> conclusion is determinative."); *First Am. Corp. v. Al-Nahyan*, 948 F.Supp. 1107, 1119 (D.D.C. 1996) ("The United States has filed a Suggestion of Immunity on behalf of H. H. Sheikh Zayed, and courts of the United States are bound to accept such head of state determinations as conclusive."); *Saltany v. Reagan*, 702 F.Supp. 319, 320 (D.D.C. 1988) ("[T]he United States has suggested to the Court the immunity from its jurisdiction of Prime Minister Thatcher as the sitting head of government of a friendly foreign state. . . . The Court must accept [the suggestion] as conclusive.") *rev'd in part on other grounds*, 886 F.2d 438 (D.C. Cir. 1989).[4]

The court rejected the plaintiff's argument that the TVPA overrode customary head of state immunity.

> It is undisputed that head of state immunity is a well established common law principle, *see* Pls.' Opp'n at 17, and according to Plaintiffs, the TVPA covers the issue of head of state immunity for extrajudicial killings, which is traditionally governed by the common law, *id.* at 7. Therefore, the relevant question for the Court is whether there is any evidence to suggest Congress did *not* intend to maintain the common law doctrine of head of state immunity when it enacted the TVPA.
>
> Framed this way, it is clear Congress intended to maintain head of state immunity to suit under the TVPA. The House Report accompanying the TVPA explicitly stated "nothing in the TVPA overrides the doctrines of diplomatic and head of state immunity." H.R. Rep. No. 102-367, at 5 (1991), *reprinted in* 1992 U.S.C.C.A.N. 84, 88; *see also* S. Rep. No. 102-249, at 8 (1991) ("Nor should visiting heads of state be subject to suit under the TVPA."). The clear statutory purpose behind the TVPA was to *maintain* the common law doctrine of head of state immunity, not override it. To the extent Plaintiffs are correct that immunizing heads of state from liability under the TVPA runs contrary to the general purposes of the statute, that contradiction was recognized by Congress before the statute was enacted, and the Court is not in a position to remedy that contradiction.[5]

Second Circuit Rules RICO Does Not Reach Extraterritorially

In January 2012 in *Cedeño v. Castillo*,[1] the U.S. Court of Appeals for the Second Circuit affirmed in an unpublished opinion a lower court's ruling that the U.S. Racketeer Influenced and Corrupt Organizations Act[2] (RICO) does not reach alleged money laundering and other offenses committed in Venezuela. The case continues a trend toward limiting the extraterritorial range of statutory causes of action stemming from the U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank Ltd.*[3]

The lead plaintiff in *Cedeño* is a Venezuelan banker living in Miami. The suit alleges that Venezuelan officials and bankers engaged in money laundering[4] and extortion[5] to gain

[4] *Id.* at *5–9 (footnote omitted).

[5] *Id.* at *11–12.

[1] 457 Fed.Appx. 35 (2d Cir. 2012).

[2] 18 U.S.C. §§1961–1968.

[3] Morrison v. Nat'l Austl. Bank Ltd., 130 S.Ct. 2869 (2010); *see* John R. Crook, Contemporary Practice of the United States, 104 AJIL 654, 654 (2010).

[4] *Cedeño*, 457 Fed.Appx. at 37 (citing 18 U.S.C. §1956).

[5] *Id.* (citing 18 U.S.C. §1951).

improper interests in two banks in Venezuela. The district court dismissed the complaint, ruling that RICO did not reach the extraterritorial violations alleged. A substantial excerpt from the Second Circuit's summary order affirming dismissal follows:

