

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 23-CR-20454-JB**

UNITED STATES OF AMERICA

vs.

**CARL ALAN ZAGLIN and
FRANCISCO ROBERTO COSENZA CENTENO,**

Defendants.

**GOVERNMENT’S RESPONSE IN OPPOSITION
TO DEFENDANT ZAGLIN’S MOTION TO DISMISS THE INDICTMENT**

The United States of America, by and through its undersigned counsel, hereby files this Response in Opposition to Defendant Zaglin’s Motion to Dismiss the Indictment. Dkt. No. 145 (the “Motion”). The 23-page, highly detailed Indictment charges Zaglin for his participation in a sophisticated and long-lasting bribery and money laundering scheme. The government’s allegations provide notice to Zaglin that far exceeds the applicable pleading standards, and the defendant’s attempts to rewrite the elements of the charged offenses have no merit. The Motion should be denied in its entirety.

I. RELEVANT FACTUAL BACKGROUND

A. The Indictment

On November 28, 2023, a federal grand jury in the Southern District of Florida returned a five-count indictment charging Zaglin, the owner and Chief Executive Offer of Georgia Company 1, a Georgia-based manufacturer of law enforcement uniforms, and others, for their involvement in a scheme to bribe Honduran government officials. Dkt. No. 3 (the “Indictment”). Zaglin is charged with conspiracy to violate the Foreign Corrupt Practices Act (“FCPA”) (Count 1), a substantive violation of the FCPA (Count 2), and conspiracy to commit money laundering (Count 3). Co-defendant Francisco Roberto Cosenza Centeno (“Cosenza”), a Honduran official while the

criminal conduct was ongoing, is also charged in Counts 3 through 5 of the Indictment for his participation in the scheme. Cosenza did not join in Zaglin's Motion.

The lengthy Indictment describes the corrupt scheme in significant detail. The Indictment alleges that Zaglin and others, including Georgia Company 1 executives and employees, conspired to bribe Honduran officials from approximately March 2015 through November 2019. *Ind.* at 7. Specifically, the Indictment alleges that the conspiracy began in or around early 2015 when Zaglin and his co-conspirators agreed to and did offer to pay, promise to pay, and authorize the payment of bribes to Honduran officials, including Cosenza, for the corrupt purpose of winning and securing payment on contracts with the Comité Técnico del Fideicomiso para la Administración del Fondo de Protección y Seguridad Poblacional ("TASA"), a Honduran government agency responsible for procuring uniforms and other goods for the Honduran military and law enforcement for which Cosenza served as Executive Director. *Id.* at 7–8. The contracts are alleged to be valued at over \$10 million. *See id.* at 9, 11.

The Indictment further alleges that, after securing the first contract, in or around September 2015, Zaglin and his co-conspirators began using Aldo Nestor Marchena ("Marchena") as an intermediary to deliver the agreed-upon bribe payments to Honduran officials, to help conceal the corruption, and to help launder the corrupt proceeds of the scheme.¹ *Id.* at 8–9. The Indictment alleges that the co-conspirators secured three contracts during the conspiracy and paid at least around two hundred thousand dollars to multiple foreign officials.

Finally, the Indictment alleges that, in 2019, Georgia Company 1 sought to win another lucrative contract with TASA and, in an attempt to do so, senior executives at the company,

¹ On June 5, 2025, Marchena pled guilty to a superseding information charging conspiracy to commit money laundering. Dkt. Nos. 135, 144.

including Zaglin, continued the conspiracy by again agreeing to bribe Honduran officials, and sent a corrupt offer to a consultant in the Southern District of Florida. *Id.* at 16–17.

With respect to the specific Counts, Count 1 charges Zaglin with conspiring to violate the FCPA from in or around March 2015 through in or around November 2019, in violation of 18 U.S.C. § 371. *Id.* at 7. Count 1 includes a detailed description of the object and purpose of the conspiracy, its manner and means, and alleges 53 overt acts in furtherance of the conspiracy, including acts performed by Zaglin. *Id.* at 7–17.

Count 2 charges Zaglin with a substantive violation of the FCPA, and alleges that, *inter alia*, on or about November 6, 2019, Zaglin violated the FCPA by aiding, abetting, and causing “Executive 1 to send an email to a consultant in the Southern District of Florida containing Georgia Company 1’s corrupt bid on a contract with TASA.” *Id.* at 17–18.

