

DOJ Global Corruption Efforts Beyond the FCPA

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In summary

Recent US law enforcement has increasingly relied upon alternatives to the Foreign Corrupt Practices Act (FCPA) to police global corruption. These include the wire fraud and money laundering statutes, which can reach conduct that occurs primarily outside the United States and that may be outside the reach of the FCPA. Second Circuit courts have largely upheld the government's efforts, but a recent acquittal of a non-US individual shows juries may check extraterritorial pursuits.

Discussion points

- The FCPA criminalises the payment of bribes to foreign officials by specifically-identified categories of chargeable individuals
- The Department of Justice has relied on the money laundering and wire fraud statutes to prosecute non-US individuals and foreign officials
- The transfer of funds between US banks may satisfy money laundering statute requirements
- Wire transfers passing through the United States may establish jurisdiction
- Second Circuit courts have generally upheld the government's interpretation of the money laundering and wire fraud statutes' extraterritorial application

Referenced in this article

- Foreign Corrupt Practices Act anti-bribery provisions
- 18 USC Section 1956 and 1343
- *United States v Hoskins*
- *United States v Boustani*
- DOJ investigations and prosecutions involving Petroleos de Venezuela SA
- *United States v Thiam*
- *Bascuñán v Elsaca*
- *United States v Napout*

Introduction

Although courts have reined in the application of the Foreign Corrupt Practices Act (FCPA) anti-bribery provisions in the past two years, the US Department of Justice (DOJ) shows no sign of scaling back its global anti-corruption efforts. In fact, it appears to be expanding them, at least in part by using different laws – such as those prohibiting money laundering and wire fraud – to target individuals engaged in foreign bribery conduct that may be outside the scope of the FCPA. Courts have thus far upheld the application of these statutes to such conduct, even where the bribery is alleged to have occurred largely overseas and entirely between non-US individuals.

Hoskins and its limitation on the DOJ under the FCPA

In November 2019, Lawrence Hoskins was found guilty of FCPA and money laundering violations following a jury trial in the United States District Court for the District of Connecticut. According to the evidence, Hoskins, a non-US citizen employed by a UK subsidiary of a French company, had hired consultants who bribed Indonesian officials in order to win energy contracts for a US subsidiary of the French company. Following a pre-trial interlocutory appeal in which the Second Circuit ruled that the DOJ could not charge Hoskins with ‘conspiring to violate the FCPA, or aiding and abetting a violation of it, if he did not fit into one of the statute’s categories of defendants,’¹ the government obtained a conviction based on the theory that Hoskins, as an ‘agent’ of the US subsidiary, acted in furtherance of the US subsidiary’s bribe payments with the US subsidiary’s knowledge and assent.²

After the trial, the district court took the unusual step of reversing the verdict and entering a judgment of acquittal on the FCPA counts.³ While acknowledging the evidence put forward by the government (and credited by the jury), the court nevertheless concluded that it did not establish that Hoskins acted as an ‘agent’ of the US subsidiary.⁴ Noting that the typical indications of control for an agency relationship – the right to hire or fire and the right to reassign – were not present between the US subsidiary and Hoskins, the court held that there was ‘no evidence upon which a rational jury could conclude that Mr Hoskins agreed or understood that [the US subsidiary] would control his actions’ with respect to the project in question.⁵

1 *United States v Hoskins*, 902 F.3d 69, 73 (2d Circuit 2018). Those categories are: ‘American companies and citizens, and their agents, employees, officers, directors, and shareholders, as well as foreign persons acting on American soil.’ *Id.* See also 15 USC Sections 78dd-1 (issuers and their officers, directors, employees, and agents); 78dd-2 (domestic concerns and their officers, directors, employees, agents and shareholders); and 78dd-3 (persons and entities other than issuers and domestic concerns acting while in the territory of the US).

2 Ruling on Def’s Rule 29(C) and Rule 33 Motion, *United States v Hoskins*, No. 3:12cr238 (JBA), 2020 US Dist. LEXIS 32663 at *2 (D. Conn., 26 February 2020).

3 *Id.* at *29.

4 *Id.* at *22.

5 *Id.* at *27–28.

