

Extradition of Gilberto Rodriguez-Orejuela

From the Courts: Justice Watch

Colombian defendants: U.S. reneged on extradition deal

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When the Colombian government agreed to extradite Miguel and Gilberto Rodriguez-Orejuela to Miami to face charges that they ran the largest cocaine cartel in the world, they did so with the understanding that the brothers would not be tried for acts committed before 1997. That was in keeping with the Colombian government's extradition treaty with the United States.

Now the government finds itself in a pitched battle with the defense, which claims the feds reneged on their promise to follow the terms of the extradition deal.

The U.S. attorney's office in Miami has agreed to drop one of the charges to make the case fit, but is steadfastly resisting defense demands to purge all mention of pre-'97 events in the indictment. The case is being closely watched by the Colombian government and press, and could have a chilling effect on future extraditions from Colombia, experts say.

"I don't think they would stop future extraditions altogether, but the government might be more careful in the future," said Ricardo Bascuas, a University of Miami law professor and criminal law expert. "This could create problems for the U.S. government down the road."

The defense's motion to enforce the "rule of specialty" is the latest twist in the high-profile criminal case of the Rodriguez-Orejuela brothers. It is only the second time the doctrine, which is intended to ensure that U.S.

prosecutors abide by extradition orders, has been invoked in court.

The brothers were indicted in 2003 by a Miami grand jury on drug conspiracy charges, accused of importing some 220 tons of cocaine into the United States from the early 1990s through 2002.

Extradited from Colombia early last year, they face trial in Miami.

The son of Miguel Rodriguez-Orejuela, William Rodriguez-Abadia, was sentenced last week to 262 months imprisonment by U.S. District Judge Federico A. Moreno for his role leading the cartel. Rodriguez-Abadia is a cooperating witness against his father and uncle.

Under the rule of specialty, also called the specialty doctrine, a country can only try a foreign defendant on charges that the country of extradition approved in its extradition order. The situation in Colombia is particularly sensitive, because that government only recently entered into an extradition treaty with the U.S., amid much debate and opposition by some parties.

"Extradition is a touchy issue in Colombia," Bascuas said. "It's an important political issue because a lot of people with a lot of money behind them were pushing the government not to have an extradition treaty with the United States."

In the case of the Rodriguez-Orejuelas, the defense filed a motion on Jan.

23 claiming that the U.S. government's indictment of the brothers violates the rule of specialty because it refers to an alleged conspiracy to and crimes that pre-dated 1997. The government of Colombia's extradition order stated that it was turning over the brothers so they would stand trial for post-Dec. 17, 1997 conduct only, in keeping with a constitutional amendment passed by Colombia on that date.

The joint motion by David O. Markus, who represents Gilberto Rodriguez-Orejuela, and Roy Kahn, who represents Miguel Rodriguez-Orejuela, cites a letter sent from Vice Minister Jaime Giron Duarte to Secretary of State Colin Powell on Dec. 7, 2004. In the letter, Duarte expresses concern about the U.S. government's prosecution of the Rodriguez-Orejuelas is in apparent violation of the extradition order.

"Hereby I would like to express my surprise and deep concern with which the National Government learned about the press statements issued by the federal prosecutor, Marcos Daniel Jimenez, after Gilberto Rodriguez Orejuela came before the federal court of the southern district of the state of Florida,"

states the letter. It goes on to say that the brothers were supposed to be prosecuted only for events that occurred after 1997.

There can be no doubt, assert Markus and Kahn, that their motion "represents the wishes of the Republic of Colombia."

The defense attorneys asked the court to redact the indictments to exclude reference to any conduct that occurred prior to Dec. 17, 1997.

“We think it is not too much to ask of our government to comply with the international agreements it makes with other countries,” Markus said in an interview. “This is an important issue - if we can’t live up to our end of a bargain, why will other countries continue to extradite to the United States?”

In its response on Feb. 15, the government said “oops” and dropped the fourth count, agreeing that it violated the extradition order. But it refused to change the other three counts in the indictment, saying it will use a three-pronged approach developed by the Department of Justice to ensure the rule of specialty is followed.

Under that approach, the judge would:

- * Give limiting instructions to jurors at the start and the end of the trial explaining that the jury cannot find the defendants guilty unless they determine that crimes continued after 1997.

- * Require jurors to answer a special verdict form to ensure jurors understand.

- * Sentence the defendants, in the event that they are convicted, only for crimes that occurred after 1997.

“The United States has fully complied and will continue to fully comply with the provisions of defendant’s extradition orders and with the rule of specialty,” states the motion by assistant U.S. attorneys Matthew Axelrod and Lisa Hirsch. They called the defense motion an “extraordinary request”

that “no United States court has ever granted.”

Both sides use the only other specialty doctrine case that addressed the

1997 Colombian issue, U.S. v. Valencia-Trujillo, to support their positions.

In the Middle District of Florida case, Joaquin Mario Valencia-Trujillo was also charged with participating in the Cali cartel in a four-count indictment, and the defense sought to invoke the rule of specialty last year.

The court granted in part and denied in part the defense motion, ordering the government to redact certain language in the indictment that pre-dates

1997 but otherwise refusing to enforce the rule of specialty. The court also stated that evidence about crimes committed before 1997 could be brought up at trial.

Why is the government refusing to alter the indictment to remove the

pre-1997 evidence?

“They’d lose 75 percent of their case,” asserted Kahn.

Axelrod declined comment.

A hearing on the rule of specialty is scheduled before Magistrate Judge Theodore Klein on April 12.

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