

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-20454-CR-BECERRA

UNITED STATES OF AMERICA

vs.

**CARL ALAN ZAGLIN,
ALDO NESTOR MARCHENA,
FRANCISCO ROBERTO COSENZA CENTENO,**

Defendants.

/

**DEFENDANT ZAGLIN'S
MOTION TO DISMISS**

The government has charged Defendant Carl Zaglin with conspiring to commit, and committing, alleged “bribery” pursuant to the Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1 *et seq.* (FCPA). *See* Dkt. # 3, pp. 3, 4, 8-10, 12, 16, 19-21. However, the Indictment fails to allege facts showing any conduct which meets the legal definition of bribery. Rather, the government alleges conduct which amounts to the payment of gratuities after an action had been performed.

The President of the United States has furthermore explicitly focused on the FCPA and existing enforcement actions under the Act, criticizing enforcement of the FCPA as “overexpansive,” “unpredictable” and “abused.” *See* Exec. Order No. 14209, 90 Fed. Reg. 9587 (Feb. 10, 2025) (Executive Order). This prosecution for bribery under the FCPA founded on alleged facts which do not constitute bribery amounts to precisely the sort of overexpansive and abusive enforcement of the FCPA condemned by the President in his Executive Order. The charges against Mr. Zaglin in this case fail to state an offense and directly conflict with public policy, and should be dismissed.

I. BACKGROUND

The government has charged Mr. Zaglin with conspiracy to violate the FCPA (Count 1), violating the FCPA (Count 2), and conspiracy to commit money laundering involving the proceeds of, or in order to promote, violations of the FCPA (Count 3). *See* Dkt. # 3, pp. 7-19. Its Indictment uses the terms “bribery” and “bribe” numerous times, and alleges that it was the object and purpose of the conspiracy “to offer, promise to pay, and pay bribes to Honduran government officials in order to obtain and retain contracts with, and receive payment from, the Honduran government, for and with, and direct business to [Mr. Zaglin’s company, Atlanco, LLC] and others.” *Id.* at 8.

The relevant facts alleged in the government’s Indictment allege that:

2. On or about June 25, 2015, [Bryan DeHart], on behalf of [Atlanco, LLC], executed a contract with [the Comité Técnico del Fideicomiso para la Administración del Fondo de Protección y Seguridad Poblacional (TASA)] whereby [Atlanco] agreed to provide the Honduran National Police with uniforms and accessories in return for over \$4.8 million (the “First Uniform Contract”). [Juan Molina] signed the First Uniform Contract as a legal representative of TASA.

3. On or about September 9, 2015, CARL ALAN ZAGLIN met with Luis Berkman and ALDO NESTOR MARCHENA at [Achieve GEA, LLC]’s office in Miami, Florida, in the Southern District of Florida, to discuss making bribe payments to Honduran government officials.

4. On or about October 6, 2015, CARL ALAN ZAGLIN, on behalf of Georgia Company 1, and ALDO NESTOR MARCHENA, on behalf of [Achieve GEA], executed a sham “Brokerage Agreement” to conceal the bribe payments to Honduran government officials. The Brokerage Agreement required [Atlanco] to pay [Achieve GEA] 25.4 percent of the revenue [Atlanco] received from TASA under the First Uniform Contract.

Dkt. # 3, pp. 9-10. In January and February of 2016, Atlanco made payments to Achieve GEA pursuant to the agreement, and in September of 2016 Marchena made a payment to Francisco Cosenza, an official with TASA. *Id.* at 10-11.

Similarly, the Indictment alleges that:

17. On or about October 26, 2016, [Bryan DeHart], on behalf of [Atlanco], executed a contract with TASA whereby [Atlanco] agreed to provide the Honduran National Police with uniforms and accessories in return for over \$5.6 million (the

"Second Uniform Contract"). [Molina] signed the Second Uniform Contract as a legal representative of TASA...

20. On or about February 6, 2017, CARL ALAN ZAGLIN and ALDO NESTOR MARCHENA executed a second sham "Brokerage Agreement," backdated to October 26, 2016, to conceal subsequent bribe payments to Honduran government officials.

