17-2765

To Be Argued By:
ELISHA J. KOBRE

United States Court of Appeals

FOR THE SECOND CIRCUIT
Docket No. 17-2765

UNITED STATES OF AMERICA,

Appellee,

—v.—

MAHMOUD THIAM,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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Preliminary Statement

Defendant Mahmoud Thiam appeals from a judgment of conviction entered on August 28, 2017, in the United States District Court for the Southern District of New York, following a seven-day trial before the Honorable Denise L. Cote, United States District Judge, and a jury.

Indictment 17 Cr. 47 (DLC) was filed on January 18, 2017, in two counts. Count One charged Thiam with conducting transactions in criminally derived property, in violation of 18 U.S.C. §§ 1957 and 2. Count Two charged Thiam with money laundering, in violation of 18 U.S.C. §§ 1956 (a)(1)(B), 1956(f) and 2.

Trial commenced on April 24, 2017 and ended on May 3, 2017, when Thiam was convicted on both counts in the Indictment.

On August 25, 2017, Judge Cote sentenced Thiam to a term of 84 months' incarceration, to be followed by three years' supervised release, ordered $8.5 million in forfeiture, and imposed a $200 mandatory special assessment.

Thiam is serving his sentence.

Statement of Facts

A. The Government's Case

At trial, the Government overwhelmingly proved that Thiam, as a high-level Guinean government official, accepted $8.5 million in bribes in order to promote and negotiate a highly lucrative mining contract with a Chinese conglomerate. The Government's proof at trial included the testimony of eight witnesses, including Daouda Camara, the Senior Advisor to the former Prime Minister of Guinea, and Mamadou Sande, the former Minister of Finance of Guinea. In addition to witness testimony, the evidence at trial included portions of Thiam's recorded post-arrest interview, various agreements and draft agreements, e-mail and other communications, and bank records, among other documentary evidence.

1. Thiam Used His Position as Guinea's Minister of Mines to Promote the Award of Valuable Mining Rights to the Chinese Conglomerate

Thiam is a United States citizen who was, in 2009 and 2010, Minister of Mines and Geology of the Republic of Guinea (the "Minister of Mines"). (A. 457, 674).[1] As Minister of Mines, Thiam had substantial powers relating to mining in Guinea, including setting Guinea's mining policy, promoting the development of the mining sector, and granting mining licenses and concessions. (A. 479-83). As Minister of Mines, Thiam also oversaw Guinea's Ministry of Mines, which consisted of between 800 and 1,200 employees. (A. 479). During Thiam's tenure as Minister of Mines, no important decision about mining in Guinea was made without Thiam's involvement. (A. 482).

In the spring of 2009, Guinea began to negotiate with the China International Fund ("CIF"), a China-based company, regarding a potential joint venture between CIF and Guinea. (A. 456, 673-74, 688-90). CIF was headed by an individual named Sam Pa, who also headed an affiliated company named China Sonangol. (A. 485, 690). The negotiations between Guinea and

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[1] "Br." refers to Thiam's brief on appeal; "A." refers to the appendix filed with that brief; "GX" refers to a Government Exhibit admitted at trial; and "Docket [#]" refers to the corresponding entry on the District Court's docket for this case.

CIF centered on highly valuable rights to natural resources in Guinea, including vast reserves of bauxite, iron ore, gold and diamonds. (A. 459-60).

Thiam was the Guinean government official primarily responsible for directly negotiating the terms of CIF's investment. (A. 457). Thiam's central role in the award of rights to CIF was evidenced by many facts proved at trial.

Thiam "promot[ed]" the award of valuable rights to CIF at four official ministerial meetings, including by touting the benefits such a deal would bring to Guinea's mining sector. (A. 483-541). These meetings included at least two with Guinea's full Council of Ministers, whose function it was to "regulat[e] the policies of the government," "direct[ ] the main orientations of the government," and "implement[ ] the plans and the programs of the government" (A. 471), and two with a subset of the full Council of Ministers whose ministries would be directly impacted by the proposed joint venture (A. 483-84). Thiam was the "primary presenter" at several of these meetings and "present[ed] the benefits of the investment" by CIF. (A. 487-88). Thiam also accompanied CIF's Chairman and Chief Executive Officer ("CEO"), Sam Pa, to at least two other meetings with the Prime Minister of Guinea. (A. 495-96).

Thiam was also appointed by the Prime Minister of Guinea to head up a "technical committee" established "to examine all the documents regarding the financial, legal matters in order to review the connection between . . . Guinea and China International Fund." (A. 497). The Prime Minister of Guinea directed the

technical committee to report about the negotiations regularly to Thiam in his role as Minister of Mines. (A. 497). The technical committee did so, including at one point presenting specific concerns that the proposed Shareholder's Agreement contained terms substantially disadvantageous to Guinea. (A. 526-27).

The documents reviewed by the technical committee included a series of written agreements of increasing formality and detail between the parties—a Memorandum of Understanding, dated June 6, 2009, a Framework Agreement, dated June 12, 2009, and finally a Shareholder's Agreement, dated October 10, 2009. (A. 497-525). Under the terms of the Shareholder's Agreement, Guinea became shareholders with subsidiaries of CIF and China Sonangol (together, the "Chinese Conglomerate") in a joint venture named Africa Development Corporation ("ADC"), which was owned 85 percent by the Chinese Conglomerate and 15 percent by Guinea. (A. 513). The joint venture was granted highly valuable rights and concessions to Guinea's natural resources, including mining rights. (A. 515-18). It was Thiam, in his capacity as Minister of Mines and head of the technical committee, who provided drafts of each of these agreements to the rest of the technical committee for its review. (A. 499, 504, 509).

Thiam was also a member of a three-person commission established by presidential decree to negotiate with CIF. (A. 673-74, 686-716). As part of his work on this commission, Thiam headed a delegation that went to Singapore in July 2009 to negotiate with executives of the Chinese Conglomerate. (GX 405-T, 506-T;

A. 501, 720). During these negotiations, and in response to objections raised by the Chinese Conglomerate to a proposal that gave Guinea a greater ownership interest in the proposed joint venture, Thiam "suggested" a compromise solution. (GX 506-T). This and other changes—including the inclusion in the agreement of various mining rights—were incorporated into a new version of the Framework Agreement, dated July 18, 2009. (A. 531-32, 1184-85). This alternative Framework Agreement, which was evidently prepared outside of the ordinary negotiation process, was signed on behalf—but without the knowledge—of Mamadou Sande, Guinea's Minister of Economy and Finance. (A. 528-30, 722-23). The July 18, 2009 Framework Agreement was never provided to the technical committee for review. (A. 537-38).

Thiam initialed each page of the Shareholder's Agreement, which was the final and formal agreement between Guinea and the Chinese Conglomerate. (A. 511-12, 715). Provisions of the Shareholder's Agreement, negotiated by Thiam, were so substantially disadvantageous to Guinea that Daouda Camara, the Senior Adviser to the Prime Minister, repeatedly raised concerns about it with Thiam and others. (A. 519-28, 533-34, 541-46). Among other things, the Shareholder's Agreement gave the Chinese Conglomerate, through ADC, "full exclusivity" over a wide range of sectors of the Guinean economy, including "diamond, iron, bauxite, gold, oil and gas and mineral concessions." (A. 516-17). Under this exclusivity provision, "[t]he sovereign rights of the Republic of Guinea regarding its natural resources were practically re-

moved from Guinea." (A. 518). The exclusivity provision as written also violated the rights of prior shareholders of mining rights in Guinea. (A. 537).

The Shareholder's Agreement also called for the creation of a National Mining Company ("NMC"), in which the Chinese Conglomerate would have "the right to be the first and strategic shareholder." Under the Shareholder's Agreement, NMC:

> would get the rights attached to the shares that are already associated with the current mining operations. And rights for the new projects, the dividends that might come from that, and for the operational and the future projects, the commercial and taking-off rights, and the commercial rights of marketing, it represents an incredible and enormous amounts of rights and benefits.

(A. 524).

Camara expressed concern that such a provision "represented a real threat on to the government regarding operational projects that were already in place and to projects that would be developed in the future." (A. 525). Camara's concerns were reiterated at ministerial meetings conducted on October 7 and October 8, 2009 and in a letter sent, on or about November 4, 2009, by the Prime Minister to, among others, Thiam. (A. 542-46). These concerns were disregarded. (A. 546-47).

2. Thiam Received Bribes from Executives of the Chinese Conglomerate

On September 25, 2009—approximately two weeks before the signing of the Shareholder's Agreement—Sam Pa, the CEO of the Chinese Conglomerate, with whom Thiam was negotiating, transferred $3 million into a bank account at HSBC in Hong Kong in Thiam's name (the "Thiam Hong Kong Account"). (A. 777-80). Thiam had opened the Thiam Hong Kong Account the previous day, September 24, 2009, at a bank located in the same building where the Chinese Conglomerate was headquartered. (A. 773-77). Five days later, on September 30, 2009, Sam Pa was reimbursed for this $3 million transfer by the Chinese Conglomerate. (A. 791-92).

Between March and November 2010, Thiam received an additional $5.5 million from Sam Pa and other executives of the Chinese Conglomerate. (A. 797-818). Like the initial transfer, the initial source for each of these funds was the Chinese Conglomerate, which funneled the money to Thiam through its executives. (*Id.*).

Shortly thereafter, on November 8, 2010, upon receiving a message that Sam Pa was "locked up," Thiam commented "[Sam Pa] predicted I would be locked up. Life has its twists." (GX 601A).

Between September 2009 and August 2011, Thiam conducted numerous wire transfers of bribe proceeds from the Thiam Hong Kong Account to his own accounts in the United States and to other transferees. Thiam spent these bribe proceeds on, among other

things, luxury items and expensive vacations. (GX 1001; A. 793-94, 824-28, 834-38). Thiam also transferred $375,000 in bribe proceeds to a company in Malaysia to conceal the source of these proceeds, which Thiam then used to purchase—through a parallel wire transfer from a Mozambique-based company—an estate in Dutchess County, New York ("the Dutchess County Estate"). (GX 1005; A. 850-62). That transfer was charged in Count Two of the Indictment.

3. Thiam Lied About and Concealed His Official Position and the Source of the Bribe Payments

Evidence presented at trial showed that Thiam lied repeatedly to conceal the bribery scheme. When Thiam opened the Thiam Hong Kong Account, which he used to receive the bribes, he lied to the bank by claiming that he was a "consultant" with an income of $200,000 per month. (A. 775). Thiam was, in reality, then Guinea's Minister of Mines with minimal income. Thiam further concealed his status as a Guinean government official by reporting his nationality to the bank as "France" and by providing the bank with a French passport rather than his valid Guinean diplomatic passport. (A. 776).

Thiam also lied repeatedly to two banks in the United States to which he transferred the bribe proceeds. Thiam first falsely told a compliance officer with JPMorgan Chase Bank, where Thiam held an account (the "Thiam Chase Account"), that the funds in the Thiam Hong Kong Account were from business transactions over the years with an individual named Baker

Al-Sadi. (A. 431-38). None of those funds were from Al-Sadi; they were almost all from the Chinese Conglomerate. (A. 905-06). Prior to sending an e-mail with this false information, Thiam forwarded it to Al-Sadi, a business partner of Thiam's, who replied, in pertinent part, "Looks fine if they don't dig too deep." (A. 1057, 1155-56). After Thiam asked whether he should send the false information to the bank, Al-Sadi suggested that Thiam "[b]uy some time" and further suggested that Thiam tell the bank he had requested some information from Al-Sadi after which "we'll see if they follow up." (A. 1156).

