

ALERT MEMORANDUM

Second Circuit Reinstates FIFA Bribery Convictions, Reviving Honest Services Fraud Prosecutions for Foreign Commercial Bribery

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In a significant decision with broad implications for companies and individuals operating internationally, the U.S. Court of Appeals for the Second Circuit has reversed the acquittal of a former media executive and a sports marketing company in the long-running FIFA bribery investigation.¹ The ruling reinstates jury convictions for honest services wire fraud and money laundering conspiracy, holding that the federal honest services fraud statute, 18 U.S.C. § 1346, can apply to foreign commercial bribery schemes.²

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¹ *United States v. Lopez*, No. 23-7183-CR, 2025 WL 1818945 (2d Cir. July 2, 2025).

² *Id.* at *1.

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The decision, issued on July 2, 2025, overturns a September 2023 judgment of acquittal from the U.S. District Court for the Eastern District of New York.³ As we discussed in our [September 14, 2023 alert memorandum](#), the district court had concluded that recent Supreme Court decisions in *Percoco v. United States* and *Ciminelli v. United States* narrowed the scope of the honest services fraud statute to exclude the foreign commercial bribery at issue in the FIFA case.⁴ The Second Circuit’s reversal revives a statutory tool for the Department of Justice (“DOJ”) to police international corruption, even when the Foreign Corrupt Practices Act (“FCPA”) may not apply.

Background

The case involves allegations that a former media executive and a sports marketing company paid millions of dollars in bribes to officials of the South American football confederation, CONMEBOL, to secure lucrative broadcasting rights for soccer tournaments.⁵ In March 2023, a federal jury convicted the sports marketing company and a former executive at the media company on charges of honest services wire fraud conspiracy and money laundering conspiracy.⁶

However, U.S. District Judge Pamela K. Chen granted the defendants’ post-trial motion for acquittal.⁷ Judge Chen reasoned that the Supreme Court’s 2023 rulings in *Percoco* and *Ciminelli*, which limited the scope of honest services fraud in the context of public officials and property rights, effectively foreclosed the application of the statute to foreign commercial bribery schemes.⁸ The district court held that § 1346 does not criminalize the conduct of a foreign, private

actor who deprives a foreign, private entity of its honest services.⁹

The Second Circuit’s Decision

The Second Circuit panel unanimously disagreed, vacating the judgment of acquittal and remanding the case to the district court with instructions to reinstate the guilty verdicts.¹⁰ In doing so, the court made several key holdings:

1. ***Percoco* and *Ciminelli* Did Not Warrant Acquittal:** The Court held that the district court’s reliance on *Percoco* and *Ciminelli* was misplaced.¹¹ Those cases, the Second Circuit explained, dealt with distinct theories of fraud—the “right-to-control” theory of property fraud in *Ciminelli* and the scope of fiduciary duty for private citizens dealing with the government in *Percoco*.¹² Neither case, the Court reasoned, addressed the core of honest services fraud as it applies to private-sector commercial bribery.¹³
2. **Honest Services Fraud Applies to Foreign Commercial Bribery:** The Second Circuit reaffirmed its precedent that § 1346 criminalizes schemes to deprive a private employer of its employee’s honest services through bribery and kickbacks.¹⁴ The Court found no basis in the statute’s text or history to create a carve-out for bribery schemes that happen to involve foreign actors or foreign entities.¹⁵ The focus of the wire fraud statute, for purposes of determining its domestic application, remains the use of U.S. wires to

³ *Id.*

⁴ *U.S. District Court Tosses FIFA Bribery Convictions, Finding Honest Services Statute Does Not Reach Foreign Commercial Bribery*, CLEARY GOTTlieb (Sept. 14, 2023), <https://www.clearygottlieb.com/news-and-insights/publication-listing/us-district-court-tosses-fifa-bribery-convictions-finding-honest-services-statute-does-not-reach-foreign-commercial-bribery>.

⁵ *Lopez*, 2025 WL 1818945 at *2–3.

⁶ *Id.* at *4.

⁷ *United States v. Full Play Grp., S.A.*, 690 F. Supp. 3d 5 (E.D.N.Y. 2023), *vacated and remanded sub nom. United*

States v. Lopez, No. 23-7183-CR, 2025 WL 1818945 (2d Cir. July 2, 2025).

⁸ *Id.* at 11–12.

⁹ *Id.* at 12.

¹⁰ *Lopez*, 2025 WL 1818945 at *1.

¹¹ *Id.* at *9.

¹² *Id.* at *8.

¹³ *Id.* at *11.

¹⁴ *Id.* at *10.

¹⁵ *Id.* at *11.

advance the fraudulent scheme.¹⁶ Because the defendants used the U.S. financial system to transmit the bribes, the Court found a sufficient domestic nexus to apply the statute.¹⁷

3. **Distinguishing from “Undisclosed Self-Dealing”:** The Court distinguished the bribery and kickback scheme at issue from cases of undisclosed self-dealing, which the Supreme Court in *Skilling v. United States* held was outside the scope of the honest services statute.¹⁸ The FIFA case, the Court emphasized, involved classic bribery aimed at corrupting a fiduciary relationship, which lies at the “core” of the conduct Congress intended to prohibit in § 1346.¹⁹

The Court remanded the case for the district court to consider the defendants’ alternative arguments for acquittal or a new trial, but the core legal holding strengthens the DOJ’s jurisdiction in future international corruption cases.