Importantly, the judge's ruling left intact Hoskins' conviction on four money laundering counts, which were premised on essentially the same conduct underlying the FCPA counts.⁶ The government's appeal of the judge's ruling on the FCPA counts is currently pending.⁷

The impact of *Hoskins* on the DOJ's approach to FCPA prosecutions is reflected in the DOJ's recently revised FCPA guidance.⁸ The revised guidance maintains the long-standing DOJ position that:

*[a] foreign company or individual may be held liable for aiding or abetting an FCPA violation or for conspiring to violate the FCPA, even if the foreign company or individual did not take any act in furtherance of the corrupt payment while in the territory of the United States.*⁹

Referencing *Hoskins*, however, it also notes that 'at least in the Second Circuit,' an individual's 'conduct and role' must 'fall into one of the specifically enumerated categories expressly listed in the FCPA's anti-bribery provisions' in order to be 'criminally prosecuted for conspiracy to violate the FCPA anti-bribery provisions or aiding and abetting an FCPA anti-bribery violation.'¹⁰

The DOJ's non-FCPA foreign corruption enforcement efforts

Although *Hoskins* put limits on the DOJ's FCPA enforcement capabilities, the DOJ has been using other statutes to address conduct that it may not be able to reach under the FCPA. Both the money laundering and wire fraud statutes allow the government to charge individuals who, like Hoskins, may not fall within any of the FCPA's specific categories of chargeable individuals because they are not US citizens, present on US soil or officers, directors, employees or 'agents' of US issuers or concerns. These statutes have also laid the basis for prosecutions of foreign officials receiving bribes overseas, which the FCPA does not penalise.

Money laundering prosecutions of foreign corruption

Section 1956 of Title 18, United States Code, is the United States' primary money laundering enforcement statute. It prohibits certain financial transactions involving the proceeds of 'specified unlawful activities.'¹¹ To prove money laundering under section 1956, the government must establish that an individual:

6 Id. at *22.

7 Brief for the United States, *United States v Hoskins*, Nos. 20-842(L), 20-1061(Con), 20-1084(Con), at ix (2d Cir. July 13, 2020).

8 See Criminal Division of the US Department of Justice and the Enforcement Division of the US Securities and Exchange Commission, A Resource Guide to the US Foreign Corrupt Practices Act, Second Edition, (2020), available at <https://www.justice.gov/criminal-fraud/file/1292051/download>.

9 Id. at 36.

10 Id.

11 18 USC Section 1956. Specified unlawful activities include mail and wire fraud and offenses committed against a foreign nation, such as bribery of a public official and fraud on a foreign bank. See generally, 18 USC Section 1956(c)(7).

*(1) knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, (2) conducted or attempted to conduct a financial transaction (3) which in fact involved the proceeds of that unlawful activity, (4) either (a) with the intent to promote the carrying on of that unlawful activity or (b) with the knowledge that the transaction was designed at least in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds of the unlawful activity.*¹²

While Section 1956 requires the government to prove that the defendant knew that he or she was ‘dealing with the proceeds of “some” crime’, it does not require proof that he or she knew ‘precisely what specified unlawful activity produced the money, so long as he believed that the money was from some unlawful activity.’¹³ In addition, a defendant may be convicted of money laundering even though he or she ‘is not a party to, much less convicted of, the specified unlawful activity.’¹⁴

By its plain terms, Section 1956 extends to conduct outside the United States.¹⁵ Subsection (f) of the statute provides for ‘extraterritorial jurisdiction,’ so long as ‘the conduct is by a United States citizen’ or ‘occurs in part in the United States’ and ‘the transaction or series of related transactions’ exceed US\$10,000.¹⁶ Courts generally consider that transfers of criminal proceeds that begin or end in the United States satisfy the requirement that the ‘conduct occur in part in the United States.’¹⁷ This includes correspondent banking transactions, in which the US nexus consists entirely of US banks that merely facilitate the transfer of funds between non-US financial institutions.¹⁸

¹² *United States v Gotti*, 459 F.3d 296, 334 (2d Circuit 2006).

¹³ *United States v Maher*, 108 F.3d 1513, 1526-7 (2d Circuit 1997).

