UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-21010-CR-JEM

UNITED STATES OF AMERICA

v.

JOEL ESQUENAZI
and
CARLOS RODRIGUEZ,

Defendants. /

GOVERNMENT'S CONSOLIDATED RESPONSE IN OPPOSITION TO DEFENDANTS' MOTIONS FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL

The United States of America, by and through the undersigned counsel, hereby submits this Consolidated Response in Opposition to Defendants Carlos Rodriguez's and Joel Esquenazi's Motion for Judgment of Acquittal or New Trial (DE 542, 546) and Motion for Judgment of Acquittal or New Trial Based Upon Newly Discovered Evidence (DE 543, 547). As explained below, the evidence adduced at trial overwhelmingly established Rodriguez's and Esquenazi's guilt and Rodriguez and Esquenazi have failed to demonstrate any errors or newly discovered evidence that would justify a new trial. Accordingly, this Court should deny the defendants' motions.

I. FACTUAL BACKGROUND

A. Indictment

On December 4, 2009, a federal grand jury sitting in the Southern District of Florida returned a 21-count indictment against Joel Esquenazi, Carlos Rodriguez, Robert Antoine, Jean Rene Duperval, and Marguerite Grandison. Count 1 charged Esquenazi, Rodriguez, and others with conspiring to violate the Foreign Corrupt Practices Act ("FCPA") and to commit wire fraud, all in

violation of 18 U.S.C. § 371. Counts 2-8 charged Esquenazi, Rodriguez, and others with substantive FCPA offenses, in violation of 15 U.S.C. § 78dd-2 and 18 U.S.C. § 2. Count 9 charged Esquenazi, Rodriguez, and others with conspiring to commit money laundering, in violation of 18 U.S.C. § 1956(h). Counts 10-21 charged Esquenazi, Rodriguez, and others with substantive money laundering offenses, in violation of 18 U.S.C. §§ 1956 (a)(1)(B)(i) and 2. The specified unlawful activities alleged in all 13 of the money laundering counts were (1) violation of the FCPA, (2) violation of the wire fraud statute, and (3) violation of Haitian bribery law.

B. Trial

On March 12, 2010, co-defendant Robert Antoine pleaded guilty. DE 132. On May 27, 2011, the Court severed the trial of defendants Esquenazi and Rodriguez from the trial of the remaining co-defendants, Duperval and Grandison. DE 394. On July 18, 2011, Esquenazi and Rodriguez proceeded to trial on the original indictment. During the trial, the Government called eleven witnesses and introduced over 100 exhibits, all of which overwhelmingly established the defendants' guilt on all counts. This section summarizes some of the trial evidence that is relevant to the instant motions; it is not intended to be comprehensive.

The Government introduced voluminous documentary evidence showing that Esquenazi, the President and CEO of Terra Telecommunications ("Terra"), and Robert Antoine, the Director of International Relations for Telecommunications D'Haiti ("Teleco"), reached an agreement under which Antoine would reduce Teleco's invoices to Terra in exchange for a kickback to Antoine of 50% of the savings; that Antoine would create and send to Terra fraudulent invoices reflecting the agreed-upon reductions; that Esquenazi or, more commonly, Rodriguez, Terra's Executive Vice-President, would authorize payments in the amount of the agreed kickbacks to third parties posing

as telecommunications "consultants;" and that these "consultants" would deliver the money to Antoine by various means. *See, e.g.,* Gov. Exs. 32, 159-160, 505.

The Government introduced voluminous documentary evidence showing that the defendants entered into a similar agreement with Jean Rene Duperval, one of Antoine's successors as Teleco's Director of International Relations. Duperval agreed to reduce Terra's rates after Terra agreed to make "consulting" payments to Telecom Consulting Services ("TCS"), a company which was incorporated by Terra's in-house attorney, James Dickey, on behalf of Duperval's sister, Marguerite Grandison, and whose bank account was set up by Terra's personal banker. *See, e.g.,* Gov. Exs. 2-21, 127-137, 198-202, 601. Rodriguez set up recurring wire payments to TCS and authorized the majority of the "consulting" payments, which Grandison distributed to Duperval. *See, e.g.,* Gov. Exs. 2-21, 128, 603.

In addition to the voluminous documentary evidence, the Government's witnesses confirmed the details of these illegal agreements. Cooperating co-conspirators Robert Antoine, Jean Fourcand, and Juan Diaz testified that Esquenazi agreed with Antoine on the kickback scheme described above and that Fourcand and Diaz, along with other Antoine associates, agreed to launder the kickback payments by receiving checks and calling cards from Terra on Antoine's behalf. *See, e.g.,* Tr. 7/26/2011 AM pp. 34-35 (Antoine explaining his discussions with Esquenazi regarding the kickback scheme); Tr. 7/19/2011 AM pp. 69-70 (Diaz explaining that he agreed to launder the kickback payments from Terra to Antoine); Tr. 7/22/2011 PM p. 55 (Fourcand explaining his role in laundering kickback payments from Terra to Antoine). Antoine explained that, per Esquenazi's instructions, he met with Antonio "Tony" Perez, Terra's controller, over lunch to work out the details of how the kickbacks would be paid. Tr. 7/26/2011 AM p. 36. After Terra fired Perez in

January 2002, Antoine discussed the kickback arrangements with Esquenazi. Tr. 7/26/2011 PM p. 89; *see also id.* pp. 53-54 (explaining that Gov. Exs. 159-160 reflected the kickback agreements).

