PROTECTING AMERICANS FROM FOREIGN BRIBERY: THE LEGAL FRAMEWORK BEHIND THE FOREIGN EXTORTION PREVENTION ACT

UPDATED JUNE 2023

Scott Greytak
Director of Advocacy
Transparency International U.S.

TRANSPARENCY INTERNATIONAL U.S.
fighting corruption, promoting democracy

THIS WHITE PAPER DISCUSSES THE U.S. LEGAL FRAMEWORK FOR APPLYING FEDERAL CRIMINAL LAWS OUTSIDE THE UNITED STATES, AND DETAILS HOW THAT FRAMEWORK WOULD SUPPORT THE ROBUST ENFORCEMENT OF THE FOREIGN EXTORTION PREVENTION ACT.

INTRODUCTION

The scope of Congress's authority to regulate criminal commercial conduct outside the United States is vast. In particular, the Interstate Commerce Clause and the Foreign Commerce Clause contained in Article I of the U.S. Constitution empower Congress to reach activity that has a substantial effect on commerce between the states or on commerce between the United States and foreign nations. Congress has broad authority to regulate such commercial activity and currently does so through a wide variety of federal criminal statutes.

The Foreign Extortion Prevention Act ("FEPA") is a proposed federal law that would build on this authority by criminalizing the demand- or recipient-side of foreign commercial bribery in order to protect U.S. persons and U.S. companies operating abroad and to address foreign corruption at its source. As discussed below, FEPA is clearly within Congress's ambit of authority, and unimpeded by existing legal and doctrinal obstacles to robust extraterritorial application, making it enforceable as a matter of law.

As with other[1] U.S. laws that apply extraterritorially, FEPA would also be enforceable as a matter of practice. Those indicted by the U.S. Department of Justice ("DOJ") for FEPA violations could be apprehended by U.S. law enforcement if present in, or upon entering, the territory of the United States, and by foreign law enforcement upon entering a jurisdiction with which the United States has a relevant extradition treaty, pursuant to a U.S. extradition request.[2] The U.S. government could also freeze assets associated with the planning, implementation, or concealment of a FEPA violation. And the threat of any of the above actions may increase the likelihood that that the offender's home country pursues criminal and/or civil penalties, before a foreign government does.

This paper begins by providing a brief overview of FEPA and its relationship to the U.S. Foreign Corrupt Practices Act. From there, it discusses potential limitations on the extraterritorial reach of U.S. criminal laws, including due process considerations, treaties, diplomatic immunity, and the act of state doctrine—none of which are reasonably likely to curb the robust application of FEPA—before closing with three hypotheticals that help illustrate the elements, scope, and reach of the law in practical application.

---

[1] *See infra* I(A).
[2] *See generally* Casey Michel & Paul Massaro, "The U.S. Midwest is Foreign Oligarchs' New Playground," Foreign Policy, June 3, 2021, available at https://foreignpolicy.com/2021/06/03/the-u-s-midwest-is-foreign-oligarchs-new-playground/ ("These kleptocrats can then be arrested and tried when they travel to the West to spend and launder their ill-gotten gains.")

OVERVIEW OF THE FOREIGN EXTORTION PREVENTION ACT

The Foreign Extortion Prevention Act is a proposed federal law that would criminalize the demand- or recipient-side of foreign commercial bribery. It rests on strong policy arguments: Bribery permits a small group of well-connected people to play by a different set of rules at the expense of the general public. It can undermine health and safety, create national security risks, and divert taxpayer money to wasteful or harmful projects.[3] FEPA would empower law enforcement to combat the disruptive impacts of bribery, and to combat corruption at its source.

Furthermore, American companies increasingly must compete for business overseas in order to maintain profitability and growth. Such companies, and their personnel, are, of course, subject to the U.S. Foreign Corrupt Practices Act ("FCPA"),[4] which criminalizes supply-side bribery, and therefore cannot pay bribes to foreign officials in order to secure business. Yet if a foreign government does not act effectively to criminalize bribery in its own country, law-abiding U.S. companies desiring to compete in that country are not only vulnerable to demands for bribes, but are at an obvious and significant competitive disadvantage compared to non-U.S. companies that are beyond the reach of the FCPA and that may be more than willing to pay such bribes. This is particularly disadvantaging when it comes to non-U.S. companies controlled by foreign governments that deliberately employ bribery as a means of securing commercial advantages or otherwise achieving discrete political or economic goals.