¹⁴ *United States v Cherry*, 330 F.3d 658, 667 (4th Circuit 2003); see also *United States v Martinelli*, 454 F.3d 1300, 1312 n.8 (11th Circuit 2006) (stating money laundering “does not require proof that the defendant committed the specified predicate offense, it merely requires proof that the monetary transaction constituted the proceeds of a predicate offense”) (quoting *United States v Richard*, 234 F.3d 763, 768-69 (1st Circuit 2000)); *United States v Mankarious*, 151 F.3d 694, 703 (7th Circuit 1998) (affirming convictions for money laundering despite acquittal of specified unlawful activity).

¹⁵ See, eg, *United States v Hawit*, No. 15-cr-252 (PKC) 2017 US Dist. LEXIS 23391, at *24-25 (EDNY 2017) (explaining that ‘the federal money laundering statute contains a provision specifying the circumstances in which it can be applied extraterritorially, and thus overcomes the presumption against extraterritoriality’).

¹⁶ 18 USC Section 1956(f).

¹⁷ *United States v Varela Garcia*, 533 Fed. Appx. 967, 980 (11th Circuit 2013) (finding that transfers of drug proceeds from the United States to Colombia ‘undoubtedly affected interstate or foreign commerce’ and thus met the requirement of the statute); *United States v Approximately \$25,829,681.80 in Funds*, 1999 US Dist. LEXIS 18499, at *10-14 (SDNY 1999) (finding that the activation of a wire transfer from the United States to the United Kingdom by someone not physically present in the United States satisfied jurisdictional requirements over the money laundering claim).

¹⁸ See, eg, *United States v Prevezon Holdings, Ltd*, 251 F. Supp. 3d 684, 692 (SDNY 2017) (stating that “[t]he use of correspondent banks in foreign transactions between foreign parties constitutes domestic conduct within [the statute’s] reach, especially where bank accounts are the principal means through which the relevant conduct arises”).

The *Hoskins* case exemplifies how money laundering charges can reach foreign corruption conduct that the FCPA cannot. As mentioned above, the district court in that case left intact the money laundering convictions, even though these were predicated on violations of the FCPA that the court vacated. *Hoskins* sought dismissal of the money laundering counts on grounds that the evidence failed to show he ‘knew that any funds would be transferred from accounts within the United States.’¹⁹ The government disputed that such knowledge was required to be established and the court, without deciding the issue, found that the evidence showed the defendant knew that payments to the overseas consultant began within the United States subsidiary (in Connecticut) or would pass through a third-party in Maryland before reaching the consultant overseas.²⁰

A recent prosecution in the Eastern District of New York, *United States v Boustani*, also illustrates how a money laundering charge can be used to target foreign corruption that may be out of the jurisdictional reach of the FCPA. There, the defendant, Jean Boustani, a Lebanese citizen and chief executive officer of an Abu Dhabi-based investment company, was charged with participating in a scheme of bribery and kickbacks to Mozambique officials and Swiss bankers.²¹ The government alleged that Boustani and others obtained three loans totalling more than US\$2 billion for the benefit of companies owned and controlled by the Mozambican government and diverted more than US\$200 million of the loan proceeds to bribe Mozambican government officials to ensure that the Mozambican companies would enter into the loan arrangements and the government of Mozambique would guarantee the loans.²² According to the indictment, the loans were subsequently sold to investors based on misrepresentations about how loan proceeds would be used and the Mozambican government’s ability to repay the loans.²³ While the bribery scheme occurred primarily overseas, Boustani and others sought and secured investors in the United States, who funded the loans using New York City-based bank accounts, and the Abu Dhabi investment company received the fraudulent loan proceeds from New York City-based bank accounts.²⁴ In announcing the charges against Boustani and his co-defendants, the DOJ described the conduct as ‘a brazen international criminal scheme in which corrupt Mozambique government officials, corporate executives and investment bankers stole approximately [US]\$200 million in loan proceeds that were meant to benefit the people of Mozambique,’ and affirmed the DOJ’s

19 Ruling on Def’s Rule 29(C) and Rule 33 Motion, *United States v Hoskins*, 2020 U.S. Dist. LEXIS 32663 at *29.

20 *Id.* at *30-31.