On or about June 7, 2010, shortly after JP Morgan Chase closed the Thiam Chase Account, Thiam opened a new account at HSBC bank in Manhattan (the "Thiam HSBC Account"). During an account opening interview, Thiam falsely told the HSBC banker that he was employed by a natural resources company named "AMER," which he said was based at the address of Thiam's Manhattan apartment, and did not mention that he was, at the time, Guinea's Minister of Mines. (A. 964-66). HSBC only discovered Thiam's official status when, by happenstance, a bank employee saw Thiam being interviewed on CNBC. (A. 928-29). During a follow-up interview at HSBC on July 19, 2010, Thiam admitted to the HSBC banker that he was the Minister of Mines, but this time falsely stated that the funds in the Thiam Hong Kong Account were from savings from past employment and the proceeds from the sale of land in Africa. (A. 930-36, 988).

During a videotaped post-arrest interview conducted on December 13, 2016, Thiam continued to lie

to hide the bribery scheme, stating—contrary to the stories Thiam had told to JP Morgan Chase and HSBC—that the funds in the Thiam Hong Kong Account were a personal "loan" from Sam Pa, albeit one with no terms, documentation, interest rate, or repayment date. (GX 801A). Among the other lies Thiam told during the post-arrest interview were that the Thiam Hong Kong account was funded by "50 people" who owed him money and that the Shareholder's Agreement had been "signed and done a long time" before Thiam received the payment from Sam Pa. (GX 801A; A. 864-65). Those statements were plainly false.

B. The Defense Case

The defense case consisted of the brief testimony of Momo Sakho, who was an adviser to the president of the Republic of Guinea during the relevant period (A. 1021-41), and the testimony of Thiam (A. 1049-1100, 1118-1235). Mr. Sakho testified about the state of the government in Guinea in 2009, specifically that the president at the time was not particularly receptive to advice from others and that joint ventures like the one with the Chinese Conglomerate were not unusual at the time. (A. 1026, 1029).

Thiam testified that the money he received from Sam Pa was a personal loan, but that it was not in return for anything other than Thiam's promise to repay the loan. (A. 1133-36). Thiam testified that the $8.5 million loan was an undocumented verbal agreement with no interest rate and no repayment date. (A. 1170). Thiam also admitted that he lied about the source of the proceeds and his position as Minister of

Mines to three banks in Hong Kong and the United States, but stated that he had done so because he was a politically exposed person, and was therefore concerned that banks might refuse to allow him to open or control an account. (A. 1138-44). Thiam also admitted that he had failed to report a portion of the bribe proceeds on his 2009 tax returns and that the portion he did report on his 2010 return he reported as "income" from consulting, which was inconsistent with his testimony that it was a loan. (A. 1158-62). Thiam insisted that he needed the loan from Sam Pa to "feed [his] family." (A. 1208).

C. The Verdict

After deliberating for less than a day, the jury convicted Thiam on both counts. (A. 992).

D. Post-Trial Motions

Thiam filed a post-trial motion arguing that the evidence at trial was insufficient to prove that the funds wired through Thiam's bank accounts were proceeds of bribes. Judge Cote rejected that motion, finding the evidence, which included: (i) the suspicious timing of the first payment; (ii) Thiam's numerous false statements to multiple banks; (iii) Thiam's efforts to conceal the source of the deposits; (iv) Thiam's false statements to law enforcement; (v) Thiam's trial testimony that he had received an interest-free loan from Sam Pa, which he never repaid; and (vi) Thiam's consciousness of guilt as evidenced by his message regarding Pa getting "locked up," was sufficient for the jury to find that Thiam had received a bribe. (A. 1380-81).

E. Sentencing

On August 25, 2017, Judge Cote sentenced Thiam principally to 84 months' imprisonment to be followed by three years' supervised release, and ordered Thiam to pay $8.5 million in forfeiture. Thiam does not challenge any aspect of his sentence on appeal.

ARGUMENT

POINT I

There Was Sufficient Evidence to Prove that Thiam Accepted Bribes in Violation of the Laws of Guinea

A. Relevant Facts

Before trial, the Government moved *in limine* requesting that the District Court instruct the jury as to two Guinean anti-bribery statutes that would each qualify as "specified unlawful activity" because, as alleged in the Indictment, each was "an offense against a foreign nation involving . . . bribery of a public official." 18 U.S.C. § 1956(c)(7)(B)(iv). These two statutes were Article 192 of Guinea's Penal Code, which criminalizes "passive corruption," or the receipt of bribe payments by a public official ("Article 192"), and Article 194 of Guinea's Penal Code, which criminalizes "active corruption," or the payment of bribes by other persons to a public official ("Article 194").

In support of this motion, the Government submitted a sworn affidavit by Zogbelemou Togba, a professor of law at the University of Conakry, Guinea, who had

also previously served as Minister of Justice and in other governmental capacities in the Republic of Guinea (the "Togba Affidavit"). (A. 70-84). As set forth in the Togba Affidavit, Article 192, subsection I, titled "Passive Corruption," was in effect during the relevant period and provides:

> Shall be punished by imprisonment of 1 to 5 years . . . whoever has solicited or accepted offers or promises, solicited or received donations or gifts in order to: . . . being an elected public official, a public official of the administrative or judicial order, member of the military or related staff, agent or official of a public administration or citizen in charge of a public service ministry, to perform or refrain from performing an act within the scope of his/her functions or job, fair or not, but not subject to salary.

(A. 66-67, 71, 76, 81).

The Togba Affidavit set forth the four elements of a violation of Article 192 as follows:

> First, at the time of the alleged offense, the defendant was. . . an agent or official of a public administration; or . . .a citizen in charge of a public service ministry;
>
> . . .
>
> Second, the defendant knowingly solicited or received something of value, outside of or beyond the defendant's government salary;

> Third, the defendant's solicitation or receipt of the thing of value was in return for engaging in an act or refraining from engaging in an act; [and]
>
> . . .
>
> Fourth, the act that the defendant took or refrained from taking fell within the scope of the defendant's job function or position.

(A. 72-73, 82-83).

As to the first element, Professor Togba stated that "the Minister of Mines of Guinea is both an 'agent of a public administration' and a 'citizen in charge of a public service ministry.'" (A. 82). As to the third element, Professor Togba noted that "it is irrelevant whether the act in question was fair or just, or not. In other words, it is immaterial whether the defendant might have lawfully and properly engaged in (or refrained from engaging in) the same act." (A. 82).

As further set forth in the Togba Affidavit, Article 194, subsection I, titled "Active Corruption," was in effect during the relevant period and provides:

> Whosoever, to obtain, either performance of an act or the refraining from performance of an act or one of the favors or advantages set forth in articles 192 and 193, having employed assaults or threats, promises, offers, donations or gifts or given in to entreaties aimed at bribery, even if he/she has not taken the initiative, whether or not the force or bribery

> has had an effect, shall be punished by the same penalties as those set forth in said articles against the bribed person.

(A. 68, 73, 78, 83).

The Togba Affidavit set forth the three elements of a violation of Article 194 as follows:

> First, the defendant, whether directly or through a third party, knowingly offered or gave something of value to a public official—even if in response to the solicitation of the public official—outside of or beyond the public official's government salary;
>
> . . .
>
> Second, the thing of value was offered or given to the public official to influence the public official to engage in an act or to refrain from engaging in an act; [and]
>
> . . .
>
> Third, the act in question was within the scope of the public official's job function or position.

(A. 83-84). The Minister of Mines falls within the meaning of "public official" as used in Article 194. (A. 82, 83). And, as with Article 192, it is "irrelevant

whether the act in question was fair or just, or not." (A. 84).[2]

Thiam expressly consented to the Government's requested jury instruction, and the District Court granted the motion on consent. (A. 286-87, 302). At the conclusion of trial, and without objection, Judge Cote instructed the jury regarding Articles 192 and 194 of the Guinean Penal Code consistent with the Togba Affidavit as described above. (A. 1307-11).

B. Applicable Law

1. Money Laundering

Sections 1956 and 1957 prohibit individuals from engaging in certain financial and monetary transactions involving proceeds of "specified unlawful activity." 18 U.S.C. §§ 1956(a), 1957(a). "Specified unlawful activity," is defined, in relevant part, "with respect to a financial transaction occurring in whole or in part in the United States," to include "an offense against a foreign nation involving . . . bribery of a public official." 18 U.S.C. §§ 1956(c)(7)(B)(iv), 1957(f)(3). "Bribery" is defined, for purposes of these money laundering provisions, according to the laws of the "foreign nation," in which the bribery occurred. *See United States v. Real*

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[2] The Government offered to make Mr. Zogbelemou available for live testimony in case additional evidence regarding the construction and interpretation of Articles 192 and 194 was deemed necessary. (A. 39-40). Thiam never requested any additional evidence of Guinean law.

Prop. Known as Unit 5B of Onyx Chelsea Condo., No. 10 CIV. 5390 KBF, 2012 WL 1883371, at *5 (S.D.N.Y. May 21, 2012) ("[T]he prohibited activity includes an act of bribery, as defined by the relevant foreign nation."); *United States v. Awan*, 459 F. Supp. 2d 167, 183 (E.D.N.Y. 2006) ("An 'offense against a foreign nation' refers to offenses which are 'prohibited under the law of the foreign nation in which it is committed.' The phrase 'intent to promote the carrying on of an offense against a foreign nation involving murder . . . ' accordingly means that the defendant intended to aid an activity in a foreign country which has as a necessary consequence murder . . . as defined in the country referred to." (quoting *United States v. One 1997 E35 Ford Van, VIN 1FBJS31L3VHB70844*, 50 F. Supp. 2d 789, 802 (N.D. Ill. 1999)). Thus, where conduct constitutes "bribery" in the country where it occurred, that conduct constitutes a "specified unlawful activity," for purposes of Sections 1956 and 1957.

2. Sufficiency of the Evidence

"[A] defendant challenging the sufficiency of the evidence 'bears a heavy burden,' as the standard of review is 'exceedingly deferential.'" *United States v. Coplan*, 703 F.3d 46, 62 (2d Cir. 2012) (quoting *United States v. Heras*, 609 F.3d 101, 105 (2d Cir. 2010); *United States v. Hassan*, 578 F.3d 108, 126 (2d Cir. 2008)). Specifically, this Court "view[s] the evidence in the light most favorable to the government, crediting every inference that could have been drawn in the government's favor, and deferring to the jury's assessment of witness credibility and its assessment of the weight

of the evidence." *Id.* (internal quotation marks omitted) (quoting *United States v. Chavez*, 549 F.3d 119, 124 (2d Cir. 2008)); *United States v. Binday*, 804 F.3d 558 (2d Cir. 2015). "Although sufficiency review is *de novo*, [this Court] will uphold the judgments of conviction if '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* (citation omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The Court "must consider the evidence as a whole, and not as individual pieces, and remember that the jury is entitled to base its decision on reasonable inferences from circumstantial evidence." *United States v. Rahman*, 189 F.3d 88, 122-23 (2d Cir. 1999).