Tony Perez corroborated Antoine's testimony and confirmed that Rodriguez and Dickey also agreed to pay kickbacks to Antoine in exchange for reductions in the amounts Terra owed Haiti Teleco and for not disconnecting Terra's service despite non-payment. Perez explained that, around October 2001, Esquenazi instructed him to ask Antoine to agree to amortize Terra's debt to Haiti Teleco and, if that did not work, "to offer Antoine a side payment." Tr. 7/22/2011 AM pp. 74-76. During a lunch meeting, Antoine rejected Perez's amortization request but agreed to accept "side payments" laundered through third-party intermediaries. *Id.* Perez testified that he reported back on this lunch meeting to Esquenazi, Rodriguez, and Dickey:

> [A]fter that meeting, I mean, you know, I felt good. I felt like I made a huge contribution to the company, so I went back to my office and I had some stuff to do. And you know, later that afternoon, I ended back in Joel's office and James Dickey and Carlos Rodriguez were there and, you know, basically the news of that deal was shared with them.

Tr. 7/22/2011 AM pp. 79-81. Perez explained that he discussed with Esquenazi, Rodriguez, and Dickey "the fact that Robert Antoine had accepted an arrangement to accept, you know, payments to him in exchange for reducing our bills" and their reactions to his report: "Well, [Esquenazi] was happy, and both James Dickey and Carlos Rodriguez also congratulated me on a job well done." Tr. 7/22/2011 AM pp. 79-81. Perez also explained the advice he received from Dickey when he later expressed his concern that they had entered into an illegal arrangement:

> James Dickey said, look Tony, you have nothing to worry [about], you're not an officer of the company, you're not an owner of the company, you don't have signatory authority to sign checks, to sign wires, to sign anything, you cannot bind the company contractually with your signature, you have nothing to worry about. This is Joel's and Carlos['s] problem. This is their decision, this is not your decision, don't worry about it.

Tr. 7/22/2011 AM pp. 79-81.

The testimony of Terra accountant Jose Arroliga corroborated the testimony of the cooperating co-conspirators. For example, Juan Diaz testified that the "Consulting Agreement" he entered into with Terra (Ex. 301) was a sham contract created so that Terra would "have some documentation as to why money was being paid to [his company,] JD Locator." Tr. 7/19/2011 AM pp. 69-70. Diaz never submitted invoices to justify the payments to him, even though the contract, which was signed by Rodriguez, required him to do so. Tr. 7/19/2011 AM pp. 80-81; Ex. 301 ¶ 7. Arroliga, who was responsible for Accounts Payable at Terra, confirmed that Terra never received any back-up documentation for the payments to JD Locator or any of the other third party "consultants." Tr. 7/20/2011 PM pp. 56-57, 60, 70, 76-77, 79, 82. Arroliga explained that the manner in which payments to JD Locator were initiated—by "check request" and without backup documentation—was "unusual" and not "normal." Tr. 7/21/2011 PM pp. 13, 15-17. Moreover, Arroliga testified, Rodriguez authorized the majority of the payments to JD Locator, A&G Distributors, and Telecom Consulting, three of the companies Terra used to launder funds to Teleco officials. *Id.* The documentary evidence, especially when coupled with Arroliga's testimony, constituted powerful circumstantial evidence that Rodriguez knew about the kickback scheme, corroborated Perez's testimony that he told Rodriguez about that scheme, and reinforced Diaz's testimony that he never performed the "consulting" work for which he was purportedly paid.

In support of the allegations regarding the FCPA and Haitian bribery law, the Government called Gary Lissade, Haiti's former Minister of Justice and the author of a book on Haiti's public administration, as an expert in Haitian law and Haitian public institutions.[1] Tr. 7/25/2011 PM pp.

[1] Mr. Lissade explained that he conducted extensive research, including legal research and interviews, in reaching his conclusions. *See, e.g.,* Tr. 7/25/2011 PM pp. 38, 82-83.

34-37. Mr. Lissade explained that Teleco was widely considered to be a Haitian public entity during the relevant time period and that he had classified Teleco as part of the public administration in his 2000 book. *Id.* pp. 60, 61, 95, 97.

Mr. Lissade explained that Teleco was established as a private institution in 1968 but became a public entity when, around 1971-72, the state-owned National Bank of the Republic of Haiti ("BNRH") acquired 97% of its shares. *Id.* pp. 38, 40, 68. Mr. Lissade conceded that the exact time and circumstances of this acquisition were unclear but explained that the Government's actions and official documents from the time period reflected that the acquisition and assumption of control had occurred. *Id.* pp. 80-81, 96. Mr. Lissade also conceded that, although Teleco began to use the term "S.A.M.," rather than "S.A.,"[2] to reflect its partial state-ownership after the acquisition, Teleco never underwent any legal process to change its name. *Id.* pp. 41-42, 96.