Dkt. # 3, p. 12. Marchena then made payments to Cosenza and Molina. *Id.* at 12, 13, 14.

Mr. Zaglin, Marchena and Cosenza were indicted in November of 2023. *See* Dkt. # 3. On February 10, 2025, less than three weeks after assuming office, the President issued an Executive Order entitled "Pausing Foreign Corrupt Practices Act Enforcement To Further American Economic and National Security." *See* Executive Order. The President found that the FCPA "has been systematically, and to a steadily increasing degree, stretched beyond proper bounds and abused in a manner that harms the interests of the United States." *Id.* at § 1.¹ On April 11, 2025, the prosecution filed a Notice of Authorization to Proceed, advising that "the Government has completed its detailed review of the instant case as contemplated by Executive Order 14209... and intends to proceed to trial." Dkt. # 123.

II. ARGUMENT

The Constitution requires that an indictment contain the elements of the offense charged. *See United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007) (quoting *Hamling v. United States*, 418 U.S. 87, 119 (1974)). It may track the language of the statute that the defendant has been charged with violating "so long as it also alleges enough facts to inform the defendants what they

¹ Mr. Zaglin recognizes and acknowledges that the President's Executive Order expressly states that it "is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person." Executive Order, § 4(c). He respectfully submits that the Court may consider the governmental policies announced in the Executive Order, and in subsequent releases by the Department of Justice, in considering his legal arguments for dismissal of the charges against him.

have been charged with doing.” *United States v. Bazantes*, 978 F.3d 1227, 1246 (11th Cir. 2020) (citing *United States v. Bobo*, 344 F.3d 1076, 1083 (11th Cir. 2003)). ““An indictment not framed to apprise the defendant with reasonable certainty, of the nature of the accusation against him is defective, although it may follow the language of the statute.”” *United States v. Bobo*, 344 F.3d 1076, 1083 (11th Cir. 2003) (quoting *Russell v. United States*, 369 U.S. 749, 763 (1962)).

A. The Indictment Fails to Allege an Offense Under the FCPA

The Supreme Court, in *Snyder v. United States*, 603 U.S. 1 (2024), recently reaffirmed the rule that, “[a]s a general matter, bribes are payments made or agreed to before an official act in order to influence the official with respect to that future official act.” *Snyder v. United States*, 603 U.S. 1, 5 (2024). “[B]ribery requires that the official have a corrupt state of mind and accept (or agree to accept) the payment intending to be influenced in the official act.” *Id.* at 11 (citing *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404–405 (1999)). Furthermore, “[o]fficial-act bribery requires the ‘intent ‘to influence’ an official act,’ which means that there must be a ‘*quid pro quo*,’ or ‘a specific intent to give or receive something of value in exchange for an official act.”” *United States v. Whitman*, 887 F.3d 1240, 1247 (11th Cir. 2018) (quoting *Sun-Diamond Growers of Cal.*, at 404–405).

Bribes are distinct from gratuities. *See Snyder*, 603 U.S. at 6. “[T]he timing of the agreement is the key, not the timing of the payment...” *Id.* at 19. A payment made after an official act could be found to be a bribe “[i]f there were an agreement before the official act was complete to make a payment for that act...” *United States v. Macrina*, 109 F.4th 1341, 1351 (11th Cir. 2024). However, if there is no agreement to pay prior to the official act, a payment is a gratuity and not a bribe. The purpose of a bribe is to induce or influence a future action. *See United States v. Ng Lap Seng*, 934 F.3d 110, 132 (2d Cir. 2019) (“The FCPA... requires that each of these *quos* serves a

particular purpose, i.e., to assist the giver in ‘obtaining,’ ‘retaining,’ or ‘directing’ business”) (quoting 15 U.S.C. § 78dd-2(a)(1); 15 U.S.C. § 78dd-3(a)(1)).