This Court has recognized that "the task of choosing among competing, permissible inferences is for the [jury], not for the reviewing court," *United States v. McDermott*, 245 F.3d 133, 137 (2d Cir. 2001). Thus, "it is well-settled that when reviewing the sufficiency of the evidence [this Court] 'defer[s] to the jury's assessment of witness credibility and the jury's resolution of conflicting testimony.'" *United States v. Glenn*, 312 F.3d 58, 64 (2d Cir. 2002) (quoting *United States v. Bala*, 236 F.3d 87, 93-94 (2d Cir. 2000)). In that regard, "the jury has a right to consider the defendant's lack of credibility in reaching its verdict." *United States v. Tyler*, 758 F.2d 66, 69 (2d Cir. 1985). Thus, "[i]n evaluating the sufficiency of the evidence, [this Court is] not limited to the government's case and may look to the testimony of [the defendant]. A defendant's testimony may thus add weight to the government's case. To put it another way, a jury may 'use its disbelief [of a defendant's testimony] to supplement the other evidence

against him.'" *United States v. Velasquez*, 271 F.3d 364, 371 (2d Cir. 2001) (citations omitted) (quoting *United States v. Stanley*, 928 F.2d 575, 577 (2d Cir. 1991)).

3. McDonnell v. United States

Prior to trial in this case, the Supreme Court, in *McDonnell v. United States*, 136 S. Ct. 2355 (2016), considered the definition of "official act" under the general federal bribery statute, 18 U.S.C. § 201(b). *See United States v. Skelos*, 707 F. App'x 733 (2d Cir. Sept. 26, 2017); *United States v. Silver*, 864 F.3d 102, 116 (2d Cir. 2017); *United States v. Boyland*, 862 F.3d 279 (2d Cir. 2017). In *McDonnell*, the former Governor of Virginia was charged with, among other things, honest services fraud and Hobbs Act extortion. *McDonnell*, 136 S. Ct. at 2364-65. While McDonnell was in office, he and his wife accepted $175,000 in financial benefits from a businessman seeking, among other things, to have Virginia's public universities conduct research studies on a nutritional supplement. *Id.* at 2361. The Government alleged in that indictment and argued at trial that McDonnell's "official acts" in exchange for those funds consisted primarily of arranging meetings and hosting events. *Id.* at 2365. "The Government also argued more broadly that these activities constituted 'official action' because they related to Virginia business development, a priority of Governor McDonnell's administration." *Id.* at 2361.

The parties in *McDonnell* agreed that the jury charge should define bribery with reference to the federal bribery statute, 18 U.S.C. § 201. *Id.* at 2365. That

statute makes it a crime for "a public official or person selected to be a public official, directly or indirectly, corruptly" to demand, seek, receive, accept, or agree "to receive or accept anything of value" in return for being "influenced in the performance of any official act." 18 U.S.C. § 201(b)(2). An "official act" is defined as "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." 18 U.S.C. § 201(a)(3).

The *McDonnell* district court defined "official act" accordingly for the jury, and further instructed it that official acts "encompassed acts that a public official customarily performs, including acts in furtherance of longer-term goals or in a series of steps to exercise influence or achieve an end." *McDonnell*, 136 S. Ct. at 2366. The district court, however, refused to instruct the jury, as requested by McDonnell, that "merely arranging a meeting, attending an event, hosting a reception, or making a speech are not, standing alone, 'official acts,' even if they are settled practices of the official, because they are not decisions on matters pending before the government." *Id.* (internal quotation marks and citation omitted).

The Supreme Court held that the jury was incorrectly instructed on the meaning of "official act," within the meaning of Section 201, and vacated McDonnell's conviction because the error was not harmless in light of the Government's theory of his of-

ficial acts. *Id.* at 2374–75. Relying on the statutory definition of "official act," the Court held that "an 'official act' is a decision or action on a 'question, matter, cause, suit, proceeding or controversy.'" *Silver*, 864 F.3d at 116 (quoting *McDonnell*, 136 S. Ct. at 2371). The Court set forth a two-part test to meet this definition.

First, "[t]he 'question, matter, cause, suit, proceeding or controversy' must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee." *Silver*, 864 F.3d at 116 (internal quotation marks omitted) (quoting *McDonnell*, 136 S. Ct. at 2372). This question, matter, cause, suit, proceeding or controversy "must also be something specific and focused that is 'pending' or 'may by law be brought' before a public official." *Id.* (internal quotation marks omitted) (quoting *McDonnell*, 136 S. Ct. at 2372).

Second, "to qualify as an 'official act,' the public official must make a decision or take an action on that 'question, matter, cause, suit, proceeding or controversy,' or agree to do so. Such an action or decision "may include using [an] official position to exert pressure on another official to perform an 'official act,' or to advise another official, knowing or intending that such advice will form the basis for an 'official act' by another official." *Id.* at 117 (internal quotation marks omitted) (quoting *McDonnell*, 136 S. Ct. at 2372). However, "[w]ithout more, 'setting up a meeting, talking to another official, or organizing an event (or agreeing to do so),' are not official acts." *Id.* (quoting *McDonnell*, 136 S. Ct. at 2372).

The decision in *McDonnell* relied principally upon a close analysis of the statutory text and precedent applying that particular statute. *See McDonnell*, 136 S. Ct. at 2367-72. The Supreme Court also noted, however, that the Government's "expansive interpretation of 'official act' would raise significant constitutional concerns." *Silver*, 864 F.3d at 117 (internal quotation marks omitted) (quoting *McDonnell*, 136 S. Ct. at 2372). Those concerns were "the criminalization of virtually all actions taken on behalf of constituents, subjecting public officials to prosecution without fair notice due to the vagueness of the Government's definition, and setting standards of good government for local and state official in contravention of federalism principles." *Id.*

McDonnell also reaffirmed that "a public official is not required to actually make a decision or take an action. [I]t is enough that the official agree to do so. The agreement need not be explicit, and the public official need not specify the means that he will use to perform his end of the bargain." *United States v. Halloran*, 664 F. App'x 23, 28 (2d Cir. 2016) (citations and internal quotation marks omitted) (quoting *McDonnell*, 136 S. Ct. at 2370-71). "Nor must the public official in fact intend to perform the 'official act,' so long as he agrees to do so. A jury could, for example, conclude that an agreement was reached if the evidence shows that the public official received a thing of value knowing that it was given with the expectation that the official would perform an 'official act' in return." *McDonnell*, 136 S. Ct. at 2371.

C. Discussion

Thiam argues that the evidence was insufficient to prove (i) an "official act" as defined by *McDonnell*, and (ii) a quid pro quo. The defendant's arguments are meritless. With respect to the "official act" argument, *McDonnell* does not apply to the Guinean bribery statutes at issue because those statutes contain different and more expansive language than the federal bribery statute at issue in *McDonnell* and no constitutional concerns warrant application of the *McDonnell* standard. Moreover, even if *McDonnell* does apply, the evidence at trial showed that Thiam performed numerous qualifying "official acts" under *McDonnell* in return for the bribes paid to him by the Chinese Conglomerate. Furthermore, there was more than sufficient evidence that Thiam's acts were a quid pro quo in return for the $8.5 million bribe payment he received from the Chinese Conglomerate.

1. *McDonnell* Does Not Apply to the Guinean Bribery Statutes at Issue

Thiam attempts to graft *McDonnell*'s interpretation of a phrase in a particular federal statute onto an entirely different statute enacted by the government of a different country. This effort should be rejected.

First, as noted, *McDonnell* interpreted the phrase "official act" in Section 201. Unlike that statutory provision, however, the Guinean statutes at issue do not require an "official act." Rather, both Article 192 and Article 194 require merely that the act was "within the scope of the defendant's job function or position." (A. 72-73, 83). This element plainly encompasses a

broader swath of conduct than Section 201. Moreover, unlike Section 201, Articles 192 and 194 contain none of the language in Section 201 suggesting that the act in question be akin to a "formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee." *Silver*, 864 F.3d at 116 (quoting *McDonnell*, 136 S. Ct. at 2372). Nor do the Guinean statutes at issue contain Section 201's language, upon which *McDonnell* relied, that there be "something specific and focused that is 'pending' or 'may by law be brought' before a public official." *Id.* And, unlike Section 201, there is no requirement in the Guinean statutes that the act be "on" such a matter, which was the principal basis for *McDonnell*'s interpretation. *Silver*, 864 F.3d at 117. In other words, Articles 192 and 194 are intended to and do cover a broader range of corrupt conduct than Section 201.

Here, the money laundering statutes that Thiam was charged with and convicted of criminalize United States citizens laundering the proceeds of specified unlawful activity or the use of the United States financial system to launder such proceeds. With respect to certain of the defined specified unlawful activities, including bribery, Congress elected to define the conduct with respect to foreign law, not Section 201 or other federal law. *See* 18 U.S.C. § 1956(c)(7)(B)(iv) (defining "specified unlawful activity" to include "an offense against a foreign nation involving . . . bribery of a public official"). That a foreign government, including the government of Guinea, chose to criminalize bribery more broadly than Section 201 has been construed is neither unusual nor problematic. *See Boyland*, 862

F.3d at 291. Therefore, this Court should not export *McDonnell*'s interpretation of a specific federal statute to constrict the bribery laws of a foreign country.[3]

Indeed, this Court has made clear that *McDonnell* does not apply to other criminal statutes. In *Boyland*, this Court declined to apply *McDonnell* to the federal fund bribery statute, 18 U.S.C. § 666, and other broadly worded statutes. *See Boyland*, 862 F.3d at 291. Thus, although the Court concluded in *Boyland* that the jury instructions on the honest services fraud and Hobbs Act counts were erroneous under *McDonnell*, it held that *McDonnell* was inapplicable to the counts charging federal funds bribery under Section 666, conspiracy to commit bribery and violate the Travel Act,

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[3] Thiam has never argued, nor could he, that violations of Articles 192 and 194 do not constitute "bribery," as that term is used in 18 U.S.C. § 1956. *Cf. United States v. Garner*, 837 F.2d 1404, 1418 (7th Cir. 1987) ("[A]ny statute that proscribes conduct which could be generically defined as bribery can be the basis for a predicate act [under 18 U.S.C. § 1961(1)(A)]."); *United States v. Kaplan*, 886 F.2d 536, 542 (2d Cir. 1989); *United States v. Forsythe*, 560 F.2d 1127, 1137 (3d Cir. 1977) ("The test for determining whether the charged acts fit into the generic category of the predicate offense is whether the indictment charges a type of activity generally known or characterized in the proscribed category, namely, any act or threat involving bribery."). To the contrary, the District Court, without objection, instructed the jury as much. (A. 1307-08).

voucher fraud, and mail fraud conspiracy.[4] *See id.* at 291. With respect to the Section 666 counts, the Court concluded that Section 666 was "more expansive than § 201" because it "prohibits individuals from 'solicit[ing] . . . anything of value from any person, *intending to be influenced* or rewarded *in connection with any* business, transaction, or series of transactions of [an] organization, government, or agency.'" *Id.* (quoting 18 U.S.C. § 666(a)(1)(B)). The Court likewise concluded that the other counts, including the Travel Act count, "do not depend on the meaning of official act under § 201(a)(3)." *Id.*; *see also United States v. Ferriero*, 866 F.3d 107, 128 (3d Cir. 2017) ("*McDonnell*'s 'more constrained' construction of 'official act' was primarily a product of the Court's interpretive analysis of that particular statute and the expansive jury instructions given by the District Court. Although the statutes in *McDonnell* and here both involve bribery, we see no reason for transplanting the conclusions in *McDonnell* that stem solely from the Court's application of general statutory-construction principles to the particular statute at issue in that case." (citation omitted)).[5]

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[4] The Travel Act, 18 U.S.C. § 1952, like the money laundering statutes at issue here, makes it unlawful, among other things, to distribute funds of "unlawful activity," which is defined, in part, to include "bribery" in violation of the laws of jurisdictions other than the federal government. *See* 18 U.S.C. § 1952(b).

