



## United States Soccer Federation (USSF) / Competition Law / Governance / National courts / Coach / National team

# Internal and External Pressures to Change USSF at Play in 2023



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In the first half of 2023, the United States Soccer Federation (USSF) was confronted with internal and external pressure to address problematic behavior in its organization. Externally, this pressure came in the form of a lawsuit challenging USSF's enforcement of a FIFA policy prohibiting foreign clubs from playing league matches overseas in the U.S. Internally, USSF was pressured into investigating allegations of misconduct by their national team coach, Mr *Gregg Berhalter*, as well as a former national team player, Mr *Claudio Reyna*. Both situations may have lasting effects on USSF throughout 2023 and beyond.

Both USSF and FIFA have a lengthy legal battle ahead of them after the United States Court of Appeals for the Second Circuit in March 2023 revived a lawsuit against them that had previously been dismissed by the Southern District

of New York in 2021. The lawsuit stems from FIFA's implementation of a policy in 2018 that prohibits official season professional international football matches (i.e. games that count towards a club's league record) from being played outside of the national association's home country.

In September 2019, *Relevant Sports, LLC* - a global promoter and organizer of friendly football matches - filed a lawsuit against USSF and FIFA for violating US anti-trust law, specifically Section 1 of the [Sherman Anti-Trust Act](#) (the US equivalent of the European Union's competition law), which prohibits agreements to restrain trade or commerce. Prior to filing its complaint, *Relevant Sports* had tried to organize official in-season league matches three different times with various leagues such as *La Liga*, *Liga MX*, and *LigaPro Serie A*. Each time, USSF prohibited the out-of-market game from

being played on US soil, citing to FIFA's October 2018 policy<sup>1</sup> requiring that official league matches had to be played within the territory of the respective member association. *Relevant Sports* alleged that such a policy was tantamount to a horizontal agreement among competitors that restricted competition for official international football games held in the US.

Although the district court found *Relevant Sports* had failed to establish that FIFA made any sort of agreement with its member associations to restrict competition, the Second Circuit disagreed and vacated the lower court's ruling. Relying on jurisprudence, the Second Circuit explained that not all policies or regulations implemented by an association are shielded from anti-trust scrutiny. Those that focus on the day-to-day operations (e.g. how many players may be on the field

<sup>1</sup> On 26 October 2018, FIFA issued a press release memorializing its policy: "Consistent with the opinion expressed by the football stakeholders committee, the council emphasized the sporting principle that official league matches must be played within the territory of the respective member association." See [www.fifa.com](http://www.fifa.com)



or the time allotted to play) are best left to the association and its members to decide on, whereas those policies that impact competition between members of an association or with their competitors (e.g. broadcasting rights or geographical location of teams) can be examined for anti-trust violations.

The Appellate Court found that FIFA's 2018 policy restricting the location where official season competition matches can be played was subject to anti-trust scrutiny because it reflected a contractual commitment of head-to-head competitors to restrict competition. Consequently, because Revalent Sports had properly stated a claim, the case was remanded to the District Court for further legal proceedings.

Within days of the Second Circuit reviving the lawsuit against USSF and FIFA, USSF released the findings of the investigation it had ordered in December 2022 regarding allegations of misconduct against its Head Coach, Mr *Berhalter*. The investigation stemmed from an accusation made by *Danielle Reyna* to US Soccer Sporting Director *Earnie Stewart*, where she alleged Mr *Berhalter* had physically assaulted his then-girlfriend and now wife, *Rosalind Santana Berhalter*, while they were in college.

The investigation was conducted by the international law firm *Alston & Bird*. As explained in their 40-page report,<sup>2</sup> they interviewed several individuals regarding the allegations against Mr *Berhalter*, but were eventually asked by USSF to expand the scope of their investigation to examine whether Mr *Reyna* and his wife violated any applicable regulations in their interactions with USSF representatives.

It is clear from the report that the REYNAS were dissatisfied with

the minimal playing time their son, *Gio Reyna*, received during the FIFA World Cup. A week after the US was eliminated from the World Cup, the *Reynas* had a conversation with USSF Sporting Director, Mr *Stewart*, regarding comments Mr *Berhalter* allegedly made about their son's lack of effort. This was when Mrs *Reyna* brought to Mr *Stewart's* attention the allegations that Mr *Berhalter* beat his girlfriend freshman year in college.

While the investigation confirmed the physical assault by Mr *Berhalter* against his wife in 1992, it did not reveal any evidence that Mr *Berhalter* or his wife were lying about what happened or that Mr *Berhalter* committed any similar violent act at any other point in time. The investigators found Mr *Berhalter* never improperly withheld the facts of the incident from USSF, either, and that, more importantly, he acknowledged his culpability and his need to be accountable both the day after the incident and recently. Ultimately, the report concluded that the 1992 incident does not prevent an employer from employing Mr *Berhalter*.

As for the investigation into the *Reynas*, the investigators learned from witnesses that there was a pattern of outreach from Mr *Reyna* to USSF officials and staff to advocate for his son ever since his son was in the US Development Academy. It was noted that Mr *Reyna's* communications all occurred while Mr *Reyna* was responsible for administrative matters of various MLS clubs. It also became apparent that, at the time the *Reynas* made USSF aware of the allegations against Mr *Berhalter*, the *Reynas* were aware that Mr *Berhalter's* contract as the US National Team coach was set to expire at the end of 2022. They were dissatisfied with Mr *Berhalter's* handling of their

son on the team. Witnesses and Mr *Stewart* explained that they believed the *Reynas* made the disclosure of the 1992 incident to discourage USSF from hiring Mr *Berhalter* for another term. However, even with this information, *Alston & Bird* found Mr *Reyna's* communications with USSF officials did not violate any US Soccer policies but may have violated the FIFA Code of Ethics and its rule against Abuse of Position; however, *Alston & Bird* made it clear that it would ultimately be up to FIFA to make that determination.

On 13 March 2023, USSF released a statement saying that, based on the investigation's findings, Mr *Berhalter* would remain a candidate to serve as Head Coach of the men's national team and that they would revisit and update their policies concerning appropriate parental conduct and communications with USSF staff.

Based on these two situations, 2023 will be an eventful year for USSF on multiple levels.

<sup>2</sup> The 10 March 2023 report can be downloaded at: [ussoccer.app.box.com](https://ussoccer.app.box.com)