The FCPA is a foreign bribery statute. *See United States v. Esquenazi*, 752 F.3d 912, 921 (11th Cir. 2014) (quoting *United States v. Kay*, 359 F.3d 738, 749 (5th Cir. 2004)). Its main prohibition provides that it is unlawful for any domestic concern to “corruptly” make use of the mail or an instrumentality of interstate commerce:

[C]orruptly, in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--

(1) any foreign official *for purposes of--*

(A)(i) *influencing any act or decision of such foreign official* in his official capacity, (ii) inducing such foreign official to do or omit to do any act in violation of the lawful duty of such official, or (iii) securing any improper advantage; or

(B) *inducing such foreign official to use his influence* with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

15 U.S.C. § 78dd-2(a) (emphasis added). Unless there is an agreement to pay prior to the decision to award any business, a payment made after business has already been obtained or retained constitutes the payment of a gratuity, and is not conduct within the scope of the FCPA. A payment made after business has been obtained or retained cannot influence or induce the award of the business.

The FCPA has never included gratuities within its scope. Congress has never added a gratuities provision to the FCPA in its amendments to the statute. The statute does not refer to “rewards” like the anti-bribery statute for state and local officials at issue in *Snyder*. *See* 18 U.S.C. § 666(a). The government’s own, 130-page FCPA “resource guide” furthermore references “gratuities” exactly once, in a footnote, and not in the context of being violative of the FCPA. *See*

The Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, p. 25 n. 160 (2d Ed.).

The foregoing authorities make clear that the FCPA applies only to bribes and not to gratuities. However, in the event that the Court finds any ambiguity in the breadth of the FCPA, the Court is urged to follow the Supreme Court’s reasoning in *Snyder* and to interpret its scope narrowly, pursuant to the rule that penal statutes are to be construed “strictly” against the government. *See Bittner v. United States*, 598 U.S. 85, 101 (2023). The then-U.S. Secretary of Treasury testified before the Senate Committee on Banking, Housing, and Urban Affairs during the passage of the FCPA that ““a law which provides criminal penalties must describe the persons and acts covered with a high degree of specificity in order to be enforceable, to provide fair warning to American businessmen.”” *United States v. Hoskins*, 902 F.3d 69, 86 (2d Cir. 2018) (quoting Foreign Corrupt Practices and Domestic and Foreign Investment Disclosure: Hearing on S. 305 Before the S. Comm. on Banking, Hous., & Urban Affairs, 95th Cong. 67 (1977)).

The Indictment in this case alleges that Atlanco and TASA executed the First Uniform Contract on or about June 25, 2015. *See* Dkt. # 3, p. 9. Over two months later, on or about September 9, 2015, Mr. Zaglin met with Marchena. *Id.* at 10. Nearly a month after that, on or about October 6, 2015, Marchena and Mr. Zaglin executed the brokerage agreement. *Id.* Marchena did not make any payment to any official until nearly a year later, in September of 2016. *Id.* at 10-11.

In regard to the Second Uniform Contract, the Indictment alleges that Atlanco and TASA executed the contract on or about October 26, 2016. *See* Dkt. # 3, p. 12. However, Marchena and Mr. Zaglin did not execute the second brokerage agreement until over three months later, on or

about February 6, 2017. *Id.* Marchena then made payments to foreign officials from February to May of 2017. *Id.* at 12, 13, 14.

The foregoing facts establish that the Honduran Uniform Contracts were awarded, agreed to and executed before the brokerage agreements to pay commissions were agreed to and any payments made. The Indictment fails to allege any facts showing any agreement between the defendants and any Honduran officials prior to the award or execution of the Uniform Contracts to give anything of value. The government does not allege facts showing any *quid pro quo*. At most, the Indictment charges an agreement to make payments after an official decision or act has taken place.

Without evidence of any prior agreement to make payments to influence or induce the decision or action, the payments cannot constitute alleged bribes for the purposes of the FCPA, and are similar to gratuities. As in the case of a gratuity, the payments in this case could not have influenced or induced the decision or action by TASA to award the Uniform Contracts to Atlanco for the reason that the contracts had already been awarded prior to the agreement to enter into the brokerage agreements. The FCPA was intended to curtail foreign bribery, however the Indictment in this case fails to charge facts showing any bribes.

