UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, v. LAWRENCE HOSKINS.	3:12-cr-238 (JBA) July 31, 2014

MEMORANDUM OF LAW IN SUPPORT OF LAWRENCE HOSKINS'S MOTION TO DISMISS THE SECOND SUPERSEDING INDICTMENT

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Defendant Lawrence Hoskins respectfully submits this memorandum of law in support of his Motion to Dismiss the Second Superseding Indictment, returned July 30, 2013 ("Indictment"), pursuant to Rule 12 of the Federal Rules of Criminal Procedure.

PRELIMINARY STATEMENT

Resting as it does, upon an infirm foundation of aged allegations, overly expansive applications of law, and novel theories of criminal liability, the Indictment in this case suffers from numerous and fatal defects of law and logic. Among other things, it charges stale and time-barred conduct that occurred more than a decade ago; it asserts violations of U.S. law by a British citizen who never stepped foot on U.S. soil during the relevant time period; and, it distorts the definition of the time-worn legal concept of agency beyond recognition. In other words, the Indictment marks an excessive and improper exercise of executive authority. This is an Indictment that never should have been brought.

The Indictment seeks to hold Lawrence Hoskins, a retired 63-year-old British citizen, responsible for his alleged conduct that occurred—outside the United States more than ten years ago—while he was working in Paris at Alstom Holdings, SA ("Alstom"), the parent company of the French conglomerate. The Indictment asserts that Mr. Hoskins, in his capacity as a Senior Vice-President of the Alstom parent company, approved and authorized the retention and compensation of two consultants, knowing that they would bribe Indonesian officials to help a consortium (including Alstom and one of its U.S. subsidiaries) obtain a contract to construct a power plant in Indonesia. According to the Indictment, Mr. Hoskins's limited, dated, and purely extraterritorial conduct subjects him to liability for two conspiracies and a total of ten substantive violations of the Foreign Corrupt Practices Act ("FCPA") and United States' money-laundering statutes. These charges all fail.

First, the Indictment is time-barred. Mr. Hoskins resigned from Alstom ten years ago, in August 2004, after 35 months of employment with the parent company and, when he did so, he withdrew from any alleged conspiracy operating therein. Second Circuit precedent makes clear that resignation from a business constitutes withdrawal from any criminal conduct operating within that entity if, following resignation, there is no promotion of or benefit received from the alleged illegal activity. Mr. Hoskins passes the Second Circuit's test with ease. After he resigned from Alstom, he immediately moved from Paris back to his home in England and started a new job, at a new company, in a new industry. He had no contact with, and received nothing from, any of his alleged co-conspirators. He also had no involvement with criminal conduct of any kind. To the point, the last act attributable to Mr. Hoskins in the Indictment occurred in March 2004, and the wire transfers that constitute the FCPA and money-laundering offenses all occurred long thereafter, between November 2005 and October 2009. Thus, Mr. Hoskins successfully withdrew from any alleged criminal conduct upon his resignation from Alstom. As such, all of the charges in the Indictment are time-barred and should be dismissed.

Second, the FCPA charges are facially defective. The Indictment alleges that Mr. Hoskins was an "agent of a domestic concern," to wit, an agent of Alstom's U.S. subsidiary. While it is black letter law that the fundamental characteristic of agency is control, the supporting factual allegations in the Indictment make plain that Mr. Hoskins was in no way under the control of the U.S. subsidiary. Indeed, much to the contrary, the Indictment demonstrates that Mr. Hoskins was "approving" and "authorizing" certain requests from employees of subsidiary companies "in his capacity" as an executive of the Alstom *parent* company. Thus, because the allegations in the Indictment describe conduct bearing no semblance to an agency relationship, the FCPA-related charges are facially defective and should be dismissed.

Third, the Indictment's use of the term "agent" is so counter-intuitive to the common understanding of that phrase that its application to Mr. Hoskins's relationship with the U.S. subsidiary renders the FCPA unconstitutionally vague as applied. Such a construction of the term "agent" could not have provided Mr. Hoskins with fair warning that his alleged conduct—authorizing and approving matters at the request of employees of subsidiaries in his oversight capacity at the parent company—could expose him to criminal liability. As such, the FCPA charges are also constitutionally flawed and should be dismissed.

Fourth, the FCPA charges do not apply to Mr. Hoskins's purely extraterritorial conduct. Though Congress directed certain provisions of the FCPA to have extraterritorial effect, the subsection of the FCPA charged in the Indictment was not included in any such direction. Accordingly, the presumption against extraterritoriality applies. Thus, because all of Mr. Hoskins's alleged conduct occurred outside of the United States in the territory of a foreign sovereign, the substantive FCPA charges fail and should be dismissed.

Fifth, given the pronounced defects with the Indictment's FCPA charges, any theory of liability premised upon conspiracy and/or aiding and abetting also necessarily fail. Applicable Supreme Court precedent holds that when Congress affirmatively chooses to exclude a certain class of individuals from liability under a criminal statute, the government cannot circumvent that intent by alleging conspiracy. Moreover, federal courts have repeatedly held that ancillary offenses, including aiding and abetting and conspiracy, are only deemed to confer extraterritorial jurisdiction to the extent of the offenses underlying them. For these reasons, the conspiracy and aiding and abetting theories advanced in the Indictment cannot stand once the underlying FCPA charges fail.

Finally, the money-laundering charges are improperly venued in the District of Connecticut. The venue provision of the money-laundering statute establishes that venue lies only where the

predicate money laundering transaction was "conducted." The Indictment makes clear that the allegedly offending transfers were initiated from Maryland. As such, the District of Maryland is the only proper venue for the money-laundering charges, and they should be dismissed.

For the reasons described above and explained below, all of the charges should be dismissed. Mr. Hoskins never should have been charged on such old, infirm, and overextended allegations and legal theories. He should be freed to resume his life in England.

FACTUAL BACKGROUND[1]

A. Overview

Lawrence Hoskins is a 63-year-old British citizen. He is married and, with his wife of 39 years, has two adult sons, both of whom are successful professionals. (Hoskins Aff. ¶ 2.) He has lived and worked his entire life in the United Kingdom, with the exception of 35 months between 2001 and 2004, during which he worked for Alstom's parent company in Paris, France. (*Id.* ¶ 9.)

Mr. Hoskins graduated in 1975 from the University of Stirling (in Scotland) with a bachelor's degree in Economics. (*Id.* ¶ 3.) For the next 25 years, he worked in England, in management-level positions for corporations in the engineering and related services industries. (*Id.*) In September 2001, at age 50, Mr. Hoskins accepted a senior executive position with Alstom, a French multinational conglomerate that specialized in building and servicing power plants and providing transportation services. (*See id.* ¶ 4; Ind. ¶ 2.) He left Alstom in August 2004, and for the next six years (twice as long as he spent at Alstom), Mr. Hoskins worked in England at National Air Traffic Services ("NATS"), the leading provider of air-traffic-control services in the United Kingdom. (Hoskins Aff. ¶¶ 7–8.) In 2010, Mr. Hoskins retired from

[1] For purposes of this motion, we accept the allegations in the Indictment as true. Mr. Hoskins reserves his right to challenge these allegations at the appropriate time.

NATS and started a part-time consulting business (related to the work he was doing at NATS), which he ran out of his home in England. (*Id.* ¶ 8.)

Mr. Hoskins was arrested on these charges on April 23, 2014 when he and his wife disembarked from a ferry boat in St. Thomas in the U.S. Virgin Islands, *en route* to Dallas, Texas. Unbeknownst to Mr. Hoskins, nearly a year earlier, on July 30, 2013, a grand jury in the District of Connecticut had returned an indictment against him, alleging that conduct he had engaged in at Alstom between 2002 and 2004 violated the FCPA and money-laundering statutes. (*Id.* ¶ 13.) By the time the Indictment was returned, Mr. Hoskins's alleged conduct was nearly a decade old.

B. Mr. Hoskins's Job at Alstom

Mr. Hoskins started work at Alstom on October 1, 2001. (Hoskins Aff. ¶ 4.) Mr. Hoskins and his wife, after years of living in England and with their sons away in college and working, were intrigued by the notion of a few years abroad. They rented a small apartment in central Paris near Alstom's then–global headquarters at Avenue Kléber. (*Id.* ¶ 4.)

Mr. Hoskins worked for Alstom Holdings, SA, the corporate parent of the numerous Alstom subsidiaries around the world, as an Area Senior Vice-President ("ASVP") for the Asia Region. (Ind. ¶ 2; Hoskins Aff. ¶ 4.) According to the Indictment, Mr. Hoskins's job responsibilities at the parent company included helping it exercise "oversight" over its many subsidiaries, including Alstom's U.S. subsidiary in Connecticut. (Ind. ¶ 13.) This responsibility allegedly included overseeing Alstom's subsidiaries' efforts to obtain business in Asia. (*Id.*) In particular, the Indictment alleges that "in his capacity" as ASVP at the parent company, Mr. Hoskins "approved" the selection of and "authorized" payments to certain third party consultants for Alstom subsidiaries, including Alstom's U.S. subsidiary. (*Id.* ¶ 7.) Mr. Hoskins never travelled to the United States during his relatively brief employment with Alstom. (Hoskins Aff. ¶ 9.)

