

## Peru loses motion to dismiss bounty case in US courts

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Peru faces going to trial over its refusal to pay a reward to Jose Guevara, who enabled the capture of former Peruvian intelligence chief Vladimir Montesino, who is now standing trial for corruption allegations.

The US Court of Appeals for the 11th Circuit upheld a decision in the ongoing legal wrangle between Peru and Guevara on 31 March.

Guevara is suing Peru in Florida's state court, saying he did not receive the US\$5 million reward he believes he is owed. The case was initially dismissed under the Foreign Sovereign Immunities Act (FSIA), which protects foreign governments from lawsuits in the US.

But Guevara's attorneys, **Michael Diaz** and **Carlos Gonzalez of Diaz, Reus, Rolff & Targ LLP**, challenged the dismissal before the court of the appeals, arguing that by offering a reward in the first place, Peru's actions constituted 'commercial activity', which is an exception to the FSIA.

"It's all coming to a head after years of ducking and delaying," says Diaz.

The appellate court sided with Guevara, whereupon Peru challenged the decision, one its main arguments being that the case had "nothing to do with the US". This is the argument that has just been rejected.

While the latest point was won on the definition of commercial activity, Diaz says the real victory for the case is its wider implications in international law.

He says the court pointed out that Peru's claim that the case had "nothing to do with the US" was inaccurate: "The 11th Court said that in this day and age, post-9/11, countries are more frequently using rewards to obtain information and to defend their borders. It would be inappropriate to allow any government, including the US, to welsh on these kinds of promises," he explains.

FBI agents detained Venezuela-born Guevara in Miami in June 2001, after he had been found hiding Montesinos. Guevara was told he would be criminally prosecuted unless he revealed information. Guevara was also notified of the US\$5 million reward Peru had offered for information on Montesinos via an emergency decree in 2000.

Fellow counsel Gonzales says governments are increasingly turning to this non-traditional way of gathering information by offering rewards: "the US, as a leader in combating security issues, should send a message that if an offer of a reward is made for information about terror suspects or war criminals, there will be protections in place to ensure the rewards will be paid out," he says. "People who go out on a limb to provide information need to know that the government will make good on their promises, whether it was money, a passport, a visa, or security for an individual or a family that was offered."

Gonzales explains that the US has a fund to pay individuals these kinds of rewards, and Peru set

up a similar one for finding Montesinas, from which their client should get his money.

Following this ruling, Guevara's counsel has made a motion for summary judgement, which asks for a ruling on a case without a full trial. If it is dismissed the case will proceed to trial or be settled out of court. Diaz and Gonzales are confident of their legal position, as "the material facts of the case are not in dispute: a clear offer was made by the Republic of Peru for information and Guevara is entitled to his money," says Gonzales.

"This is an important case for public policy, and we hope that this will not become a matter for litigation," he adds.

Montesinos stands accused of arms trafficking, drug dealing, money laundering, extortion and a number of murders during his tenure as an advisor to former Peruvian president Alberto Fujimori and head of Peru's National Intelligence System in the 1980s.

Guevara met Montesinos in Venezuela and agreed to provide a safe house for him in 2000.

### **Counsel to Jose Guevara**

- Diaz, Reus, Rolff & Targ LLP

Partners Michael Diaz and Carlos Gonzales

### **Counsel to Republic of Peru and Interior Minister**

#### **Antonio Ketin Vidal and Fernando Rospigliosi**

- Baker & Hostetler

Partners Mark Cymrot and Matthew Julian

- Moran & Shams

Associate Aldo Giuseppe Bartolone