

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 09-21010-CR-MARTINEZ-BROWN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOEL ESQUENAZI, et al.,

Defendants.

ORDER DENYING DEFENDANT JOEL ESQUENAZI'S (CORRECTED AND AMENDED) MOTION TO DISMISS INDICTMENT FOR FAILURE TO STATE A CRIMINAL OFFENSE AND FOR VAGUENESS

THIS CAUSE came before the Court upon Defendant Joel Esquenazi's (Corrected and Amended) Motion to Dismiss Indictment for Failure to State a Criminal Offense and for Vagueness (D.E. No. 283).¹ In this motion, Defendant Joel Esquenazi ("Defendant") moves to dismiss the indictment for failure to state a criminal offense and in the alternative for vagueness "with respect to who would constitute a 'foreign official' within the meaning of the Foreign Corrupt Practices Act" ("FCPA"). After careful consideration and for the reasons set forth below, the Court denies this motion.

The FCPA prohibits "any officer, director, employee, or agent" of a domestic concern to offer payment to a foreign official for purposes of influencing that official acting in his official capacity. The FCPA defines a "foreign official" as

any officer or employee of a foreign government or any department, agency, or

¹Defendants Jean Rene Duperval and Marguerite Grandison have joined in this motion. See (D.E. No. 299, 301).

instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

15 U.S.C. § 78dd-2(h)(2)(A). The foreign officials in this case are alleged to be employees of Telecommunications D'Haiti ("Haiti Teleco"), which the government alleges "was the Republic of Haiti's state-owned national telecommunications company." (D.E. No. 3 at 2). Specifically, the foreign officials at issue in this case are Robert Antoine ("Antoine") who was the Director of International Relations of Haiti Teleco and Jean Rene Duperval ("Duperval") who was Robert Antonine's successor and also acted as the Director of International Relations at Haiti Teleco (D.E. No. 3 at 3,5).

Defendant discusses a number of factual issues and argues that the indictment must be dismissed because Antoine and Duperval are not foreign officials under the FCPA "merely because . . . [they are] employed by an entity 'owned or partially owned' by a foreign government department, agency, or instrumentality as alleged in the indictment." (D.E. No. 283 at 3). Defendant also argues that the Court "cannot read into the statute an extension of the FCPA's definition of 'Department, Agency, or Instrumentality' to entities controlled or partially controlled by departments, agencies or instrumentalities." *Id.* at 4. Finally, Defendant argues that the phrase "department, agency, or instrumentality is unconstitutionally vague "if it is premised solely on government control of ownership." *Id.* at 14.

The Court, however, finds that the Government has sufficiently alleged that Antoine and Duperval were foreign officials by alleging that these individuals were directors in the state-owned Haiti Teleco. Any factual arguments Defendant has on this point may be addressed at

trial. *See United States v. Torkington*, 812 F. 2d 1347, 1354 (11th Cir. 1987) (stating that "a court may not dismiss an indictment . . . on a determination of facts that should have been developed at trial." .)


The Court also disagrees that Haiti Teleco cannot be an instrumentality under the FCPA's definition of foreign official. The plain language of this statute and the plain meaning of this term show that as the facts are alleged in the indictment Haiti Teleco could be an instrumentality of the Haitian government. *See* 15 U.S.C. § 78dd-2(h)(2)(A).

Finally, the Court also disagrees that the phrase "department, agency, or instrumentality" in the definition of "foreign official" is unconstitutionally vague. "Vagueness arises when a statute is so unclear as to what conduct is applicable that persons of common intelligence must necessarily guess at its meaning and differ as to its application." *Mason v. Florida Bar*, 208 F. 3d 952, 958 (11th Cir. 2000). Defendant has not met this standard, and the Court finds that persons of common intelligence would have fair notice of this statute's prohibitions. Therefore, it is hereby:

ORDERED AND ADJUDGED that

Defendant Joel Esquenazi's (Corrected and Amended) Motion to Dismiss Indictment for Failure to State a Criminal Offense and for Vagueness (D.E. No. 283) is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 19 day of November, 2010.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Brown
All Counsel of Record