Count 3 charges Zaglin with conspiring to commit concealment and international promotional money laundering from in or around March 2015 through in or around November 2019. *Id.* at 18–19. The Indictment further charges that the specified unlawful activities were a felony violation of the FCPA and violation of Honduran law involving bribery of a public official, and the misappropriation, theft, and embezzlement of public funds by and for the benefit of a public official. *Id.* The money laundering conspiracy is predicated on the conduct charged in Counts 1 and 2. *Id.*

B. The Motion

Zaglin’s Motion asserts four principal arguments in seeking dismissal of the Indictment. First, it argues that the government has failed to properly charge a violation of the FCPA and therefore Count 2 must be dismissed. *Mot.* at 4–8. Second, and doubling down upon his first argument, Zaglin argues that the conspiracy counts (Counts 1 and 3) must also be dismissed because the government failed to properly charge a violation of the FCPA. *Id.* at 8–9. Third, Zaglin argues that the money laundering conspiracy charged in Count 3 should be dismissed

because the government did not plead particular statutory provisions of Honduran law that the government alleges were among the specified unlawful activities. *Id.* at 9–10. Fourth, Zaglin argues that Executive Order 14209, 90 Fed. Reg. 9587 (Feb. 10, 2025) (the “Executive Order”), necessitates dismissal of the Indictment on “public policy” grounds. *Id.* at 13–14. None of these arguments has merit.

Finally, the Motion requests that the court conduct an *in camera* review of the prosecution’s instructions to the grand jury concerning the FCPA to determine whether the grand jury was properly charged. *Id.* at 14–15. The Court should likewise deny this untimely and unsupported request.

II. LEGAL STANDARD

An indictment need only contain a “plain, concise, and definite written statement of the essential facts constituting the offense charged” and “give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.” Fed. R. Crim. P. 7(c)(1). In general, an indictment is required to allege only those facts and elements of the offense necessary to sufficiently inform the accused of the charge and to safeguard the accused from double jeopardy. *See Hamling v. United States*, 418 U.S. 87, 117 (1974) (“[A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense”). “An indictment is sufficient ‘if it: (1) presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enables the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense.’” *United States v. Steele*, 178 F.3d 1230, 1233–34 (11th Cir. 1999) (quoting *United States v. Steele*, 147 F.3d 1316, 1320 (11th Cir. 1998)).

“In determining whether an indictment is sufficient, [courts] read it as a whole and give it a ‘common sense construction.’” *United States v. Jordan*, 582 F.3d 1239, 1245 (11th Cir. 2009). “In judging the sufficiency of the indictment, the court must look to the allegations and, taking the allegations to be true, determine whether a criminal offense has been stated.” *United States v. Fitapelli*, 786 F.2d 1461, 1463 (11th Cir. 1986); *see also United States v. Poirier*, 321 F.3d 1024, 1029 (11th Cir. 2003) (when analyzing challenges to the sufficiency of an indictment, “the appropriate test . . . is not whether the indictment might have been drafted with more clarity, but whether it conforms to minimal constitutional standards”) (quoting *United States v. Varkonyi*, 645 F.2d 453, 456 (5th Cir. 1981)).

III. THE INDICTMENT MORE THAN ADEQUATELY ALLEGES THE CHARGED OFFENSES

The Indictment alleges all the elements of the charged counts and more than adequately informs Zaglin of the charges against him. Nothing more is required at this stage. The Court should reject Zaglin’s attempt to graft additional elements and a heightened pleading standard on the charged offenses. The Court should likewise reject his additional arguments, which are based on misstatements of the applicable law and the facts alleged in the Indictment.

A. Snyder has no bearing on this case

Relying heavily on *United States v. Snyder*, 603 U.S. 1 (2024), Zaglin argues that the FCPA “applies only to bribes and not to gratuities.” Mot. at 6.² But *Snyder*—which addresses a completely different statute—has no bearing on this case. First and most importantly, Zaglin concedes that the government has not charged him with paying gratuities. Mot. at 8 (“The government has not charged Mr. Zaglin with alleged payment of unlawful gratuities.”). Rather,

² In explaining the distinction between the two in the context of 18 U.S.C. § 666, the Supreme Court observed that, “Bribes are typically made or agreed to *before* an official act in order to influence the public official with respect to that future act.” *Id.* at 1 (emphasis in original). “Gratuities,” by contrast, “are typically payments made to a public official *after* an official act as a reward or taken of appreciation.” *Id.* (emphasis in original).

the Indictment explicitly charges Zaglin and his co-conspirators with offering to pay, promising to pay, and authorizing the payment of “bribes” to Honduran officials and using Marchena to send “bribe payments” to Cosenza and other officials. Ind. at 8–9. Moreover, as noted above, read in context, the Indictment alleges that a corrupt agreement was struck in or around March 2015 when the conspiracy began—that is, *before* the first TASA contract was awarded in June 2015. See Ind. at 7–10.³ Accordingly, the Court should reject Zaglin’s invitation to speculate how *Snyder* might apply to a hypothetical case involving a “reward or token of appreciation” paid to a foreign government official; this case presents no such question.