C. The Resignation From Alstom

On June 30, 2004, Mr. Hoskins resigned from his job at Alstom effective August 31, 2004. (Hoskins Aff. ¶ 5; Ex. 1.) As Mr. Hoskins wound down his employment at Alstom, he notified Alstom executives and employees that he had resigned from the company and was moving home to England to work at NATS, a different company in a different industry. He sent e-mails to colleagues to say goodbye and express gratitude for hard work and shared corporate accomplishments. (*Id.* ¶ 6; Exs. 2–5.) It was a clean break; he left no loose ends.

So, on August 31, 2004, at approximately 10:00 pm, Mr. Hoskins walked out of Alstom's corporate headquarters in Paris for the last time. Earlier that day, he had turned in his company car, his computer, his files, his phone, his corporate credit card, his office access card and all other vestiges of his professional connection to Alstom. (*Id.* ¶ 7.) That night, Mr. Hoskins and his wife packed their belongings into a rental car, left their rental apartment in central Paris for the final time, and began the drive back home to the south of England. (*Id.*) The following Monday, September 6, 2004, Mr. Hoskins started his new job at NATS. (*Id.* ¶ 8.)

D. No Further Collaboration with Alstom

Mr. Hoskins's separation from Alstom was complete. On only three occasions after resigning from Alstom did Mr. Hoskins ever come into contact with former colleagues from Alstom (aside from his former secretary, with whom he maintained a friendship). None of these interactions was meaningful. In October 2004, a month after his departure, Mr. Hoskins attended a farewell lunch in Paris that the company held in his honor (and in honor of another departing employee). (*Id.* ¶ 10(a).) Two months later, in December 2004, Mr. Hoskins's former secretary

sent holiday wishes on his behalf (and at her suggestion) to a handful of Alstom executives.[2] (*Id.* ¶ 10(b).) And, in June 2007, Mr. Hoskins met with a few Alstom executives in Paris as a courtesy to his former boss, Etienne Dé, to hear a pitch for his return to Alstom in the United Kingdom. Prior to the meeting, Mr. Hoskins told Mr. Dé that he was unlikely to be interested, and subsequently, he confirmed to Mr. Dé by telephone that he did not wish to pursue the position. (*Id.* ¶ 10(c).) Other than the holiday-greeting e-mail described above, at no time after his departure from Alstom did Mr. Hoskins communicate with or receive anything of value from any one of the alleged individual co-conspirators referred to in the Indictment. (*Id.* ¶ 11.)

Nor did Mr. Hoskins receive any money or any other benefit from Alstom following his departure. (*Id.* ¶ 12.) He owned no stock in the company, and he received no bonuses, deferred compensation, or gifts from Alstom after he left. (*Id.*) Mr. Hoskins has a small Alstom pension that he (and Alstom) contributed to during the 35 months he worked at the company. Neither Mr. Hoskins nor Alstom contributed to this pension after his employment terminated on August 31, 2004. (*Id.*) In October 2010, when Mr. Hoskins reached age 60, he began drawing down on various retirement funds he earned during his working years, including the small Alstom pension. (*Id.*)

E. The Indictment

The Indictment contains twelve counts. Count One charges Mr. Hoskins with conspiracy in violation of 18 U.S.C. § 371; Counts Two through Seven allege substantive FCPA offenses, in violation of 15 U.S.C. § 78dd–2; Count Eight charges Mr. Hoskins with conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h); and Counts Nine through Twelve each allege a substantive money laundering offense, in violation of 18 U.S.C. § 1956(a)(2)(A).

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[2] The innocuous holiday e-mail was addressed to several former colleagues, including the individual referred to in the Indictment as "Power Company Employee A." (*See* Ind. ¶ 17; Hoskins Aff. ¶ 10(b).)

The overarching FCPA conspiracy charge—described in paragraphs 1 through 100 of the Indictment—alleges that, between 2002 and 2009, Mr. Hoskins and others (including employees of Alstom's U.S. subsidiary in Windsor, Connecticut, and employees of an Alstom subsidiary in Indonesia), conspired to hire and pay two third-party consultants for the purpose of making illegal payments to officials of the Indonesian government in order to secure a contract for a power plant in Indonesia, known as the Tarahan Project. (Ind. ¶¶ 4, 6.) Mr. Hoskins's role in the alleged conspiracy was to approve the selection of and authorize payments to the two consultants. (*Id.* ¶ 7.) His conduct is alleged to have occurred between August 22, 2002 and March 30, 2004. (*See id.* ¶¶ 40–77.)

The substantive FCPA counts each relate to one of six separate wire transfers allegedly made by employees of Alstom's U.S. subsidiary in Connecticut between November 2005 and October 2009. (*See id.* ¶ 102.) These wire transfers all occurred long after Mr. Hoskins left Alstom; the last was allegedly made more than five years after his departure from the company. (*See id.*)

The money-laundering conspiracy alleges that, between 2002 and 2009, Mr. Hoskins and others conspired to engage in monetary transactions in amounts greater than $10,000 to promote the alleged FCPA violations. (*See id.* ¶ 104.) The earliest of these wire transfers is alleged to have occurred on June 30, 2005, almost one year after Mr. Hoskins left Alstom. (*See id.* ¶ 98.) Finally, the substantive money-laundering counts relate to alleged transfers between December 2005 and March 2007 by one of the consultants, from Maryland to a bank account in Indonesia for the purpose of paying an Indonesian government official. (*See id.* ¶¶ 112–13.) Again, each of these wire transfers occurred long after Mr. Hoskins left Alstom.

F. The Post-Indictment Period

The Department of Justice issued a press release announcing the Indictment on July 30, 2013, the day it was returned. Despite the fact that he was living and travelling openly, Mr. Hoskins was never contacted by anyone relating to the charges, including the Department of

Justice, the U.K. authorities or anyone on behalf of Alstom. (Hoskins Aff. ¶ 13.) In fact, Mr. Hoskins first learned about the Indictment on April 23, 2014—nearly a decade after his resignation from Alstom—when he was arrested in St. Thomas as he travelled with his wife to visit his son in Dallas, Texas. (*Id.*)

ARGUMENT

I. THE INDICTMENT IS TIME-BARRED AND SHOULD BE DISMISSED

It is beyond dispute that Lawrence Hoskins resigned from Alstom on August 31, 2004. Following that date, any participation on his part in the conduct alleged in the Indictment forever ceased. This reality is reflected in the fact that the last overt act in the Indictment that refers to Mr. Hoskins is an e-mail exchange that occurred *more* than ten years ago, on March 30, 2004, a date well outside the applicable five-year limitations period. (*See* Ind. ¶ 77.) In fact, Mr. Hoskins's unequivocal resignation began a period of total disassociation from Alstom—and, *ipso facto*, his alleged co-conspirators—that has continued uninterrupted for nearly ten years. This makes sense, of course, because Mr. Hoskins's alleged role in the charged conspiracy—authorizing and approving certain matters—*required* his continued employment at the parent company.

For these reasons and others, the preponderance of the evidence establishes that, *as a matter of law*, Mr. Hoskins withdrew from the alleged crimes upon his resignation from Alstom on August 31, 2004. *See United States* v. *Berger*, 224 F.3d 107, 118–19 (2d Cir. 2000) (resignation from a business plus no further steps to promote, nor receipt of further benefits from, a conspiracy operating therein constitutes withdrawal as a matter of law). Thus, the five-year statute of limitations applicable to all of the charges in the Indictment expired on August 31, 2009, almost four years before the government indicted Mr. Hoskins on July 30, 2013. On this ground alone, the entire Indictment should be dismissed as time-barred.

A. Applicable Law

1. Pretrial Determination of Mr. Hoskins's Withdrawal Defense Is Proper

This Court has the authority to grant this motion to dismiss the Indictment upon a finding that Mr. Hoskins withdrew from the alleged criminal conduct when he resigned from Alstom in August 2004. Rule 12 of the Federal Rules of Criminal Procedure allows a defendant "to raise by pretrial motion any defense, objection or request that the court can determine without a trial of the general issue." Fed. R. Crim. P. 12(b)(2). This includes motions to dismiss an indictment as time-barred.[3]

It is well settled that a court can rule on a defense prior to trial when a "trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense." *United States* v. *Covington*, 395 U.S. 57, 60 (1969) (affirming pretrial dismissal of indictment); *see United States* v. *Bodmer*, 342 F. Supp. 2d 176, 180 (S.D.N.Y. 2004) (quoting *Covington* and dismissing FCPA charges on pretrial motion). Rule 12(d) actually requires courts to "decide every pretrial motion before trial unless it finds good cause to defer a ruling." Fed. R. Crim. P. 12(d). As Judge Scheindlin observed in her opinion dismissing the FCPA charges in *Bodmer*, "'[g]ood cause' to postpone ruling on a pretrial motion exists when a defendant's claims 'are substantially founded upon and intertwined with the evidence to be presented at trial.'" *Bodmer*, 342 F. Supp. 2d at 180 (quoting *United States* v. *Williams*, 644 F.2d 950, 952–53 (2d Cir. 1981)).[4] Such good cause is absent here.

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[3] *See* Fed. R. Crim. P. 12(b) advisory committee's note to subdivision (b)(1) and (2) (noting that defenses such as the statute of limitations may be raised before trial).

[4] *See also United States* v. *Flores*, 404 F.3d 320, 324 n.6 (5th Cir. 2005) (observing that district court is entitled to make necessary factual findings to resolve legal questions raised in a pretrial motion, provided trial court's conclusions do not invade province of ultimate finder of fact); *United States* v. *Barletta*, 644 F.2d 50, 57–58 (1st Cir. 1981) ("district court *must* rule on any issue entirely segregable from the evidence to be presented at trial" but may defer where resolution of the motion would require "the presentation of any significant quantity of evidence relevant to the question of guilt or innocence." (emphasis added)).