21 Press Release, US Dep’t of Justice, Mozambique’s Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme that Victimized US Investors (7 March 2019), available at <https://www.justice.gov/opa/pr/mozambique-s-former-finance-minister-indicted-alongside-other-former-mozambican-officials>; see also Indictment at paragraph 24, *United States v Boustani et al*, No. 1:18-cr-00691 (EDNY 19 December 2018).

22 Indictment at paragraphs 24–26, *United States v Boustani*.

23 *Id.* at paragraph 24.

24 *Id.* at paragraphs 38, 50–51, 55–56, 70–72, 75, 78, 81–82, 92.

commitment to use ‘all tools at [its] disposal to prosecute those who engage in money laundering, financial fraud and corruption at the expense of US investors, wherever those individuals may be located.’²⁵

Even though Boustani was alleged to have paid bribes to foreign officials, he was not charged with violating the FCPA and likely could not have been, since he was not an officer, director, employee or agent of a US issuer or a domestic concern, nor was he a US citizen or physically present in the United States. Instead, Boustani was charged with money laundering, wire fraud and securities fraud conspiracies.²⁶ The money laundering conspiracy count was premised on violations of various different laws, including the FCPA and Mozambican anti-corruption law.²⁷ Boustani sought to dismiss the charge on grounds that the extraterritorial reach of the money laundering statute did not cover his conduct because the transfers of funds in question had taken place abroad, between non-US entities, in accounts held by non-US citizens and at banks in foreign countries.²⁸ The court rejected this argument, concluding that it was enough to demonstrate that Boustani had ‘systematically directed [US]\$200 million of US denominated bribe and kickback payments through the US financial system using US correspondent accounts.’²⁹ According to the court:

*these allegations describe[d] the transmission of monetary instruments and funds into, out of, or through the territory of the United States—precisely the type of conduct Congress focused on prohibiting when enacting the money laundering provisions.*³⁰

The court thus permitted the money laundering conspiracy charge to proceed to trial.

The DOJ has also relied on the money laundering statute to prosecute foreign officials who receive bribes – a category of individuals and conduct wholly outside the scope of the FCPA. According to the DOJ, the first conviction of a foreign official for money laundering involving proceeds of an FCPA violation occurred in 2010.³¹ Since then, and especially in the last five years,

25 Press Release, U.S. Dep’t of Justice, Mozambique’s Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme that Victimized U.S. Investors (March 7, 2019).

26 *Id.*

27 Indictment at paragraph 103, *United States v Boustani*.

28 Motion to Dismiss at 35-38, *United States v Boustani et al*, No. 1:18-cr-00681 (EDNY 21 June 2019), ECF No. 98.

29 Opposition to Motion to Dismiss at 38, *United States v Boustani et al*, No. 1:18-cr-00681 (EDNY 22 July 2019), ECF No. 113.

30 Decision & Order Denying Motions to Dismiss at 15-6, *United States v Boustani et al*, No. 1:18-cr-00681 (EDNY 3 October 2019), ECF No. 231.

31 US Dep’t of Justice, Steps Taken by the United States to Implement and Enforce the OECD Anti-Bribery Convention (Information as of 25 February 2013), 76-77, available at <http://www.justice.gov/criminal/fraud/fcpa/docs/2013-02-25-steps-taken-oecd-anti-briberyconvention.pdf>. See Second Superseding Indictment, *United States v Cruz et al*, No. 1:09-cr-21010-JEM (SD Fl. 12 January 2012).

there have been a significant number of similar prosecutions. In *Boustani*, for example, the three Mozambican officials who were alleged to have received the bribe and kickback payments were charged with conspiracy to commit money laundering, among other offences.³²

Additionally, in connection with a sprawling and still ongoing foreign bribery investigation involving Venezuela's state-owned oil company Petroleos de Venezuela SA (PDVSA), the DOJ has charged PDVSA officials who are alleged to have awarded contracts to companies who paid bribes and kickbacks to them and laundered these monies through the US financial system, with money laundering predicated on the FCPA violative conduct.³³