[5] Several district courts have also declined to extend *McDonnell* to other statutes. *See United States v.*

Second, contrary to Thiam's assertions, the constitutional concerns described in *McDonnell* are not a basis to impose additional requirements contained nowhere in the text of the Guinean statutes. As noted, in addition to principally basing its decision on a careful reading of the particular federal bribery statute at issue, the Supreme Court in *McDonnell* explained that the "expansive interpretation" of "official act" proffered by the Government could raise constitutional concerns. None of those concerns are present here.

The Supreme Court began by noting that the Government's interpretation of "official act" in Section 201

Jefferson, No. 1:07–cr–209, 2017 WL 4423258, at *14 (E.D. Va. Oct. 4, 2017) (stating that the meaning of "official acts" under the bribery statute has no bearing on the jury's guilty verdict on the Foreign Corrupt Practice Act ("FCPA") conspiracy count because an "official act" is not an element of an FCPA conspiracy); *United States v. Williams*, No. CR 17-137, 2017 WL 2713404, at *6 (E.D. Pa. June 13, 2017) (holding *McDonnell*'s construction of official acts to be "inapplicable" to Travel Act charge premised on Pennsylvania bribery law as opposed to federal bribery law); *Edmondson v. United States*, No. 5:15-CR-118-BO, 2017 WL 2210255, at *3 (E.D.N.C. May 18, 2017) (finding *McDonnell* to be "inapplicable" to 18 U.S.C. § 201(b)(2)(B)); *United States v. Porter*, No. 7:15-022-DCR, 2017 WL 1095040, at *2 (E.D. Ky. Mar. 22, 2017) (declining to extend *McDonnell* to a Section 666 prosecution and noting "the absence of the phrase 'official act' in the latter statute").

could interfere with the ability of elected public officials to respond to the needs of their constituents. *See McDonnell*, 136 S. Ct. at 2372 ("The basic compact underlying representative government *assumes* that public officials will hear from their constituents and act appropriately on their concerns. . . ."). Here, of course, the relevant briber-bribee relationship is between foreign government officials and whoever pays them bribes—a political relationship about which the United States constitution has nothing to say. Moreover, in this case, the Chinese Conglomerate that paid the bribes obviously was not a "constituent" of the Guinean Minister of Mines. Consequently, no interpretation of "official act" will affect how Guinean officials respond to their constituents. And further underscoring the inherent problem of using United States constitutional and democratic principles to interpret foreign law, at the time of the bribes at issue, Guinea did not even have a representative form of government; in December 2008, Moussa Dadis Camara seized control of the government in a military coup and dissolved the representative branches of government. (A. 682-83).

Next, the Supreme Court explained that an expansive interpretation of "official act" would "raise[] significant federalism concerns" because it would risk "involv[ing] the Federal Government in setting standards of good government for local and state officials." *McDonnell*, 136 S. Ct. at 2373 (internal quotation marks omitted). This concern has no application here, because the money laundering statutes, in relevant respect, only criminalize transactions if the foreign coun-

try itself has chosen to criminalize the underlying conduct that generated the laundered proceeds. In other words, federal law does not purport in any way to govern the conduct of or set standards for foreign government officials. Therefore, applying the law as written by Guinea does not implicate any federalism-related concerns.[6]

Lastly, the Supreme Court noted a concern with subjecting public officials to prosecution "without fair notice." *McDonnell*, 136 S. Ct. at 2373. Here, however, the text of the Guinean bribery statute provides more than adequate notice regarding conduct that would subject Guinean government officials to prosecution. Under Guinean law, a public official is only subject to prosecution if he or she receives or solicits "something

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[6] In fact, to the extent this case implicates federalism-like concerns at all, it is the defendant's position—in which he demands that a foreign country's bribery laws passed against a backdrop of that country's political history and concerns be interpreted the same way the United States interprets its own bribery laws—that would violate them. *See Ferriero*, 866 F.3d at 128 ("[T]his case lacks the federalism concerns present in *McDonnell*. . . . Though this case applies a federal statute to a nonfederal, local party official, it applies a standard from a New Jersey statute written by New Jersey legislators. It simply does not "'involve [] the Federal Government in setting standards' of 'good government for local and state officials.'" (quoting *McDonnell*, 136 S. Ct. at 2373 (quoting *McNally v. United States*, 483 U.S. 350, 360 (1987)))).

of value," which is meant "to influence the public official to perform actions or refrain from performing actions within the scope of the public official's position or job." (A. 83). Thus, the statute makes clear that the action at issue must be within the scope of the official's job and includes an express quid pro quo requirement. (A. 84 ("[T]he thing of value was offered or given to the public official to influence the public official to engage in an act or to refrain from engaging in an act."). And as discussed above, this Court has expressly declined to apply *McDonnell* to other broad statutes based on vagueness or other constitutional concerns. *See Boyland*, 862 F.3d at 291 (declining to apply *McDonnell* to federal funds bribery under Section 666, conspiracy to commit bribery and violate the Travel Act, voucher fraud, and mail fraud conspiracy). The Court should do the same here.

This is particularly true given the facts of this case. Thiam was the Minister of Mines—a position that carries authority inherently limited to the mining sector —and accepted $8.5 million from a Chinese conglomerate hoping to obtain valuable mining rights from the Guinean government. (A. 479-83). There can be no reasonable argument that, as applied to him, Thiam did not know that this conduct was prohibited. *See United States v. Nadi*, 996 F.2d 548, 550 (2d Cir. 1993) ("Because the statute is judged on an as applied basis, one whose conduct is clearly proscribed by the statute cannot successfully challenge it for vagueness."); *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988) ("Objections to vagueness under the Due Process Clause rest on the

lack of notice, and hence may be overcome in any specific case where reasonable persons would know that their conduct is at risk.").

Accordingly, Thiam's argument that Articles 192 and 194 should be interpreted to include *McDonnell*'s definition of "official act" should be rejected. And because the Government was not required to prove a *McDonnell* "official act," Thiam's sufficiency challenge is without merit.

2. Evidence at Trial Included Numerous Acts Satisfying the *McDonnell* Standard

Even if *McDonnell* applied to the Guinean bribery statutes (which it does not), the evidence at trial consisted of numerous acts taken by Thiam that constitute "official acts" under *McDonnell* and were in return for the bribes. These include the following:

- Thiam "promot[ed]" the award of valuable rights to CIF at four official ministerial meetings including by touting the benefits such a deal would bring to Guinea's mining sector. (A. 483-541). Thiam was the "primary presenter" at several of these meetings, (A. 487-88), where he "present[ed] the benefits of the investment" by the Chinese Conglomerate. (A 488).
- Thiam headed a "technical committee" established to examine all the financial and legal documents related to the potential agreement with CIF. (A. 497). The Prime Minister of the Republic of Guinea

directed the technical committee to report regularly to Thiam in his role as Minister of Mines. (A. 497). Thiam also provided to the technical committee for its review drafts of the agreements between the Republic of Guinea and the Chinese Conglomerate. (A. 499, 504, 509).

- Thiam headed a delegation to Singapore in July 2009 to negotiate with executives of the Chinese Conglomerate. (GX 405-T, 506-T; A. 501, 720). During this mission, Thiam "suggested" a compromise solution to a potential objection raised by the Chinese Conglomerate. (GX 506-T). This and other changes were incorporated into a new version of the Framework Agreement, dated July 18, 2009. (A. 531-32, 1184-85). This new Framework Agreement, which conferred additional benefits on the Chinese Conglomerate as compared to the prior agreement, was signed on behalf—but without the knowledge—of Sande and was never provided to the technical committee for its review. (A. 528-30, 537-38, 722-23).
- Thiam initialed each page of the Shareholder's Agreement, which was the final and formal agreement between the Republic of Guinea and the Chinese Conglomerate. (A. 511-12, 715).

The decision of whether and under what terms to enter into an agreement with the Chinese Conglomerate is plainly "something specific and focused that is 'pending' or 'may by law be brought' before a public official." *Silver*, 864 F.3d at 116 (internal quotation marks omitted) (quoting *McDonnell*, 136 S. Ct. at 2372). Moreover, all of the acts described above are decisions or actions "on" that specific and focused matter. *Silver*, 864 F.3d at 117. Thiam's efforts to promote the deal, highlight its benefits, present on it at multiple ministerial meetings, and negotiate deal terms are undoubtedly official acts under *McDonnell*. *See id.* ("Such an action or decision 'may include using [an] official position to exert pressure on another official to perform an "official act," or to advise another official, knowing or intending that such advice will form the basis for an "official act" by another official.'" (quoting *McDonnell*, 136 S. Ct. at 2372)); *see Skelos*, 707 F. App'x at 739-40 ("Using one's influence as a high ranking state official to push through county legislation and to bestow a county-issued contract are indisputably formal exercises of governmental power constituting official acts under *McDonnell*. Similarly, evidence of Dean Skelos's efforts to pass state legislation to fund various projects benefitting AbTech also supports a reasonable jury finding of legally cognizable official acts." (citation omitted)).[7]

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[7] Thiam's suggestion that the only relevant acts are those that occurred after he received the first bribe payment on September 25, 2009 (Br. 38), is plainly wrong, both legally and as a matter of common sense. *See, e.g., United States v. Jennings*, 160 F.3d 1006,

Thus, the evidence was sufficient to prove multiple "official acts" within the meaning of *McDonnell*.

3. There Was More Than Sufficient Evidence of a Quid Pro Quo

There was also ample evidence at trial that the payments from the Chinese Conglomerate were "in return for" Thiam's acts to further the venture between the Chinese Conglomerate and Guinea. This evidence includes the highly suspicious timing of the first $3 million payment, which Thiam received on September 25, 2009, just two weeks before the signing of the Shareholder's Agreement on October 10, 2009; Thiam's repeated attempts to conceal the payments, including his receipt of the money using an offshore account; his repeated lies to conceal his status as a public official; and his numerous lies about the source of the money.

Thiam's multifarious lies about the source of the bribe proceeds include that those funds were derived from (i) business transactions with Baker Al-Sadi (A. 431-33, 436-39), (ii) income from consulting work

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1014 (4th Cir. 1998) ("Bribes often are paid before the fact, but 'it is only logical that in certain situations the bribe will not actually be conveyed until the act is done.' ") (quoting *United States v. Campbell*, 684 F.2d 141, 148 (D.C. Cir. 1982)). In any event, many of Thiam's acts occurred after he received the first bribe, including initialing the Shareholder's Agreement, failing to take action on concerns raised by the technical committee, and continuing to defend and promote the deal at ministerial meetings on October 7 and 8, 2009.