Mr. Lissade testified that Teleco was 97% owned and 100% controlled by the BNRH's successor, the state-owned Bank of the Republic of Haiti ("BRH"), for many years, including during the time period charged in the indictment. *Id.* pp. 40-41, 49, 60, 95, 96. Teleco was run by a board of directors and a general director, all of whom were appointed by executive order signed by Haiti's President, Prime Minister, and relevant Ministers. *Id.* pp. 42, 44. The people who worked under these political appointees were considered to be "public agents" working for the "public administration," *id.* pp. 61-62, which Mr. Lissade defined as "the entities that the state use[s] to perform and to give services to the people living in Haiti" and "as an instrument . . . for the state

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In addition to his trial testimony, the Government submitted an affidavit from Mr. Lissade in support of its proposed jury instructions on the money laundering counts. *See* DE 417, Ex. B. Esquenazi also retained an expert on Haitian law but did not call him at trial. *See* DE 360.

[2] Mr. Lissade noted that S.A. designates a private corporation in Haiti and that the addition of the initial "M." indicates that the corporation is a mixed public/private enterprise.

to reach its missions and objectives and goals." *Id.* pp. 36. Teleco was entitled to special treatment under Haitian tax laws, and its revenues were controlled by the BRH. *Id.* pp. 49, 53.

Mr. Lissade further testified that Haiti's bribery laws applied to Teleco officials during the relevant time period. *Id.* pp. 56-57. In 2008, Haiti passed an asset disclosure law, intended to combat public corruption, that required certain employees of Teleco and other public institutions to declare their assets, further confirming Mr. Lissade's opinion that Teleco had been considered a public entity during the relevant time period. *Id.* pp. 58-59, 60, 95.

Mr. Lissade also explained that, in 1996, Haiti passed a modernization law intended to privatize certain state-owned companies, including Teleco, but Teleco did not actually become partially privatized until 2009-2010. *Id.* pp. 54-55.

Mr. Lissade's testimony that Teleco was owned and controlled by the Haitian government was corroborated by numerous witnesses and voluminous documentary evidence. For example:

- Robert Antoine testified that Teleco was a state-owned company and that, when he worked there, he was a government employee whose supervisor, Patrick Joseph, had been appointed by the President of Haiti (Tr. 7/26/2011 AM pp. 11-12, 13, 15);

- Jean Fourcand testified that the President of Haiti appointed his cousin, Patrick Joseph, as General Director of Teleco, the"state owned" "national phone company" of Haiti (Tr. 7/21/2011 PM pp. 31-32);

- Juan Diaz testified that he learned while living in Haiti that Teleco was a "nationalized" company owned by the Haitian government (Tr. 7/19/2011 AM p. 64);
- Antonio Perez testified that Esquenazi, Dickey, and Terra's business partners at HAWAI told him that Haiti Teleco was owned and operated by the Haitian government and that he saw an Aon insurance application submitted by Terra to that effect (Tr. 7/25/2011 AM pp. 70-71); and

- John Marsha, who worked at Aon, testified that Esquenazi, Rodriguez, and Dickey told him that the contract they wanted to insure was with a foreign government and that the type of insurance they requested applied only to government contracts. Tr. 7/27/2011 AM pp.7 -8.

See also, e.g., Gov. Exs. 91-97, 185-187 (Aon insurance documents); Gov. Exs. 451T-453T (executive orders appointing Teleco officials).

After the Government rested on July 28, 2011, defendant Esquenazi put on a defense case. Esquenazi did not call an expert to testify that Antoine and Duperval were not Haitian officials, as he had promised in his opening statement. Tr. 7/19/2011 AM pp. 41-42. Instead, Esquenazi testified that he did not know that Teleco was state-owned, that he had not read the Aon insurance documents, and that John Marsha had not testified accurately. 7/29/2011 AM pp. 115-119. Esquenazi conceded on cross-examination, however, that he testified during a 2005 deposition that Teleco was a government-owned telecommunications company. Tr. 8/1/2011 PM pp. 120-121. Rodriguez put on a brief defense case that did not address whether Teleco was an instrumentality of the Haitian government or whether Antoine and Duperval were Haitian officials. Both Esquenazi and Rodriguez had cross-examined Mr. Lissade during the Government's case-in-chief.

On August 4, 2011, the case was submitted to the jury. Later that day, the jury returned guilty verdicts on all counts against Esquenazi and Rodriguez. DE 522-523. With respect to Count 1, the jury specially found that Esquenazi and Rodriguez had conspired to commit ***both*** objects of the conspiracy, FCPA and wire fraud. *Id.*

C. Superseding Indictment

On July 12, 2011, a federal grand jury sitting in the Southern District of Florida returned a 28-count superseding indictment against Washington Vasconez Cruz, Amadeus Richers, Cinergy, Patrick Joseph, Jean Rene Duperval, and Marguerite Grandison. DE 419. Only Duperval and Grandison had also been charged in the original indictment. Esquenazi and Rodriguez were not

charged in the superseding indictment, but the charges are factually related to the original indictment. *See* DE 421 (explaining relationship between indictment and superseding indictment).

