paulo. Even during the military dictatorship, when he was a political prisoner for the first time, Lula have his rights recognized to go to his mother's funeral, Dona Lindú, on May 12, 1980. This time, the denials of the Federal Police of Paraná, Judge Carolina Lebbos and the Federal Regional Court of the 4th Region before a right expressed by the Criminal Enforcement Law used as justification "logistical difficulty" or "security issues". It





is important to note that Brazilian laws are categorical, through its Law on Criminal Executions (Article 120), in order to expressly allow the release of prisoners for wakes and burials of relatives - a right that is granted on a daily and routine basis to thousands of prisoners across the country.

After having all these resources denied, the minister of the Federal Supreme Court, Dias Toffoli "released" Lula to say goodbye to his brother. But what lies behind that decision is yet another attack on the rights of the former president. Toffoli's decision occurred minutes before Lula's brother's burial - which in practice made his presence unfeasible.

Faced with the bad public repercussion of this first case, Lula was released to attend the wake of his grandson, Arthur Araújo Lula da Silva, only 7 years old, who died of a generalized infection on March 1st, 2019. The judge responsible for the criminal execution of the former president forbade him to make public statements and determined that militants would not be summoned to the scene.

In addition, it also restricted the presence of the press in the funeral ceremony. Still in February 2017, at the height of the Lava Jato's persecution, Maria Leticia Lula da Silva, wife of the former president, died as a result of a stroke. Later, Lula said: "I think Brazil was not unfair to her, but these Lava Jato boys have responsibility for her death." Marisa Leticia was also investigated in Lava Jato proceedings and, even after her death, former judge Sergio Moro refused to decree his innocence - Moro determined the extinction of the possibility of sentence for Marisa after his death, but without considering innocence or guilt.

At the Federal Police Superintendence in Curitiba, Lula is in an impromptu cell, and has contact only with his caretakers, lawyers, friends and relatives authorized to visit him. Despite this, among the numerous international visits that the former president received, we can highlight: Juan Carlos Monedero, founder of the Spanish party Podemos; Pepe Mujica, former president of Uruguay; the Italian deputy





Roberto Gualtieri; Ernesto Samper, former president of Colombia and former general secretary of the Union of South American Nations (UNASUR); Martin Schulz, leader of the German social democracy and former president of the European Parliament; former Italian Prime Minister Massimo D'Alema; Cuauhtémoc Cárdenas, former governor of the Federal District of Mexico; the Nobel Peace Prize winner, the Argentine Adolfo Pérez Esquivel; the secretary-general of the International Trade Union Confederation, Sharan Burrow, and intellectuals of the size of Noam Chomsky and Domenico de Masi. As the ex-chancellor and current president of the Lula Livre International Committee, Celso Amorim, said, "which country is the one in which a prison cell in Curitiba is visited more by international political figures, authorities, than the Presidential Palace? There is something very wrong in the country for this to happen."

These visits are a fundamental part of the Free Lula Vigil. The Vigil never ceased to "work" since it was installed, the day before the former president left

Sao Bernardo do Campo toward the capital of Paraná, on April 7, 2018. The Free Lula Vigil became a place of pilgrimage for militants from various states in Brazil and other countries, who are moving to provide solidarity and protest against the unjust and unproven imprisonment. The Vigil is the guarantee that Lula will never be alone: every day there was a "good morning", "good afternoon" and "good night" shouted by the militants to the former president.

Despite the obvious and undeniable public and historical interest of an interview with Lula, the Federal Supreme Court prevented the former president's contact with journalists during the entire electoral campaign. On that occasion, in another case decision, Federal Supreme Court (STF) Minister Luiz Fux suspended an injunction granted by Minister Ricardo Lewandowski authorizing an interview of former President Luiz Inácio Lula da Silva (PT) to the newspaper Folha de S. Paulo. It is far from being commonplace for a STF minister to suspend a monocratic decision from another Supreme Minister. For Lula, however,





the Brazilian court does not tire of treating the law with bias - "taking into account the name on the case", says Minister Marco Aurélio Mello (STF).