(A. 1160-62), (iii) proceeds from the sale of land in Africa (A. 936, 988), and finally (iv) an interest-free, undocumented, personal loan from Sam Pa, "a canny businessman" (Br. 43), Thiam had met for the first time just months earlier, which had no repayment period and which Thiam never in fact repaid. (GX 801A; A. 1133-36, 1211).

The jury was entitled to conclude that Thiam concealed his public official status and repeatedly lied about the source of the payments from executives of the Chinese Conglomerate, because he knew that he had taken bribes in violation of Guinean law. That Thiam discussed with Sam Pa which of them would get "locked up" only highlights that Thiam knew he had committed a crime. And given Thiam's lies during his testimony in open court and his extensive history of admitted lies, the jury may reasonably have decided to reject his testimony altogether, and even considered it as further evidence of his guilt. *See Velasquez*, 271 F.3d at 371.

Accordingly, the defendant's sufficiency challenge should be rejected.

POINT II

The District Court Properly Instructed the Jury as to the Guinean Penal Statutes at Issue

1. Applicable Law

An appellant challenging a jury instruction must demonstrate that (1) he requested a charge that "accurately represented the law in every respect" and (2) the

charge actually delivered, when viewed as a whole, was erroneous and prejudicial. *United States v. Wilkerson*, 361 F.3d 717, 732 (2d Cir. 2004); *United States v. Nektalov*, 461 F.3d 309, 313-14 (2d Cir. 2006). In reviewing jury instructions, this Court does not look only to the particular words or phrases challenged by the defendant, but must "review the instructions as a whole to see if the entire charge delivered a correct interpretation of the law." *United States v. Carr*, 880 F.2d 1550, 1555 (2d Cir. 1989); *see also United States v. Mulder*, 273 F.3d 91, 105 (2d Cir. 2001).

Where the defendant "failed to raise a specific objection to the omission of the necessary . . . language from the charge" and "no better instruction was requested," this Court will review the alleged failure to give a more adequate instruction for plain error. *See United States v. Skelly*, 442 F.3d 94, 99 (2d Cir. 2006). Although Federal Rule of Criminal Procedure 30(d) does not specifically require that a defendant propose alternative language to preserve an objection, *see United States v. Hassan*, 578 F.3d 108, 129 (2d Cir. 2008), the defendant must state his objection with sufficient specificity to permit the district court to resolve the issue in the first instance. *See United States v. Ghailani*, 733 F.3d 29, 52 (2d Cir. 2013) (where a defendant "objects only generally to the issuance of a jury instruction, and not to the specific language used by the District Court, the objection to the formulation of the charge is not preserved"). Indeed, even where the defendant does propose a jury instruction that "arguably could be read to encompass the theory they press on appeal," this Court will still review for plain error

if the requested instruction "was insufficiently particular to raise the question now presented." *United States v. Weintraub*, 273 F.3d 139, 145-46 (2d Cir. 2001). "[R]equested instructions do not substitute for specific objections to the court's instructions." *United States v. Tannenbaum*, 934 F.2d 8, 14 (2d Cir. 1991) (internal quotation marks omitted) (quoting *United States v. Graziano*, 710 F.2d 691, 696 n.8 (11th Cir. 1983)); *United States v. Birbal*, 62 F.3d 456, 459 (2d Cir. 1995) ("Although appellants requested the standard jury instructions on reasonable doubt, the presumption of innocence, and the burden of proof, they did not specifically object to the district court's alternative instruction at the time it was given, as [Rule 30] requires. Accordingly, we review the court's instructions for plain error . . . .").

To establish plain error, an appellant must demonstrate that "(1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the appellant's substantial rights, which in the ordinary case means it affected the outcome of the district court proceedings; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Marcus*, 560 U.S. 258, 262 (2010) (internal quotation marks and alterations omitted); *see Boyland*, 862 F.3d at 288-92 (affirming jury instructions challenged under *McDonnell* on a plain error standard).

For an error to be plain, "it must, 'at a minimum,' be 'clear under current law.'" *Weintraub*, 273 F.3d at 152 (quoting *United States v. Feliciano*, 223 F.3d 102, 115 (2d Cir. 2000)). The Supreme Court has cautioned

that reversal for plain error should "be used sparingly, solely in those circumstances in which a miscarriage of justice would otherwise result." *United States v. Frady*, 456 U.S. 152, 163 n.14 (1982). This Court "typically will not find such error where the operative legal question is unsettled," including where there is no binding precedent from the Supreme Court or this Court." *United States v. Whab*, 355 F.3d 155 (2d Cir. 2004) (internal quotation marks omitted) (quoting *Weintraub*, 273 F.3d at 152).

Even where a defendant requests a proper instruction that was not given, reversal will not be warranted if the trial court's error was harmless. Fed. R. Crim. P. 52(a); *see United States v. Gansman*, 657 F.3d 85, 91-92 (2d Cir. 2011). Thus, a conviction should be affirmed despite instructional error if it "appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *Neder v. United States*, 527 U.S. 1, 15 (1999) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). "The Government bears the burden of establishing harmlessness." *Silver*, 864 F.3d at 119.

2. Discussion

Judge Cote's instructions to the jury were not erroneous, let alone plainly erroneous. As an initial matter, Thiam did not object to or challenge Judge Cote's jury instruction as to the Guinean bribery statutes. To the contrary, Thiam expressly consented to the Government's motion *in limine* to instruct the jury in accord with the Togba Affidavit. (A. 286-87). The District

Court granted that motion on consent at the final pretrial conference. (A. 302). Judge Cote later noted in scheduling the charge conference, and without any objection by the defense, that "there was basically no dispute on the elements of Guinean law." (A. 1101). And at no time during the charge conference did Thiam raise any objection to Judge Cote's proposed instruction as to the elements of Guinean law. (A. 1101-14).

Thiam argues, however, that his proposed jury instruction, which stated that "[t]he Government must show that the money was given in exchange for his action or favor in an official capacity," was sufficient to preserve his current objection. (Br. 45-46). This is far from the case. Thiam's proposed instruction, which was filed approximately two weeks before he expressly consented to the Government's proposed instruction, and which did not reference *McDonnell*,[8] is substantively identical to the Government's proposed instruction and the instruction that was actually given. (A. 1309 (instructing the jury that the Government had to prove that the payment was "in return for engaging in an act," and that the act "fell within the scope of the defendant's job or function as the minister of mines")). To the extent the defendant wished to use his pre-consent instruction to preemptively withdraw his later express consent and lodge a *McDonnell*-based

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[8] *McDonnell* was decided on June 27, 2016, approximately 10 months before Thiam's trial began. At no point before or during trial did the defendant ever suggest that *McDonnell* had any bearing on this case.

objection to the definition of "official act" (a term that appeared nowhere in Thiam's proposed instruction or the District Court's actual instruction), he was required to do so explicitly. *See United States v. Masotto*, 73 F.3d 1233, 1237 (2d Cir. 1996) (objection to jury charge "must direct the trial court's attention to the contention that is to be raised on appeal") (internal quotation marks omitted) (quoting *United States v. Scarpa*, 913 F.2d 993, 1020 (2d Cir. 1990)). Thus, because Thiam failed to object to the instruction, his claim on appeal is reviewed for plain error.

For the reasons set forth above, the District Court committed no error in not instructing the jury that the *McDonnell* definition of "official act" applied to Guinean law. *McDonnell* was largely based on the interpretation of particular federal statute that is not at issue in this case. *See Ferriero*, 866 F.3d at 127 ("The bulk of [the holding in *McDonnell*] rested on the Court's interpretation of § 201."). And while the Supreme Court raised certain constitutional concerns that supported its textual analysis, those concerns are also not at issue here. Accordingly, there was no error in the District Court's jury instructions. Moreover, given that multiple courts, including this Court, have declined to extend *McDonnell* to other federal and state statutes, *see, e.g.*, *Boyland*, 862 F.3d at 291; *Ferriero*, 866 F.3d at 128, let alone foreign statutes, the jury instructions, even if erroneous, cannot constitute plain error, because it is not "clear under current law" that *McDonnell* applies to the Guinean bribery statutes (which it does not). *See Weintraub*, 273 F.3d at 152.

Moreover, even if Judge Cote's instructions somehow constituted error that was plain, Thiam cannot show any error affected his substantial rights or the fairness, integrity or public reputation of the judicial proceedings. Nearly all if not all of the acts Thiam took in relation to the joint venture between Guinea and the Chinese Conglomerate were "official acts" within the meaning of *McDonnell*. There can be no real dispute that the question of whether and on what terms to proceed with the mining joint venture was a "'question [or] matter' . . . involving the formal exercise of governmental power" and is "something specific and focused that is 'pending' or 'may by law be brought before any public official.'" *McDonnell*, 136 S. Ct. at 2374. And the evidence at trial established that Thiam acted on that matter. As the defendant concedes, the evidence established, among other things, that "Thiam arranged meetings, forwarded documents via email, and hosted or participated in events." (Br. 46-47). While the Supreme Court, in *McDonnell*, held that an act like "setting up a meeting, calling another public official, or hosting an event does not, *standing alone*, qualify as an 'official act,'" *McDonnell*, 136 S. Ct. at 2368 (emphasis added), here, there was much more than evidence of isolated, non-official acts.

The meetings at issue here were official ministerial meetings of the entire Council of Ministers, whose function it was to "regulat[e] the policies of the government" (A. 471); a subset of the Council of Ministers particularly concerned about the venture (A. 483-84); and meetings of the technical committee established "to examine all the documents regarding the financial [and] legal matters in order to review the connection

between . . . Guinea and China International Fund" (A. 497). These are nothing like the informal and commonplace setting up of "meetings for constituents," at issue in *McDonnell*. *See McDonnell*, 136 S. Ct. at 2372. In fact, the Chinese Conglomerate was not Thiam's "constituent"; it was the entity on the opposite side of a transaction from Guinea—the country that Thiam was supposed to represent and whose interests Thiam was supposed to protect.

Likewise, the e-mails Thiam sent were in direct furtherance of the proposed joint venture to monetize Guiana's mineral resources. (*See*, *e.g.* GX 506-T (providing a report to the Prime Minister "to report back to you on our current mission to Asia at the CIF"); GX 510-T, 511-T, 512-T (corresponding with the President of the Central Bank of the Republic of Guinea regarding bank accounts for the joint venture); A. 766-68 (e-mail to representative of the Chinese Conglomerate attaching "proposed amendments received from Guinea [to the bylaws of the proposed joint venture]" and asking the representative to "have them checked and give us your opinion"). Sending these e-mails to effectuate and further the joint venture were plainly official acts under *McDonnell*.

Similarly, the "events" at issue during trial, *e.g.*, Thiam's heading up of an official delegation to Singapore in July 2009 for a ceremony to sign deal documents and the initialing of the Shareholder's Agreement, constitute official acts under *McDonnell*. And Thiam's advocacy and "promot[ion]" of the venture at official ministerial meetings convened to decide whether and under what terms to enter the agreement

were plainly "intend[ed] to exert pressure on another official or provide advice, knowing or intending such advice to form the basis for an 'official act.'" *McDonnell*, 136 S. Ct. at 2371.