D. Bellerive Declarations

As noted above, one of the new defendants charged in the superseding indictment was Patrick Joseph, who was appointed General Director of Teleco by President Aristide in 2001 and who hired and supervised Robert Antoine. On July 20, 2011, Patrick Joseph made his initial appearance and was arraigned on the superseding indictment. DE 472-474. On August 1, 2011, attorney Paul Calli entered an appearance as co-counsel for Mr. Joseph. DE 506.

On the evening of August 9, 2011, Mr. Calli sent a letter to the Government that enclosed the declaration, dated July 26, 2011, that is part of Defense Exhibit A (hereinafter, the "first Bellerive declaration"). Mr. Calli's letter was the first time the Government learned about the existence of the first Bellerive declaration. Mr. Calli had never informed the Government that he possessed such a declaration, and the Government does not know the circumstances under which he obtained it. The next day, August 10, 2011, the Government forwarded the first Bellerive declaration to counsel for Esquenazi and Rodriguez. In the forwarding cover letter, which is also part of Defense Exhibit A, the Government explained, "Yesterday evening, the government received the attached declaration from Mr. Paul Calli in connection with the charges pending against Patrick Joseph." Thus, contrary to the allegations made by Rodriguez in his motion for a new trial, and as the defendants already know, the Government did ***not*** seek the first Bellerive declaration from the Republic of Haiti, and there is no need for an evidentiary hearing as to when or how the Government obtained it.

After receiving the letter from Mr. Calli, the Government reached out to representatives of the Haitian Government, including Mr. Bellerive, to ascertain the origin and purpose of the July 26th declaration. The Government learned that the letter was actually an internal document created in connection with Teleco's modernization and was not intended to convey a position that Teleco was not a government entity, as had been interpreted by Mr. Calli (and now Rodriguez and Esquenazi). The Haitian Government reiterated the position it has held throughout the course of this investigation and prosecution—that Haiti Teleco was part of the public administration during the relevant time period. The Haitian Government, and Mr. Bellerive in particular, offered to clarify its position on this issue. As a result of those conversations, the Government assisted Mr. Bellerive in preparing the declaration attached to this response as Exhibit 1 (hereinafter, the "second Bellerive declaration").[3]

E. Motions

On August 24, 2011, Rodriguez timely filed two motions for judgment of acquittal or new trial under Federal Rules of Criminal Procedure 29 and 33. DE 542, 543. On August 25, 2011, Esquenazi moved to adopt and join these motions. DE 546, 547. The Government submits this consolidated response in opposition to both motions.[4]

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[3] The Government also provided a copy of the second Bellerive declaration to defense counsel on August 29, 2011. *See* DE 549.

[4] The Government does not oppose Esquenazi's motions to adopt Rodriguez's motions but notes that the first ground asserted by Rodriguez—that the evidence was insufficient to establish Rodriguez's guilt—does not apply to Esquenazi and that Esquenazi did not join Rodriguez's "Rule 44" objections at trial. Accordingly, as to these two grounds, Esquenazi's motions should be denied as moot.

II. STANDARD OF REVIEW

Rodriguez moves for a judgment of acquittal under Federal Rule of Criminal Procedure 29. Under that rule, the Court must consider "whether the evidence, examined in a light most favorable to the Government, was sufficient to support the jury's conclusion that the defendant was guilty beyond a reasonable doubt." *United States v. Williams*, 390 F.3d 1319, 1323 (11th Cir. 2004). "All credibility choices must be made in support of the jury's verdict." *Id.* It "is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt, provided a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt." *Id.* at 1323-24.

Rodriguez moves for a new trial under Federal Rule of Criminal Procedure 33. Under that rule, "the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). In considering whether to grant a Rule 33 motion based on the sufficiency of the evidence, "[t]he court may not reweigh the evidence and set aside the verdict simply because it feels some other result would be more reasonable." *United States v. Martinez*, 763 F.2d 1297, 1312-13 (11th Cir. 1985). Rather, "[t]he evidence must preponderate heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand." *Id.* at 1313. Such motions are disfavored and should be granted only in exceptional cases. *Id.* A Rule 33 motion based on newly discovered evidence may be granted only if all of the following five factors are met:

> (1) the evidence was in fact discovered after trial; (2) the defendant exercised due care to discover the evidence; (3) the evidence was not merely cumulative or impeaching; (4) the evidence was material; and (5) the evidence was of such a nature that a new trial would probably produce a different result.

United States v. Thompson, 422 F.3d 1285, 1294 (11th Cir. 2005). Such motions are also "highly disfavored in the Eleventh Circuit and should be granted only with great caution." *United States v. Campa*, 459 F.3d 1121, 1151 (11th Cir. 2006) (*en banc*).