Numerous reasons support the conclusion that this Court should decide this motion before trial. First, the facts relevant to Mr. Hoskins's withdrawal defense are not "substantially founded upon and intertwined with the evidence to be presented at trial."[5] *Id.* To the contrary, the discrete facts germane to this motion are independent of the underlying evidence. As explained in detail below, the evidence supporting this motion is straightforward and beyond dispute: Mr. Hoskins withdrew from the criminal conduct alleged in the Indictment because he affirmatively resigned from Alstom and, thereafter, *neither promoted nor profited* from the alleged conspiracy. (Hoskins Aff. ¶¶ 11–12); *see Berger*, 224 F.3d at 118–19. Thus, to resolve this motion, the Court need only examine Mr. Hoskins's resignation from Alstom and the extent of his post-resignation involvement with the alleged conspiracy. Given that Mr. Hoskins has had no contact with any of his alleged co-conspirators since his resignation in 2004, that inquiry is uncomplicated and discrete.

Second, the court should assume the truth of the allegations in the Indictment for the purposes of this motion. *See Smith* v. *United States*, 133 S. Ct. 714, 719 (2013) ("[W]ithdrawal presupposes that the defendant committed the offense."). Thus, issues that may be contested at trial—such as the existence, scope, duration, and objects of the conspiracies charged and Mr. Hoskins's participation therein—are presumed for purposes of this motion and should not clutter

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[5] While the affirmative defense of withdrawal may raise questions of fact that are interwoven with facts relevant to guilt or innocence, courts also recognize that the merits of the withdrawal defense can be determined without a trial. *See United States* v. *Grimmett*, 150 F.3d 958, 961–62 (8th Cir. 1998) (remanding case for pretrial determination of whether defendant, who had entered a conditional plea, withdrew from alleged conspiracy); *United States v. Fernandez-Torres*, 604 F. Supp. 2d 356, 362–63 (D. P.R. 2008) (adopting magistrate judge's recommendation and dismissing indictment pre-trial after withdrawal established by undisputed evidence).

consideration of whether, as a matter of law, Mr. Hoskins withdrew from the charged conduct upon his resignation in 2004.[6]

Third, the burden of establishing withdrawal (by a preponderance of the evidence) belongs to Mr. Hoskins alone; it never shifts to the government. *Id.*; *see also United States* v. *Hamilton*, 538 F.3d 162, 173 (2d Cir. 2008) (noting Second Circuit's long-standing precedent that a defendant must prove affirmative defense of withdrawal by a preponderance of the evidence). Thus, while the government may seek to rebut or impeach the evidence proffered in support of this motion, it bears no burden of proof. When combined with the presupposition of the Indictment's allegations and the independent and limited facts relevant to Mr. Hoskins's withdrawal, there is no valid reason why such government response must await trial.

Finally, judicial efficiency would be well served by addressing this discrete issue in advance of trial. Should this Court conclude that Mr. Hoskins has established his withdrawal by a preponderance of the evidence, the case is over. Accordingly, there would be no need for the Court, the government, or the defense to expend any further—likely substantial—time and resources preparing for and trying this case. Moreover, Mr. Hoskins's bail conditions, at the moment, require him to remain in the United States—away from his wife and ailing 91-year-old mother—for the duration of this matter. Thus, based on the foregoing and given the dispositive nature of this motion, it would be inefficient and unnecessary to force Mr. Hoskins to face a trial to resolve this isolated issue.

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[6] Nothing in the Supreme Court's recent decision in *Smith* suggests that consideration of a defendant's withdrawal defense must wait until trial. In fact, given the presupposition of the indictment's allegations, *Smith* actually makes a court's pre-trial determination of withdrawal more streamlined. 133 S. Ct. at 719.

2. The Applicable Statute of Limitations Must Be Liberally Interpreted In Favor of Mr. Hoskins

Summarizing black letter law, the Supreme Court recently observed that withdrawal "starts the clock running on the time within which the defendant may be prosecuted, and provides a complete defense when the withdrawal occurs beyond the applicable statute-of-limitations period." *Smith*, 133 S. Ct. at 719.[7] Notably, the Court in *Smith* also observed that withdrawal from a conspiracy terminates a defendant's liability for post-withdrawal acts of his co-conspirators. *Id*. Therefore, because Mr. Hoskins withdrew from the conspiracy—and all other related liability—on August 31, 2004, the statute of limitations expired as to all of the charges in the Indictment on August 31, 2009.[8]

A statute of limitations "reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution." *Id.* at 720. To this end, criminal statutes of limitations broadly reflect Congress's determination "to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past." *Toussie* v. *United States*, 397 U.S. 112, 114–15 (1970). For this reason, courts are guided by "the principle that criminal limitations statutes are to be liberally interpreted in favor of repose." *Id*. at 115 (citations and internal quotation marks omitted).

The significance of this point cannot be understated, particularly in a case like this, where the allegations in the Indictment relating to Mr. Hoskins are *all* at least ten years old, and, in many instances, even older. Supreme Court case law reaching back well more than 100 years

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[7] *See also United States* v. *Antar*, 53 F.3d 568, 582 (3d Cir. 1995) ("[I]f a defendant properly and adequately terminates his or her involvement with the conspiracy . . . the statute of limitations begins to run in his behalf."); *United States* v. *Salerno*, 868 F.2d 524, 534 n.4 (2d Cir. 1989) ("[A]n individual conspirator can commence the running of the statute of limitations as to him by affirmatively withdrawing from the conspiracy.").

[8] The statute of limitations applicable to all of the charges in this case is five years. 18 U.S.C. § 3282.

recognizes that the primary purpose of a statute of limitations is to protect individuals from losing "their means of defen[s]e. These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced." *United States* v. *Marion*, 404 U.S. 307, 322 (1971) (internal citations and quotation marks omitted). In the words of the Second Circuit: "[T]he statute of limitations exists primarily to protect the rights of the defendant, not just to prevent the government from acting in bad faith." *United States* v. *Poddle*, 105 F.3d 813, 819 (2d Cir. 1997).

Given the age of the allegations in this case, there is no doubt that Mr. Hoskins's right to a fair trial is already in jeopardy. To put this in context, Mr. Hoskins's *last* alleged involvement in the conspiracy occurred (well-outside the limitations period), in March 2004—eight months before former President George W. Bush was elected for a second term in November 2004; more than a year and a half before Chief Justice John Roberts took his seat on the Supreme Court in September 2005; and more than three years before the now-ubiquitous iPhone first came to market in June 2007. Under these circumstances, the reliability of evidence diminishes or vanishes; memories and recollections fade; witnesses become unavailable; and physical evidence deteriorates. Again, it is for these reasons that the Supreme Court requires criminal limitations statutes to be liberally interpreted in favor of repose, and that is why this Court should do so here. *See Toussie*, 397 U.S. at 114–15.

3. Legal Standard for Withdrawal

It is well established that the "mere cessation of activity" in continuing criminal conduct is not enough to start the running of the statute of limitations. *See, e.g.*, *Berger*, 224 F.3d at 118–19 (quoting *United States* v. *Borelli*, 336 F.2d 376, 388 (2d Cir. 1964)). Rather, withdrawal requires some affirmative conduct to take root. *See United States* v. *U.S. Gypsum Co.*, 438 U.S. 422, 464 (1978). In *U.S. Gypsum*, the Supreme Court's seminal decision on the scope of the

withdrawal defense, the Court held that a district court's overly narrow jury instruction on withdrawal constituted reversible error. *Id.* at 464–65. Rebuffing the "confining blinders" the district court placed on the jury with its instruction, the Court observed that "[a]ffirmative acts inconsistent with the object of the conspiracy and communicated in a manner reasonably calculated to reach co-conspirators have generally been regarded as sufficient to establish withdrawal or abandonment." *Id.* (citations omitted). Thus, withdrawal occurs if a defendant, along with some affirmative action inconsistent with the object of the conspiracy, establishes that he communicated "the abandonment in a manner reasonably calculated to reach co-conspirators." *Berger*, 224 F.3d at 118–19 (quoting *Borelli*, 336 F.2d at 388).