In *Snyder*, a city awarded two contracts to a local truck company. *Id.* at 9. The following year, the company issued a check for \$13,000 to the city's mayor, Snyder. *Id.* Snyder was indicted and convicted for accepting an illegal gratuity in violation of 18 U.S.C. § 666. *Id.* at 9-10. The Supreme Court held that § 666 did not make it a federal crime for state and local officials to accept gratuities for their past official acts. *Id.* at 10. *See also United States v. Bongiovanni*, No. 19-CR-227, 2024 WL 3487914, at *5 (W.D.N.Y. July 19, 2024) (granting the defendant's motion for judgment of acquittal as to bribery count in the indictment, finding that "there was no

circumstantial evidence from which a jury could infer beyond a reasonable doubt that the payments were bribes, as opposed to being gratuities or benign exchanges between friends”). As in *Snyder*, the payments in this case were made after the official acts, and were therefore not alleged bribes but similar to gratuities. The government’s Indictment accordingly fails to state an offense for violation of the FCPA, and the FCPA charge in Count 2 of the Indictment should be dismissed as to Mr. Zaglin, as a matter of law. The government has not charged Mr. Zaglin with alleged payment of unlawful gratuities. The Indictment in this case provides no notice to Mr. Zaglin of any *quid pro quo* agreed to prior to TASA’s award of the Uniform Contracts to Atlanco for the purposes of the FCPA. Pursuant to *Snyder* and the rule of strict construction of criminal laws, the Court should construe the FCPA narrowly to not include the conduct alleged by the government, and should find that the government’s Indictment fails to allege a violation of the FCPA involving Mr. Zaglin and dismiss Count 2 of the Indictment. “[A]n indictment fails as a matter of law if the defendants’ charged conduct, even if true, does not violate the statute or provision cited in the indictment.” *United States v. Berdeal*, 595 F.Supp.2d 1326, 1328 (S.D.Fla. 2009).

B. The Failure to Allege an Offense Under the FCPA Invalidates the Charges for Conspiracy to Violate the FCPA and Conspiracy to Launder Proceeds of, or Promote, Violations of the FCPA

“Where the scheme to defraud alleged in the substantive count is not sufficient to state an offense, a conspiracy count based upon the charge must also be found deficient.” *Bobo*, 344 F.3d at 1086 (citing *McNally v. United States*, 483 U.S. 350, 361 (1987)). In failing to allege an agreement to influence Honduran officials prior to the award of the contract by TASA and thus failing to allege a violation of the FCPA, the prosecution has likewise failed to allege a conspiracy to violate the FCPA in Count 1 of the Indictment. *Id.* at 1086 (the Court of Appeals reversed the trial court’s denial of the defendant’s motion to dismiss the indictment where the Court could not

say that the defendant violated the health care fraud statute, and therefore the count against the defendant for conspiracy to violate the statute was deficient as a matter of law). The government's charge against Mr. Zaglin for conspiracy to commit money laundering in Count 3 of its Indictment fails on similar grounds. The Indictment charges that the "specified unlawful activity" supporting the alleged money laundering conspiracy is a felony violation of the FCPA. Dkt. # 3, p. 19. However, where there is insufficient evidence of the specified unlawful activity, a conspiracy charge based upon the activity must fail as well. *See United States v. Medina*, 485 F.3d 1291, 1300–1301 (11th Cir. 2007); *see also United States v. D'Alessio*, 822 F. Supp. 1134, 1146 (D.N.J. 1993) (finding that the money laundering counts in the indictment were required to be dismissed where the counts charging the specified unlawful activity had been dismissed). The Court should find that Count 1 and Count 3 fail to state offenses, and should dismiss the Counts as to Mr. Zaglin.

To support its charge for money laundering conspiracy, the government also alleges that the specified unlawful activity was "an offense against a foreign nation, specifically Honduras, involving bribery of a public official..." Dkt. # 3, p. 19. The prosecution cites to no provision of Honduran law in its indictment. 18 U.S.C. § 1956 provides that "specified unlawful activity" includes "bribery of a public official..." 18 U.S.C. § 1956(c)(7)(B)(iv). Gratuities, even alleged unlawful gratuities under 18 U.S.C. § 201(c), do not constitute alleged specified unlawful activity for the purpose of the money laundering statute. The prosecution's cursory and conclusory reference to alleged offenses against Honduras cannot salvage its Indictment, which fails to state a claim.

