

## Paulo Maluf (United States)

**Case ID:**

ARW-148

**Jurisdiction of Origin of Public Official or Entity Allegedly Involved:**

Brazil

**Position of Public Official(s) (yrs in office):**

Governor and Mayor of Sao Paulo (Governor, 1979-1983; Mayor, 1993-1996); Legislator (as of 2007)

**Jurisdiction of Asset Recovery:**

United States

**Jurisdiction of Asset Recovery ? Description:**

Undertaking Recovery Effort, Location of Recovery Effort, Asset Location / Alleged Asset Location

**Asset Recovery Start:**

2002

**Asset Recovery End:**

Ongoing

**UNCAC Offenses Implicated:**

Art.17

Art.23

**Money laundering Implicated:**

Yes

**Legal Basis for Asset Recovery:**

Criminal Prosecution and Forfeiture

**Intl.Cooperation: MLAT/Letter of Request?:**

Unknown

**Basis for Intl Cooperation:**

Cooperation in investigation but mechanism unknown

**Contributing Factors in Asset Recovery:**

Ongoing Case

**Status of Asset Recovery :**

Ongoing

**Stage in Asset Recovery Chain:**

Before Court of First Instance

**Agreement for Returned Assets:**

Ongoing

**Agreement for Returned Assets - Description:**

N/A

**Case Summary:**

In April 2014, a New York Supreme Court Appellate Division panel unanimously refused to overturn a lower court decision not to grant Mr. Maluf's request to have the indictment filed against him dismissed. (Sources: Matter of Maluf v Vance 2014 NY Slip Op 02546 Decided on April 15, 2014 Appellate Division, First Department and Mark Thompson, "Brazilian Pol Can't Shake Indictment in New York," Courthouse News Service, April 22, 2014.) The appellate

court held that: "The extraordinary remedy of prohibition is not available to petitioners, who assert that the underlying criminal action violates their statutory and constitutional rights to a speedy trial and their right to due process, or, in the alternative, that the indictment should be dismissed either in furtherance of justice pursuant to CPL 210.40(1) or under principles of international comity. These claims allege errors of law for which petitioners have adequate alternative remedies, including filing pretrial motions in the underlying criminal action and challenging any conviction on appeal [citation omitted]. That petitioners would have to voluntarily leave their home country to appear for arraignment since Brazil will not extradite its own citizens before availing themselves of such remedies does not render them inadequate [citation omitted] Moreover, petitioners have failed to meet their burden of demonstrating a "clear legal right" to any of the relief sought [ ]." (Source: Matter of Maluf v Vance 2014 NY Slip Op 02546 Decided on April 15, 2014 Appellate Division, First Department, published at <http://law.justia.com/cases/new-york/appellate-division-first-department...>)

In April 2012, the New York County Supreme Court had declined to grant Mr. Maluf's request to have the indictment filed against him dismissed and to have an Interpol arrest warrant lifted. (Source: Matter of Maluf v. Vance, 2012 NY Slip Op 50743(U), April 24, 2012.) In March 2007, Mr. Maluf, his family members and his associates were indicted by the New York County District Attorney's Office, which charged them with conspiracy, grand larceny and criminal possession of stolen property. The indictment alleged that, "The object of the conspiracy was to steal money from the City of Sao Paulo, Brazil, to possess the money in Brazil, New York and elsewhere, and to conceal the existence of the conspiracy and the location of the stolen money. To do this, the conspirators perpetrated an over-invoicing and kick-back scheme involving the municipal construction of an arterial highway in Sao Paulo known as the Avenida Agua Espriada project. In the course of the conspiracy, stolen proceeds were transferred to a bank account in New York County and, from New York County, to a bank account located in the Bailiwick of Jersey in the Channel Islands. The conspirators also used the bank account in New York County to return stolen proceeds to Brazil, to buy personal items, and to pay for expenses related to Brazilian political campaigns. During the period from on or about January 1993 to on or about December 1996, PAULO MALUF was Mayor of Sao Paulo. During this period and thereafter, PAULO MALUF directed the over-invoicing scheme, received kick-backs from the scheme amounting to millions of dollars, used secret bank accounts in New York County and the Bailiwick of Jersey to hide and utilize the stolen funds, and was the conspiracy's principal beneficiary. (Source: The People of the State of New York v. Paulo Maluf, Flavio Maluf, Simeao Damasceno de Oliveira, Joel Guedes Fernandes and Vivaldo Alves, Indictment filed on March 8, 2007, New York State Supreme Court, County of New York.) Then-District Attorney for New York County, Mr. Robert Morgenthau, wrote that Mr. Maluf's indictment was among the spin-offs of his office's investigation into the unlicensed money transmitter, Beacon Hill Service Corporation. Mr. Morgenthau wrote that \$140 million had passed through Mr. Maluf's principal account at Safra National Bank in Manhattan. (Source: Robert Morgenthau, "Tax Evasion Nation," American Interest, September-October 2008, last accessed on October 1, 2010 at <http://www.the-american-interest.com/article-bd.cfm?piece=465>.)