Second, as *Snyder* itself makes clear, its applicability is limited. Indeed, in holding that Section 666(a)(1)(B) does not prohibit state and local officials from accepting gratuities for their past official acts, the Court relied upon Section 666’s specific statutory structure, legislative history, elements, and punishment scheme—all of which are meaningfully different from the FCPA. See *id.* at 11. Therefore, even if this case did involve allegations of gratuities—which, as Zaglin concedes, it does not—*Snyder* would have no impact on the viability of the FCPA and related conspiracy charges in this case. See *United States v. Wakil*, No. 21-cr-20406-WILLIAMS, 2023 WL 2898510, at *5 (S.D. Fla. Feb. 14, 2023) (Dkt. No. 94), *R. & R. adopted and mot. to dismiss denied*, 2023 WL 2895154 (S.D. Fla. Apr. 11, 2023) (Dkt. No. 100) (defendant “fails to cite to a single case stating that where payment of a bribe is made after a payor had received the benefit of any bargain struck, no violation of the FCPA occurs. Nor has the Undersigned found any. Further, this argument is in tension with the FCPA’s language, broad application, and the facts alleged in the Indictment. As the Government notes the FCPA ‘contains no provision that the actual payment of a bribe must occur prior to business being awarded ... [and if Wakil’s]

³ Under *Snyder*, a corrupt payment made after an official act would still be regarded as a “bribe,” rather than a “gratuity,” if a corrupt offer or promise was made prior to the official act which was intended to be influenced. See *Snyder*, 603 U.S. at 18.

argument were true, this would create an outsized loophole that would allow bribe payment to occur so long as the payments were delayed.’’).⁴

B. The Indictment Sufficiently Charges a Violation of the FCPA in Count 2

The Motion, which repeatedly claims the government failed to properly charge a substantive violation of the FCPA, completely ignores the substantive violation of the FCPA charged in Count 2. The Indictment properly charges Zaglin with violating the FCPA in Count 2, which alleges:

On or about November 6, 2019, in St. Lucie County, in the Southern District of Florida, and elsewhere, the defendant, **CARL ALAN ZAGLIN** being a domestic concern and officer, director, employee and agent of a domestic concern, did willfully make use of, and aid, abet and willfully cause others to make use of, the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay and authorization of the payment of any money, offer, gift, promise to give and authorization of the giving of anything of value to a foreign official, and to a person while knowing that all and a portion of such money and thing of value would be and had been offered, given and promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing any improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist **CARL ALAN ZAGLIN, ALDO NESTOR MARCHENA**, Executive 1, Luis Berkman, Bryan Berkman, and others in obtaining and retaining business for and with, and directing business to, Georgia Company 1, New York Company 1, and others, as follows: **CARL ALAN ZAGLIN** caused, and aided and abetted, Executive 1 to send an email to a consultant in the Southern District of Florida containing Georgia Company 1’s corrupt bid on a contract with TASA. In violation of Title 15, United States Code, Section 78dd-2, and Title 18, United

⁴ *Snyder* is inapposite for the additional reason that it involved the “demand side” of domestic bribery, proscribed by 18 U.S.C. § 666(a)(1)(B), rather than the “supply side” of domestic bribery under 18 U.S.C. § 666(a)(2). *See United States v. Lee*, No. 23-1687, 2025 WL 636318 at 2 n.4 (9th Cir. Feb. 27, 2025) (finding *Snyder* “inapposite” to convictions under the federal programs bribery statute’s bribe *payor* provision, since *Snyder* concerned only a bribe *taker*) (citing *United States v. Shen Zhen New World*, 115 F.4th 1167, 1179 n.5 (9th Cir. 2024)). The FCPA proscribes only the “supply side” of foreign bribery, criminalizing acts in furtherance of schemes to bribe foreign officials. *See generally* 15 U.S.C. § 78dd-2; *United States v. Castle*, 925 F.2d 831, 832 (5th Cir. 1991) (FCPA does not criminalize receipt of bribes by foreign officials).

States Code, Section 2.

Ind. at 17–18. Count 2 is a plain and concise statement of the facts constituting the charged violation of the FCPA. It tracks the language of the statute and informs Zaglin of what he has been charged with doing and therefore is sufficient to meet the minimal standards of Rule 7(c). *See United States v. Bazantes*, 978 F.3d 1227, 1246 (11th Cir. 2020). Nothing more is required.