In sum, the evidence established that Thiam received $8.5 million from the Chinese Conglomerate to help ensure that the Chinese Conglomerate received the contract for Guiana's mining rights. In return, Thiam, as Minister of Mines, took numerous concrete steps to make sure that occurred. That conduct falls squarely into *McDonnell*'s "official act" definition. Thus, Thiam cannot demonstrate that any error in the District Court's jury instructions—and there was none—affected his substantial rights or the fairness of the proceedings. *See Boyland*, 862 F.3d at 292 ("[A]ll of Boyland's dealings with Getson and Quinn involved concrete matters that, in order to proceed, needed to be brought before public officials or agencies that would have to make formal and focused administrative decisions. In connection with each matter, Boyland agreed to ensure that favorable governmental decisions would be made, whether for licensing, work contracts, zoning, or funding. Although the jury was not instructed as to its need to find that the matters were concrete, that they required focused governmental decisions, and that Boyland took action on these matters, we see no reasonable possibility, in light of the record as a whole, that that flaw affected the outcome of the case."); *Halloran*, 664 F. App'x at 28-29 ("*McDonnell* makes clear that while merely setting up a meeting is not in itself an 'official act' for purposes of Hobbs Act extortion, doing so 'could serve as evidence of an agreement to take an official act.' Thus, given the

strength of the evidence supporting the Government's theory that Smith promised to help channel government funds to benefit the bribe-givers . . . there is no 'reasonable probability that the [asserted] error affected the outcome of the trial.'" (citation omitted) (quoting *McDonnell*, 136 S. Ct. at 2371; *United States v. Prado*, 815 F.3d 93, 102 (2d Cir. 2016))).

Indeed, for these same reasons, even if this Court were to find that Thiam preserved his *McDonnell* jury instruction objection, any error would be harmless. The evidence established, beyond a reasonable doubt, an explicit quid pro quo in exchange for Thiam's efforts to bring about a concrete result.[9]

---

[9] Thiam suggests that the Government's argument in summation that "[a]ll that is required is that he accepted money to take an act in his official position, whatever that act may be," (A. 1252), renders the jury instruction not harmless (Br. 46-47). That is not so. The Government was not responding to an argument that defendant's actions did not constitute "official acts" within the meaning of Guinean bribery statutes; indeed, that argument was not raised at all in the District Court. Rather, in context, the Government was describing key actions undertaken by the defendant—including specifically initialing a version of the contract—and responding to the suggestion that it could only be bribery if the defendant were solely responsible for the contract. Nothing about that argument advocated for conviction based solely on non-*McDonnell* official acts.

Thus, the District Court committed no error, let alone plain error, in failing to instruct the jury that it was required to find an "official act," as defined by *McDonnell*.

POINT III

Thiam's Challenges to the District Court's Evidentiary Rulings Are Without Merit

Thiam argues that the District Court erred in (i) precluding him from offering his own hearsay statements; (ii) admitting a summary chart showing his lavish spending and an electronic communication relevant to his consciousness of guilt; and (iii) permitting cross-examination on matters related to his credibility and guilty knowledge. Because the District Court acted well within its substantial discretion with respect to each of these issues, Thiam's evidentiary challenges should be rejected.

A. Relevant Facts

Before trial, the Government moved *in limine* to preclude the defense from offering into evidence portions of Thiam's videotaped post-arrest statement that were not being offered by the Government. (A. 51-54, 94-285). Thiam, in response, sought to introduce other portions of the statement under the rule of completeness. (A. 289-90). The District Court ruled on these motions at the final pretrial conference (A. 315-19, 341-42), granting in whole or in part Thiam's requests to offer three additional portions of the statement, and denying Thiam's remaining requests. (A. 317-18). Judge Cote held that the other portions requested by

Thiam were "neither explanatory of, nor relevant to, the admitted passages." (A. 317 (quoting *United States v. Johnson*, 507 F.3d 796 (2d Cir. 2007))).

During trial, Thiam also objected to the introduction of a summary chart depicting, based upon admitted bank records, how Thiam spent a portion of the bribe proceeds as unduly prejudicial under Rule 403 of the Federal Rules of Evidence. (A. 746-50; GX 1001). Thiam did not argue that the chart was inaccurate or that the underlying records were inadmissible, but rather that it would be unfairly prejudicial to show the jury that Thiam spent bribe proceeds on, among other things, luxuries. (A. 747-48). Judge Cote overruled the objection, finding that how the defendant used the bribe money was "highly relevant" to, among other things, "why one would take a bribe." (A. 749-50). And Judge Cote noted that the exhibit was no more prejudicial than other evidence admitted at trial showing that Thiam had used a portion of the bribe to buy an estate in Dutchess County. (A. 749).

At trial, the Government also offered into evidence a string of electronic communications recovered from Thiam's cellular phone pursuant to a search warrant. (A. 909-11; GX 601A). In the message string, a third party wrote "At least Sam Pa is locked up so u r fine" to which Thiam responded "[h]e predicted I would be locked up. Life has its twists." (A. 910; GX 601A). Judge Cote overruled Thiam's Rule 403 objection, finding Thiam's statement to be highly probative and the prior reference to Sam Pa being locked up necessary to provide context to Thiam's response. (A. 832). The Dis-

trict Court provided the jury with a limiting instruction when the message string was introduced, directing the jury that the statement regarding Sam Pa was "not being offered for the truth" and that it is "not evidence as to whether Mr. Pa is locked up or not, and you're not to speculate at all with respect to whether he is locked up, where he's locked up, why he's locked up, or whether he isn't locked up. It's not being received for the truth." (A. 910-11).

Finally, during cross-examination of Thiam, the Government asked Thiam, over defense objections, about, among other things: (1) his failure to file Reports of Foreign Bank and Financial Accounts ("FBARs") as required to report his control over the Thiam Hong Kong Account (A. 1159-60); (2) his knowledge of the harms caused by corruption (A. 1206); and (3) his knowledge that Sam Pa paid bribes to African officials (A. 1207-08).

1. Applicable Law

a. The Rule of Completeness

Pursuant to Rule 801(d)(2)(A) of the Federal Rules of Evidence, a defendant's out-of-court statement is not hearsay when offered by the Government. Fed. R. Evid. 801(d)(2)(A) ("A statement is not hearsay if . . . [it] is offered against a party and is the party's own statement."); *see United States v. Marin*, 669 F.2d 73, 84 (2d Cir. 1982). The defendant, however, does not have a parallel ability to offer the statement into evidence. "When the defendant seeks to introduce his own prior statement for the truth of the matter asserted, it

is hearsay, and it is not admissible." *Marin*, 669 F.2d at 84.

Notwithstanding the hearsay bar, a defendant may in some circumstances invoke the "rule of completeness" to require the introduction of additional portions of his own out-of-court statement when the Government offers excerpts of it. *See* Fed. R. Evid. 106. "Under this principle, an omitted portion of a statement must be placed in evidence if necessary to explain the admitted portion, to place the admitted portion in context, to avoid misleading the jury, or to ensure fair and impartial understanding of the admitted portion. . . . The completeness doctrine does not, however, require the admission of portions of a statement that are neither explanatory of nor relevant to the admitted passages." *United States v. Jackson*, 180 F.3d 55, 73 (2d Cir. 1999). The "'rule of completeness' . . . is violated 'only where admission of the statement in redacted form distorts its meaning or excludes information substantially exculpatory of the declarant.'" *Marin*, 669 F.2d at 84; *see United States v. Benitez,* 920 F.2d 1080, 1086-87 (2d Cir. 1990). As such, "the rule of completeness is not a mechanism to bypass hearsay rules for any self-serving testimony." *United States v. Gonzalez*, 399 F. App'x 641, 645 (2d Cir. 2010).

b. Standard of Review

This Court "review[s] the district court's evidentiary rulings for abuse of discretion." *United States v. Natal*, 849 F.3d 530, 534 (2d Cir. 2017); *Jackson*, 180 F.3d at 73 ("The trial court's application of the rule of

completeness is reviewed only for abuse of discretion."). "The hallmark of abuse-of-discretion review is deference." *Lore v. City of Syracuse*, 670 F.3d 127, 155 (2d Cir. 2012). This Court therefore finds abuse of discretion "only if the ruling was arbitrary and irrational." *United States v. Coppola*, 671 F.3d 220, 244 (2d Cir. 2012) (internal quotation marks omitted).

When reviewing Rule 403 decisions for abuse of discretion, this Court "is highly deferential in recognition of the district court's 'superior position to assess relevancy and to weigh the probative value of evidence against its potential for unfair prejudice.'" *Id.* (quoting *United States v. Abu–Jihaad*, 630 F.3d 102, 131 (2d Cir. 2010)). When reviewing a Rule 403 ruling, this Court reviews the evidence "maximizing its probative value and minimizing its prejudicial effect." *Id.* (internal quotation marks omitted).

Moreover, "[a]n erroneous evidentiary decision that has no constitutional dimension is reviewed for harmless error." *United States v. Litvak*, 808 F.3d 160, 184 (2d Cir. 2015).

B. Discussion

1. The District Court Properly Precluded Thiam from Offering His Own Hearsay Statements

Judge Cote correctly ruled—and certainly did not abuse her discretion in ruling—that certain of Thiam's own hearsay statements that he sought to admit were "neither explanatory of nor relevant to the admitted passages," *Jackson*, 180 F.3d at 73, and were therefore

inadmissible under the rule of completeness. Thiam argues, however, that it was error for him not be able to offer parts of his statement (1) concerning the role played *by others* in negotiating the joint venture; and (2) Thiam's practice in obtaining loans from others not related to the charged scheme. (Br. 52-53). As Judge Cote correctly found, nothing about these self-serving statements, unlike others that she admitted, were needed "to explain the admitted portion, to place the admitted portion in context, to avoid misleading the jury, or to ensure fair and impartial understanding of the admitted portion." *Jackson*, 180 F.3d at 73. Accordingly, the District Court acted well within its discretion in carefully considering the statements at issue, admitting some and excluding others. (A. 317-18). Moreover, when the defendant testified at trial, he made these points (A. 1089-96, 1147-50), and, therefore, any error would be harmless.

2. Thiam's Rule 403 Challenges Are Without Merit

The District Court also correctly overruled Thiam's Rule 403 objections to the summary chart showing how Thiam used part of the bribe proceeds and the electronic communications in which Thiam described as one of life's "twists," the thought that Sam Pa, who had predicted that Thiam would be locked up, was himself locked up. As the District Court found, the summary chart, which the defense agrees accurately summarized voluminous records, was "highly relevant" to Thiam's motive for taking the bribe. (A. 749-50). It also was not unfairly prejudicial for the jury to see a summary of how Thiam actually used the money,

based on unobjected-to evidence that was already before the jury. Moreover, the evidence directly rebutted the defendant's purportedly innocent explanation for the $8.5 million bribe, namely that he was "badly in need of money because his pre-existing income ran out and he wasn't being paid a salary for his Guinean government service." (Br. 21; A. 1135-36, 1208 ("Q. You testified earlier that you needed the money from Sam Pa, correct? A. Correct. Q. And you needed it because you had to feed your family, correct? A. And pay down debt, yes.")). Accordingly, the District Court did not abuse its substantial discretion in concluding that the probative value of this evidence was not "substantially outweighed" by the risk of any "unfair prejudice." *See* Fed. R. Evid. 403.