On the contrary, the prosecution's allegation of alleged offenses against Honduras renders its money laundering conspiracy charge defective and subject to dismissal. Mr. Zaglin possesses a due process right to fair notice of the law. *See United States v. Davis*, 588 U.S. 445, 464–465

(2019) (quoting *United States v. Lanier*, 520 U.S. 259, 265–266 (1997)). The money laundering conspiracy charge provides no notice of which law of Honduras the defendants allegedly intended to promote or carry out the violation of, or the alleged violation of which generated the proceeds involved in the transactions. “[N]ot every violation of foreign law is a ‘specified unlawful activity.’ To qualify, the ‘offense against a foreign nation’ must fall within the bounds of one of the listed categories—say, ‘bribery of a public official.’” *United States v. Polit*, No. 22-20114-KMW, 2023 WL 6849835, *4 (S.D. Fla. Aug. 17, 2023) (quoting *United States v. Chi*, 936 F.3d 888, 894 (9th Cir. 2019)).² Without reference to a specific Honduran criminal law, Mr. Zaglin lacks any notice as to whether his conduct violated section 1956. Furthermore, to the extent that bribery under Honduran law does not require proof of the elements of bribery under U.S. federal law, an alleged violation of Honduran bribery law cannot constitute bribery and therefore alleged specified activity under section 1956(c)(7)(B)(iv). The government’s indictment fails to sufficiently allege any specified unlawful activity as defined under 18 U.S.C. § 1956(c)(7), and should be dismissed.

The government’s charge for alleged conspiracy to violate the FCPA is also deficient on an additional ground. 18 U.S.C. § 371 states that:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

² An arguably similar argument was disregarded in *United States v. Polit*, No. 22-20114-KMW, 2023 WL 6849835 (S.D. Fla. Aug. 17, 2023), in which the defendant was charged with a scheme which involved taking bribes before an Ecuadorian court and the District Court found that the indictment provided fair notice of the essential elements of the charged offense, *id.* at *1, *5. However, the indictment in *Polit* charged that the defendant’s co-conspirators “made bribe payments to Polit in exchange for Polit’s influence as Comptroller General of Ecuador.” *Id.* at *2. As argued herein, the prosecution in this case has entirely failed to set forth any alleged bribes in exchange for any act or influence by any foreign official.

18 U.S.C. § 371. Section 371 “reaches ‘any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government.’” *Dennis v. United States*, 384 U.S. 855, 861 (1966) (quoting *Haas v. Henkel*, 216 U.S. 462, 479 (1910); *United States v. Johnson*, 383 U.S. 169, 172 (1966); citing *Lutwak v. United States*, 344 U.S. 604 (1953); *Glasser v. United States*, 315 U.S. 60, 66 (1942); *Hammerschmidt v. United States*, 265 U.S. 182, 188 (1924); Goldstein, *Conspiracy to Defraud the United States*, 68 Yale L.J. 405, 414-441, 455-458 (1959)); accord *United States v. Puerto*, 730 F.2d 627, 630 (11th Cir. 1984) (“Conspiracies in violation of section 371 need not cause any monetary loss to the government, so long as they interfere with or obstruct its lawful functions”) (citing *In re Sealed Case*, 676 F.2d 793, 815 (D.C.Cir. 1982)).

Mr. Zaglin recognizes that, pursuant to the “any offense” clause of section 371, the government need not allege that the United States was the intended victim of the conspiracy. See *United States v. Mendez*, 528 F.3d 811, 815 (11th Cir. 2008) (citing *Tanner v. United States*, 483 U.S. 107, 130 (1987)). Nevertheless, the government must establish that some function of the government was defeated, obstructed or impaired by the charged conduct. See *Mendez*, at 815, 816 (reversing the defendant’s conviction under section 371 where the government failed to prove that the defendant knew that the federal government was involved in the issuance of state commercial driver’s licenses or that the defendant intended to defraud the United States Department of Transportation); see also *United States v. Vanegas*, 294 F.Appx. 537, 540 (11th Cir. 2008) (*per curiam*) (same). No facts are alleged in the Indictment in this case with any tendency to establish that Mr. Zaglin knew that any of his alleged conduct would affect the functions of any department of the United States. See *United States v. Winter*, 509 F.2d 975, 982 (5th Cir. 1975) (“The case law clearly establishes that the District Court has jurisdiction over a conspiracy and all those proved to be conspirators if the conspiracy is designed to have criminal effects within the United States...”).