III. ARGUMENT

A. There was more than sufficient evidence to establish Rodriguez's guilt on all counts.

Rodriguez first argues that the Government failed to prove that he knew of the existence of the conspiracy charged in Count 1, that he committed the FCPA violations charged in Counts 2-8, or that he knowingly laundered funds as alleged in Counts 9-21. DE 542 at 1. Rodriguez argues that the Court should reject Tony Perez's testimony that he knowingly agreed to participate in the conspiracy alleged in Count 1, claiming Perez was "heavily impeached." DE 542 at 2. The Court should reject this basis for Rodriguez's motion.

At trial, the Government produced both direct and circumstantial evidence to support the jury's verdict against Rodriguez on all counts. For example, Perez provided direct evidence that Rodriguez knew about and joined the conspiracy charged in Count 1. Perez testified that he specifically told Rodriguez (as well as Esquenazi and Dickey) that Antoine agreed to "accept ... payments to him in exchange for reducing [Terra's] bills" and that Rodriguez then "congratulated [Perez] on a job well done." Tr. 7/22/2011 AM pp. 79-81. Perez further testified that Dickey told him that it was ultimately Rodriguez's and Esquenazi's decision to bribe Antoine. *Id.* Perez's testimony was corroborated by ample documentary evidence. *See, e.g.,* Gov. Exs. 101, 115-116, 119, 148.

Following this conversation, Rodriguez authorized the majority of the payments to the third-party intermediaries who were used to launder the bribes paid to Antoine and his successor,

Duperval. *See, e.g.,* Tr. 7/21/2011 PM pp. 16-17 (Arroliga testifying that Rodriguez authorized the majority of the payments). Bank and business records showed that Rodriguez signed 17 checks and authorized nine wire transfers to the third-party intermediaries; requested via check request forms and emails that checks be cut the third-party intermediaries; sent a letter canceling calling card debt owed by one of the third-party intermediaries; and signed the sham JD Locator "Consulting" Agreement, under which hundreds of thousands of dollars in bribe payments to Antoine were laundered. *See, e.g.*, 2-21, 128, 603. The testimony of Terra's accountant, Jose Arroliga, was particularly powerful in establishing that Rodriguez knew about the illicit nature of these payments: Arroliga testified that Rodriguez paid close attention to Terra's finances, decided which vendors to pay, and, by taking the"unusual" step of issuing check requests, instructed Terra's employees that no backup documentation was required to justify these payments. Tr. 7/21/2011 PM pp. 3-4, 13, 15-17; Tr. 7/20/2011 PM pp. 41-42, 47-48, 56-57, 60, 70, 76-77, 79, 82. Similarly, Juan Diaz testified that Rodriguez signed the "Consulting" Agreement but never required him to submit any invoices and never asked him about his qualifications to perform the work described in the contract. Tr. 7/19/2011 AM pp. 77-81.

The testimony of Perez and John Marsha and the related Aon insurance documents, showed that Rodriguez knew that Teleco was owned by the Haitian government. Tr. 7/27/2011 AM pp.7-8; Tr. 7/25/2011 AM pp. 70-71; Gov. Exs. 91-97, 185-187.

In light of this and the other evidence presented at trial, Rodriguez's motions for a judgment of acquittal under Rules 29 and 33 must fail. The evidence not only was sufficient to support the jury's conclusion that Rodriguez was guilty beyond a reasonable doubt but also preponderated heavily ***in favor*** of the jury's verdict. Contrary to Rodriguez's contention, Perez's testimony was

subject only to garden variety impeachment for a cooperating defendant (*e.g.*, Perez made conflicting statements in his first interview and is hoping for a sentence reduction). On the other hand, Perez's testimony was amply corroborated by the documentary evidence and by the testimony of other witnesses. Although their testimony differed in minor detail—unsurprising given the passage of time—it was entirely consistent on the major points. Moreover, in addition to corroborating Perez's testimony, this evidence constituted independent circumstantial evidence of Rodriguez's guilt.[5] Indeed, it is telling that Rodriguez fails to address this other evidence and focuses solely on Perez's testimony in support of his motion.

In short, Rodriguez has failed to show that this is one of the "exceptional" cases in which the interests of justice require that the jury's verdict be set aside. *Martinez*, 763 F.2d at 1313. Accordingly, the Court should deny Rodriguez's motions for a judgment of acquittal.

B. The Court's jury instructions were proper.

Rodriguez next argues that the Court made three errors in its jury instructions: (1) omitting his requested statute of limitations instruction; (2) omitting his requested instrumentality instruction; and (3) including instructions on deliberate ignorance. DE 542 at 4. Rodriguez is wrong on all three grounds.