Likewise, as Judge Cote concluded, Thiam's electronic communications were "highly probative" of his consciousness of guilt and the message prompting Thiam's response was plainly needed to give context to his response. (A. 832). And in order to address any prejudice that could possibly arise from the suggestion that Sam Pa was incarcerated, Judge Cote gave a firm and clear limiting instruction, directing the jury not to consider the evidence for its truth, and not to speculate as to whether Pa was locked up or why he might be locked up. (A. 910-11); *see United States v. Arline*, 660 F. App'x 35, 41 (2d Cir. 2016) (upholding admission of statement "I heard you killed my brother" not for the truth of the matter asserted but to provide context for defendant's response, and rejecting the argument that "the statement was unfairly prejudicial because 'the jury was certain to disregard the limiting instruction,'

noting that the district court's "careful limiting instruction . . . reduced the risk of unfair prejudice"). Accordingly, nothing about the District Court's assessment of this evidence constituted abuse of its direction.

3. The District Court Correctly Permitted Relevant Cross-Examination

The Government was correctly permitted to cross-examine Thiam about his failure to file an FBAR for the Hong Kong Account, and his knowledge about corruption in Africa generally and more specifically Sam Pa's involvement in paying bribes. Thiam's failure to file an FBAR was probative to show his consciousness of guilt, as reporting the account to United States authorities would have notified authorities of the account and may have triggered an investigation. Thiam's failure to file an FBAR and, relatedly, reporting on his tax return that he had no foreign bank accounts, also bears directly on his credibility and was therefore also admissible under Federal Rule of Evidence 608(b). *See United States v. Schwab*, 886 F.2d 509, 511 (2d Cir. 1989) ("[M]isconduct may be relevant to impeachment of a witness, including the defendant, because it tends to show the character of the witness for untruthfulness. When offered for that purpose, prior misconduct is governed by Fed. R. Evid. 608(b), which precludes proof by extrinsic evidence and limits the inquiry to cross-examination of the witness."). And contrary to Thiam's assertion, "[t]he Government has no obligation to provide [a defendant] with notice of any material that will be used to impeach him pursuant to Rule 608 should he elect to testify." *United States v. Livoti*, 8 F. Supp. 2d 246, 250 (S.D.N.Y. 1998).

The District Court likewise acted well within its discretion in permitting cross-examination on Thiam's knowledge of corruption generally and by Sam Pa specifically. This testimony was directly relevant to Thiam's knowledge that Pa's payments to Thiam were, in fact, bribes "in return for" Thiam's acts to further the venture between the Chinese Conglomerate and Guinea, and was not an interest-free $8.5 million loan. Nor was there any "unfair prejudice" resulting from the evidence. The evidence did not demonstrate "guilt by association" (Br. 58); rather it showed the defendant's conscious decision to receive $8.5 million from someone he knew would expect concrete action in return. Accordingly, the District Court did not abuse its discretion in permitting this cross-examination.

4. There Was No Cumulative Error

Thiam also argues that, even if any error was harmless, the cumulative effect of the errors warrants reversal. (Br. 50-51). As none of the alleged errors actually constitutes error, however, Thiam cannot successfully avail himself of the cumulative error doctrine. *See, e.g.*, *United States v. Rivera*, 900 F.2d 1462, 1469-71 (10th Cir. 1990) ("[A] cumulative-error analysis aggregates only actual errors to determine their cumulative effect."). Because Thiam cannot make out a claim of cumulative error by aggregating a host of individually meritless claims, *see, e.g., Rahman*, 189 F.3d at 145; *United States v. Hurtado*, 47 F.3d 577, 586 (2d Cir. 1995), his cumulative error claim must be rejected.

Moreover, even if this Court concluded that the District Court abused its discretion with respect to any of Thiam's evidentiary challenges, any error—viewed individually or cumulatively—would be harmless. Here, the unchallenged evidence—including the timing of the bribes, Thiam's acts of concealment and repeated lies, his role and actions as the Minister of Mines involved in negotiating the mining deal, and the implausible explanations he provided, under oath, to the jury—clearly demonstrated the defendant's guilt beyond a reasonable doubt. Accordingly, the defendant's claims can be rejected.

CONCLUSION

The judgment of conviction should be affirmed.

Dated: New York, New York
April 16, 2018

Respectfully submitted,

GEOFFREY S. BERMAN,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

CHRISTOPHER J. DIMASE
ELISHA J. KOBRE,
DANIEL B. TEHRANI,
Assistant United States Attorneys, Of Counsel.

SANDRA MOSER,
Attorney Chief, Fraud Section Criminal Division U.S. Department of Justice

LORINDA I. LARYEA,
Trial Attorney.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel hereby certifies that this brief complies with the type-volume limitation of the Federal Rules of Appellate Procedure and this Court's Local Rules. As measured by the word processing system used to prepare this brief, there are 13,171 words in this brief.

GEOFFREY S. BERMAN,
United States Attorney for the
Southern District of New York

By: DANIEL B. TEHRANI,
Assistant United States Attorney

ADDENDUM

Add. 1

Ammon-Rousseau Translations
Certified Translation

MINISTRY OF STATE AT THE PRESIDENCY
IN CHARGE OF CONSTRUCTION,
LAND MANAGEMENT OF THE TERRITORY
AND PUBLIC BUILT HERITAGE

REPUBLIC OF GUINEA
Work-Justice-Solidarity

No. 1748 /MECATPBP/CAB/2009 Du 07/13/ 2009

MAIL DISTRIBUTION SLIP

Expeditor: PRIMATURE (Office of the Prime Minister)

Ref.: Letter No. 0378 of July 10, 2007

Subject: Activation of ADC holding company creation

NOTICE AND INSTRUCTIONS

MINISTER OF STATE	SECRETARY OF STATE AT THE TP	GENERAL SECRETARY
	Arrival date…….. Departure date……	Arrival date…….. Departure date……
HEAD OF THE CABINET	DIRECTOR OF BUILT HERITAGE	DIRECTOR
Arrival date…….. [document s signed] Departure date July 13, 2009	Arrival date…….. Departure date	Arrival date…….. Departure date

GOVERNMENT EXHIBIT 405-T
17 Cr. 47 (DLC)

Add. 2

Ammon-Rousseau Translations
Certified Translation

PRIMATURE
(Office of the Prime Minister)

REPUBLIC OF GUINEA
Work – Justice - Solidarity

No. 00378 /CAB.P/

The Prime Minister

To

State Minister in charge of Construction,
Land Management of the Territory and
Public Built Heritage

CONAKRY

Subject: Activation of ADC Holding Company creation

Mr. Minister,

As you have been informed, I have asked Minister Mahmoud THIAM, currently on a mission in Asia with the CEO of China Investment Fund, Mr. SAM, to please send us in writing the list of documents they are expecting to finalize the creation of the ADC Holding Company, once the bylaws are accepted by both parties.

He sent me an email, you will find a copy appended herein.

Hope you receive this in good order.

Sincerely yours

Kabiné Komara

[document is signed]

[seal of the Republic of Guinea, Prime Minister Head of the Government]

Add. 3

Ammon-Rousseau Translations
Certified Translation

Documents AOC

Thursday, July 9, 2009 7:22: 59 PM

From: "mahmoud.thiam@gmail.com" <mahmoud.thiam@gmail.com>

To: keitabaringa@yahoo.fr

Your Excellency the Prime Minister,

Following our telephone conversation, I am submitting to you the list of documents necessary to accomplish our mission in Asia.

1 All the documents or instructions and procedures that would enable the BCRG to open an account at the Singaporean and Chinese banks.

2 Any document that enables Guinea to justify its legal identity for its shareholding in the ADC

3 Signatory powers in the name of the State Minister allowing him to sign the various agreements necessary for the creation of the holding company.

4 A list of documents necessary for the ADC, CIF or China Sonangol to open and maintain accounts at the BCRG

Thank you
Mahmoud Thiam
Sent from my BlackBerry® wireless device

Add. 4

Ammon-Rousseau Translations
Certified Translation

From: mahmoud.thiam@gmail.com
To: keitabaringa@yahoo.fr
Subject: Trip
Date: July 9, 2009 1:13:32 PM

Your Excellency Prime Minister. I have the honor to report back to you on our current mission to Asia at the CIF:

Mr. Theodore Kourouma - representative of the PRG, Mr. Diare - our ambassador in China, and myself arrived in Singapore 2 days ago with our Chinese partners. Mr. Manuel Vicente, Chairman of Sonangol, was already there waiting for us.

A ceremony for the incorporation of the African Development Corporation ADC was scheduled the following morning at 10 AM in the office of China Sonangol.

During this ceremony, the different corporate partners of the group, which will be responsible for the execution of different types of projects, gave a presentation of their respective capacities and their views on the tasks to be completed in Guinea as well.

Because the documents required for Guinea's stakeholding in the company to be created have not arrived from Conakry yet, it was decided to authorize Mr. Vicente to sign these documents so we could return home. The Guinean and Chinese parties decided to postpone signing these documents and to wait for the arrival of the Minister of State along with the required documents.

Another variable made this wait necessary: the documents presented were again listing the initially discussed sharing of 85% for CIF and 15% for Guinea. It seemed to me that the commission eventually chose to offer 20% or 25%. When I brought this up, I was told that considering they will deploy or raise 100% of the funding, this sharing out is imposed on them.
I then suggested, as compensation, that ADC not own 100% of these local GDG subsidiaries but only up to 80 or 90%. Therefore, it would allow the State to recover what was given apropos the Holding company.

I left the board to assess the situation and notify us of their decision

Mahmoud Thiam

Sent from my BlackBerry® wireless device

Add. 5

Ammon-Rousseau Translations
Certified Translation

From: mahmoud.thiam@gmail.com
To: Alhassane Barry
Subject: Re: request for documents
Date: Tuesday, July 14, 2009 10:15:59 AM

4 Attachments
------Original Message------
From: Alhassane Barry
To: Mahmoud Thiam 1
Cc: keitabaringa@yahoo.fr
Subject: request for documents
Sent: July 14, 2001 00:06

Mr. Minister,

I have just been requested by His Excellency the Prime Minister to send you the documents necessary to complete your mission in Asia.

For the points related to the BCRG [Central Bank of the Republic of Guinea], I would like to make the following points:

- the documents and procedures requested for the opening of BCRG accounts in the books of Singaporean and Chinese banks must be requested from the latter by the BCRG itself. As you should know, they must be nostro accounts. Therefore, it is up to the banks, upon request from the BCRG, to indicate the documentation necessary to open an account in their books;

- the documents necessary to open accounts in the books of the BCRG on behalf of Chinese companies are essentially the company bylaws, if it is already incorporated, or its certificate of incorporation if it is in the process of being incorporated.