Another recent prosecution that has used the money laundering statute to target a government official in foreign corruption schemes is *United States v Thiam*, in which a jury convicted the former Minister of Mines and Geology of the Republic of Guinea for money laundering and other violations due to his receipt of over US\$8 million in bribes from a Chinese conglomerate.³⁴ According to the evidence in the case, Thiam laundered the bribes through the US financial system by transferring the money from bank accounts in Hong Kong to accounts opened in the United States. From there, the money was directed to private preparatory schools in Manhattan and US businesses.³⁵

Wire fraud prosecutions of foreign corruption

The DOJ has also relied on wire fraud charges to prosecute global corporate corruption that may fall outside the reach of the FCPA. The wire fraud statute criminalises the use of wires in furtherance of 'any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises'.³⁶ The wire fraud statute does not apply extraterritorially.³⁷ The Second Circuit, however, recently defined the requirement for a proper 'domestic' application of the statute in *Bascuñán v Elsaca*.

That case arose from a dispute between two Chilean cousins. Bascuñán sued Elsaca and affiliated entities under the Racketeer Influenced and Corrupt Organizations Act (RICO), alleging that he had conducted fraudulent asset transfers from Bascuñán's New York bank accounts to

32 Press Release, US Dep't of Justice, Mozambique's Former Finance Minister Indicted Alongside Other Former Mozambican Officials, Business Executives, and Investment Bankers in Alleged \$2 Billion Fraud and Money Laundering Scheme that Victimized US Investors (7 March 2019), available at <https://www.justice.gov/opa/pr/mozambique-s-former-finance-minister-indicted-alongside-other-former-mozambican-officials#:~:text=Manuel%20Chang%2C%2063%2C%20the%20former,conspiracy%20to%20commit%20money%20laundering>. The cases against Mozambican officials were still pending at the time this article was written.

33 See, eg, *Indictment, United States v Leon-Perez et al*, No. 4:17-cr-00514 (SD Tex. 23 August 2017). *Criminal Complaint, United States v Santilli*, No. 20-mj-02459 LFL (SD Fla. Filed 20 March 2020); Press Release, US Dep't of Justice, Former Venezuelan Official Pleads Guilty to Money Laundering Charge in Connection with Bribery Scheme (16 July 2018), available at <https://www.justice.gov/opa/pr/former-venezuelan-official-pleads-guilty-money-laundering-charge-connection-bribery-scheme-0>.

34 *United States v Thiam*, 934 F.3d 89, 92 (2nd Circuit 2019).

35 Criminal Complaint at paragraph 5, *United States v Thiam*, No. 17-cr-00047 (SDNY 18 January 2012).

36 *Skilling v United States*, 561 US 358, 369 n.1 (2010) (quoting 18 USC Sections 1341 (mail fraud) and 1343 (wire fraud)).

37 *Bascuñán v Elsaca*, 927 F.3d 108, 121 (2nd Circuit 2019).

Elsaca's own accounts.³⁸ The predicate offenses for the RICO violation included wire fraud and it was in that context that the Second Circuit considered whether the facts supported a domestic application of the statute.³⁹

The court concluded that it did because, even though the parties were non-US citizens residing outside the United States, the core component of the alleged scheme was the use of US wires to request that a New York bank fraudulently transfer money out of a New York account.⁴⁰ While acknowledging that 'a defendant's location is relevant to whether the regulated conduct was domestic', the *Bascuñán* court ruled that 'the mail and wire fraud statutes do not give way simply because the alleged fraudster was located outside the United States.'⁴¹ The court made clear, however, that the use of US wires 'must be essential, rather than merely incidental, to the scheme to defraud.'⁴²

A recent criminal prosecution for corruption tested the boundaries of the wire fraud's 'domestic' application, as articulated in *Bascuñán*, demonstrating that wire transfers passing through the United States may alone suffice, so long as they are 'central' to the fraud scheme.⁴³ *United States v Napout* arose out of a large-scale and high profile investigation into alleged bribes and kickbacks paid to officials of the FIFA in connection with the sale of broadcasting and marketing rights to several popular soccer tournaments.⁴⁴ The DOJ charged former FIFA officials Juan Ángel Napout, a Paraguayan citizen and former head of the South American soccer confederation, and José Maria Marin, a Brazilian citizen and former president of the Brazilian soccer federation, with racketeering, honest services wire fraud and money laundering.⁴⁵ According to the indictment, Napout and Marin accepted millions of dollars in bribes from sports media and marketing companies, without the knowledge and against the policy of the organizations that employed them, in return for exclusive broadcasting and marketing rights to tournaments.⁴⁶ Both defendants stood trial, and, though they were acquitted on a number of counts, both were convicted of wire fraud.⁴⁷