First, the Court properly determined the relevant date for the statute of limitations and correctly instructed the jury that, as to Count 1, it "must unanimously decide that at least one member of the conspiracy committed at least one overt act after July 31, 2003." DE 520 at 14. *See also* DE 429, 431; *United States v. Hudson*, 982 F.2d 160, 163 (5th Cir. 1993) (affirming district

[5] Perez's testimony, of course, alone is sufficient to sustain the defendants' convictions. *United States v. Hoskins*, 628 F.2d 295, 296 (11th Cir. 1980) (per curium) ("A federal conviction, however, can be based on the uncorroborated testimony of a single witness.").

court's refusal to give defendant's proposed jury instruction, which involved a question of law rather than of fact). There was no legal basis for a statute of limitations instruction as to the substantive counts, all of which were alleged to have taken place after July 31, 2003.

Second, the Court's "instrumentality" instruction (DE 520 at 23-24) was proper, and Rodriguez's proposed instructions were legally incorrect, for the reasons set forth in DE 409. In summary, Rodriguez's preferred proposed instruction directly contradicted the Court's prior ruling (and the ruling of two other courts) that term "instrumentality" in the FCPA includes state-owned and state-controlled enterprise; Rodriguez would have had the jury instructed that "a state owned enterprise is **not** a foreign government instrumentality within the meaning of the Foreign Corrupt Practices Act, and officers and employees of a state owned enterprise therefore are **not** "foreign officials" under the Foreign Corrupt Practices Act." DE 404-1 Ex. A. (emphasis added). Rodriguez's alternative instruction included a profoundly prescriptive 16 part test with no foundation in law or common sense. DE 409. This Court properly rejected these proposed instructions and instead included a non-exclusive multi-factor definition, consistent with the case law. DE 530 at 23-24.

Third, Rodriguez states, without further elaboration, that "the Court erred in instructing the jury on deliberate ignorance." DE 542 at 4. However, both the deliberate ignorance provision within the instruction concerning the FCPA, DE 520 at 26, and the general deliberate ignorance instruction, DE 520 at 35, were properly given. First, both instructions were correct statements of the law. The definition in the FCPA portion of the instructions tracked the statutory definition of knowledge in the FCPA, which includes constructive knowledge. *See* 15 U.S.C. 78dd-2(h)(3)(B) ("When knowledge of the existence of a particular circumstance is required for an offense, such

knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist."). The general deliberate ignorance instruction is derived from Eleventh Circuit Pattern Special Instruction 8. Second, there was adequate factual predicate for including these instructions. Although the Government presented evidence that Rodriguez, in fact, knew of the bribery scheme when he worked to perpetuate the bribes, Rodriguez's defense was to attack the credibility of the Government's witnesses, especially Perez, and to argue that he signed checks in the routine course of business and with no criminal intent. *See, e.g.*, Tr. 8/3/2011 PM pp. 75-77 (arguing in closing that signing checks was not evidence of guilt). Consequently, the Government also adduced evidence at trial that Rodriguez was aware of various red flags (for example the nature of the documents that were being requested and signed and the status of the parties that were being paid), which established a high probability that the payments were bribes and yet deliberately proceeded without requiring the usual, back up documentation before authorizing payment. Therefore, the Court did not error in including instructions on deliberate ignorance. DE 520 at 26, 35; 15 U.S.C. 78dd-2(h)(3)(B); *see also United States v. King*, 351 F.3d 859, 866-67 (8th Cir. 2003).

C. The Court's pre-trial rulings were correct.

Rodriguez next seeks to relitigate this Court's pre-trial rulings regarding severance, spoliation, failure to state a criminal offense, and statute of limitations. DE 542 at 4-5. For the reasons set forth in this Court's prior rulings (DE 239, 240, 308, 309), and in the Government's previous briefs on these issues (DE 186, 204, 207, 208, 211, 219, 222, 225, 228, 288, 294, 429), these arguments should be rejected.

D. The Court properly overruled Rodriguez's Rule 44 objections.

Rodriguez next seeks to relitigate the "Rule 44" objections he made at trial. DE 542 at 5. Rodriguez argued that any document from Terra's corporate files (*i.e.*, documents bearing the "TERRA" Bates label) that was sent to Terra from Haiti should be excluded under Federal Rule of Civil Procedure 44 and 18 U.S.C. § 3505. However, the Government established that, after acquiring these documents from Teleco, Terra used them for internal purposes, such as paying bills, and then kept them in its corporate records. *See, e.g.*, Tr. 7/20/2011 AM pp. 8-9. These documents thereby became Terra's business records. *See* DE 458; *United States v. Adefehinti*, 510 F.3d 319, 324-27 (D.C. Cir. 2007)*; United States v. Parker*, 749 F.2d 628, 632-33 (11th Cir. 1984); *United States v. Merrill*, 08-20574-CR-LENARD(s), DE 608, 645. Accordingly, the Court properly admitted these documents and should again reject Rodriguez's Rule 44/ § 3505 argument.

