

FUGITIVE FAILS TO CHARGE VENEZUELA IN NY COURT

by **Emiliano Mellino**

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Venezuelan fugitive and dissident Eligio Cedeño has failed to bring most of his conspiracy and extortion charges against Venezuelan government officials and business figures in the US courts.

US District Judge Jed Rakoff, who issued his ruling on 24 August, said that the Racketeer Influenced and Corrupt Organizations Act (RICO) could not be applied to the acts alleged by Cedeño because they occurred in Venezuela, outside the jurisdiction of the US.

Cedeño accused the defendants of having imprisoned him without justification for almost three years and of damaging his BVI company, Cedel International Investment. He hoped to win damages for money he alleges was obtained by the defendants in Venezuela through fraud, extortion and abuse of power, and was later laundered in the US.

He was accused in 2007 of tax fraud, for allegedly circumventing Venezuelan foreign exchange rules. Cedeño was paroled on 10 December 2009 by Venezuelan Judge Maria Lourdes Afiuni before fleeing to the US a week later. Afiuni was later jailed having released him when he was retained longer than is allowed under Venezuelan law.

“It is thus apparent on the face of the amended complaint that, although the dreadful events alleged therein may be perfectly plausible given what is generally known about the Chávez regime, the connections to the United States may be too peripheral or problematic to support a RICO lawsuit brought here,” said Judge Rakoff when issuing his verdict.

But Rakoff did grant a motion for default judgement against Domingo Martinez, who lives in the US, and Intech, a company on the US-side of the conspiracy, and referred the case to another judge to conduct an inquest on damages.

The judge referred to an earlier US Supreme Court decision, *Morrison v. National Australia Bank*, which limited RICO's reach to actions inside the US.

“It was a correct ruling on the law and a significant victory for the Venezuelan authorities who have asked the U.S. for the extradition of Cedeño,” said Michael Diaz, partner at Diaz, Reus, & Targ, LLP and counsel to Venezuelan businessman Ruben Rogelio Idler Osuna, one of the defendants.

Diaz added that the court's ruling would “severely impair Cedeño's legal strategy of using a RICO lawsuit as a vehicle to avoid extradition and obtain political asylum in the US.”

While Cedeño's lawyers, Marcus Auerbach LLC and Dewey, Pegno & Kramarsky, LLP, welcome the default judgements against Intech and Martinez, they believe that the role that the US-side of the conspiracy played was enough to put the scheme within RICO's reach.

“[Cedeño and his lawyers] believe that in this post-9/11 era Congress clearly intended that all the tools, including the civil anti-racketeering statute and related anti-money laundering laws, be available to protect US financial institutions from being exploited by terrorists and narco-traffickers, as well as by corrupt foreign officials seeking to profit from their access to power, and by other threats to US commerce and business interests,” says a statement issued by Cedeño’s attorneys.

Among the defendants is former Venezuelan vice-president Adina Mercedes Bastida Castillo, who was represented by Hogan Lovells.

The firm’s Caracas office has advised the Venezuelan government in various transactions including a recent US\$20 billion loan from the China Development Bank to its Venezuelan counterpart, BANDES.

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