Rather than engage with the allegations in the substantive charge, Zaglin asks the Court to focus on a handful of the overt acts from 2015 and 2016 charged in Count 1 and, based only on those overt acts, to evaluate the sufficiency of the charged violation of the FCPA in Count 2. Specifically, Zaglin repeatedly claims that the government has failed to charge a *substantive* FCPA violation, because the *conspiracy* count does not allege a corrupt agreement that predates an “official act.” Mot. at 7–8. This argument is meritless.

As an initial matter, there is no requirement that the government must allege a corrupt agreement between a covered person and a foreign official in order to prove a violation of the FCPA (although such an agreement, if established, would be sufficient to satisfy the offer and intent requirements of the FCPA). Indeed, a bribe-payor can possess the requisite intent under the FCPA with no agreement at all. *See United States v. Esquenazi*, 752 F.3d 912, 936 (“[A]n ‘offer’ or a ‘promise to pay’ a foreign official for a business benefit is just as unlawful as an actual ‘payment’ under [the FCPA].”). Nor does the FCPA have an “official act” requirement. *See United States v. Ng Lap Seng*, 934 F.3d 110, 134 (2nd Cir. 2019) (concluding that 18 U.S.C. § 201’s “official act” standard does not apply to the FCPA). Accordingly, Zaglin’s claim that the government must allege and prove an “agreement to make payments to influence or induce the decision or action” to allege a substantive violation of the FCPA is contrary to the plain language of the statute. *See* 15 U.S.C. § 78dd-2.⁵

⁵ Zaglin also asks the Court to invoke the rule of lenity in interpreting the FCPA. *See* Mot. at 6. The Court should deny this request. “To invoke the rule of lenity, the court ‘must conclude

In addition, with respect to Count 2, Zaglin disregards the factual allegations forming the basis of the substantive FCPA violation. Count 2 charges Zaglin with aiding, abetting, and causing his business partner and employee to email a corrupt bid to a consultant on or about November 6, 2019. Ind. at 18. The conduct relates to a proposed contract from 2019, when Georgia Company 1 sought to win a third lucrative contract with TASA for the sale of uniforms to the Honduran National Police. Ind. at 16. The Indictment alleges that Zaglin and his colleagues discussed making bribe payments to Cosenza and others on the proposed contract. *Id.* The Indictment therefore makes clear that Zaglin is charged for his part in making a corrupt offer to Honduran officials in 2019 to obtain a new contract. *See Esquenazi*, 752 F.3d at 936 (an offer or a promise to pay a foreign official for a business benefit is unlawful); *see also Poirier*, 321 F.3d at 1029 (relying on other parts of the indictment to clarify charges).

C. The FCPA and money laundering conspiracies are properly pled

The Motion asserts that the FCPA and money laundering conspiracies should fail because the government failed to state an FCPA offense. Mot. at 8–9. The Court should reject this argument.

Count 1 alleges:

Beginning in or around March 2015, and continuing through in or around November 2019, in Miami-Dade and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendants, **CARL ALAN ZAGLIN and ALDO NESTOR MARCHENA**, did knowingly and willfully, that is, with the intent to further the objects of the conspiracy, combine, conspire, confederate, and agree with each other and with Executive 1, Luis Berkman, Bryan Berkman, and others known and unknown to the Grand Jury, to commit an offense against the United States, that is: being a domestic concern, and an officer, director, employee, and agent of a domestic concern, and a stockholder acting on behalf of a domestic concern, willfully and corruptly to make use of the mails and means and instrumentalities of interstate commerce in furtherance of an offer, payment,

that there is a grievous ambiguity or uncertainty in the statute.” *United States v. Baldwin*, 774 F.3d 711, 733 (11th Cir. 2014) (quoting *Muscarello v. United States*, 524 U.S. 125, 138–39 (1998)). The defense has pointed to no ambiguity or uncertainty in the statute, much less a grievous one.

promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value, to a foreign official or to a person, while knowing that all or part of such money or thing of value would be and had been offered, given, or promised to a foreign official, for purposes of (i) influencing acts or decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do or omit to do acts in violation of the lawful duty of such official; (iii) securing any improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect or influence acts or decisions of such government and agencies and instrumentalities, in order to assist **CARL ALAN ZAGLIN, ALDO NESTOR MARCHENA**, Executive 1, Luis Berkman, Bryan Berkman, and others in obtaining and retaining business for and with, and directing business to, Georgia Company 1, New York Company 1, and others, in violation of Title 15, United States Code, Section 78dd-2.