### **Disposition of Criminal Case(s):**

According to the March 8, 2007 press release by the New York County District Attorney's Office, Mr. Maluf was indicted in New York for his alleged conspiracy in embezzlement of public funds and concealment of such funds, and that charges were also pending against him in Brazil. (Source: The People of the State of New York v. Paulo Maluf, Flavio Maluf, Simeao Damasceno de Oliveira, Joel Guedes Fernandes and Vivaldo Alves, Indictment filed on March 8, 2007 in New York state Supreme Court, County of New York and New York County District

Attorney's Office, News Release on the Paulo Maluf case, March 8, 2007.) According to Agence France Presse, on November 4, 2013, Mr. Maluf's conviction on "administrative corruption" was upheld by a Brazilian court. (Source: Agence France Presse, "Graft sentence upheld for ex-Sao Paulo ex-mayor," November 4, 2013.)

**Jurisdiction of Origin: Investigative Agency:**

Ministry of Justice; Federal Police

**Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):**

Prosecutor General of the State of Sao Paulo, Prosecutor General of the Republic of Brazil

**Jurisdiction of Origin: Courts Involved:**

Superior Tribunal of Justice

**Jurisdiction of Asset Recovery: Investigative Agency:**

New York County District Attorney's Office

**Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):**

New York County District Attorney's Office

**Jurisdiction of Asset Recovery: Courts Involved:**

Supreme Court of the State of New York, County of New York, Criminal Term; New York Supreme Court, Appellate Division, First Department

**Documents:**





Maluf\_New\_York\_Indictment\_Mar\_8\_2007.pdf

Maluf\_NY\_Indictment\_Press\_Release\_Mar\_8\_2007.pdf

Maluf\_Swiss\_Dept\_Justice\_Oct\_14\_2002.pdf

Maluf\_US\_Morgenthau\_Tax\_Evasion\_American\_Interest\_SepOct\_2008.pdf

**Documents:**

<b>Attachment</b>	<b>Size</b>
 Maluf_Graft_sentence_upheld_Agence_France_Presse_Nov_4_2013.pdf	729.38 KB
 Maluf_US_NY_Appeal_Court_Decision_Apr_2014.pdf	270.75 KB
 Maluf_US_NY_Appeal_Courthouse_News_Service_Apr_22_2014.pdf	223.14 KB
 Maluf_Interpol_wanted_Feb_6_2015.pdf	579.51 KB

**Documents Links:**

**Other Sources:**

Matter of Maluf v Vance 2014 NY Slip Op 02546 Decided on April 15, 2014 Appellate Division, First Department (also at 2014 WL 1419459); Mark Thompson, "Brazilian Pol Can't Shake Indictment in New York," Courthouse News Service, April 22, 2014, at <http://www.courthousenews.com/2014/04/22/67222.htm>

Matter of Maluf v. Vance, 2012 NY Slip Op 50743(U), April 24, 2012, accessed at <http://law.justia.com/cases/new-york/other-courts/2012/2012-ny-slip-op-5...>

The People of the State of New York v. Paulo Maluf, Flavio Maluf, Simeao Damasceno de Oliveira, Joel Guedes Fernandes and Vivaldo Alves, Indictment filed on March 8, 2007 in New York State Supreme Court, County of New York, accessed at <http://manhattanda.org/whatsnew/press/2007-03-08%20Maluf%20Indictment%20...>

New York County District Attorney's Office, News Release on the Paulo Maluf Case, March 8, 2007, accessed at <http://www.manhattanda.org/whatsnew/press/2007-03-08.shtml> 1/;

Robert Morgenthau, "Tax Evasion Nation," American Interest, September-October 2008,

accessed at <http://www.the-american-interest.com/article-bd.cfm?piece=465>;

See also, Swiss Federal Department of Police and Justice Press Release, "Strengthening co-operation in the fight against crime / Brazilian delegation visits Bern," October 14, 2002, accessed at <http://www.ejpd.admin.ch/content/ejpd/en/home/dokumentation/mi/2002/2002....>

Agence France Presse, "Graft sentence upheld for ex-Sao Paulo ex-mayor," November 4, 2013, at <http://www.globalpost.com/dispatch/news/afp/131104/graft-sentence-upheld...>