Key Takeaways

- **Revival of a Key Enforcement Tool:** The Second Circuit’s decision may breathe new life into the use of the honest services wire fraud statute as a flexible tool for the DOJ to prosecute foreign bribery, particularly in cases where the FCPA anti-bribery provisions do not apply (e.g., commercial bribery involving no government officials).
- **Decision Aligns with DOJ’s Aggressive Enforcement Posture:** This ruling dovetails with the DOJ’s recently announced priorities. The DOJ’s new white-collar enforcement plan,

as discussed in our [May 15, 2025 alert memorandum](#), and its revised FCPA guidance, covered in our [June 11, 2025 alert memorandum](#), both signal an intent to use all available statutory tools to pursue high-impact international corruption that harms U.S. interests.²⁰ The Second Circuit’s decision to revive a non-FCPA theory of liability for foreign commercial bribery provides prosecutors with the kind of flexibility the DOJ’s new policies envision. In assessing enforcement risks, companies should consider whether conduct previously believed to fall outside FCPA coverage may now trigger scrutiny under § 1346.

- **Use of U.S. Wires Remains a Critical Jurisdictional Hook:** The decision reaffirms the principle that any use of the U.S. financial system—including correspondent bank accounts—to facilitate illicit payments can be sufficient to trigger U.S. jurisdiction.²¹ This serves as a reminder that even seemingly “foreign-to-foreign” transactions can fall within the purview of U.S. prosecutors if they touch the U.S. financial system in any meaningful way.²² Here, the Second Circuit reiterated that what is key is the “use of the telecommunications systems of the United States in furtherance of a scheme,” and that the identity and location of the victim are “irrelevant.”
- **Compliance Programs Should Address Commercial Bribery:** This decision underscores the importance for multinational companies to maintain robust compliance programs that address not only bribery of

¹⁶ *Id.* at *11–12.

¹⁷ *Id.* at *12.

¹⁸ *Id.* at *7.

¹⁹ *Id.* at *8–10.

²⁰ See *DOJ Criminal Division Announces White Collar Enforcement Plan and Revisions to Three Key Policies*, CLEARY GOTTlieb (May 15, 2025), [https://www.clearygottlieb.com/news-and-insights/publication-listing/doj-criminal-division-](https://www.clearygottlieb.com/news-and-insights/publication-listing/doj-criminal-division-announces-white-collar-enforcement-plan-and-revisions-to-three-key-policies)

[announces-white-collar-enforcement-plan-and-revisions-to-three-key-policies](https://www.clearygottlieb.com/news-and-insights/publication-listing/doj-issues-revised-fcpa-guidelines); *DOJ Issues Revised FCPA Guidelines: A Strategic Focus on U.S. National Interests and High-Impact Enforcement*, CLEARY GOTTlieb (June 11, 2025), <https://www.clearygottlieb.com/news-and-insights/publication-listing/doj-issues-revised-fcpa-guidelines>.

²¹ See *Lopez*, 2025 WL 1818945 at *2–3, 11.

²² See *id.* at *11.

public officials under the FCPA but also commercial bribery. For example, companies should examine whether their third-party policies address commercial bribery risks and consider training employees and agents on the subject.

- **Importance of Maintaining Accurate Books and Records, and Adequate Internal Controls:** Companies publicly-traded on a U.S. stock exchange also should remain mindful of the FCPA's accounting provisions, which require that public companies account for all assets and liabilities accurately and in reasonable detail in their books and records, as well as devise and maintain a system of internal accounting controls sufficient to assure management's control, authority, and responsibility over the firm's assets. DOJ and SEC have previously brought FCPA cases based, in part, on violations of the books and records provision related to commercial bribery, where improper payments were falsely recorded.
- **Potential for Further Supreme Court Review:** Given the conflicting interpretations of the honest services statute and the significant implications of this ruling, the defendants stated they will seek Supreme Court review.²³ The Supreme Court has shown a recent interest in clarifying the scope of federal fraud statutes, and this case presents an opportunity to address the extraterritorial application of honest services fraud.²⁴

The Second Circuit's decision is a significant development in the landscape of white-collar criminal enforcement. It serves as a reminder that U.S. law enforcement authorities will continue to use a variety of statutes to pursue international corruption and assert

broad jurisdiction over conduct that has alleged ties to the United States.

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²³ See Santul Nerkar & Ken Bensinger, *Court Reinstates Convictions in International Soccer Corruption Case*, N.Y. TIMES (July 2, 2025), <https://www.nytimes.com/2025/07/02/nyregion/court-reinstates-fifa-corruption-convictions.html>.

²⁴ See e.g., *Kousisis v. United States*, 145 S. Ct. 1382 (2025) (clarifying the scope the federal wire-fraud statute, 18 U.S. § 1343).