Ind. at 7–8. The Indictment accurately tracks the statutory language. The Indictment then details the object and purpose of the conspiracy and its manner and means. It alleges that Zaglin and others “offered to pay, promised to pay, and authorized the payment of bribes, directly and indirectly, to and for the benefit of Honduran government officials, including [Cosenza] and Foreign Official 1, in order to win contracts with, and secure payment from, TASA.” *Id.* at 8–9. The Indictment also alleges that Zaglin and others agreed to have Marchena pay bribes to Cosenza, Foreign Official 1, and others, and took steps to conceal the scheme, “including by creating shame contracts and fraudulent invoices[.]” *Id.* The Indictment sets forth 53 overt acts in furtherance of the conspiracy, which include specific alleged acts by Zaglin. *Id.* 9–17. For example, the Indictment charges Zaglin with executing sham brokerage agreements (OA 4, 20), emailing Luis Berkman about payments to Marchena (OA 31), and discussing making bribe payments to Cosenza and others on a proposed contract in October 2019 (OA 51).

Zaglin’s argument that the government must charge with specificity a corrupt agreement predating an “official act” fails for three reasons. First, as noted above, a corrupt agreement and “official act” are not essential elements of an FCPA violation, much less a conspiracy to violate the FCPA. The government therefore has no need to plead them.

Second, the government need not plead the object of a conspiracy in such detail. “[A]n indictment for conspiracy to commit a criminal offense need not spell out the elements of that offense in the same particularity that would be required from an indictment of the substantive offense.” *Brown v. United States*, 403 F.2d 489, 490 (5th Cir. 1968) (citing *Wong Tai v. United States*, 273 U.S. 77 (1927)); *see also United States v. Ramos*, 666 F.2d 469, 475 (11th Cir. 1982) (citing *Brown*) (“We observe that an indictment for conspiracy to commit a criminal offense need not be as specific as a substantive count.”). The Indictment meets this even lower standard for pleading the object of the conspiracy by tracking the statutory language of the FCPA and citing the statute. Ind. at 7–8.

Third, the Indictment nevertheless goes well beyond pleading the essential elements of a conspiracy and of its object, alleging—despite Zaglin’s claims to the contrary—that the defendant and his co-conspirators not only came to a criminal agreement to violate the FCPA, but also that beginning in or around March 2015, they in fact offered and agreed to bribe Honduran officials to obtain business advantages, as described above. The Indictment goes even further, alleging numerous overt acts including corrupt agreements between the co-conspirators and Honduran officials that predate benefits sought by the co-conspirators. *See* Ind. at 11–12, ¶¶ 14, 17 (charging that Marchena wired a \$20,000 bribe to Cosenza less than a month before Georgia Company 1 executed the Second Uniform Contract); *Id.* at 16–17, ¶¶ 52, 53 (alleging that in October 2019, Luis Berkman called Cosenza to confirm the amount of the bribe to be paid on a proposed contract, approximately a month before a Georgia Company 1 executive emailed a corrupt bid to a consultant).⁶

⁶ Zaglin’s remaining arguments seeking dismissal of Count 1 are wholly without merit. First, Zaglin seeks dismissal of Count 1 because the government did not charge Zaglin with impeding a government function, a fraud theory the government sometimes advances to prove a conspiracy to defraud the United States under § 371. Mot. at 10–12. Here, the government charged Zaglin with conspiring to commit an offense against the United States, which is a different offense than conspiring to defraud the United States. Because the government charged Zaglin with

Count 3 also properly pleads a conspiracy to commit money laundering. The Indictment tracks the statutory language, charging Zaglin with conspiring to commit money laundering during the same period as the FCPA conspiracy. The Indictment cites the relevant statutes and describes the two objects of the conspiracy (concealment and international promotional money laundering), and the two specified unlawful activities (a felony violation of the FCPA and an offense against Honduras involving bribery of a public official, and the misappropriation, theft, and embezzlement of public funds by and for the benefit of a public official). The preceding 17 pages of the Indictment, including the General Allegations section, which is explicitly incorporated, make clear that the money laundering conspiracy is based on the same conduct charged in Counts 1 and 2. *See Poirier*, 321 F.3d at 1029; *United States v. Hooshmand*, 931 F.2d 725, 735 (11th Cir.1991) (noting that “practical, rather than technical considerations govern the validity of an indictment”).