Only in April 2019, the president of the STF, Dias Toffoli, released former president Luiz to give interviews. Interviewing prisoners from inside prison units is commonplace, but Lula is not a common prisoner. Lula is a political prisoner, a prisoner of conscience. The interview with President Lula, granted to the newspapers El Pais and Folha de São Paulo, had repercussions in the press of the whole world. Lula remains haughty and convinced that he will prove his innocence: "I can stay imprisoned for a hundred years. But I do not change my dignity for my freedom. " In addition, he remains attentive to the country's political scenario and to the suffering of the Brazilian people: "Let's make a general self-criticism in this country. This country is governed by this gang of crazy that governs the country. The country does not deserve this and above all the people do not deserve it".

The Superior Court of Justice (STJ) decided on April 23, unanimously, to reduce the sentence of former president Lula to 8 years, 10 months and 20 days in the case of the Guarujá triplex. The Court of First Instance appealed to procedural requirements that were inapplicable to the specific case and failed to conduct an effective examination of the merits, as sought by the defense's appeal - the STJ considered that it could not re-examine the evidence of the case, but only to assess whether the evidence was taken into consideration with which they determine the penal laws. Reducing the former president's sentence was a first step in addressing the abuses committed against former President Lula by "Car Wash" Operation. With the former president's defense said: "It's not enough. But it's the beginning". One of the most important jurists alive in the country, Celso Antônio Bandeira de Mello, declared: "The arrest of Lula is absurd and (STJ ministers) have lost the opportunity to acquit him. Conviction is madness without proof. Finally, reducing





the penalty is the minimum in the face of what should be done". Without giving up the acquittal, the former president's lawyers filed with the STJ in the STJ pleading for the right to an open regime that Lula would already have the right, and for nullifying the process.

Against Lula, the "criminal law of the enemy" is practiced - they act as the "judge who does not want to lose the game" - as was exposed by the renowned Italian jurist Luigi Ferrajoli during a public hearing held in Rome in April 2018, and in a later letter, in which he emphatically denounces the persecution of Lula and the "impressive" lack of impartiality of the Brazilian judiciary. Lula is undoubtedly the victim of Lawfare: a war waged through manipulation of laws to target someone who has been elected as a political enemy - abusive use of the law as a weapon of war.

As President Lula himself wrote in an article published in the Folha de São Paulo newspaper on April 7: "Why are you so afraid of Lula's freedom, if you have already achieved the goal

of preventing my election, if there is nothing support this prison? In fact, what they fear is the people's organization that identifies with our country project. They fear they have to recognize the arbitrariness they have committed to elect an incompetent president who fills us with shame".

Recently, "Car Wash" Operation attempted its most daring political maneuver. An agreement between the US Attorneys and the United States - without support in any Brazilian law - to receive R\$ 2.5 billion from Petrobras, or about US\$ 853 million, and to administer it through a private-law foundation. The amounts would come from fines that Petrobras would have to pay in the United States - with the agreement the company would terminate its litigation with the regulators of that country. The maneuver is currently prohibited by decision of the Supreme Court. Marco Aurélio Mello, STF minister, said: "It is pernicious that 'super organs' emerge, making financial fiscal control unfeasible. It is the loss of parameters, it is the lack of control, it is the administrative





mess". "Car Wash" Operation has sought a process of capture of the State and of destruction of the Brazilian political system. The unjust imprisonment of the former president is the first and most important step in this process that, even with the setback suffered in the "Car Wash" Foundation issue, is progressing with the election of Bolsonaro and the appointment of former judge Sergio Moro to the Ministry of Justice and Public Security.

Defending the immediate freedom of former President Lula is to fight for democracy in Latin America and the world. It is not to give up the struggle for the reversion of attacks on labor and social rights imposed by the current Brazilian government. In this context, we have created, together with a group of entities and personalities, the "Free Lula International Committee" - the Committee seeks to strengthen and enhance the initiatives already in place in Brazil and in the world for the immediate freedom of former President Lula. We will also continue to fight for former President Lula to be awarded the Nobel Peace

Prize in 2019 - a movement devised by Argentinean activist Adolfo Pérez Esquivel, who won the award in 1980. Lula was a tireless fighter against hunger and poverty - one world leader for peace and human dignity. To fight for Lula's freedom is to fight for democracy, human rights and the very idea of a democratic State of law in our country.

Antonio Lisboa is Secretary of International Relations of CUT Brazil and member of the Free Lula International Committee







www.cut.org.br



/CUTBrasil



/CUT_Brasil



/cutbrasil



/cutbrasil