E. The first Bellerive declaration does not provide any basis for an acquittal or new trial.

Rodriguez next argues that he is entitled to a judgment of acquittal or a new trial based on the first Bellerive declaration. DE 543. According to Rodriguez, ***all*** of the charges in the indictment turned on whether Teleco was an instrumentality of the Haitian government and whether Antoine and Duperval were Haitian government officials. DE 543 at 1-2. Rodriguez contends that the first Bellerive declaration stands in "stark contrast" to the trial testimony of Mr. Lissade and "demonstrates that the factual predicate for the FCPA offenses and related charges is absent and never existed." DE 543 at 3, 6. From this, Rodriguez concludes that, had the defendants possessed the first Bellerive declaration, there is a reasonable likelihood that the verdict would have been affected. DE 543 at 6. Rodriguez further claims that the Government failed to notify him that it had sought a declaration from Mr. Bellerive. DE 543 at 7. Because Rodriguez's arguments are based

on a thorough misapprehension of the facts and the law, they should be rejected, and his motion should be denied.

1. The Government received the first Bellerive declaration from defense counsel; it did not seek it from the Haitian Government.

As a preliminary matter, Rodriguez's description of how the Government came into possession of the first Bellerive declaration is wrong. As was made clear in the cover letter sent to counsel for Rodriguez and Esquenazi—a cover letter that is included in Ex. A to Rodriguez's motion—the Government received the first Bellerive declaration on the evening of August 9, 2011 from attorney Paul Calli, who, at the time, was co-counsel for defendant Patrick Joseph. DE 506. The Government did ***not*** seek the declaration from the Republic of Haiti as Rodriguez erroneously states in his motion, DE 543 at 7, and did not know of its existence before August 9, 2011. Mr. Calli provided no explanation as to how he obtained the declaration. Indeed, before he sent the letter on August 9, 2011, Mr. Calli never indicated in any way to the Government that he possessed such a declaration.

2. The first Bellerive declaration does not contain newly discovered evidence and would not have affected the verdict.

The first Bellerive declaration also does not contain any "newly discovered" evidence that would entitle the defendants to relief. According to Rodriguez, the Bellerive declaration makes four important points: (1) Private individuals founded Teleco in 1968; (2) converting Teleco from an "S.A." to an "S.A.M." required a change in Teleco's by-laws; (3) Teleco never changed its by-laws; and (4) Teleco remained a "company under common law" even after BRH became a shareholder. DE 543 at 3-4. None of these points is new. Mr. Lissade made the first three points known to the defendants before trial and to the jury during trial. *See* DE 417, Ex. B at ¶¶ 5, 16; Tr. 7/25/2011 PM

pp. 38, 40-42, 68, 96. Indeed, in closing argument, Esquenazi argued that he did not need to call his own Haitian law expert because "Mr. Lissade's cross-examination gave it to me." Tr. 8/3/2011 PM p. 7.[6] According to his pre-trial Notice of Expert Witness Disclosure, Esquenazi's expert witness was prepared to testify that, among other things:

- Teleco was established as a private company in 1968;
- the BRH's acquisition of Teleco "did not change the nature of a corporation that is governed by civil law;"
- Teleco's "staff and employees are not public officials or public servants" and "are all under the jurisdiction of private law;"
- "neither Robert Antoine [n]or Jean Rene Duperval were officials of the government of Haiti during their employ at Teleco;" and
- "Teleco was, during the period of times in the indictment, a private entity under Haitian law."

DE 360. Because the defendants knew all of these points prior to the verdict, the first Bellerive declaration does not contain"newly discovered" evidence; and because the jury heard most of these points from Mr. Lissade, there is no reason to believe that their repetition by Mr. Bellerive would have affected the jury's verdict. *Thompson*, 422 F.3d at 1294.

The first Bellerive declaration also would not have affected the jury's verdict because, simply stated, it does not say what Rodriguez (or Mr. Calli before him) says that it does. In his second declaration, Mr. Bellerive explains that, although truthful, the statements made in his first declaration "might lead to confusion" if taken out of context (as Rodriguez has done here and as Mr. Calli had done before him). Ex. 1, Translation at ¶ 3. As Mr. Bellerive explains:

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[6] The significance to this motion of Esquenazi's strategic decision not to call his own expert should not be understated.

> On July 26, 2011 I signed a statement on the legal status of Télécommunications d'Haïti SAM ("Téléco"). When I signed that statement, I did not know that it was going to be used in criminal legal proceedings in the United States or that it was going to be used in support of the argument that, after the takeover by BRH and before its modernization, Téléco was not part of the Public Administration of Haiti. This is obviously not the case since, during that time, Téléco belonged to BRH, which is an institution of the Haitian state. That document had been signed strictly for internal purposes and to be used in support of the on-going modernization process of Téléco.
>
> * * *
>
> Even though the facts mentioned in the statement are truthful, now that I know the purpose for which they were used, I wish to explain how they might lead to confusion....
>
> * * *
>
> All the facts in the July 26, 2011 statement are correct. However, that statement can be confusing if taken in its current context since it omits the fact that, after the initial creation of Téléco and prior to its modernization, it was fully funded and controlled by BRH, which is a public entity of the Haitian state.
>
> * * *
>
> References to private law or to public law made in my statement dated July 26, 2011 have to be clarified due to a lack of precision, omissions and improper interpretation. The only legal point that should stand out in this statement is that there exists no law specifically designating Téléco as a public institution. Yet this does not mean that Haiti's public laws do not apply to Téléco even if no public law designates it as such.....