Relying on these principles, the Second Circuit has recognized that resigning from a business enterprise will constitute an affirmative act inconsistent with the object of the conspiracy sufficient to withdraw from a conspiracy operating within that enterprise, so long as the defendant neither promotes nor benefits from the conspiracy post-withdrawal. *See Berger*, 224 F.3d at 118 ("[R]esignation from a criminal enterprise standing alone, does not constitute withdrawal as a matter of law; more is required. Specifically, the defendant must not take any subsequent acts to promote the conspiracy and must not receive any additional benefits from the conspiracy." (internal citations omitted)).[9]

This concept is not new, nor is it controversial. Numerous courts have observed that resignation from a business can trigger withdrawal from a conspiracy operating therein; the

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[9] In articulating these requirements for withdrawal by resignation, the Second Circuit agreed with the Third Circuit's synthesis of these principles in *United States* v. *Antar*, 53 F.3d 568, 583 (3d Cir. 1995), which held: "(1) resignation from the enterprise does not, in and of itself, constitute withdrawal from a conspiracy as a matter of law; (2) total severing of ties with the enterprise may constitute withdrawal from the conspiracy; however (3) even if the defendant completely severs his or her ties with the enterprise, the defendant still may remain a part of the conspiracy if he or she continues to do acts in furtherance of the conspiracy and continues to receive benefits from the conspiracy's operations."

critical inquiry turns on what happens *after* the resignation. *See, e.g.*, *United States* v. *Nerlinger*, 862 F.2d 967, 974–75 (2d Cir. 1988) (resignation from brokerage firm and closing of account through which fraudulent scheme was perpetrated constituted an "explicit withdrawal" from conspiracy); *United States* v. *Goldberg*, 401 F.2d 644, 648–49 (2d Cir. 1968) (defendant's resignation from brokerage firm plus absence of any subsequent acts in furtherance of conspiracy established withdrawal); *United States* v. *Steele*, 685 F.2d 793, 804 (3d Cir. 1982) (un-rebutted evidence defendant resigned and permanently severed his employment relationship with corporation sufficient to establish withdrawal); *see also Morton's Mkt., Inc.* v. *Gustafson's Dairy Inc.*, 198 F.3d 823, 839 (11th Cir. 1999) (observing that "[r]esignation from the conspiring business has frequently been held to constitute effective withdrawal."); *United States* v. *Shaw*, 106 F. Supp. 2d 103, 123 (D. Mass. 2000) ("[A] defendant can withdraw from a business conspiracy . . . by severing his ties to the business.").

Accordingly, based on the clear Supreme Court and Second Circuit precedent set forth above, Mr. Hoskins can establish that he withdrew from the charged crimes if he proves by a preponderance of the evidence that he: (i) terminated his employment ties with Alstom in a manner reasonably calculated to reach his alleged co-conspirators; (ii) did nothing post-resignation to participate in or otherwise promote the alleged conspiracy; and (iii) received no additional benefits from the alleged conspiracy's continued operation after his resignation. *See U.S. Gypsum Co.*, 438 U.S. at 464; *Berger*, 224 F.3d at 118–19. Mr. Hoskins easily meets this standard.

B. The Preponderance of the Evidence Establishes That Mr. Hoskins Withdrew From the Criminal Conduct Alleged in the Indictment

1. Mr. Hoskins Resigned From Alstom in a Manner Reasonably Calculated To Reach His Alleged Co-conspirators

Mr. Hoskins's resignation from Alstom on August 31, 2004 affirmatively ended his participation in any conspiracy operating within the company in a manner reasonably calculated to

reach his alleged co-conspirators. The government cannot dispute the fact that Mr. Hoskins resigned from Alstom; the discovery produced to date establishes that Mr. Hoskins resigned in August 2004. In fact, his resignation involved multiple unambiguous affirmative acts of disassociation.

Among other affirmative acts, Mr. Hoskins: (i) tendered a formal resignation letter confirming that he would no longer work for Alstom after August 31, 2004 (Hoskins Aff. ¶ 5; Ex. 1); (ii) sent e-mails to his coworkers, including alleged co-conspirators, informing them of his resignation from Alstom (*id.* ¶ 6; Exs. 2–5); (iii) immediately moved from Paris to England (*see id.* ¶ 7); and (iv) promptly began working in England for another company in another industry (*see id.* ¶ 8). These dissociative acts demonstrate that Mr. Hoskins engaged in "[a]ffirmative acts inconsistent with the object of the conspiracy." *U.S. Gypsum Co.*, 438 U.S. at 464.

Indeed, Mr. Hoskins's resignation from Alstom fully disabled his ability to participate in the alleged conspiracy. The Indictment alleges that "in his capacity" as an ASVP at Alstom's parent company, Mr. Hoskins "approv[ed]" the selection of and "authorize[ed]" payments to third-party consultants. (*See* Ind. ¶ 7.) By resigning from Alstom, Mr. Hoskins affirmatively relinquished any such "capacity." As Mr. Hoskins's continued employment at Alstom was a necessary prerequisite to participation in the conspiracy, his resignation foreclosed the possibility of any further participation in the conspiracy on his part. *See Nerlinger*, 862 F.2d at 974.

And, as written notice of Mr. Hoskins's departure from Alstom was widely distributed—by Mr. Hoskins and others—to Mr. Hoskins's former colleagues (some of whom are alleged co-conspirators), his abandonment was also "communicated in a manner reasonably calculated to reach co-conspirators." *U.S. Gypsum Co.*, 438 U.S. at 464. Indeed, given the direct and unambiguous e-mails referenced above, there is no doubt that the news of his departure in fact reached his alleged co-conspirators.

In sum, Mr. Hoskins's affirmative acts of resigning from Alstom, moving to England, starting a new job in a new industry, and informing his colleagues and alleged co-conspirators of the same demonstrate that he severed ties with Alstom in a manner reasonably calculated to reach his alleged co-conspirators.

2. Mr. Hoskins Did Not Promote the Alleged Conspiracy Following His Resignation

Following his departure from Alstom, other than one holiday-greeting e-mail, Mr. Hoskins never communicated with or received anything from *any* of the alleged individual co-conspirators referred to in the Indictment. (Hoskins Aff. ¶ 11.) Likewise, in the more than one million pages of discovery and witness statements produced by the government to date, there is *not one* document demonstrating that Mr. Hoskins had *any* involvement or contact with the conspiracy or any conspirators after his departure from Alstom. And, despite repeated requests for disclosure of any such evidence, the government has pointed us to none. Nor does the Indictment allege a single overt act by Mr. Hoskins after his departure from the company—the last identifying him being March 30, 2004—five months prior to his resignation. (*See* Ind. ¶ 77.) Thus, Mr. Hoskins severed ties with his alleged co-conspirators and the conspiracy in general as of August 2004.

Even Mr. Hoskins's post–August 2004 contact with the company in general was *de minimis.* As set forth in his detailed affidavit, other than attending his farewell reception in October 2004, allowing his former secretary to send a one-line e-mail conveying holiday greetings to former colleagues in December 2004, and briefly meeting a few Alstom executives on one occasion in 2007, Mr. Hoskins had no contact with Alstom. (*See* Hoskins Aff. ¶¶ 10–11.) These minimal contacts did not bear any relation to—let alone occur in furtherance of—any alleged conspiracy.

Thus, given Mr. Hoskins's complete and permanent disassociation from all of his alleged co-conspirators, he could not have promoted the alleged conspiracy post-resignation.

3. Following His Resignation, Mr. Hoskins Did Not Receive Any "Additional Benefits" From the Alleged Conspiracy

The Second Circuit has also held that a claim of withdrawal fails where the defendant received "*additional* benefits *from the conspiracy*" following the putative withdrawal. *Berger*, 224 F.3d at 118 (emphases added). Here, because Mr. Hoskins had no contact with any of his alleged conspirators following his departure from Alstom, it follows that he also received no benefits—financial or otherwise—from the alleged conspiracy after August 31, 2004. (Hoskins Aff. ¶ 12.) Beyond Mr. Hoskins's sworn statement, the voluminous discovery and witness statements produced by the government to date likewise are devoid of information showing that Mr. Hoskins received any "additional benefit" from the alleged conspiracy after his resignation. And, again, despite requests, the government has not produced any such evidence.

Mr. Hoskins did not even receive any "additional benefit" from *Alstom* after he left the company. Post-resignation, Mr. Hoskins neither owned stock in the company nor possessed any options to purchase shares. (*Id.*) In fact, Mr. Hoskins *never* had any ownership interest in Alstom. (*Id.*) Nor did he receive any payment of any kind from Alstom following his departure from the company: no bonus, no deferred compensation, and no gifts. (*Id.*)

As described in his affidavit, Mr. Hoskins has a small pension that he funded from his salary (along with matching contributions from Alstom) *during* his 35 months of employment at Alstom; neither he nor Alstom made any contributions to the pension *after* his employment terminated on August 31, 2004. Thus, the pension cannot constitute the receipt of an "*additional* benefit *from* the conspiracy"; the money was neither "from the conspiracy" nor an "additional benefit" obtained as a result of the conspiracy's ongoing post-resignation operations. *Berger*,

224 F.3d at 118–19 (emphases added). *See also United States* v. *Eisen*, 974 F.2d 246, 269 (2d Cir. 1992) (in contrast with the instant case, resignation from law firm insufficient to constitute withdrawal where defendant received profits from actual conspiracy after resignation).

4. Precedent Uniformly Supports a Finding that Mr. Hoskins Has Established Withdrawal as a Matter of Law

Based on the foregoing analysis and the proffered evidence, Mr. Hoskins has more than met his burden of establishing by a preponderance of the evidence that he withdrew from any alleged conspiracy as a matter of law. Not only did Mr. Hoskins sever ties with the alleged criminal conduct and his alleged co-conspirators when he resigned from Alstom as of August 31, 2004, he has had no contact with them in the ten years since. When coupled with his multiple, open and obvious affirmative steps of disassociation from the conspiracy—submission of a resignation letter, written notification to coworkers (including alleged co-conspirators) of his departure, moving to a different country, and starting another job in another industry—Mr. Hoskins's total lack of any further involvement with the conspiracy or alleged co-conspirators, establishes withdrawal. Accordingly, Mr. Hoskins satisfies both the Supreme Court's and the Second Circuit's criteria for withdrawal. *See Berger*, 224 F.3d at 118–19.