On appeal, Napout and Marin argued that the wire fraud convictions rested upon impermissible extraterritorial applications of the statute, and framed the issue in terms of:

38 Id. at 111–112.

39 Id. at 115.

40 Id. at 124–125.

41 Id. at 123.

42 Id. at 122.

43 *United States v Napout*, Nos. 18-2750 (L), 18-2820 (Con), 2020 US App. LEXIS 19299, at *35 (2d Circuit 2020).

44 Id. at *4–5.

45 Id. at *6.

46 Id. at *5.

47 Id. at *7.

*one overarching question: by what authority does the United States purport to police the relationship between a Paraguayan employee and his Paraguayan employer, and an alleged scheme involving South Americans that took place almost entirely in South America.*⁴⁸

The answer to the question was, in a word, ‘*Bascuñán*’. Applying the analytical framework set out by the court in *Bascuñán*, the court in *Napout* concluded that the wire transfers at issue sufficed to establish a ‘domestic’ application of the wire fraud statute.⁴⁹ According to the evidence, Napout and Marin accepted bribes from various South American companies in exchange for the exclusive broadcasting and marketing rights of regional tournaments and the bribe payments had a nexus to the United States.⁵⁰ The bribes designated for Marin were deposited in a Swiss bank account of a shell company, then transferred to the bank account of a New York shell company that Marin owned and controlled.⁵¹ In the case of Napout, the bribe payments originated in a US bank account before being transferred to a third party that facilitated a cash delivery to Napout in Buenos Aires.⁵² Napout also accepted bribes in the form of luxury items, such as concert tickets and the use of a vacation house, which were paid for with money wired from a US bank account.⁵³ In sum, the court observed that:

*U.S. wires provided a—or the—key means of paying [. . .] bribes. In other words, in the relatively straightforward quid pro quo transactions underlying these schemes, the quid was provided through the use of U.S. wires.*⁵⁴

Although *Napout* differed from the typical foreign corruption case, insofar as it involved bribes of private sector employees (not government officials) under an honest services application of the wire fraud statute, the Second Circuit’s holding was not limited to the facts of the case or that particular theory of fraud.⁵⁵ As such, the holding can potentially encompass any overseas bribery conduct, so long as it can be shown to involve a scheme to defraud and the passing of money through the US financial system as an essential part of that scheme.⁵⁶

48 Id. at *3.

49 Id. at *30.

50 Id. at *13–21.

51 Id. at *17–18.

52 Id. at *21.

53 Id. at *33–35.

54 Id. at *35.

55 Id. at *30–31 (stating that the argument that honest services wire fraud has a different focus from other wire fraud ‘mischaracterises the nature of honest services wire fraud. It is not something different from wire fraud; it is a type of wire fraud that is explicitly prohibited by that statute. The statute includes a provision specific to honest services wire fraud not because it is in some essential aspect different from other wire fraud, but to clarify the application of the law of wire fraud to honest services fraud.’).

56 Id. at *34.

Indeed, the breadth of *Bascuñán* was evident in the *Boustani* case discussed above, which involved allegations of bribery of foreign government officials taking place almost entirely overseas. In addition to the money laundering conspiracy charges (discussed in more detail above), the indictment alleged that Boustani and his co-conspirators engaged in a wire fraud conspiracy when, among other things, they used domestic wires to make materially false statements to induce investments from US investors in various loans that were ultimately used to pay bribes and kickbacks.⁵⁷ Boustani sought to dismiss the wire fraud conspiracy charge on extraterritoriality grounds because the only element required to prove a wire fraud conspiracy is the agreement to commit wire fraud and no agreement was shown to have occurred on US soil.⁵⁸ In addition – citing *Bascuñán* – Boustani argued that the use of US wires in his case was ‘far too ancillary to constitute a “core component” of the alleged scheme.’⁵⁹ The district court declined to dismiss the charge, stating that the indictment provided ‘a fulsome description of a fraud scheme involving numerous wires soliciting investment and moving funds into and out of the United States.’⁶⁰ Furthermore, ‘the use of US-based wires was crucial in developing the scheme to defraud.’⁶¹