The defendant’s reliance on *United States v. Bobo*, 344 F.3d 1076 (11th Cir. 2003), is misplaced. In *Bobo*, the Eleventh Circuit dismissed an indictment charging health care fraud and conspiracy to commit health care fraud because the “indictment [did] not specify the scheme or artifice to defraud” and contained “no indication of what the government contended was unlawful about Dr. Bobo’s conduct.” *Id.* at 1084 (“[T]he government made no mention in the indictment of a federal statute which prohibits the type of conduct alleged here.”). In essence, the Eleventh Circuit held that, taking the allegations of the Indictment as true, what the defendant did was not

conspiracy to commit an offense, the government need not prove that Zaglin impaired, obstructed, or defeated the lawful function of a department or government. *See United States v. Mendez*, 528 F.3d 811, 815 (11th Cir. 2008) (explaining that proof required to support conspiracy to commit an offense is different than conspiracy to defraud the United States).

Second, Zaglin states that “liability for alleged general conspiracy is inconsistent with liability under the FCPA itself[,]” citing *United States v. Hoskins*, 902 F.3d 69, 86 (2d Cir. 2018). *Id.* at 12. Numerous courts, including the Second Circuit in *Hoskins*, have affirmed that covered persons can be charged for conspiring to violate the FCPA under § 371. *Hoskins* held that a non-covered person could not be held criminally liable for conspiracy to violate the FCPA. That issue is not present here, as Zaglin and every person charged as a co-conspirator in the FCPA conspiracy is a covered domestic concern.

illegal. No such deficiencies are present here. As described above, the government properly pled that Zaglin corruptly agreed to pay, and in fact caused the payment of, bribes to foreign officials, conduct that even Zaglin does not question is illegal under the FCPA. Ind. at 8. Moreover, unlike *Bobo*, in which the conspiracy count was based on a single, albeit improperly pled health care scheme, the conspiracies charged in this case are based on a much broader set of conduct—lasting from 2015 through 2019—than the single substantive violation of the FCPA charged in Count 2.

IV. THE GOVERNMENT PROPERLY PLED SPECIFIED UNLAWFUL ACTIVITIES BASED ON HONDURAN LAW

The defendant also seeks dismissal of Count 3 because the Indictment does not cite specific provisions of Honduran law. Mot. at 9–10. This argument is meritless. Numerous courts, in this district and elsewhere, have held that an indictment alleging money laundering where the specified unlawful activity is a violation of foreign law need not cite the specific foreign law statute violated. For example, the Ninth Circuit Court of Appeals held that a citation to a foreign statute is not necessary for a properly pled indictment. In *United States v. Lazarenko*, a money laundering and wire fraud prosecution involving the former Prime Minister of Ukraine, the appellate court affirmed the denial of defendant’s motion to dismiss based on the fact the indictment, which charged, *inter alia*, conspiracy to commit and substantive money laundering, did not cite the specific Ukrainian statute constituting the specified unlawful activity. The court held that “[n]othing in our case law supports requiring the government to plead a specific violation of foreign law in an indictment.” *United States v. Lazarenko*, 564 F.3d 1026, 1033–1034 (9th Cir. 2009).

More recently, Judge Dimitrouleas of the Southern District of Florida relied on *Lazarenko* to deny a nearly identical motion to the one Zaglin now brings. In *United States v. Claudia Patricia Diaz Guillen*, Diaz Guillen and two others were charged with conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h), and two substantive counts of money

laundering, in violation of 18 U.S.C. § 1956(a)(2)(A). Superseding Indictment, *United States v. Claudia Patricia Diaz Guillen*, 18-80160-CR-WPD (S.D. Fla. Dec. 12, 2020). In language that is nearly identical to that found in the Indictment, Diaz Guillen’s superseding indictment alleged that the specified unlawful activity was “an offense against a foreign nation, specifically Venezuela, involving bribery of a public official and the misappropriation, theft, and embezzlement of public funds by or for the benefit of a public official.” *Id.* Diaz Guillen moved to dismiss the indictment for failure to cite the specific Venezuelan statute alleged to have been violated. Judge Dimitrouleas denied the motion, holding that it found *Lazarenko* “persuasive.” Order (Dkt. No. 210), *United States v. Claudia Patricia Diaz Guillen*, 18-80160-CR-WPD (S.D. Fla. Oct. 18, 2022). *See also United States v. Ng Chong Hwa*, 18-CR-538 (MKB), 2021 WL 11723583, at *34–35 (E.D.N.Y. 2021) (“the Court is unaware of a case that dismissed an indictment for money laundering for failing to state the foreign statute which was violated.”).⁷

V. THE DEPARTMENT OF JUSTICE AUTHORIZED THIS CASE FOR PROSECUTION PURSUANT TO THE PRESIDENT’S EXECUTIVE ORDER

Having failed to establish any legal grounds to dismiss the Indictment, Zaglin urges the Court—without citing any decisional authority—to grant his Motion as a matter of “public policy.” Mot. at 13. In support of this argument, Zaglin relies on the Executive Order and related Department of Justice memoranda, including the Attorney General’s February 5, 2025 Memorandum, *Total Elimination of Cartels and Transnational Criminal Organizations* (the “AG Memo”), and the Deputy Attorney General’s Memorandum, *Guidelines for Investigations and*