Id. at ¶¶ 2-3, 5, 8. In other words, Mr. Bellerive squarely rejects Rodriguez's (and Mr. Calli's) proposed interpretation of his first declaration.

Moreover, it appears likely that, had the defendants called him to testify at trial,[7] Mr. Bellerive would have been consistent with Lissade's testimony. For example, Mr. Bellerive explains in his second declaration that:

- Teleco was part of the Public Administration of Haiti because it "belonged to BRH, which is an institution of the Haitian state" (*see* Ex. 1, Translation at ¶ 2);
- "[p]rior to its modernization, 97% of Téléco belonged to the Haitian State, which nevertheless controlled it ... 100%" (*id.* at ¶ 7);

[7] The first Bellerive declaration is inadmissible hearsay and thus, by itself, could not have affected the verdict.

- "the nomination of the Director General and of the Board members of Téléco has always been done by Decision of the President of the Republic and been countersigned by the Prime Minister and other ministers concerned" (*id.* at ¶ 6);
- "Téléco's income was to be used by BRH for public purposes" and its "debts were ... borne by BRH" (*id.* at ¶ 7);
- "Téléco does not pay taxes or import duties" (*id.* at ¶ 7);
- "Téléco ... benefits from a State monopoly authorized for land-line telephone services in Haiti" (*id.* at ¶ 7);
- "[a]ny bribe paid to a Téléco agent constitutes a violation of Haiti's anti-corruption laws" (*id.* at ¶ 3); and
- Teleco was subject to the modernization law and the asset declaration law (*id.* at ¶ 8).

Because these points reaffirm Mr. Lissade's testimony, there is ***no*** likelihood that the verdict would have been affected had the defendants possessed the first Bellerive declaration. Rodriguez's motion should be rejected. *Thompson*, 422 F.3d at 1294.

Even assuming for the sake of argument that the first Bellerive declaration had been submitted to the jury without any clarification, there is still no reason to conclude that the verdict would have been affected. Mr. Lissade's testimony was corroborated by documentary evidence; by the testimony of Robert Antoine, Jean Fourcand, Juan Diaz, Antonio Perez, and John Marsha; and by Esquenazi's own testimony on cross-examination. These documents and this testimony amply supported all five of the factors enumerated in the Court's jury instruction. DE 520 at 23-24.

3. The first Bellerive declaration would not have affected the wire fraud allegations.

Finally, even assuming for the sake of argument that the first Bellerive declaration would have affected the FCPA and Haitian bribery allegations, there is no reason to conclude that the declaration would have affected the wire fraud allegations. Rodriguez is simply wrong when he claims that ***all*** of the counts in the indictment were based upon the alleged FCPA violations and that an essential element and factual predicate for ***each*** offense charged was that Teleco was an instrumentality and that Antoine and Duperval were officials under the FCPA. DE 543 at 1-2. The wire fraud offenses alleged in the indictment—both as an object of the conspiracy in Count 1 and as specified unlawful activities ("SUAs") for the money laundering counts in Counts 9-21—are legally separate offenses and are ***not*** based upon the FCPA violations. To establish the wire fraud violations, the Government was not required to prove any of the elements of the FCPA violation, including whether Teleco was an "instrumentality" of the Haitian government or whether Robert Antoine or Jean Rene Duperval were "foreign officials." Rather, to prove wire fraud, the Government need only prove that a person

> knowingly and willfully with intent to defraud, devise[d] or participate[d] in a scheme to defraud or to obtain money or property by using false pretenses, representations, or promises about a material fact, and . . . transmit[ted] or cause[d] to be transmitted by [interstate] wire some communication to help carry out the scheme to defraud.

DE 520 at 16-18.

The Government proved that the defendants caused Antoine and Duperval to create fraudulently reduced invoices, thereby depriving Teleco of money owed by Terra, and that the invoices were transmitted by faxes sent from Teleco in Haiti to Terra in Miami-Dade County. Based

on these facts and others,[8] the jury, properly instructed on the elements of wire fraud as described above, specially found that the defendants had committed the wire fraud object of the 371 conspiracy in addition to the FCPA object. DE 522-523. Given the jury's special verdict on wire fraud and the fact that wire fraud was one of the SUAs for the money laundering counts, the defendants were unquestionably properly convicted on this alternate theory. Thus, even assuming *arguendo* that the defendants are entitled to a new trial on the FCPA charges (they are not), the defendants are ***not*** entitled to any relief with respect to the conspiracy or money laundering counts. The motion for a new trial based on the first Bellerive declaration should be denied as to Counts 1 and 9-21.

IV. CONCLUSION

For the reasons set forth above, the Court should deny Rodriguez's and Esquenazi's motions.

Respectfully submitted,
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[8] For example, the Government also proved that the bribe payments were sent via wire transfers and via checks drawn on federally-insured bank accounts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court and defense counsel using CM/ECF on September 12, 2011.

By: /s/ Nicola J. Mrazek
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