This inescapable conclusion is supported by applicable case law. At least twice the Second Circuit has found withdrawal as a matter of law in analogous scenarios to the instant case. In *Goldberg*, for instance, the Second Circuit reversed the securities fraud conviction of a participant in a "boiler room" conspiracy and directed the district court to enter a judgment of acquittal based upon the fact that the defendant in question withdrew from the conspiracy as a matter of law. 401 F.2d at 649–50. In *Goldberg*, the court held that the defendant in question established withdrawal by resigning his employment in a manner that "reached his co-conspirators" and, thereafter, engaged in no further illegal activity. *Id.* The same is true here.

Similarly, in *Nerlinger*, 862 F.2d at 974–75, the Second Circuit held that a defendant's resignation from a brokerage firm, when combined with his closing of an account that his wife had set up and that he maintained specifically for use in the fraud, constituted an "explicit withdrawal" from the conspiracy. The court noted that the defendant's affirmative conduct "disabled him from further participation and made that disability known to [his co-conspirator]." *Id.* at 974.[10] Again, Mr. Hoskins satisfies this standard.

The Third Circuit has also directed a district court to enter a judgment of acquittal based on a finding of withdrawal through resignation. In *Steele*, a General Electric executive was charged with participating in a conspiracy to bribe government officials in Puerto Rico to obtain the rights to build a power plant there. 685 F.2d 793. The defendant in question resigned from GE five years and five days before the indictment was filed. *See id.* at 798, 802–03. The court concluded that the defendant's resignation from GE, when combined with no further participation in the alleged conspiracy, constituted withdrawal as a matter of law. *Id.* at 803.

Taken together, the results in *Goldberg*, *Nerlinger*, and *Steele*, provide stark parallels to the facts of Mr. Hoskins's case. In each case, the defendants established withdrawal as a matter of law by resignation and refraining from any further conduct in connection with the alleged conspiracies.[11]

In contrast to the foregoing cases where withdrawal was established, the cases involving resignation where the defendant's claims of withdrawal failed are all distinguishable from Mr.

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[10] Though not relevant to the precedential effect of the decision, the court's withdrawal analysis in *Nerlinger* related to whether co-conspirator statements could be admitted against him following his asserted withdrawal from the conspiracy. 862 F.2d at 974. Though the court held that the statements were inadmissible, the case did not involve a statute of limitations argument.

[11] In fact, the only meaningful distinction between the cases is how far past the expiration of the statute of limitations the various indictments were returned. In *Steele*, the indictment was obtained five days after expiration; in *Goldberg* the indictment was five months after expiration; for Mr. Hoskins, of course, the Indictment was returned four *years* after the statute of limitations expired. As noted, the indictment in *Nerlinger* was timely filed; the withdrawal point related to an evidentiary issue. 862 F.2d at 974–75.

Hoskins's circumstances; they each involve post-resignation acts by the defendant in furtherance of the conspiracy or additional benefits obtained from the conspiracy. *See Berger*, 224 F.3d at 118–19 (no withdrawal where resignation in question actually furthered fraudulent scheme and defendant during limitations period lied to law enforcement agents to conceal conspiracy); *Antar*, 53 F.3d 568, 582–84 (no withdrawal where Director and Executive Officer of Crazy Eddie retail chain, involved in RICO and securities fraud conspiracy, resigned positions but did not divest significant stock holdings in company and continued to conceal fraud despite subsequent attempt to take over company); *Eisen*, 974 F.2d at 269 (no withdrawal where defendant continued to receive profits of conspiracy after his resignation from law firm).

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Based on the foregoing, the issue of withdrawal can and should be determined in advance of trial and in Mr. Hoskins's favor *as a matter of law*; there is no question of fact for the jury to resolve on this issue. Simply put, the irrefutable evidence establishes that Mr. Hoskins resigned from Alstom on August 31, 2004, and, thereafter, committed no acts in furtherance of the conspiracy and received no additional benefits from the conspiracy. As such, Mr. Hoskins has met his burden to establish withdrawal by a preponderance of the evidence. Because withdrawal from a conspiracy terminates liability for all subsequent acts by conspirators, the five-year statute of limitations expired with respect to all charges in the Indictment on August 31, 2009. Accordingly, the Indictment should be dismissed in its entirety.

II. THE FCPA CHARGES ARE LEGALLY AND CONSTITUTIONALLY DEFECTIVE

The Indictment seeks to assert FCPA jurisdiction over Mr. Hoskins by claiming that he was "an agent of 'a domestic concern,'" to wit, an agent of Alstom's U.S. subsidiary. (Ind. ¶¶ 13, 102.) Yet, the provision of the FCPA charged—15 U.S.C. § 78dd–2—is not as elastic as the

Indictment implies. First, the Indictment's characterization of Mr. Hoskins as an agent is directly contradicted by the surrounding allegations. The Indictment makes plain that Mr. Hoskins was, by definition, not acting as an agent of (*i.e.*, under the control of) the U.S. subsidiary. Instead, he was acting "in his capacity as" an executive of the Alstom *parent* company with "oversight," "authorization," and "approval" responsibilities over the company's subsidiaries. (*See, e.g.*, *id.* ¶¶ 7, 13.) Thus, because the specific facts alleged in the Indictment fall beyond the scope of the FCPA, the Indictment fails to state an offense. Second, such a broad reading of the term "agent" would render this provision of the FCPA vague as applied to Mr. Hoskins. Third, even if the charge is neither facially defective nor vague as applied, the charge also fails because the statute does not apply extraterritorially and Mr. Hoskins engaged in no conduct within the United States.

Accordingly, as explained below, the substantive FCPA charges (Counts Two through Seven), the FCPA conspiracy change (Count One), and any theory of FCPA liability based on aiding and abetting, are all defective. To find otherwise would stretch the FCPA and the concept of agency far beyond what Congress intended, render the statute constitutionally vague as applied to Mr. Hoskins, and deprive him of fair warning of the statute's criminal prohibition. For these reasons, in addition to being time barred, Counts One through Seven should be dismissed.

A. The Limits of the FCPA

The government's view of FCPA jurisdiction in this Indictment exceeds the strict limitations that Congress expressly placed on extraterritorial reach of the statute. By targeting "foreign practices," Congress necessarily contemplated that the FCPA would sweep some extraterritorial activity into U.S. courts. And, there is no doubt that Congress intended certain provisions of the FCPA to have extraterritorial affect. *See, e.g.*, 15 U.S.C. § 78dd–2(i) (providing for jurisdiction

"irrespective of whether such United States person makes use of the mails or any means of interstate commerce . . . "). But, given the obvious jurisdictional implications of the FCPA's focus, Congress thus took care to identify and limit with precision the individuals and entities who are subject to the statute's prohibitions. Mr. Hoskins falls outside those clear limits.

The subdivision of the FCPA charged in the Indictment applies to certain prohibited conduct by any "domestic concern" or "any officer, director, employee, or agent of such domestic concern or stockholder thereof acting on behalf of such domestic concern." 15 U.S.C. § 78dd–2(a). Congress defined the term "domestic concern" to include both natural persons and business entities. 15 U.S.C. § 78dd–2(h)(1). Thus, a domestic concern is "any individual who is a citizen, national, or resident of the United States." 15 U.S.C. § 78dd–2(h)(1)(A). Likewise, as applicable to businesses, a domestic concern is also any business that "has its principal place of business in the United States, or which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States." 15 U.S.C. § 78dd–2(h)(1)(B).

Invoking 15 U.S.C. § 78dd–2(h)(1)(B), the Indictment identifies Alstom's U.S. subsidiary as a domestic concern. (Ind. ¶ 11.) The charges against Mr. Hoskins, however, go astray from there. Mr. Hoskins is not alleged to be a domestic concern himself. Nor could he be; he is a citizen of the United Kingdom and is not—nor has he ever been—"a citizen, national, or resident of the United States." Likewise, the Indictment does not allege that Mr. Hoskins was an "officer," "director," or "employee" of Alstom's U.S. subsidiary. He was none of those either; as the Indictment notes, Mr. Hoskins was an ASVP of Alstom's France-based parent company. (Ind. ¶¶ 7, 13.)[12]

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[12] The verbatim recitation of statutory language in the FCPA counts' charging paragraphs (¶¶ 26(a), 102) can be read to refer to Mr. Hoskins as himself a "domestic concern" and an "employee of a domestic concern." These two vestigial allegations appear in the Indictment because Mr. Hoskins's former co-defendant, William Pomponi (who has since pled guilty) was both a domestic concern (as a U.S. citizen) and an employee of one (Alstom's U.S. subsidiary). As noted, Mr. Hoskins is not "a citizen, national, or resident of the United States," nor was he an officer, director or employee of Alstom's U.S. subsidiary (or any other U.S. company). *See* 15 U.S.C. § 78dd-

The Indictment thus charges Mr. Hoskins with being an "agent" of Alstom's U.S. subsidiary. (Ind. ¶¶ 13, 102.) This label, however, does not stick. The express allegations in the Indictment describe something very different: a relationship between Mr. Hoskins and Alstom's U.S. subsidiary that has none of the characteristics of agency. The Indictment's own allegations make clear that Mr. Hoskins was not an agent of a domestic concern.

