



Fugitive businessman threatens claims against El Salvador

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Jax Jacobsen



A vantage point in El Salvador's capital, San Salvador, Wikimedia Commons

Lawyers for fugitive Salvadorean businessman Jose Enrique Rais-López have warned that they may invoke a bilateral investment treaty between Switzerland and El Salvador to protect their client from what they allege is political persecution – with another possible resort being a claim under DR-CAFTA.

In a letter to El Salvador's president Salvador Sánchez sent on 12 September, lawyers at Quinn Emanuel Urquhart & Sullivan indicated they are considering bringing a claim against El Salvador under the BIT on behalf of Rais, his family and Manejo Integral de Desechos Sólidos (MIDES), a waste management company in which they have a 90% stake.

The lawyers – who include partners **Juan Morillo** in Washington, DC, and **Philippe Pinsolle** in Paris – argue in the letter that El Salvador's attorney general **Douglas Arquímides Meléndez** has “persistently attacked” the family since 2016, including issuing charges and an arrest warrant against Rais “based on completely false facts and illegal or fabricated evidence”.

They say that the attorney general's office is now considering launching, or has launched, “new criminal investigations as well as an asset forfeiture against the Rais family and MIDES.”

“El Salvador’s actions to date against the family and MIDES, which affect MIDES’ value, and any future action against them, are a violation of the Switzerland-El Salvador treaty,” the lawyers warn. “The Rais family and MIDES will pursue all available international actions [...] in response to the arbitrary and abusive actions of El Salvador.”

The treaty applies because the members of the Rais family “include Swiss citizens” and prevents El Salvador from expropriating their investments or taking any arbitrary action that reduces their value, the lawyers explain.

It would be the first known claim filed under the Switzerland-El Salvador BIT, which was signed in 1994 and has been in effect since 1996.

José Enrique Rais-López is a Salvadorean businessman who owns several companies in El Salvador as well as MIDES. He has been a fugitive from the country since January 2017, when he fled to avoid a trial for allegedly attempting to defraud the justice department.

An Interpol red alert was issued on behalf of the El Salvador prosecutor-general soon after he fled.

In the letter, the Quinn Emanuel lawyers say that five months before, in August 2016, Attorney General Meléndez had accused Rais in a national television interview of bribing and manipulating judges – without presenting any evidence or pressing any charges.

They say the arrest warrant was issued based on further “false” allegations by Meléndez that Rais had “participated in two telephone conversations of approximately 30 seconds each,” in which he discussed paying US\$5,000 to a psychologist who was to evaluate him in a criminal proceeding he had initiated after being the victim of an assault in 2015.

The attorney general’s office “fabricated” the contents of these phone calls “to falsely accuse Mr Rais,” the lawyers say. It has “refused to provide any information to the Rais family or MIDES so that they may defend themselves” against the various criminal investigations.

“We demand that El Salvador cease immediately all of its arbitrary and abusive actions against the Rais family or MIDES, including criminal investigations and asset forfeiture proceedings against them,” they say.

Quinn Emanuel held a press conference in El Salvador on 15 September to explain to the Salvadorean press the scope of the firm’s involvement in the case. *GAR* understands that the firm alleges that El Salvador’s actions are politically motivated as the right-wing regime wants to punish Rais for his sympathies for the left-wing FLMN party.

The letter sent by Quinn Emanuel is a warning to the government, but should an arbitration be launched, it would either be at ICSID in Washington, DC, or under UNCITRAL rules, as provided for in the BIT.

If the Salvadorean authorities file additional charges and attempt asset forfeiture against Rais and his family, *GAR* understands that Quinn Emanuel is also considering filing a claim under the Dominican Republic-Central America Free Trade Agreement (DR-CAFTA), which the US has signed with El Salvador and five other countries. Several members of the family are US citizens.

It is unclear which firm would represent El Salvador in either arbitration, though the state has previously used Foley Hoag in investor-state cases. The money at stake would likely be substantial, as MIDES has multi-year governmental contracts to dispose of 90% of El Salvador’s waste and is worth approximately US\$500,000.

Quinn Emanuel is also representing the Rais family in the US, where the family has also come under scrutiny. In August, a bipartisan group from US Congress sent President Donald Trump a letter urging Trump to use the Global Magnitsky Human Rights Accountability Act to sanction Rais and five other Central Americans, because of their alleged involvement in corruption and organised crime.

Counsel to José Enrique Rais López, his family and MIDES

- Quinn Emanuel Urquhart & Sullivan

Partner **Juan Morillo** and associate **Daniel Pulecio-Boek** in Washington, DC; partner **Philippe Pinsolle** in Paris

Counsel to El Salvador

Yet to be named

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