

U.S. hybrid war against Venezuela goes to court: The case of Venezuelan diplomat Alex Saab

written by John Philpot and Roger D. Harris
October 2, 2022



As Venezuela's special envoy and a deputy ambassador to the African Union, Saab has diplomatic immunity from arrest and detention under the 1961 Vienna Convention on Diplomatic Relations. Although a party to the convention, the U.S. has flouted this principle of international law.

Judicial overreach on political grounds

Alex Saab was targeted by the U.S. because of his role in helping circumvent their sanctions imposed on Venezuela. These measures, a form of collective punishment, are intended to make conditions so onerous that the people would renounce their elected government. Such unilateral coercive measures constitute [hybrid warfare](#) and are [illegal](#) under international law.

Ambassador Saab was on a humanitarian mission from Caracas to Tehran to procure food, fuel, and medicine in legal international trade but in contravention of the illegitimate U.S. sanctions. When his plane made a fuel stop in Cabo Verde on June 12, 2020, he was seized and imprisoned at Washington's behest.

He was [tortured](#) and held in solitary confinement until December 2020. Then he was released to strict house arrest but without visits from his wife and children and without necessary medical care.

Although the regional Economic Community of West Africa (ECOWAS) Court of Justice and the UN Human Rights Committee ordered his release, Saab was held captive. The \$200,000 award in damages by the ECOWAS court was unpaid.

According to distinguished Nigerian [human rights lawyer](#) Femi Falana, the arrest and detention of Alex Saab in Cabo Verde is an example of "extraterritorial politically motivated judicial overreach" and a "twenty-first-century form of colonialism."

On October 17, 2021, the opposition party won the national election in Cabo Verde

on a platform that included freeing Alex Saab. However, the day before, the long arm of Washington “justice” had simply seized the Venezuelan diplomat, dressed him in an orange jumpsuit, and deposited him in a U.S. prison.

The U.S. has no extradition treaty with Cabo Verde and no notice of his extradition was given to Saab’s family or lawyers. Nor had Saab’s legal recourse in Cabo Verdean courts been completely exhausted. His extradition was an illegal fait accompli.

Money laundering charges dropped by U.S.

The original charges against Mr. Saab related to money laundering money in Venezuela with Venezuela as the alleged victim. Even if charges related to defrauding the Venezuelan government were justifiable, they should be laid in Venezuela and not in the U.S., which is attempting to starve Venezuela into submission.

Then on November 1, 2021, after what amounted to a judicial kidnapping to the U.S., Washington dropped all money laundering charges against Saab leaving the single charge of conspiracy to launder money.

An exhaustive three-year investigation of money laundering charges by Swiss courts, where the activity was allegedly perpetrated, had found no evidence to support the U.S.’s claim.

Conveniently for the prosecution, the remaining charge of “conspiracy” is quite easy to prove since it only requires proof of an agreement without the objective being realized. Fighting vague conspiracy charges is a nightmare for defense lawyers. The charge is often called “the darling of the prosecutor’s nursery.”

The labyrinth of the U.S. ‘justice’ system

Ambassador Saab is presently detained in a federal facility in Florida. He has been unable to have family visits because they have no guarantee of safe passage. His prison conditions are difficult with insufficient food and in a dangerous environment without medical care for his cancer and other ailments.

During his unlawful detention in Cabo Verde, counsel for Alex Saab challenged the U.S. extradition proceedings with a “motion to vacate” based on his status as a diplomat.

That motion was first refused in a U.S. “lower” trial court and then appealed “up” to the 11th Circuit Court of Appeals. His appeal challenging the charges based on diplomatic status was then sent right back “down” in June 2022 from the appellate court to the trial court.

In anticipation of his December 12 hearing, Saab filed preliminary motions for disclosure of evidentiary materials with a view to filing a motion to quash the indictment based on his diplomatic status. If diplomatic immunity is recognized, Saab should be released. If not, there will be the trial for conspiracy to launder money in Venezuela.

Saab’s motion to compel disclosure of discovery materials

Exculpatory material could be held by the U.S., which would prove Saab’s status as a diplomat. Under what are known as the [Brady rules](#), the prosecution must provide all evidence available and under its control, which might help in his defense.

Accordingly, Saab requested all information material to his defense held by the U.S. government regarding diplomatic status, including evidence on:

- His service as Venezuelan special envoy or other diplomatic roles.
- Whether any other country or international or supranational organization,

considered him to be a Venezuelan special envoy or any other diplomatic role.

- His role in Venezuela's state-to-state activities with Iran and the purpose of his travel to or from Iran.
- The flight, diversion, or detention of the plane on which he was traveling, which landed in Cabo Verde.
- Knowledge by U.S. government personnel of his diplomatic status, appointment as a special envoy, or activities taken on behalf Venezuela.
- Documents found on his person or plane, following his detention and arrest in Cabo Verde, and any information relating to such documents.

Saab asked the court to order the disclosure of information held by the U.S. departments of Defense, Justice, State, and Treasury, the Office of International Affairs, the National Security Division, the Drug Enforcement Agency, the Federal Bureau of Investigation, the Customs and Border Patrol and Homeland Security Investigations, the Central Intelligence Agency, and the U.S. Coast Guard.