⁷ The government has in fact provided notice of the provisions of Honduran law it may rely on at trial, noticing its expert and producing a declaration detailing the relevant Honduran law provisions. *See* Dkt. No. 108 (expert notice). In addition, Zaglin is wrong when he claims that any specified unlawful activity under Honduran law must be coterminous with U.S. bribery law. *See United States v. Chi*, 936 F.3d 888, 898 (9th Cir. 2019). The Court need not decide the issue, though, because it is not ripe. Zaglin has not identified any Honduran statute that he contends cannot be used as a foreign law SUA.

Enforcement of the Foreign Corrupt Practices Act (the “FCPA Guidelines”) (together with the AG Memo, the “DOJ Memos”)—all of which *expressly* state that they do not create any substantive rights. The Court should reject this gambit as both contrary to bedrock legal principles and the DOJ Memos themselves.

For starters, the Supreme Court has long recognized that “[i]n our criminal justice system, the Government retains ‘broad discretion’ as to whom to prosecute.” *Wayte v. United States*, 470 U.S. 598, 607 (1985) (quoting *United States v. Goodwin*, 457 U.S. 368, 380 n.11 (1982)). Charging decisions, which are “rarely simple,” implicate complex considerations including the strength and importance of a case, the prosecution’s general deterrence value, the Government’s enforcement priorities, and the allocation of resources. *See Town of Newton v. Rumery*, 480 U.S. 386, 396 (1987). *See also United States v. Armstrong*, 517 U.S. 456, 464 (1996) (“The Attorney General and United States Attorneys retain broad discretion to enforce the Nation’s criminal laws.”) (cleaned up); *United States v. Cespedes*, 151 F.3d 1329, 1332 (11th Cir. 1998) (“[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978)); *United States v. Thompson*, 253 F.3d 700 (5th Cir. 2001) (unpublished) (upholding grant of motion *in limine* to prevent counsel from comparing defendant’s conduct to that of other uncharged or immunized witnesses).⁸ Indeed, the Executive Order is expressly premised on this “Policy of Enforcement Discretion.” *See* Executive Order, Sec. 2. The Executive Order also

⁸ For these same reasons, the government also intends to file a motion *in limine* precluding Zaglin’s counsel from introducing testimony related to the Executive Order or the DOJ Memos, or cross-examining witnesses on the government’s charging decisions. *See United States v. Re*, 401 F.3d 828, 833 (7th Cir. 2005) (counsel is not permitted to invade the Government’s charging decisions when such decisions “are not relevant to the issue of the defendant’s guilt or innocence.”). *See also* Fed. R. Evid. 403.

makes clear that it “is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable . . . against the United States.” *Id.* at Sec. 4(c). The DOJ Memos contain identical language. *See* AG Memo at 1 n.1; FCPA Guidelines at 1 n.1. In analogous contexts, the Eleventh Circuit has held that such language precludes any argument that Department of Justice guidance documents carry the force of law. *See San Pedro v. United States*, 79 F. 3d 1065, 1070-1071 (11th Cir. 1996) (United States Attorney’s Manual does not create any substantive rights).

In any event, as the Court is aware, the Executive Order required that the Attorney General “review in detail all existing FCPA investigations or enforcement actions and take appropriate actions with respect to such matters” *See* Executive Order, Sec. 2 (ii). Such a review was conducted in this case and, following that review, the Government was authorized to proceed to trial. *See* Dkt. No. 123. Zaglin may disagree with that decision, but there is simply no legal basis for dismissing an Indictment on “public policy” grounds, much less on grounds that have already been thoroughly and fully considered in accordance with the Executive Order and with the Department of Justice’s internal processes.⁹ *See generally United States v. Ucciferri*, 960 F.2d 953, 954-955 (11th Cir. 1992) (reversing trial court decision for dismissing case on public policy grounds reflecting the court’s conviction that the case should have been brought in state court) (citing *United States v. Mann*, 517 F.2d 259 (5th Cir. 1975) (“Defendants further assert that this