> On appeal, Cedeño raises principally three arguments. First, he contends that his claim fits within the scope of RICO's domestic application because it alleges conduct in the United States that is within RICO's "focus." *See* Morrison v. Nat'l Austl. Bank Ltd., 130 S.Ct. 2869, 2884 (2010) ("*Morrison*") (holding that to determine whether a complaint alleges a claim within a statute's domestic ambit, courts should consider if the alleged conduct in or contact with the United States is within the statute's "focus," meaning "the object[]" of the statute's "solicitude" or what the "statute seeks to regulate") (internal quotation marks omitted). This argument lacks merit. Regardless of whether RICO is found to focus on domestic enterprises, as the district court held, or on patterns of racketeering, as Cedeño contends it should be, the complaint here alleges inadequate conduct in the United States to state a domestic RICO claim. *See* Norex Petroleum Ltd. v. Access Indus., Inc., 631 F.3d 29, 33 (2d Cir. 2010) (per curiam) (finding that the "slim contacts" with the United States alleged by plaintiff were "insufficient to support extraterritorial application of the RICO statute"). Accordingly, it is unnecessary for us to decide what constitutes the "object[]" of RICO's "solicitude." *Morrison*, 130 S.Ct. at 2884.
>
> If an enterprise must be located in the United States for a private plaintiff to bring a domestic RICO claim, then Cedeño's complaint was rightfully dismissed as the enterprise he alleges is almost exclusively Venezuelan. The parties dispute what standard this Court should use when determining the locus of an enterprise, but under any of the proposed standards the association-in-fact enterprise alleged here—comprised of various components of the Venezuelan government—is patently foreign.
>
> Alternatively, even if this Court adopted the "pattern of racketeering" focus advocated by Cedeño and the government, it would still affirm the district court's decision. The only connection between (1) the pattern of racketeering that Cedeño alleges occurred in the United States (money laundering) and (2) the injuries he sustained (imprisonment and interference with his assets) is that members of the Venezuelan Government used the Microstar Transaction as a pretext for his subsequent arrest. Thus, Cedeño fails to allege that the domestic predicate acts proximately caused his injuries. . . .
>
> Second, Cedeño asserts that even if his complaint does not allege a domestic RICO violation, his claims should not have been dismissed because the predicate offenses on which they are based—18 U.S.C. §§1951 and 1956(f)— apply extraterritorially, and RICO incorporates these statutes. This argument is foreclosed by *Norex*, 631 F.3d 29, where this Court declined to link the extraterritorial application of RICO to the scope of its predicate offenses. *Id.* at 33 (holding that RICO is inapplicable extraterritorially even though statutes defining some of its predicate offenses explicitly apply abroad).
>
> Third, Cedeño avers that the district court erred by denying his request—in his supplemental reply brief submitted to the district court—to "replead the U.S. contacts with greater particularity." Pl. Br. at 50 (quotation marks omitted). But Cedeño never provided the district court with any details as to how he might remedy his deficient complaint in light of *Morrison*. Nor does he on appeal, aside from reciting "recent factual developments" that occurred *after* the district court entered judgment. *Id.* at 51. Accordingly, the district court did not abuse its discretion in denying Cedeño's request. . . . Thus, we reject

Cedeño's request to remand with instructions to permit the filing of an amended complaint.[6]

INTERNATIONAL OCEANS, ENVIRONMENT, HEALTH, AND AVIATION LAW

Senate Foreign Relations Committee Holds Hearings on the Law of the Sea Convention

In May 2012, the Senate Foreign Relations Committee held another round of hearings on U.S. accession to the Law of the Sea Convention, the first since 2007. Senior administration and military officials, including Secretary of State Hillary Clinton, Secretary of Defense Leon Panetta, and Chairman of the Joint Chiefs of Staff, General Martin Dempsey, urged U.S. accession to the Convention, contending that continued failure to do so badly undermines U.S. economic and security interests.[1] Clinton testified that nonparticipation prejudiced the ability of U.S. companies to deal with changing circumstances, citing the increased technological ability of U.S. oil companies to exploit deepwater energy resources, the warming Arctic, and the arrival of deep-seabed mining. She also sought to answer conservative critics' objections to the Convention, but some Republican senators disputed her rebuttals.[2] A substantial excerpt from Clinton's statement follows:

> I am well aware that this treaty does have determined opposition, limited but nevertheless quite vociferous. And it's unfortunate because it's opposition based in ideology and mythology, not in facts, evidence, or the consequences of our continuing failure to accede to the treaty. . . .
>
> We believe that it is imperative to act now. No country is better served by this convention than the United States. As the world's foremost maritime power, we benefit from the convention's favorable freedom of navigation provisions. As the country with the world's second longest coastline, we benefit from its provisions on offshore natural resources. As a country with an exceptionally large area of seafloor, we benefit from the ability to extend our continental shelf, and the oil and gas rights on that shelf. As a global trading power, we benefit from the mobility that the convention accords to all commercial ships. And as the only country under this treaty that was given a permanent seat on the group that will make decisions about deep seabed mining, we will be in a unique position to promote our interests.
>
> . . . .
>
> Now, one could argue, that 20 years ago, 10 years ago, maybe even five years ago, joining the convention was important but not urgent. That is no longer the case today. Four new developments make our participation a matter of utmost security and economic urgency.
>
> First, for years, American oil and gas companies were not technologically ready to take advantage of the convention's provisions regarding the extended U.S. continental shelf. Now they are. The convention allows countries to claim sovereignty over their continental shelf far out into the ocean, beyond 200 nautical miles from shore. The relevant area for the United States is probably more than 1.5 times the size of Texas. In fact, we believe it could be considerably larger.

[6] *Id.* at 37–38 (citations omitted).

[1] Mark Landler, *Law of the Sea Treaty Is Found on Capitol Hill, Again*, N.Y. TIMES, May 24, 2012, at A7; Walter Pincus, *Treaty on the Seas in Rough Senate Waters*, WASH. POST, May 29, 2012, at A9.

[2] Landler, *supra* note 1; Pincus, *supra* note 1.