FEPA amends 18 U.S.C. § 201 to add foreign officials to the class of persons covered by the statute. FEPA then makes it unlawful:

> [F]or any foreign official or person selected to be a foreign official to corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, anything of value personally or for any other person or nongovernmental entity, by making use of the mails or any means or instrumentality of interstate commerce, from any person (as defined in section 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–3), except that that definition shall be applied without regard to whether the person is an offender) while in the territory of the United States, from an issuer (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), or from a domestic concern (as defined in section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2)), in return for—
>
> (A) being influenced in the performance of any official act;
>
> (B) being induced to do or omit to do any act in violation of the official duty of such foreign official or person; or
>
> (C) conferring any improper advantage;
>
> in connection with obtaining or retaining business for or with, or directing business to, any person.

FEPA employs the operative jurisdictional language used in the FCPA—including "issuer" and "domestic concern"—so as to protect U.S. persons and businesses from foreign bribe-demanders regardless of where those demands take place. To this end, FEPA contains a blanket jurisdiction provision stating that an offense under FEPA "shall be subject to extraterritorial federal jurisdiction."

[3] *See* United Nations Office on Drugs and Crime, "What Is Corruption and Why Should We Care?", available at https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_1_What_Is_Corruption_and_Why_Should_We_Care.pdf.

[4] Congress enacted the FCPA in 1977 following the discovery by the Office of the Watergate Special Prosecutor, the Securities and Exchange Commission, and the Senate Subcommittee on Multinational Corporations of widespread foreign bribery by U.S. entities in the mid-1970s. *See* Michael J. Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 Ohio St. L.J. 929, 932 (2012) (discussing the legislative history of the FCPA).

I. LEGAL FRAMEWORK FOR THE EXTRATERRITORIAL APPLICATION OF AMERICAN CRIMINAL LAW: SOURCES OF CONGRESS'S AUTHORITY TO LEGISLATE EXTRATERRITORIALLY, NEXUS REQUIREMENTS, AND THE PRESUMPTION AGAINST EXTRATERRITORIALITY

Article I of the U.S. Constitution limits Congress's power to act to the specific powers enumerated therein. The two powers most relied on to enact criminal statutes that apply extraterritorially are the power "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations," U.S. Const. art. I, § 8, cl. 10, and the power "[t]o regulate commerce with foreign nations, and among the several states, and with the Indian tribes." U.S. Const. art. I, § 8, cl. 3.

A. THE FOREIGN COMMERCE CLAUSE & THE INTERSTATE COMMERCE CLAUSE

The Supreme Court has not "thoroughly explored the scope of the Foreign Commerce Clause," but "[w]hat little guidance we have from the Supreme Court establishes that the Foreign Commerce Clause provides Congress a broad power." *United States v. Baston*, 818 F.3d 651, 667-68 (11th Cir. 2016), *cert. denied* 137 S. Ct. 850, 853 (2017). Because the Foreign Commerce Clause refers to commerce "with" foreign nations, there must be some "nexus between the United States and a foreign country" and accordingly, "Congress cannot regulate commerce 'among' foreign nations." *United States v. Bollinger*, 798 F.3d 201, 214 (4th Cir. 2015); *Baston*, 818 F.3d at 668 (Foreign Commerce Clause confers power to regulate "commerce between the United States and other countries").[5]

However, Congress may regulate conduct that "occurs exclusively overseas" provided it is part of a class of "activities that have a 'substantial effect' on foreign commerce." *Baston*, 818 F.3d at 668 (analogizing the Foreign Commerce Clause to the Interstate Commerce Clause and reasoning that the Foreign Commerce Clause authorizes regulation of "channels" of foreign commerce, "instrumentalities" of foreign commerce, and conduct that has a "substantial effect" on foreign commerce); *see also Bollinger*, 798 F.3d 201, 214 (also borrowing from Commerce Clause jurisprudence, yet requiring only that overseas conduct "demonstrably affect" foreign commerce).

For example, in *Baston*, the defendant, a Jamaican national, was convicted of 21 counts of sex trafficking for acts that took place in the United States, the United Arab Emirates, and Australia. *Baston*, 818 F.3d at 659. The trial court ordered the defendant to pay restitution to his victims, but not for prostitution that occurred exclusively in Australia, reasoning that Congress lacked the power under the Foreign Commerce Clause to punish conduct that occurred exclusively overseas. *Id*. at 660. The Eleventh Circuit affirmed the convictions and reversed the restitution order, holding that under the Foreign Commerce Clause "Congress has the power to require international sex traffickers to pay restitution to their victims even when the sex trafficking occurs exclusively in another country." *Id*. at 671.

