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Judge Rips Feds For 'Misguided' Foreign Fraud Suit

By **Daniel Siegal**

Law360, Los Angeles (April 21, 2015, 8:52 PM ET) -- A California federal judge on Friday tossed the federal government's suit alleging a U.N. official in Canada took bribes from officers of a Ukrainian passport company, blasting government attorneys for their "misguided prosecution" of foreign individuals engaged in foreign conduct with U.S. laws.

At a hearing in San Francisco on motions to dismiss filed by U.N. agency executive Mauricio Siciliano and Ukrainian businessman Alexander Vassiliev, U.S. District Judge Charles Breyer excoriated Assistant U.S. Attorneys W.S. Wilson Leung and Damali Taylor for trying to charge non-U.S. citizens for activities outside the U.S., involving use of wires that did not reach or pass through the U.S., according to a transcript filed Friday.

"My first reaction in reading this indictment is that your office is to be congratulated because, apparently, you have reduced crime in the Northern District of California, and indeed in the United States of America, to such a point that you are using resources of your office to go after criminal activity that occurs in foreign countries," Judge Breyer said in the transcript. "And I never in my life, in 50 years of criminal practice, seen a more misguided prosecution as the one that you've brought."

Judge Breyer dismissed the indictment and told the government to "bring an appeal, right away," because he is "very interested" in the Ninth Circuit's opinion.

Later Friday, the government did just that, filing its notice of appeal to the Ninth Circuit.

On Tuesday Judge Breyer released his written order dismissing the indictments, expanding upon his Friday statement that the case did not belong in a U.S. court, citing the U.S. Supreme Court's 2010 ruling in *Morrison v. Nat'l Australia Bank Ltd.*, which held that "when a statute gives no clear indication of an extraterritorial application, it has none."

"Congress did not include in the wire fraud statute any language indicating that it applies extraterritorially," Judge Breyer wrote. "Under *Morrison*, without a 'clear' and 'affirmative indication' of Congress's intent to have the bribery and wire fraud statutes apply extraterritorially, the presumption is that they do not."

Prosecutors charged Venezuelan national and Canadian resident Siciliano in May 2014 with using his position at the International Civil Aviation Organization to solicit bribes, and a month later a federal grand jury indicted Siciliano, Vassiliev and Vassiliev's uncle Yuri Sidorenko on five counts each.

The indictment accuses Siciliano, an executive at the Montreal-based ICAO — which is responsible for standardizing machine-readable passports, including those used in the U.S. — of taking bribes from 2005 through 2010 from Sidorenko and Vassiliev, officers of the

EDAPS Consortium, a Ukrainian conglomerate of various companies that manufacture and supply security products, including passports.

Vassiliev and Sidorenko are citizens of Ukraine and St. Kitts and Nevis, and Sidorenko also has Swiss citizenship, according to court filings. The indictment accuses the trio of wire services fraud, soliciting and giving bribes involving a federal program, conspiracy to commit fraud, and aiding and abetting.

The indictment contends that in exchange for the bribes, Siciliano introduced Sidorenko and Vassiliev to government and NGO officials who were potential clients and business contacts for EDAPS, as well as arranging for EDAPS to sponsor ICAO conferences.

The indictment contends that the U.S. provided roughly a quarter of the agency's \$64 million annual budget during the scheme, providing it a nexus with the alleged crime.

At Friday's hearing, Judge Breyer asked whether, under this logic, the federal government can exercise jurisdiction over individuals in Mexico or Egypt because of the foreign aid given to those countries.

"So if there is ever, ever a policy interest of the United States of America in anything a foreign country — that occurs in a foreign country, the United States Attorney's Office for the Northern District of California will vindicate the way the laws apply — the honest services law applies," he said, according to the transcript. "You're going to wipe out bribery and honest services throughout the world. I want to congratulate you for that."

Wilson told Judge Breyer that Sidorenko is still at liberty in his adopted homeland of the United Arab Emirates and Vassiliev is in custody in Switzerland, while Siciliano was present in court after having been arrested and released with electronic monitoring.

Judge Breyer that day entered his order dismissing the warrants for the trio, vacated all the release conditions on Siciliano and ordered the court to return his passports.

Daniel Olmos of Nolan Barton Bradford Olmos LLP, representing Siciliano, told Law360 on Tuesday that the transcript speaks for itself, but noted that Judge Breyer at a Tuesday bail review hearing restricted Siciliano from returning to Venezuela while the appeal is pending.

Representatives for the other parties did not immediately respond to requests for comment on Tuesday.

The federal government is represented by Melinda Haag, David R. Callaway, Damli A. Taylor and W.S. Wilson Leung of the U.S. Department of Justice.

Siciliano is represented by Daniel Olmos of Nolan Barton Bradford Olmos LLP, and Bob Appleton of Day Pitney LLP. Vassiliev is represented by David W. Shapiro, Martha Boersch and Lara Kollios of Boersch Shapiro LLP. Counsel information for Sidorenko was not immediately available on Tuesday.

The case is U.S. v. Yuri Sidorenko et al., case number 3:14-cr-00341, in the U.S. District Court for the Northern District of California.

--Editing by Brian Baresch.

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