⁹ Elsewhere in the Motion, Zaglin also mischaracterizes public remarks made by Acting Assistant Attorney General Matthew Galeotti, the head of the Department of Justice’s Criminal Division, to argue that “No government interests were implicated or affected through the charged conduct,” because “there were no American or foreign competitors for the uniform contracts.” *See* Mot. at 12. Mr. Galeotti’s full remarks, summarizing the Deputy Attorney General’s FCPA Guidelines, made clear that FCPA enforcement “is not about the nationality of the subject or where the company is headquartered. In plain terms, conduct that genuinely impacts the United States or the American people is subject to potential prosecution by U.S. law enforcement.” In fact, Zaglin and his co-conspirators competed with other American companies for contracts with the Honduran government, depriving them of a fair playing field. In any event, as discussed above, the Department of Justice determined that Zaglin’s conduct merited prosecution.

prosecution contravenes the public policy of the United States by attempting to regulate private business through criminal prosecutions. It is not for the courts to decide whether criminal prosecution contravenes . . . ‘public policy.’ Indeed, it has been stated that public policy favors the unencumbered enforcement of the criminal laws”) (cleaned up)).

VI. THE COURT SHOULD DENY THE DEFENDANT’S REQUEST FOR *IN CAMERA* REVIEW OF GRAND JURY TRANSCRIPTS

Finally, Zaglin requests that the Court conduct an *in camera* review of grand jury transcripts to determine whether the prosecution properly instructed the grand jury concerning the FCPA. Mot. at 14. Specifically, Zaglin asks the Court to determine whether the government instructed the jury that “it had to find an agreement or *quid pro quo* to make payments to officials prior to the official acts.” *Id.* The Court should deny the request.

It is well established in the Eleventh Circuit that a “party seeking disclosure of grand jury material must show a compelling and particularized need for disclosure.” *United States v. Aisenberg*, 358 F.3d 1327, 1348 (11th Cir. 2004) (citing *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958)). Here, the defendant has failed to meet that high threshold standard.

As an initial matter, Zaglin has failed to identify any deficiencies in the Indictment. Moreover, it would make no sense for the Court to review the prosecution’s instructions to determine if it instructed the grand jury as Zaglin suggests, because Zaglin misstates the law. For example, the government is not required to prove a corrupt agreement, much less an “official act,” in order to prove beyond a reasonable doubt that Zaglin violated the FCPA. The anti-bribery provisions of the FCPA prohibit offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision of the official, or to secure any other improper advantage, in order to obtain or retain business. *See* 15 U.S.C. § 78dd-2. Thus, an offer to pay bribes to obtain or retain business, done with the

requisite intent, violates the FCPA, even if no agreement or *quid pro quo* is struck.¹⁰ Zaglin’s focus on an “official act” is drawn from inapposite caselaw concerning a completely different statute, not the FCPA. *See* Mot. at 4–5 (citing cases analyzing 18 U.S.C. § 666). Zaglin’s request for review of instructions to the grand jury therefore falls far short of the “compelling and particularized need” required in order to infringe upon the long-established policy that grand jury proceeds in federal courts should be kept secret. *Aisenberg*, 358 F.3d at 1349.¹¹

VII. CONCLUSION

The defendant’s arguments are meritless. The United States therefore respectfully requests the Court deny the Motion in its entirety.

Respectfully submitted,

HAYDEN P. O’BYRNE
UNITED STATES ATTORNEY

By: /s/ Eli S. Rubin
Eli S. Rubin (Court ID No. A5503535)
Assistant United States Attorney

99 N.E. 4th Street
Miami, FL 33132
Tel: (305) 961-9421
Fax: (305) 536-4651
Email: Eli.Rubin@usdoj.gov

¹⁰ As noted above, however, proof of a corrupt agreement would also satisfy the offer and intent elements of the FCPA.

¹¹ Nor does *United States v. Bravo-Fernandez*, 239 F. Supp. 3d 411, 415 (D.P.R. Mar. 7, 2017), support Zaglin’s request. There, the district court based its decision to review the grand jury material on the fact that prior to the First Circuit’s decision invalidating a gratuity-based prosecution under § 666, there was “no reason to believe that it would be improper to premise [such a prosecution] on a gratuity theory.” *Id.* at 415–16. Because there is no similar, intervening controlling caselaw here, and because the facts pled support the conspiracy and substantive FCPA counts, *Bravo-Fernandez* is inapposite, and grand jury secrecy should not be disturbed.

LORINDA I. LARYEA
ACTING CHIEF, FRAUD SECTION
Criminal Division
U.S. Department of Justice

By: /s/ Peter L. Cooch
Peter L. Cooch (A5502804)
Clayton Solomon (Court No. 72851)
Trial Attorneys
1400 New York Ave. NW
Washington, DC 20005
Tel: (202) 929-6259
Email: Peter.Cooch@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 10, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record.

/s/ Peter L. Cooch
Peter L. Cooch
DOJ Trial Attorney