B. The Indictment Fails To Allege an Essential Element of the Crimes Charged

1. Applicable Law

a. Standard on Motion To Dismiss an Indictment

The Second Circuit recently reversed a trial conviction because the indictment was "legally insufficient" and should have been dismissed. *United States* v. *Aleynikov*, 676 F.3d 71, 75–76 (2d Cir. 2012). In laying out the governing legal standard, the court observed that "[s]ince federal crimes are 'solely creatures of statute,' a federal indictment can be challenged on the ground that it fails to allege a crime within the terms of the applicable statute." *Id.* (quoting *Dowling* v. *United States*, 473 U.S. 207, 213 (1985) (internal citations and parenthetical omitted)). As the district court in *Aleynikov* observed in dismissing a different count of the indictment in that case, "[d]ismissal is *required* where the conduct alleged in the indictment as a factual basis for the offense is not actually prohibited by the language of the statute." *United States* v. *Aleynikov*, 737 F. Supp. 2d 173, 177–78 (S.D.N.Y. 2010) (Cote, J.) (emphasis added); *see also United States* v. *Panarella*, 277 F.3d 678, 685 (3d Cir. 2002) (holding "a charging document fails to state an offense if the specific facts alleged in the charging document fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation."); *United*

2(h)(1) (defining domestic concern). Thus, the government's theory of liability (as set forth in ¶ 13) is that Mr. Hoskins "was an agent of a 'domestic concern,' [Alstom's U.S. subsidiary] as that term is used in the FCPA."

States v. *Rowland*, No. 3:14cr79, 2014 WL 3341690, at *6 n.3 (D. Conn. July 8, 2014) (Arterton, J.) (same) (quoting *United States* v. *Bergrin*, 650 F.3d 257, 264–65 (3d Cir. 2011)).

A motion to dismiss claiming that an indictment does not charge an offense "may be raised at any time." *United States* v. *Crowley*, 236 F.3d 104, 108 n.6 (2d Cir. 2000). Whether an indictment charges an offense "squarely presents an issue of law determinable before trial." *United States* v. *Heicklen*, 858 F. Supp. 2d 256, 263 (S.D.N.Y. 2012) (Wood, J.). The question is whether the "alleged activities, accepted as true, are prohibited by the statute." *Id*. Here, the allegations—accepted as true—reveal that Mr. Hoskins was not an agent of Alstom's U.S. subsidiary and, as such, his conduct was not prohibited by the FCPA.[13]

b. Agency Does Not Exist Absent Control by the Principal

The FCPA does not define the term "agent." Thus, where Congress has provided no definition for a term in a statute, "courts first 'consider the ordinary, common-sense meaning of the words.'" *United States* v. *Bodmer*, 342 F. Supp. 2d 176, 183 (S.D.N.Y. 2004) (quoting *United States* v. *Dauray*, 215 F.3d 257, 260 (2d Cir. 2000)). *See United States* v. *Santos*, 553 U.S. 507, 511 (2008) ("When a term is undefined, we give it its ordinary meaning.") (citation omitted)). Further, it is "well established that where Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." *Cmty. for Creative Non-Violence* v. *Reid*, 490 U.S. 730, 739 (1989) (quotation omitted). Applying these time-worn principles here, the allegations in the Indictment do not comport with the ordinary meaning of the term "agent."

[13] To be clear, this motion does not challenge the Indictment based on either a lack of particularity or on the sufficiency of the government's evidence. Rather, this motion is squarely directed at the specific facts alleged in the Indictment, which fall beyond the scope of the FCPA as a matter of statutory interpretation.

The *sine qua non* of agency is control. Indeed, even the U.S. Department of Justice acknowledges this basic fact, noting in its FCPA guidance that "[t]he fundamental characteristic of agency is control." U.S. Dep't of Justice & U.S. Sec. & Exch. Comm'n, A Resource Guide to the U.S. Foreign Corrupt Practices Act 27 (2012). The Justice Department's embrace of this notion undoubtedly stems from the fact that the concept of control is engrained in the common law understanding of the term. For instance, in its distillation of the common law on the topic, the Restatement (Third) of Agency defines agency as "the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf *and subject to the principal's control*, and the agent manifests assent or otherwise consents so to act." Restatement (Third) of Agency § 1.01 (2006) (emphasis added). Literally hundreds of cases across the country cite the Restatement for this precise point.

Federal common law is in accord with, and indeed, often relies expressly upon the Restatement. *See Transamerica Leasing, Inc.* v. *Republica de Venezuela*, 200 F.3d 843, 849 (D.C. Cir. 2000) (recognizing that principal-agent relationship requires principal to have "'the right to control the conduct of the agent with respect to matters entrusted to [the agent]'") (quoting Restatement (Second) of Agency § 14 (1958))); *In re Shulman Transp. Enters, Inc.*, 744 F.2d 293, 295–96 (2d Cir. 1984) (no agency absent critical element of control by principal over funds collected by alleged agent); *United States* v. *Lahey*, 967 F. Supp. 2d 731, 748 (S.D.N.Y. 2013) (Karas, J.) ("It is paradigmatic that any agency relationship—that is, a relationship whereby one individual acts on behalf of another—requires 'the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.'" (quoting Restatement (Second) of Agency § 1(1) (1958)) (citation omitted)).

Likewise, state common law is also in line with this well-accepted view.[14] *See, e.g.*, *Johnson* v. *Priceline.com*, 711 F.3d 271, 277 (2d Cir. 2013) (under Connecticut law, an agency relationship requires, inter alia, "an understanding between the parties that the principal will be in control of the undertaking") (quotation omitted).[15]

2. The Indictment's Allegation that Mr. Hoskins Was an Agent of a Domestic Concern Is Facially Defective

Though the Indictment labels Mr. Hoskins as an agent of Alstom's U.S. subsidiary—a domestic concern—it does so in name only. What the Indictment actually describes regarding that relationship is something different. The Indictment places Mr. Hoskins in a position of predominance to the U.S. subsidiary. It says Mr. Hoskins was an ASVP at the Alstom parent company. (Ind. ¶¶ 7, 13.) It says Mr. Hoskins's responsibilities in that position included "oversight" of the subsidiaries' business efforts in Asia. (*Id.* ¶ 13.) He is further alleged to be among those who "approved" and "authorized" the retention of consultants. (*Id.* ¶ 7.) And he is said to have engaged in all of this conduct "in his capacity" as an ASVP at the Alstom parent company. (*Id.*)

The role these allegations carve out for Mr. Hoskins is not that of an agent of Alstom's U.S. subsidiary. This is evident in three ways:

First, the description of Mr. Hoskins's role does not square with the ordinary definition of the term agent, which hinges on control. The control, as the Indictment describes it, is in the hands of Mr. Hoskins, not the subsidiaries. Mr. Hoskins is the one said to be exercising "oversight" and "approving" and "authorizing." Employees of the U.S. subsidiary are the ones

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[14] Although this Court is not bound by state law in its interpretation of the FCPA, *see generally Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), state law may aid the court in its determination of the meaning of "agent."

[15] Even beyond the realm of law, the common understanding of the term agent incorporates the concept of control. *See, e.g.*, Merriam-Webster's Dictionary of Law 19 (1996) (defining agent as "a person or entity (as an employee or independent contractor) authorized to act on behalf of *and under the control of another* in dealing with third parties." (emphasis added)).

seeking the approval of Mr. Hoskins, not the other way around. Even the relatively few overt acts referring to Mr. Hoskins make clear that the subsidiaries were not in control of his conduct. One subsidiary employee, for instance, advises Mr. Hoskins that his "position" on a consultancy is needed and asks for Mr. Hoskins's "decision a.s.a.p." (*Id.* ¶ 40.) Another employee of the U.S. subsidiary (Mr. Pomponi) asks whether certain payment terms "would be acceptable" to Mr. Hoskins. (*Id.* ¶ 70.)

Second, and more fundamentally, the Indictment says Mr. Hoskins was acting in his capacity as an ASVP *for the Alstom parent company* when he is alleged to have ultimately given his approval and authorization. (*Id.* ¶ 7.) In other words, the Indictment itself says Mr. Hoskins was not acting in the capacity of an agent of the U.S. subsidiary, or any other domestic concern, when he engaged in the very conduct that is at the heart of the case against him.

Finally, none of the characteristics that subordinate an agent to a principal are part of the description of Mr. Hoskins's conduct in this case. The Indictment does not say that Mr. Hoskins was controlled by the U.S. subsidiary, or any of its employees. It does not say Mr. Hoskins was supervised by the U.S. subsidiary, or that the U.S. subsidiary had the authority to assess his performance or instruct him how to do his job, or that Mr. Hoskins needed the U.S. subsidiary's permission or approval for any decision he had to make. It is not alleged that the U.S. subsidiary could fire Mr. Hoskins. None of the hallmarks of an agency relationship is alleged.

An indictment is not immune to dismissal merely because it tracks the right words from the applicable statute. *See United States* v. *Aleynikov*, 676 F.3d at 73, 76–80. Aleynikov, a computer programmer, was alleged to have stolen upon his departure from Goldman Sachs & Co. a highly valuable computer source code for the company's proprietary high-frequency trading system by uploading the code to a server in Germany. *Id.* at 73–74. The indictment charged him with

transmitting stolen "goods" overseas, in violation of the National Stolen Property Act, 18 U.S.C. § 2314. *Id*. at 74. The Second Circuit reversed Aleynikov's trial conviction on the ground that the indictment was "legally insufficient." *Id*. at 76. Even though the indictment had used the statutory term "goods" to describe the source code, the Court held that the "plain and ordinary" meaning of "goods" did not include intangible items like the source code. *Id*. at 78–79.

