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A lawyer's battle with prosecutors lifts lid on Odebrecht money laundering probe

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Peruvian prosecutors have been slow to pursue allegations that Gonzalo Eduardo Monteverde Busselau and his wife Maria Isabel Carmona helped Brazilian construction company Odebrecht launder millions of dollars in bribes.

US prosecutors have now become involved, seizing the couple's Florida bank account and alluding to their own criminal investigation into the pair's role in the Odebrecht scheme, according to court filings.

In response, the couple have gone on the offensive, hiring a Miami defence lawyer who has challenged the US Department of Justice's jurisdiction and questioned the quality of the evidence against his clients.

Peru's struggles

In 2007, Peruvian attorney Pedro Morote was given a new computer by his clients Monteverde and Carmona, according to testimony (<https://www.scribd.com/document/335579724/Pedro-Morote-Cornejo>) he provided to lawmakers in Peru years later. The computer's hard drive was not wiped by its previous owners, and on it were documents that he says unlock the inner workings of the Odebrecht corruption scandal in Peru, he told lawmakers in his 2016 testimony.

The documents would lead Morote to the conclusion that the couple had a fake contract with Brazilian construction consortium Odebrecht worth \$8 million.

Morote brought the evidence to Peruvian prosecutors in 2008, but he says he was ignored, allowing the alleged scheme to continue until 2015. Morote even wrote a letter to then president Alan García (<https://trome.pe/actualidad/politica/odebrecht-peru-coimas-sabian-2008-36380>) in 2008 warning him of the scheme. Just last month, García committed suicide as police headed to his home to arrest him for allegedly receiving bribes from Odebrecht.

Eventually, in May 2016, Peruvian journalists reported, based partly on Morote's allegations, that Monteverde and Carmona were the linchpins behind the laundering of \$29 million dollars in bribes that Odebrecht paid to Latin American officials to secure lucrative construction contracts from 2007 to 2015.

The \$29 million figure is the same amount US prosecutors would cite in a 21 December 2016 (<https://www.justice.gov/opa/press-release/file/919911/download>) plea deal with Odebrecht, in which the Brazilian construction company was accused of bribing Peruvian officials to obtain more than \$143 million in benefits. Notably, at the time, US prosecutors did not credit (<https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve>) Peruvian authorities with help on the record \$3.5 billion settlement.

Then this year, Peruvian authorities made a move, issuing an arrest warrant (<https://www.scribd.com/document/400338188/Orden-de-detencion-preliminar-judicial-y-allanamiento-contr-Gonzalo-Monteverde-y-Maria-Isabel-Carmona>) for the couple concerning the very allegations contained in the

2016 press reports. But they have not been arrested, and their whereabouts are unknown. They also have not been officially charged in Peru or any other country.

The US gets involved

US prosecutors have also recently taken an interest in the couple because of their role in an alleged scheme to pay bribes for Odebrecht in Panama.

In June 2017, a federal court in Tampa, Florida, ordered under seal the seizure of an account controlled by Monteverde and Carmona.

After being made aware of the seizure, the couple hired in June 2018 a US attorney who then sued the DOJ in Tampa to unseal the affidavit issued in support of the seizure.

The DOJ, however, refused, leaving the couple in the dark as to why a foreign country had frozen their bank account.

Eventually, in January this year, prosecutors filed the complaint that was the basis for the seizure with a Brooklyn federal court after a Tampa judge ordered the DOJ to unseal the document within 90 days. It's unclear why prosecutors filed the complaint in Brooklyn but the 2016 Odebrecht settlement was filed in the same court.

According to the complaint, which is predicated on violations of the Foreign Corrupt Practices Act and the Panamanian criminal code, a \$5 million payment from Odebrecht was laundered

through Monteverde's account to help fund the campaign of José Arias, who unsuccessfully ran for president in Panama in 2014.

Then president Ricardo Martinelli allegedly arranged the scheme where Odebrecht agreed to pay two well-known journalists-turned-publicists, Monica Moura and her husband João Santana, to work on the campaign of Arias, who was in the same political party as Martinelli. Martinelli has denied

(<http://laestrella.com.pa/panama/politica/martinelli-niega-declaraciones-santana-vincula-odebrecht/24001090>) any connection to Odebrecht's bribery scheme.

A \$5 million payment from Odebrecht was wired to Monteverde's bank accounts, but after Arias lost the election, Moura and Santana were never actually paid. Instead, the money sat in Monteverde and Carmona's account.

Moura and Santana are currently serving an eight-year sentence in Brazil for their roles in the bribery scandal uncovered in Operation Car Wash, the Brazilian bribery probe that originally centred on the country's state oil company Petrobras. They have admitted (<http://www.digitaljournal.com/news/world/jailed-aides-to-brazil-s-lula-say-they-funneled-cash-to-foreign-election-campaigns/article/492489>)

laundering millions from Brazilian engineering companies

(<https://www.reuters.com/article/us-brazil-corruption-venezuela/brazilian-says-venezuelas-maduro-made-illegal-payments-in-2012-chavez-campaign-idUSKBN1880AT>) to finance presidential campaigns in Venezuela, El Salvador and Panama.

“A specious FCPA theory”

Monteverde and Carmona's US attorney, Andrew Feldman in Miami, is still fighting to unseal the original affidavit because he believes the government did not have probable cause to seize the account in the first place.

Attacking the DOJ's source of information on the case, Feldman wrote: "[I]t is possible that the affidavit supporting the warrant contained unreliable false hearsay statements made by foreign journalists in Peru and in Brazil." Feldman accused both Morote and Gustavo Gorriti, a Peruvian journalist who published many of the allegations against the couple, of frequently making "false accusations" against his clients.

Not only is he claiming that the DOJ's seizure is based on lies, but he is also fighting the DOJ's jurisdiction on the case, claiming that the complaint is predicated on a "specious FCPA theory."

The complaint, while it does document an extensive list of money transfers from accounts connected to Odebrecht to accounts controlled by the couple, does little to explain the "illicit nature" of the funds, Feldman has argued.

The DOJ complaint alleges that the money the couple sent through their accounts was "specifically used to make payments in furtherance of [Odebrecht's] bribery scheme," but gives little detail beyond that as to why the payments are considered bribes, Feldman said.

“These questionable allegations also form the crux of the complaint against claimants – that they received and kept, for their own use, money from a foreign company intended for the payment to Brazilian journalists – not foreign officials, foreign political candidates or political parties – Moura and Santana for the provision of ‘campaign services,’” Feldman wrote.

Feldman said the complaint does not connect the dots on how the money, which was never actually paid to Moura and Santana, influenced Arias in any way, according to a motion to dismiss on 1 March.

A DOJ spokesperson declined to comment.

Now, prosecutors have alluded to a possible related criminal investigation, and have asked for a stay in both the Florida and Brooklyn cases because “early discovery in this case could cause future and current subjects to avoid prosecution, raise the potential for destruction or moving evidence and jeopardize the availability or willingness of witness to cooperate.”

Meanwhile, Feldman has become a vocal proponent of the idea that the department oversteps its statutory authority in foreign bribery cases.

In an April [blog post](http://feldmanpllc.com/fcpa-defense-attorney/) (<http://feldmanpllc.com/fcpa-defense-attorney/>), Feldman wrote that the lack of FCPA trials has led to the DOJ using the the foreign bribery statute as a “limitless enforcement tool” for punishing foreign bribery “even when the nexus to the United States is, at best, tenuous and, at worst, invisible.”

Feldman declined to comment for the article. On 3 May he filed an appeal after a judge denied his motion to reconsider unsealing the affidavit supporting the initial seizure of his clients' bank account.

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