Saab's counsel anticipates that all these agencies would have information regarding his diplomatic status. Comprehensive disclosure could lead to recognition of full immunity.

U.S. government tries to prevent disclosure of discovery materials

The U.S. government prosecutor made a series of somewhat specious arguments asking the judge to reject the Brady motion, dismissing the motion as a simple "fishing expedition" with no merit. In short, this was a legal tactic by the government to hide the truth.

The U.S. prosecutor argued that the requests to review documents outside of the prosecution team's immediate control should be denied, even if they were held by a government agency and even if they supported Saab's claim to diplomatic status.

The prosecutor contended that only material under the prosecutor's direct control and related to the investigation can be disclosed; other material held by other branches of the government cannot be sought and disclosed under Brady.

This would mean, if the U.S. government has definitive proof of Saab's status or recognition thereof in agencies out of the control of the prosecutor, Saab cannot obtain such information under the Brady rule.

Saab's defense argued that he requires disclosure of information from *all* branches of the U.S. government. This is because the *entire* U.S. government is engaged with his extradition and prosecution. The prosecution, for instance, even asked to allow someone from the National Security Division to attend the hearing, although they were not previously part of the prosecution team.

Saab's diplomatic immunity argued

The following describes the prosecution's arguments followed by those of the defense. This is based on the respective court statements filed by the two sides and particularly on the transcript of the September 13th hearing.

The prosecution argued that the issue of ignoring diplomatic immunity had been settled in Cabo Verde when it granted extradition. The U.S. court should not depart from precedent and second-guess the legitimacy of a foreign country's decision to extradite an individual. Such an approach would be contrary to the [act-of-state doctrine](#) with respect to Cabo Verde.

Saab's defense countered that no authority requires deference to Cabo Verde's decision to allow the extradition. Cabo Verde law applies in Cabo Verde and not in the U.S..

The prosecution maintained that Saab has never been entitled to immunity under

either the [Diplomatic Relations Act](#) or the [International Organizations Immunities Act](#) because he had never been notified to the U.S. State Department as a member of any foreign mission in the U.S., including Venezuela's bilateral mission and delegation to the African Union.

Saab's defense disputed that, regardless, Saab was traveling from Venezuela to Iran and at no point transited the U.S.. He had "transit immunity."

The prosecution contended that U.S. law ([U.S. v. Alvarez-Machain, 1992](#)) allows prosecution even if the accused were wrongly sent to the U.S.. Even forcible abduction does not prevent trial in the U.S. for violations of U.S. laws.

Saab's defense stated that this is a baseless excuse that would allow U.S. agents to kidnap a person in any country and try that person for crimes under U.S. law.

Central to the U.S. government's case is the self-serving notion that, since Washington does not recognize the Maduro government, no Venezuelan diplomatic nominee enjoys immunity. In other words, the imperial power arrogates to itself the authority to determine whom other countries may appoint as their diplomatic representatives.

Saab's defense noted that it is an undisputed fact that Venezuela, the sending state, and Iran, the receiving state, not only recognize each other's government, they recognize that Saab is a special envoy.

In that context, to accord him diplomatic immunity is independent of the U.S.'s position as to which government of Venezuela they recognize. To hold otherwise would completely distort and rob of any meaning both the U.S. obligations and the Vienna Convention and the Diplomatic Relations Act. Failure to do so would be devastating to the diplomatic world and international relations.

Court's current ruling

Arguments in Mr. Saab's defense were presented to the court on September 13. On September 15, Judge Scola ruled partially in favor of Mr. Saab, granting him circumscribed access to discovery materials. Disclosure under Brady would include materials under the control of the prosecution: DEA, FBI, and ICE.

Excluded from Brady's disclosure are materials held by the Department of State, the Office of International Affairs, the National Security Division, the Department of Treasury, the Department of Defense, and the U.S. Coast Guard. The judge held that none of these entities were involved in the investigation leading to his indictment, so these entities need not be searched for proof of diplomatic status.

The U.S. court's narrow interpretation of the Brady obligations risks causing a major injustice. If in its many international relations and contacts, the U.S. has evidence of Saab's status, the U.S. can hide this if this evidence is outside the scope of the criminal investigation against him.

This would even be possible if the U.S. had recognized his status as a diplomat in some special context outside the investigation of the alleged conspiracy to launder money. This denial of justice could be likened to a form of judicial lynching.

Trial for December 12 and a proposed non-judicial solution

Saab's diplomatic immunity will be argued in Southern District Court on December 12. For now, Ambassador Alex Saab is still unjustly detained pending trial.

We believe, Mr. Saab must be recognized as a diplomat and the trial should be terminated. There is a non-judicial means to resolve this. The Biden administration can engage in a [prisoner exchange](#) that would unite Mr. Saab and also U.S. citizens imprisoned in Venezuela with their families. Venezuela is willing and the U.S. should do the same.

John Philpot, an expert in international criminal law, is a defense attorney and a member of the Barreau du Québec and of the Consultative Council [Asociación Americana de Juristas](#).

Roger D. Harris is a recovering political scientist. Both authors are active with the [Free Alex Saab](#) campaign and the [Task Force on the Americas](#), a human rights organization.

Source: [Pressenza New York](#)