The prosecution's Indictment contains no facts to provide Mr. Zaglin with notice regarding how any of the alleged conduct defeated, obstructed or impaired any department or function of the government. The factual allegations in the Indictment fail to demonstrate how the charged conduct had any alleged effect within the United States.

The Indictment therefore fails to state an offense for alleged conspiracy to defraud the United States pursuant to section 371, and Count 1 of the Indictment must therefore be dismissed as to Mr. Zaglin. In addition, liability for alleged general conspiracy is inconsistent with liability under the FCPA itself. The final version of the FCPA passed by Congress in 1977 "named particular categories of individuals who would be liable under the FCPA rather than relying on the use of conspiracy and complicity principles to create such liability." *Hoskins*, 902 F.3d at 89 (citing Foreign Corrupt Practices Act, Pub. L. No. 95-213, §§ 103(a), 104(b)(3)(a), 91 Stat. 1494, 1495, 1497); *see also United States v. Castle*, 925 F.2d 831, 835 (5th Cir. 1991) (finding that in passing the FCPA, Congress intended that foreign officials would be covered by the statute "without resort to the conspiracy statute"). Furthermore, through being devoid of any allegation of any effect on the United States or any of its departments, the government's FCPA conspiracy charge is also contrary to current policy. The current head of the Criminal Division of the Department of Justice has publicly stated that "[c]onduct that does not implicate U.S. interest should be left to our foreign counterparts or appropriate regulators." *See Office of Public Affairs, United States Department of Justice, Head of Justice Department's Criminal Division Matthew R. Galeotti Delivers Remarks at American Conference Institute Conference* (Jun. 10, 2025). No government interests were implicated or affected through the charged conduct. The purposes of the FCPA itself weren't even implicated since there were no American or foreign competitors for the uniform contracts. The

Court should find the government's FCPA conspiracy charge fatally deficient and contrary to the policies underlying the FCPA, and therefore subject to dismissal for failure to state a claim.

C. Dismissal as to Mr. Zaglin Is Consistent With the Executive Order of the President of the United States

The President recognized in his Executive Order that the FCPA has been “systematically” and “steadily” “stretched beyond proper bounds and abused...” Executive Order, § 1.³ In *Snyder*, the Supreme Court emphasized that criminal statutes such as anti-bribery statutes like the FCPA which ““can linguistically be interpreted to be either a meat axe or a scalpel should reasonably be taken to be the latter.”” *Snyder*, 603 U.S. at 18 (quoting *Sun-Diamond Growers of Cal.*, 526 U.S. at 412). This case, as it concerns Mr. Zaglin, is emblematic of the abuse and overreaching under the FCPA denounced by the President in the Executive Order. As illustrated above, the government has brought a prosecution under the FCPA without facts showing any agreement or *quid pro quo* to bribe a foreign official within the scope of the FCPA. As one of the existing enforcement actions under the FCPA subject to the President's Executive Order, this action should be dismissed as contrary to public policy.

The Attorney General, furthermore, has announced that a priority for the Department of Justice is the prosecution of drug cartels and “transnational criminal organizations.” See Office of the Attorney General, Memorandum for All Department Employees, *Total Elimination of Cartels and Transnational Criminal Organizations* (Feb. 5, 2025). The new focus of the Department on cartels and criminal organizations has been confirmed in the recent Memorandum of the Deputy

³ Congress amended the FCPA in 1998. See *Hoskins*, 902 F.3d at 90. In the course of amending the statute, the report of the Senate Committee on Banking, Housing, and Urban Affairs observed that “[s]ince the passage of the FCPA, American businesses have operated at a disadvantage relative to foreign competitors who have continued to pay bribes without fear of penalty,” because their countries’ laws did not include comparable prohibitions on bribery.” *Id.* (quoting S. Rep. No. 105-277, at 2 (1998)).