The potentially vast breadth of Congress's power under the Foreign Commerce Clause has been criticized. For example, Justice Clarence Thomas has said in a dissenting opinion that extending the logic of certain lower court decisions on the Foreign Commerce Clause "would permit Congress to regulate any economic activity anywhere in the world," such as "prostitution in Australia," "working conditions in factories in China, pollution from power plants in India, or agricultural methods on farms in France." *Baston v. United States*, 137 S. Ct. 850, 853 (2017) (Thomas, J., dissenting from denial of certiorari).

When it comes to the Interstate Commerce Clause, Congress can regulate (1) "the channels of interstate commerce," (2) "the instrumentalities of interstate commerce, and persons or things in interstate commerce," and (3) "activities that substantially affect interstate commerce." *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005). To determine whether activity has a "substantial" effect on interstate commerce, courts consider the regulated activity "taken in the aggregate" rather than the activity of one individual or entity, *Raich*, 545 U.S. at 22, at least when the regulated activity is "economic." *United States v. Morrison*, 529 U.S. 598, 613 (2000). Congressional findings, while neither necessary nor sufficient to show a substantial effect on interstate commerce, *see Morrison*, 529 U.S. at 614, are frequently cited as grounds for determining that Congress had a rational basis to conclude that conduct substantially affects interstate commerce. *See, e.g., Raich*, 545 U.S. at 20.

Until recently, courts had held that a broad array of extraterritorial statutes, including those rooted in the Interstate Commerce Clause alone, implicitly applied to extraterritorial conduct, but recent Supreme Court rulings have required a clearer indication of extraterritoriality by Congress. For example, certain provisions of the Securities Exchange Act historically were interpreted as applying to extraterritorial misconduct and/or foreign actors. *See Schoenbaum v. Firstbrook*, 405 F.2d 200, 208 (2d Cir. 1968) (holding that foreign corporations may be liable under 15 U.S.C. § 78j(b) for transactions that occur outside the United States if the transactions involve stock registered and listed

[5] Acknowledging these diplomatic challenges, the Senate passed Senate Resolution 265 in 1975, calling upon President Ford to seek multilateral solutions to foreign bribery pursuant to his authority under U.S. trade law. *Id*. at 982. The FCPA, adopted in 1977, initially targeted only the conduct of U.S. issuers and domestic concerns. *See* Barr Benyamin et al., *Foreign Corrupt Practices Act*, 53 Am. Crim. L. Rev. 1333, 1344 (2016). In 1998, Congress amended the FCPA to conform to the requirements of the OECD Convention. *See* Barr Benyamin et al., *Foreign Corrupt Practices Act*, 53 Am. Crim. L. Rev. 1333, 1344 (2016). The 1998 FCPA amendments (1) expanded the application of the FCPA to "any person," irrespective of citizenship, residency, or location of business activity, who commits an act in furtherance of a foreign bribe on U.S. territory, and (2) provided for nationality jurisdiction, *i.e.*, jurisdiction over the acts of U.S. issuers and domestic concerns in furtherance of unlawful payments that take place wholly outside of the United States. *Id*. at 1344-45.

on a national securities exchange and the alleged conduct is "detrimental to the interests of American investors"). In *Morrison,* however, the Supreme Court explicitly rejected the Second Circuit's interpretation of the Exchange Act in *Schoenbaum* and held that the language of the statute did not provide an affirmative indication that it was intended to apply extraterritorially. *Morrison*, 561 U.S. at 265. In doing so, the Court quoted the statute's reference in other sections to interstate commerce as evidence that the statute had an "exclusive focus on domestic transactions." *Id.* at 268.

To this end, many criminal statutes that apply extraterritorially either contain elements requiring a nexus to the United States, its territories, owned or leased U.S. properties, or its nationals or permanent residents, or they apply to U.S. nationals overseas. For example:

+ The U.S. wire fraud statute, 18 USC § 1343, criminalizes acts of fraud that use wire, radio, or television communications "in interstate or foreign commerce."

+ 18 U.S.C. § 33 criminalizes the destruction of motor vehicles or motor vehicle facilities "in interstate or foreign commerce."