Despite the court’s decision, the defence succeeded in persuading the jury at trial that the case did not belong in a US court. It argued to the jury that ‘venue’ – a requirement that a US federal criminal case be brought in the ‘district where the offense was committed’⁶² – had not been established because the government failed to prove that any ‘act in furtherance of the crime occurred within the Eastern District of New York.’⁶³ According to the defence, ‘[n]othing important in this case happened in the Eastern District of New York; that is, Brooklyn, Queens, Long Island.’⁶⁴

The government was unable to convincingly establish otherwise. While it contended that ‘the two billions [sic] dollars [of the bribery scheme] that flowed through the New York city bank accounts . . . all flowed through [the] territorial waters’ between Manhattan and Brooklyn,⁶⁵ this argument may have proven to be a bridge too far. The jury acquitted Boustani on all charges, and, according to press coverage, the reason for the acquittal was venue. The foreperson reported that the jury was troubled by the lack of connection between the defendant’s conduct and the

57 Motion to Dismiss at *7, *United States v Boustani et al*, No. 1:18-cr-00681 (EDNY 21 June 2019), ECF No. 98.

58 *Id.* at *3.

59 *Id.* at *25-31.

60 Decision & Order Denying Motions to Dismiss at 8, *United States v Boustani et al*, No. 1:18-cr-00681 (EDNY 3 October 2019), ECF No. 231.

61 *Id.*

62 Trial Transcript, at 4854-5, *United States v Boustani*, No. 1:18-cr-00681 (EDNY 22 November 2019).

63 *Id.*

64 *Id.*

65 Trial Transcript, at 4790, *United States v Boustani*, No. 1:18-cr-00681 (EDNY 21 November 2019).

Eastern District of New York.⁶⁶ It is unclear whether the jury believed there to be a more appropriate venue in the United States or whether the lack of venue in the Eastern District of New York was indicative of a larger problem (ie, an insufficient US nexus).

Conclusion

Recent criminal prosecutions demonstrate that the DOJ continues to be committed to fighting foreign corruption around the world and that it will not be limited to the FCPA in its pursuit of this conduct. Instead, it has availed itself of other laws – namely, the money laundering and wire fraud statutes – to target foreign corruption based on conduct that takes place almost entirely overseas and it has grounded any requisite US nexus on money transfers made in connection with that conduct. Courts have thus far upheld the government's efforts in this regard, as reflected in *Hoskins*, *Boustani*, *Napout* and other cases. It remains to be seen, however, whether future court challenges will result in limitations – for example, by taking a view different from the Second Circuit's in *Bascuñán* or by concluding that, even though jurisdictional requirements were met, a defendant's due process rights were violated.⁶⁷ After all, while 'US law governs domestically,' it 'does not rule the world.'⁶⁸ For now, it bears noting that US wires – including money transfers to, from or through the United States – may be all the DOJ needs to bring foreign corruption taking place between non-US individuals in the farthest reaches of the world into its home turf.

66 After trial, the jury foreman was reported saying: 'I think as a team, we couldn't see how this was related to the Eastern District of New York'. Stewart Bishop, 'Boustani Acquitted in \$2B Mozambique Loan Fraud Case', *Law360* (2 December 2019), <https://www.law360.com/articles/1221333/boustani-acquitted-in-2b-mozambique-loan-fraudcase>. Another juror told reporters that: 'We couldn't find any evidence of a tie to the Eastern District, that's why we acquitted'. *Id.*

67 See, eg, *United States v Yousef*, 327 F.3d 56, 111 (2nd Circuit 2003) (explaining that due process requires that there be a 'sufficient nexus between the defendant and the United States', so that an otherwise permissible application of the statute 'would not be arbitrary or fundamentally unfair').