Here, the FCPA charges should be dismissed for the same reason. It mattered not in *Aleynikov* that the indictment called the source code "goods" in name; the allegation was "legally insufficient" because the indictment's description revealed the source code to be something else. Similarly, labeling Mr. Hoskins an agent of a domestic concern should not be determinative here. Not when the balance of the Indictment has *him* doing the overseeing and *him* doing the approving and authorizing. Not when the Indictment has him acting for the parent company, and *not* the domestic concern, in the centerpiece episode of alleged crime. Looking at the allegations as a whole, and accepting them as true, the Indictment fails to allege an essential element of the charged crimes. The substantive FCPA counts should be dismissed as a result.

C. The FCPA Charges Are Also Constitutionally Flawed

A conclusion that the term "agent" is susceptible to an interpretation that sweeps within its meaning the conduct attributed to Mr. Hoskins would render the FCPA unconstitutionally vague as it is being applied to Mr. Hoskins. Mr. Hoskins could not have had fair notice that his conduct as a member of the parent company—overseeing, approving, and authorizing certain activity of subsidiary companies—could somehow result in a conclusion that he was acting under the control of a subsidiary company. It is beyond counter-intuitive.

An Indictment may be challenged on grounds that it failed to provide fair warning of the criminal conduct at issue. *See, e.g.*, *Bodmer*, 342 F. Supp. 2d at 189 (dismissing indictment on the ground that statute did not provide constitutionally required fair warning). The Supreme Court has

often recognized "[t]he basic principle that a criminal statute must give fair warning of the conduct that it makes a crime." *Bouie* v. *City of Columbia*, 378 U.S. 347, 350 (1964)*; see also McBoyle* v. *United States*, 283 U.S. 25, 27 (1931) (Holmes, J.) (criminal statutes must provide "fair warning . . . in language that the common world will understand, of what the law intends to do if a certain line is passed."); *United States* v. *Harriss*, 347 U.S. 612, 617 (1954) ("[N]o man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."); *United States* v. *Lanier*, 520 U.S. 259, 265 (1997) (quoting *Bouie*, *McBoyle*, and *Harriss*).

The Constitution does not abide impermissibly vague statutes, and courts must avoid novel interpretations that expand terms beyond their natural meaning. *See Lanier*, 520 U.S. at 266. The touchstone of the inquiry asks whether the statute, either standing alone or as construed by courts, made it reasonably clear at the time of the defendant's conduct that the conduct was criminal. *See Id*. at 267. Measured against these principles, Mr. Hoskins lacked fair warning that he could be deemed an agent of Alstom's U.S. subsidiary, and consequently he lacked fair warning that the FCPA would apply to him. As a result, the substantive FCPA counts should also be dismissed on due process grounds.

First, the statute is unconstitutionally vague as applied to Mr. Hoskins: the meaning of "agent" is clear on its face, but applying the term to Mr. Hoskins, as explained above, contravenes the statute's plain meaning. A statute is vague as applied to a defendant if it fails to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Dickerson* v. *Napolitano*, 604 F.3d 732, 741 (2d Cir. 2010) (quoting *Grayned* v. *City of Rockford*, 408 U.S. 104, 108 (1972)). A person of ordinary intelligence would not have understood Mr. Hoskins to be an agent of a domestic concern and thus someone who would come within the scope of persons subject to the FCPA. *See Winters* v. *New York*, 333 U.S. 507,

515–16 (1948) (vagueness challenge may arise from scope of persons subject to statute) (citing *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939)); *Bodmer*, 324 F. Supp. 2d at 189.

Given the corporate structure of Alstom, Mr. Hoskins's predominant role at the parent company vis-à-vis the U.S. subsidiary, including his oversight responsibilities, and the nature of his interactions with the U.S. subsidiary's employees, reasonable minds would not have thought that an agency relationship existed, much less one in which Mr. Hoskins played the subordinate role. *See McBoyle*, 283 U.S. at 26–27 (defendant lacked fair notice that "airplane" was within scope of statute covering "motor vehicle," even where term was defined to include not only "automobile," but also "any other self-propelled vehicle not designed for running on rails").

Second, because the term agent is facially clear, any interpretation drawing Mr. Hoskins within its scope would constitute judicial overreach. *See Lanier*, 520 U.S. at 266. Courts are barred from engaging in such unforeseeable and retroactive judicial expansions of narrow and precise statutory language. *See Bouie*, 378 U.S. at 352. As the Supreme Court explained in *Bouie*, broad judicial interpretations of narrowly constructed statutes can pose an even greater risk to due process than facially vague provisions:

> When a statute on its face is vague or overbroad, it at least gives a potential defendant some notice, by virtue of this very characteristic, that a question may arise as to its coverage, and that it may be held to cover his contemplated conduct. When a statute on its face is narrow and precise, however, it lulls the potential defendant into a false sense of security, giving him no reason even to suspect that conduct clearly outside the scope of the statute as written will be retroactively brought within it by an act of judicial construction.

378 U.S. at 352. The *Bouie* Court was construing a state statute that prohibited entering premises after being given notice not to enter. *Id.* at 349–50. The state court had interpreted the statute also to prohibit remaining on premises after being asked to leave, even if entry was initially permitted. *Id.* at 350. That reading, the Court held, retroactively broadened a statute that was clear and precise on its face such that the defendants could not even have speculated whether their conduct

was prohibited. *Id.* at 355. The principle applies here. Mr. Hoskins could not fairly have anticipated being brought within the scope of the FCPA as an agent of a domestic concern. "Agent" is a concise term with a clear meaning that does not cover Mr. Hoskins, for the reasons given above. A contrary interpretation would deprive him of fair warning and contravene *Bouie*.

Third, any contrary interpretation of the term "agent" as used in the FCPA would render that term ambiguous and, as such, the rule of lenity would apply. While congressional intent should be examined to resolve potential ambiguities prior to applying the rule of lenity (*see United States* v. *Cullen*, 499 F.3d 157, 164 (2d Cir. 2007)), courts should not attempt to play the part of mind reader when interpreting a criminal statute, nor should they resolve statutes in light of Congress's presumptive intent to facilitate prosecutions. *See Santos*, 553 U.S. at 515, 519. The rule of lenity requires that ambiguities in a criminal statute be resolved in favor of the defendant. *United States* v. *Bass*, 404 U.S. 336, 348 (1971). As Justice Scalia noted in *Santos*, "[t]his venerable rule . . . vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain." *Id.* at 514. *See United States* v. *Plaza Health Labs, Inc.*, 3 F.3d 643, 649 (2d Cir. 2000) ("[B]efore a man can be punished as a criminal under the Federal law his case must be 'plainly and unmistakably' within the provisions of some statute.") (quoting *United States* v. *Gradwell*, 243 U.S. 476, 485 (1917)). While we submit that the term "agent" has only one accepted meaning, a conclusion that Mr. Hoskins's conduct as alleged in the Indictment meets the definition of agent would render the statute ambiguous on its face. *See Bodmer*, 342 F. Supp. 2d at 189 (holding that FCPA charge "contravenes the constitutional fair notice requirement, and the rule of lenity demands its dismissal"); *see also Aleynikov*, 676 F.3d at 82 (noting that conclusion broadening scope of

statute in question would render it "facially ambiguous" and would require that ambiguity "be resolved in favor of lenity." (internal quotation marks and citation omitted)).

Based on the foregoing, the substantive FCPA charges are also constitutionally flawed and, as such, must be dismissed.

D. The Charged FCPA Provision Does Not Apply Extraterritorially

The substantive FCPA charges are also infirm because the charged provision of the FCPA does not apply extraterritorially. The "presumption against extraterritoriality" reflects the "presumption that United States law governs domestically, but does not rule the world." *Kiobel* v. *Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1664 (2013) (internal quotation marks omitted). As the Second Circuit recently observed, this presumption against extraterritoriality extends to criminal statutes. *See United States* v. *Vilar*, 729 F.3d 62, 74 (2d Cir. 2013) ("the general rule is that the presumption against extraterritoriality applies to criminal statutes."). Thus, for both criminal and civil statutes, "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." *Morrison* v. *Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010) ("legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.").

A fortiori, when a statute clearly indicates an extraterritorial intent with respect to a certain class of actors, then the presumption against extraterritoriality must operate to prevent extraterritorial application with respect to other classes of actors. *See id.* at 265 ("[W]hen a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms."). The FCPA provision charged in the Indictment, 15 U.S.C. § 78dd–2, unequivocally criminalizes extraterritorial actions by U.S. persons only. *See* 15 U.S.C. § 78dd–2(i) ("It shall also be unlawful for any United States person to corruptly do any act *outside the United States* in furtherance of" a bribe to a foreign official.) (emphasis

added). Section 78dd–2 is silent with respect to the extraterritorial actions of non–U.S. persons such as Mr. Hoskins. Given Congress's clear intent with respect to the extraterritorial actions of U.S. persons—and its silence with respect to the extraterritorial actions of non–U.S. persons—the presumption against extraterritoriality must apply to bar charges against Mr. Hoskins for his alleged actions outside of the United States.

As the Second Circuit noted in *Vilar*, once a court determines that the presumption against extraterritoriality applies "the only question we must answer in an individual case is whether the relevant conduct occurred in the territory of a foreign sovereign." 729 F.3d at 74. Here, that question is answered easily: *all* of Mr. Hoskins's conduct "occurred in the territory of a foreign sovereign." The Indictment does not allege that Mr. Hoskins, a foreign national, engaged in *any* conduct within the United States. In fact, Mr. Hoskins did not even enter the United States in connection with his Alstom employment. (*See* Hoskins Aff. ¶ 9.) At most, the Indictment alleges that Mr. Hoskins sent two e-mails to a U.S. person, but the government has not alleged that either communication violated the FCPA. (*See* Ind. ¶¶ 67, 73.[16]) According to the Indictment, the substantive FCPA violations occurred when employees of Alstom's U.S. subsidiary made certain wire transfers of funds between 2005 and 2009, long after Mr. Hoskins had left Alstom. Thus, under *Vilar*, because all of Mr. Hoskins's relevant conduct occurred in the territory of a foreign sovereign, the substantive FCPA charges fail.