Attorney General of the United States to the Head of the Department's Criminal Division, prepared pursuant to the President's Executive Order. *See* Deputy Attorney General of the United States' Memorandum, *Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA)* (June 9, 2025). Overbroad enforcement actions against domestic individuals and businesses under the FCPA, such as that in this case, should be abated on the basis that it is in conflict with current policy.

Lastly, in the event that dismissal of the charges as to Mr. Zaglin is somehow avoided, Mr. Zaglin requests that the Court conduct an *in camera* review of grand jury transcripts and specifically the prosecution's instructions to the grand jury concerning the FCPA, to determine whether the prosecution instructed the grand jury that it had to find an agreement or *quid pro quo* to make payments to officials prior to the official acts—i.e. the awarding and entering into of the two uniform contracts. In this case, the grand jury returned an indictment against Mr. Zaglin for alleged violation of the FCPA and conspiracy to violate the FCPA based upon facts which showed an agreement to make payments and payments made after the official acts had occurred, raising a question as to the instructions on the FCPA given to the grand jury and the sufficiency thereof. Courts have granted in camera review of grand jury transcripts under similar circumstances. *See United States v. Bravo-Fernandez*, 239 F. Supp. 3d 411, 415 (D.P.R. 2017) (finding that the defendant had demonstrated particularized need justifying an *in camera* review of grand jury instructions where the defendant alleged that the grand jury was mis-instructed that it could return an indictment based upon a gratuity which did not constitute a crime under the federal bribery statute); *United States v. Riley*, No. 3:20-CR-371, 2022 WL 103297, at *1 (N.D. Ohio Jan. 11, 2022) (agreeing to the defendant's request to review *in camera* the instructions to the grand jury “concerning charges about the need to find probable cause as to a *quid pro quo* agreement before

returning the indictment”). If the case is permitted to proceed, given the defects with the government’s FCPA claims raised by Mr. Zaglin and the President’s findings concerning enforcement under the FCPA, the Court should find that particularized need exists to examine whether or not the grand jury which returned the Indictment was properly instructed concerning alleged violations of the FCPA.

III. CONCLUSION

Based upon the facts and authorities set forth herein, Defendant Carl Zaglin respectfully requests that the Court grant Defendant’s Motion to Dismiss, and dismiss the charges in the Indictment against Defendant.

Respectfully submitted, this 26th day of June, 2025.

Robert M. Perez, P.A.
Counsel for Defendant Carl Zaglin
3162 Commodore Plaza, Suite 3E
Coconut Grove, Florida 33133
(305) 598-8889 - Office
E-mail: rperez@rmplawpa.com

S/Robert M. Perez.....
ROBERT M. PEREZ
Florida Bar Number: 477494

/s/ Craig A. Gillen
Craig A. Gillen, Esq.
/s/ Anthony C. Lake
Anthony C. Lake, Esq.
Counsel for Defendant Carl Zaglin
GILLEN LAKE & CLARK LLC
400 Galleria Parkway
Suite 1920
Atlanta, Georgia 30339
Telephone: (404) 842-9700
Fax: (404) 842-9750
Email: cgillen@glcfirm.com
aclake@glcfirm.com

Counsel for Mr. Carl Zaglin

CERTIFICATION

Pursuant to the Court's Order Setting Criminal Trial Date, Pretrial Schedule and Instructions, Doc. # 31, counsel hereby certifies that counsel has conferred with opposing counsel in a good faith effort to resolve by agreement the subject matter of this motion, and that counsel has been unable to resolve the issue by agreement.

S/Robert M. Perez.....
ROBERT M. PEREZ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically via CM/ECF on this 26th day of June, 2025.

Robert M. Perez, P.A.
Counsel for Defendant Carl Zaglin
3162 Commodore Plaza, Suite 3E
Coconut Grove, Florida 33133
(305) 598-8889 - Office
E-mail: rperez@rmplawpa.com

S/Robert M. Perez.....
ROBERT M. PEREZ
Florida Bar Number: 477494

Counsel for Mr. Carl Zaglin