68 *RJR Nabisco, Inc v European Cmty*, 136 S. Ct. 2090, 2100 (2016) (stating that '[i]t is a basic premise of our legal system that, in general, United States law governs domestically but does not rule the world') (internal citation omitted).



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Virginia Chavez Romano’s practice focuses on conducting internal investigations and representing companies and individuals before US federal and state enforcement agencies.

Having spent 14 years in various prosecutorial roles, Virginia offers clients a unique perspective in navigating government investigations and enforcement proceedings, particularly those involving multiple agencies and jurisdictions.

From 2002 to 2012, Virginia was an assistant United States attorney for the Southern District of New York, where she served as lead prosecutor in dozens of investigations and prosecutions, including many that involved international money laundering and complex financial crimes, and was a member of the Securities and Commodities Fraud Task Force.

From 2012 to 2014, Virginia served as deputy attorney general for the Economic Justice Division of the NY State Attorney General’s Office, where she led high-profile civil securities fraud investigations and litigations. In 2014, Virginia joined the US Department of Justice in Washington, DC, serving as associate deputy attorney general and the executive director of President Obama’s Financial Fraud Enforcement Task Force. During her time there, Virginia worked on a number of department-wide initiatives relating to corporate matters, including the department’s September 2015 Policy on Individual Accountability in Corporate Wrongdoing (the Yates Memo).

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White & Case LLP

Tami Stark's practice focuses on representing companies and individuals facing white-collar criminal and regulatory investigations. Having spent more than eight years in the enforcement division of the US Securities and Exchange Commission (SEC), Tami offers clients unique expertise in conducting internal investigations, navigating government inquiries and serving as a monitor.

Tami combines her extensive experience advising clients on white-collar matters with her experience inside the SEC to obtain quick, efficient and successful outcomes for her clients. Tami has advised clients in matters relating to, among other things, the Foreign Corrupt Practices Act, financial and accounting fraud, securities registration, insider trading, short and distort schemes, and private equity and hedge fund investment adviser conflicts of interest.

Tami served as an assistant regional director in the SEC's enforcement division, where she led enforcement efforts alongside other regulators and agencies, including the US Department of Justice, the New York Attorney General's Office, the Financial Industry Regulatory Authority and the Options Regulatory Surveillance Authority. She conducted and supervised various types of investigations and recommended the selection of, and managed, compliance monitors and fair fund distribution consultants. Tami also clerked for the Honorable Carol B Amon on the US District Court for the Eastern District of New York.



Sandra Redivo
White & Case LLP

Sandra Redivo is a law clerk in the White & Case's global white collar practice group. She represents individual executives and companies in a wide variety of cross-border criminal, regulatory and civil matters, including in connection with prosecutions and investigations by the US Department of Justice, the Securities Exchange Commission and other US government agencies. She has expertise in the laws of both the United States and of France, where she is admitted to practice.

WHITE & CASE

White-collar and regulatory investigations

Our global white-collar practice advises multinational corporations and their executives, financial institutions and senior business and political figures on domestic, transnational and international civil and criminal investigations, enforcement proceedings and a wide range of corporate governance, compliance, due diligence and risk assessment matters, including the drafting and implementation of anti-corruption policies.

Our team of nearly 70 lawyers in 13 offices throughout the Americas, Europe, Asia and the Middle East regularly handles a wide range of complex and high-stakes legal matters, including allegations of international corruption, bribery and money laundering; the Office of Foreign Assets Control and export control violations; False Claims Act matters and qui tam suits; mail and wire fraud, honest services fraud and conspiracy; securities fraud, insider trading and complex civil litigation.

We have particular expertise in the coordination of a global defence strategy, involving numerous jurisdictions and multiple global law enforcement agencies. Not only are we experienced advising the company itself, but we also have expertise advising senior executives who are under investigation including dealing with interviews, arrest, bail and extradition.

With our global footprint, experience, and skill, we are particularly adept at multi-jurisdictional matters where we are able to bring to bear the legal, linguistic and cultural experience of professionals across our firm's network. We also have a proven track record of working effectively with internal company legal, audit and management teams, reducing costs and minimising the disruption that results from governmental and internal investigations.

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