Because Sub-section 78dd–2(a) has no extraterritorial application, Counts Two through Seven should be dismissed.

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[16] Although, as noted by the Court in *Morrison*, some domestic activity is anticipated in most cases, this reality is insufficient to undermine the strong presumption against extraterritoriality. *Morrison*, 561 U.S. at 266 ("For it is a rare case of prohibited extraterritorial application that lacks all contact with the territory of the United States. But the presumption against extraterritoriality would be a craven watchdog indeed if it retreated to its kennel whenever some domestic activity is involved in a case.").

E. Because the Substantive FCPA Charges Are Defective, the Conspiracy and Aiding and Abetting Charges Should Also Be Dismissed

The flaws in the substantive FCPA counts also doom the conspiracy charge (18 U.S.C. § 371), and any FCPA culpability premised upon aiding and abetting (18 U.S.C. § 2).

The criminal penalty for violating Section 78dd–2(a) only applies to foreign nationals who, engaging in conduct in the United States, fit into one of five classes of natural persons: an officer, director, employee, or agent of a domestic concern, or stockholder acting on behalf of such domestic concern. 15 U.S.C. § 78dd–2(g)(2)(A). By circumscribing the reach of the FCPA in this way, Congress intended to exclude all other foreign nationals from Section 78dd–2's jurisdictional reach. Because Mr. Hoskins does not fall within the class of natural persons Congress defined for criminal liability under Section 78dd–2, he cannot be liable for the offense in an inchoate form.

In *Gebardi* v. *United States*, the Supreme Court held that when Congress affirmatively chooses to exclude a certain class of individuals from liability under a criminal statute, the government cannot circumvent that intent by alleging conspiracy. *See* 287 U.S. 112, 121–23 (1932). The *Gebardi* rule has been applied in the FCPA context. In *United States* v. *Castle*, the Fifth Circuit held that foreign officials not themselves subject to the FCPA's criminal penalties could not be held criminally culpable for conspiracy to violate the FCPA. *See* 925 F.2d 831, 835 (5th Cir. 1991). The court observed that, because Congress exempted foreign officials from prosecution under the FCPA, it would be "absurd" to take away that exemption by permitting prosecution for conspiracy under 18 U.S.C. § 371. *Id*. at 833, 836. Similarly, in *United States* v. *Bodmer*, the Southern District of New York noted (and the government conceded) that where the FCPA did not apply to the defendant, a charge for conspiracy to violate the FCPA must be dismissed pursuant to *Gebardi*. *See* 342 F. Supp. 2d at 181 & n.6 ("[W]here Congress passes a substantive criminal statute that excludes a certain class

of individuals from liability, the Government cannot evade Congressional intent by charging those individuals with conspiring to violate the same statute.").

The Second Circuit has recognized that the principle underlying *Gebardi* is equally applicable to aiding-and-abetting charges under 18 U.S.C. § 2. In *United States* v. *Amen*, 831 F.2d 373, 381 (2d Cir. 1987), the court considered whether a person could aid and abet a violation of the continuing criminal enterprise statute when the person could not himself violate the statute because he was not the head of an enterprise. Noting that the statute was carefully crafted to target ringleaders, not underlings, the Second Circuit, relying on *Gebardi*, held that "[w]hen Congress assigns guilt to only one type of participant in a transaction, it intends to leave the others unpunished for the offense." *Id.* Thus, the court recognized that it would be contrary to Congress's intent to hold defendants liable for aiding and abetting the violation of a statute that necessarily excluded them from direct culpability.

Here, the conspiracy and aiding-and-abetting charges should be dismissed under *Gebardi* and *Amen*. Congress intended to exempt from the FCPA foreign nationals that fall outside of certain designated classes, and the Indictment does not properly allege that Mr. Hoskins falls into any of those classes. He is not an agent of a domestic concern, nor is he subject to extraterritorial jurisdiction by virtue of conduct in the United States. Allowing the conspiracy or aiding-and-abetting charges to proceed, where the substantive FCPA charges fail, would contravene Congress's intended exemption. *See Gebardi*, 287 U.S. at 121–23; *Amen*, 831 F.2d at 381.

Finally, because the FCPA charges do not apply extraterritorially, the corresponding conspiracy and aiding-and-abetting charges must also be dismissed. Federal courts have repeatedly found that ancillary offenses, including conspiracy and aiding and abetting, are only deemed to confer extraterritorial jurisdiction to the extent of the offenses underlying them. *See*,

e.g., *United States v. Ali*, 718 F.3d 929, 939 (D.C. Cir. 2013) ("Generally, the extraterritorial reach of an ancillary offense like aiding and abetting or conspiracy is coterminous with that of the underlying criminal statute."); *United States v. Hill*, 279 F.3d 731, 739 (9th Cir. 2002) ("[A]iding and abetting[ ] and conspiracy . . . have been deemed to confer extraterritorial jurisdiction to the same extent as the offenses that underlie them.")

* * *

In sum, in addition to being time-barred, the FCPA charges (Counts One through Seven) suffer from multiple fatal defects stemming from the mislabeling of Mr. Hoskins as an agent of a domestic concern. Based on the settled definition of the term and constitutional notice principles, the charges should be dismissed. Likewise, the charges should be dismissed due to the presumption against extraterritoriality as applied to 15 U.S.C. § 78dd–2.

III. VENUE IS NOT PROPER FOR THE MONEY-LAUNDERING COUNTS

The District of Connecticut is not a proper venue for the money-laundering charges. The applicable venue provision of the money-laundering statute charged in the Indictment provides that venue lies only in the district where "the financial or monetary transaction is conducted." 18 U.S.C. § 1956(i)(1).[17] Further, the money-laundering statue defines "conduct" to mean either "initiating, concluding, or participating in initiating, or concluding a transaction." 18 U.S.C. § 1956(c)(2).[18]

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[17] Section 1956(i)(1) states that venue is proper in:

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

Section 1956(i)(1)(B) applies only to money-laundering offenses that involve the proceeds of specified unlawful activity. However, the Indictment does not allege violations of the money-laundering statute involving proceeds. Instead, the Indictment charges violations of Section 1956(a)(2)(A), which criminalizes international transactions intended "to promote the carrying on of specified unlawful activity" without regard to proceeds.

[18] The money-laundering statute defines "transaction" to include "a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition." 18 U.S.C. § 1956(c)(3).

There is no allegation that the predicate financial transactions were conducted in the District of Connecticut; the Indictment alleges, instead, that the transactions were conducted (*i.e.*, initiated) from Maryland by a third-party consultant (long after Mr. Hoskins left Alstom). (*See* Ind. ¶ 113.) As a result, the money-laundering conspiracy and substantive counts must be dismissed.

This conclusion is required by the Supreme Court's decision in *United States* v. *Cabrales*, 524 U.S. 1, 6–8 (1998). In *Cabrales*, a unanimous Supreme Court held that venue for money-laundering statutes could not be predicated on the location of the specified unlawful activity underlying the money-laundering allegations. *Id.* at 7; *see also United States* v. *Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1190 ("[V]enue is not proper in a district in which the only acts performed by the defendant were preparatory to that offense."). Rather, the Court held that venue was only proper where the money-laundering transactions "began, continued and were completed . . . ." *Cabrales*, 524 U.S. at 8.[19] Here, the money-laundering transactions are alleged to have begun in Maryland and been completed in Indonesia. Thus, venue for these allegations exists only in the District of Maryland.

Because the substantive counts cannot be brought in this District, the money-laundering conspiracy in Count Eight must also be dismissed. *See United States* v. *Saavedra*, 223 F.3d 85, 89 (2d Cir. 2000) ("Where, as in the case at hand, a defendant is charged with conspiracy as well as substantive offenses, venue must be laid in a district where all the counts may be tried."). Finally, to the extent the alleged liability is predicated on a charge of aiding and abetting, the alleged money-laundering violations must also be dismissed for lack of venue because, as the

[19] Congress added Section 1956(i) to the money-laundering statute in response to *Cabrales*, but this statute confers venue based on the location of the specified unlawful activity only for cases involving proceeds. *See* 18 U.S.C. 1956(i)(1)(B). Because the Indictment does not allege money laundering of "proceeds" of the specified unlawful activity, venue cannot be properly conferred based on the alleged location of the underlying specified unlawful activity, just as it could not in *Cabrales*.

Second Circuit has held: "Venue is proper where the defendant's accessorial acts were committed or where the underlying crime occurred." *See United States* v. *Smith*, 198 F.3d 377, 383 (1999). Here, Mr. Hoskins engaged in no conduct in Connecticut (indeed, he was gone from Alstom for more than a year before the first money-laundering transaction is alleged to have occurred). Thus, venue for an aiding abetting charge can only exist in the District of Maryland, if anywhere.

CONCLUSION

For the foregoing reasons, Mr. Hoskins's motion to dismiss the Indictment should be granted.

Dated: New York, New York
July 31, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2014, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing thorough the Court's CM/ECF System.

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