I hope that this information will be useful for your mission, best regards;

Alhassane BARRY
BCRG

Sent from my BlackBerry® wireless device

Add. 6

Ammon-Rousseau Translations
Certified Translation

From: mahmoud.thiam@gmail.com
To: Mahmoud Thiam
Subject: Fw: request for documents
Date: July 14, 2009 10:21:02 AM

Sent from my BlackBerry® wireless device

-----Original Message-----
From: mahmoud.thiam@gmail.com

Date: Tue, July 14, 2009 14:20:35
To: Alhassane Barry<alhas_barry@yahoo.fr>
Subject: Re: request for documents

7 Attachments
------Original Message------
From: Alhassane Barry
To: Mahmoud Thiam 1
Cc: keitabaringa@yahoo.fr
Subject: request for documents
Sent: July 14, 2001 00:06

Mr. Minister,

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I hope that this information will be useful for your mission, best regards;

Alhassane BARRY
BCRG

Sent from my BlackBerry® wireless device

Add. 7

Ammon-Rousseau Translations
Certified Translation

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To: Mahmoud Thiam
Subject: Fw: request for documents
Date: July 14, 2009 10:21:02 AM

Sent from my BlackBerry® wireless device

-----Original Message-----
From: mahmoud.thiam@gmail.com

Date: Tue, July 14, 2009 14:20:35
To: Alhassane Barry<alhas_barry@yahoo.fr>
Subject: Re: request for documents

7 Attachments
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From: Alhassane Barry
To: Mahmoud Thiam 1
Cc: keitabaringa@yahoo.fr
Subject: request for documents
Sent: July 14, 2001 00:06

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- the documents necessary to open accounts in the books of the BCRG on behalf of Chinese companies are essentially the company bylaws, if it is already incorporated, or its certificate of incorporation if it is in the process of being incorporated.

I hope that this information will be useful for your mission, best regards;

Alhassane BARRY
BCRG

Sent from my BlackBerry® wireless device

GOVERNMENT EXHIBIT 512-T
17 Cr. 47 (DLC)

Add. 8

Extraction Report
Cellebrite UFED Reports

Participants

MHT 16463385979@s.whatsapp.net
Nyonga Fongang 27833256657@s.whatsapp.net

Conversation - Instant Messages (8)

16463385979@s.whatsapp.net MHT 11/8/2016 2:44:18 PM(UTC-5)
How r u?
Source Extraction: Logical (2)

27833256657@s.whatsapp.net Nyonga Fongang 11/8/2016 2:48:24 PM(UTC-5)
I'm good - watching the US from cold Amsterdam. And U? Just been reading a book "looting on Africa' and u r being quoted all over it:)
Source Extraction: Logical (2)

16463385979@s.whatsapp.net MHT 11/8/2016 2:48:50 PM(UTC-5)
:)) yes. Tricky guy.
Source Extraction: Logical (2)

16463385979@s.whatsapp.net MHT 11/8/2016 2:49:32 PM(UTC-5)
He collected old interviews from 2009 and presented them as if I cooperated on his book
Source Extraction: Logical (2)

16463385979@s.whatsapp.net MHT 11/8/2016 2:49:41 PM(UTC-5)
Am in dubai
Source Extraction: Logical (2)

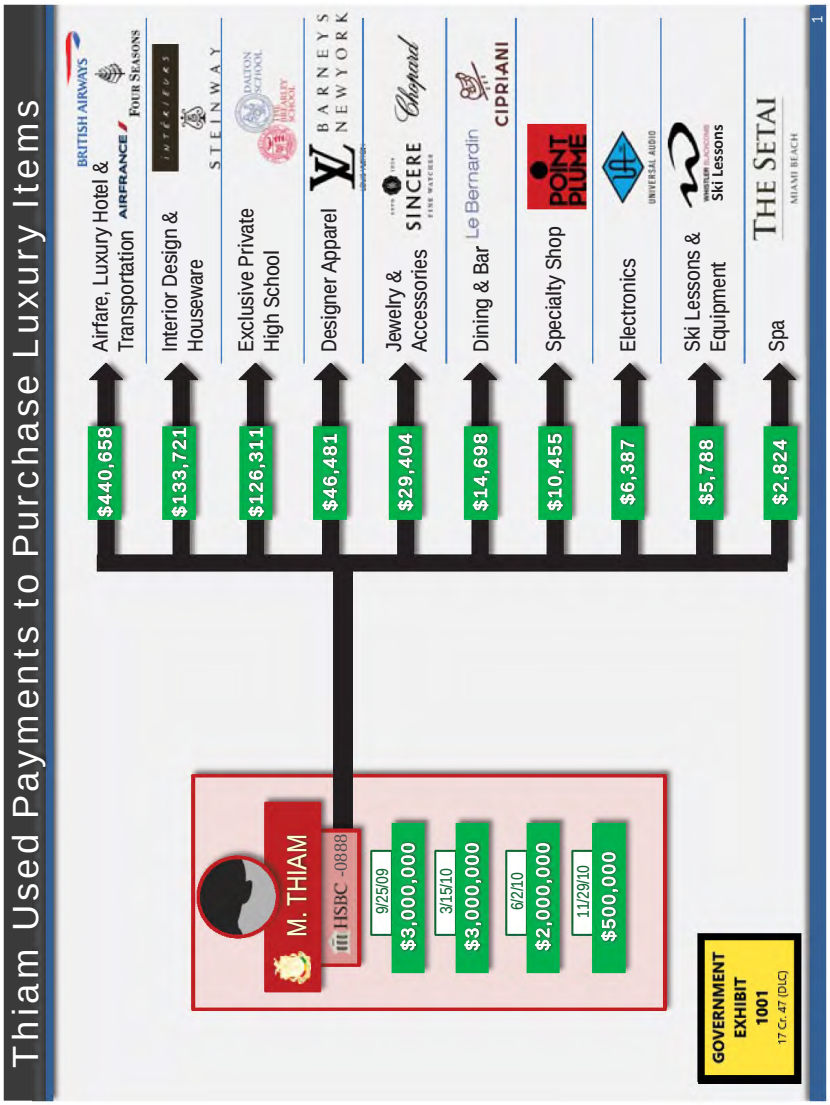
16463385979@s.whatsapp.net MHT 11/8/2016 2:50:02 PM(UTC-5)
HAVE u spoken to our friend?
Source Extraction: Logical (2)

27833256657@s.whatsapp.net Nyonga Fongang 11/8/2016 2:50:35 PM(UTC-5)
Hahahahaha. At least Sam Pa is locked up so u r fine.
Source Extraction: Logical (2)

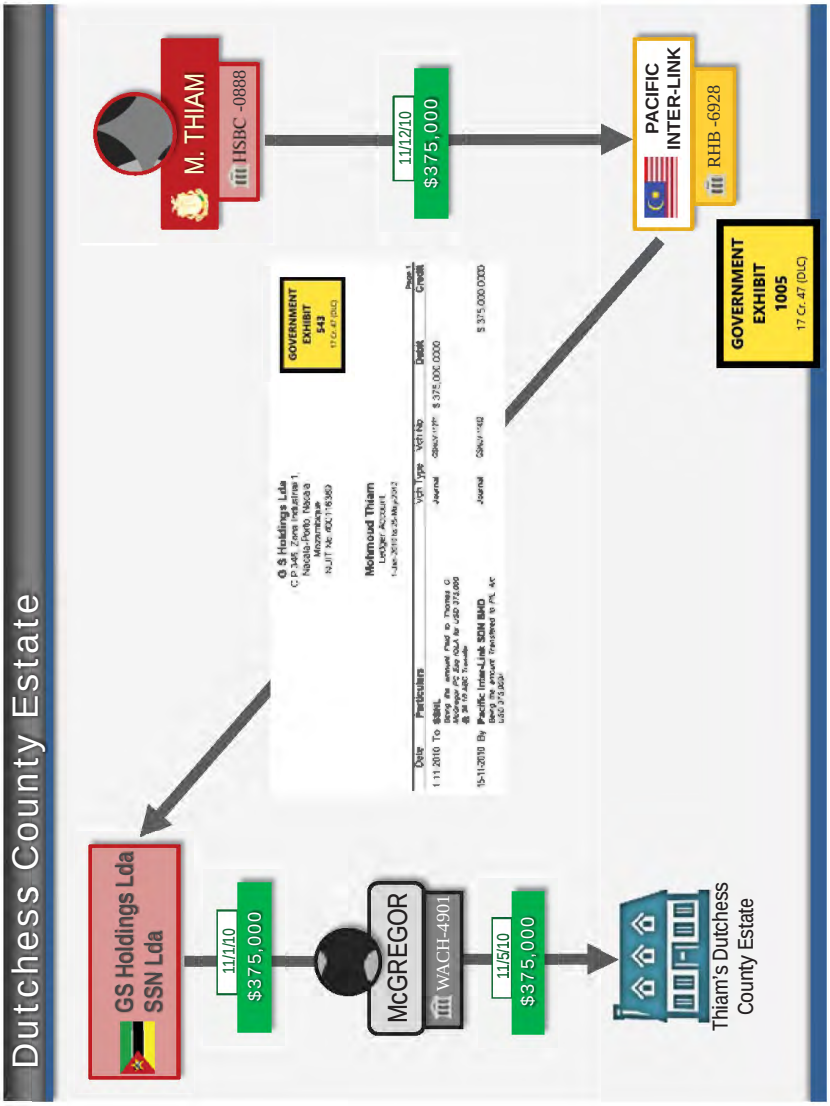
16463385979@s.whatsapp.net MHT 11/8/2016 2:51:23 PM(UTC-5)
He predicted I would be locked up. Life has its twists
Source Extraction: Logical (2)

GOVERNMENT
EXHIBIT
601A
17 Cr. 47 (DLC)

Add. 9


Thiam Used Payments to Purchase Luxury Items
M. THIAM
HSBC -0888
9/25/09
$3,000,000
3/15/10
$3,000,000
6/2/10
$2,000,000
11/29/10
$500,000
Airfare, Luxury Hotel & Transportation
$440,658
Interior Design & Houseware
$133,721
Exclusive Private High School
$126,311
Designer Apparel
$46,481
Jewelry & Accessories
$29,404
Dining & Bar
$14,698
Specialty Shop
$10,455
Electronics
$6,387
Ski Lessons & Equipment
$5,788
Spa
$2,824
BRITISH AIRWAYS
AIRFRANCE
FOUR SEASONS
STEINWAY
BARNEYS NEW YORK
SINCERE
Chopard
Le Bernardin
CIPRIANI
POINT PLUME
UNIVERSAL AUDIO
Ski Lessons
THE SETAI
MIAMI BEACH
GOVERNMENT EXHIBIT 1001
17 Cr. 47 (DLC)

Add. 10


Dutchess County Estate
GS Holdings Lda
SSN Lda
11/1/10
$375,000
McGREGOR
WACH-4901
11/5/10
$375,000
Thiam's Dutchess County Estate
M. THIAM
HSBC -0888
11/12/10
$375,000
PACIFIC INTER-LINK
RHB -6928
GOVERNMENT EXHIBIT 1005
17 Cr. 47 (DLC)
GOVERNMENT EXHIBIT 543
17 Cr. 47 (DLC)
G.S Holdings Lda
Mohmoud Thiam
Date
Particulars
Vch Type
Vch No
Debit
Credit
1.11.2010
To
15-11-2010
By
Journal
$ 375,000.0000
$ 375,000.0000