+ 18 U.S.C. § 470 criminalizes counterfeit acts committed outside the United States.

+ The U.S. money laundering statute, 18 U.S.C.§ 1956(a)(2), states that extraterritorial jurisdiction exists if the transaction in question exceeds $10,000, involves a non-U.S. citizen, and "the conduct occurs in part in the United States," where the term "conduct" is defined as "includ[ing] initiating, concluding, or participating in initiating or concluding a transaction."

+ The Rodchenkov Anti-Doping Act applies extraterritorially to any scheme to facilitate doping at a major international sports competition, so long as that scheme is "effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication," the competition organizer or sanctioning body receives sponsorship or financial support from an organization that does business in the United States or received money for the right to broadcast the competition in the United States, the competition features at least one American athlete, and the competition is governed by the World Anti-Doping Agency Code.

+ The Trafficking Victims Protection Act, the statute upheld in *Baston*, applies extraterritorially to "(1) an alleged offender [who] is a national of the United States or an alien lawfully admitted for permanent residence....or (2) an alleged offender [who] is present in the United States, irrespective of the nationality of the alleged offender." 18 U.S.C. § 1596.

+ The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Act of 2003 ("PROTECT Act")—upheld as a constitutional exercise of the foreign commerce power in *Bollinger* and other cases—criminalizes sexual abuse of minors in foreign countries when perpetrated by "[a]ny United States citizen or alien admitted for permanent residence." 18 U.S.C. § 2423(c).

+ The FCPA criminalizes actions taken abroad in furtherance of corrupt payments by discrete categories of persons, including issuers of securities registered on stock exchanges in the U.S., and U.S. "domestic concerns" (U.S. citizens, nationals, corporations, or other business entities).[6]

+ Several other statutes criminalize conduct "[w]ithin the special maritime and territorial jurisdiction of the United States." E.g., 18 U.S.C. § 1111 (proscribing murder "[w]ithin the special maritime and territorial jurisdiction of the United States").

Nexus requirements serve at least three potential purposes. First, they can be used as means of demonstrating the enumerated constitutional power(s) that undergird a statute. For example, the 18 U.S.C. § 1111 reference to "maritime" jurisdiction may be intended to invoke Congress's power "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations." U.S. Const. art. I, § 8, cl. 10; *see* Charles Doyle, E*xtraterritorial Application of American Criminal Law*, CRS Report at 1 & n.7 (Oct. 31, 2016) (collecting cases). 18 U.S.C. § 33 similarly invokes both the Interstate Commerce Clause and the Foreign Commerce Clause in criminalizing the destruction of motor vehicles or motor vehicle facilities "in interstate or foreign commerce." Nexus requirements may also help assure that a statute complies with due process. *See infra*. And they may simply represent a policy judgment of Congress as to the appropriate scope of a particular law.

The final consideration in the U.S. legal framework for the extraterritorial application of American criminal law is the presumption against extraterritoriality. Simply put, because U.S. statutes are presumed to operate domestically, any attempt to apply a statute to foreign conduct must overcome the "canon of statutory construction known as the presumption against extraterritoriality," *RJR Nabisco, Inc. v. European Cmty*., 136 S. Ct. 2090, 2100 (2016). This presumption is overcome by a "clearly expressed congressional intent to the contrary." *Id.* (citing *Morrison v. Nat'l Austl. Bank Ltd*., 561 U.S. 247, 255 (2010)).

The presumption against extraterritoriality is informed by concerns of separation of powers and international comity.

[6] Courts have expressly rejected prosecutorial efforts to use conspiracy and aiding and abetting theories to expand the scope of the FCPA beyond these categories. *See Hoskins*, 902 F.3d at 83-97 (affirming dismissal of FCPA conspiracy and aiding and abetting charges against defendant who was a foreign national and did not enter the United States during the alleged scheme).

See RJR Nabisco, 136 S. Ct. at 2100 (presumption "serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries"); *Kiobel v. Royal Dutch Petro. Co*., 569 U.S. 108, 116 (2013) ("The presumption against extraterritorial application helps ensure that the Judiciary does not erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches."). But once the presumption is overcome, these concerns do not affect the court's subject-matter jurisdiction,[7] or Congress's power.

Congress's intent that a statute is to apply extraterritorially can be demonstrated by including express language that the statute either applies to foreign conduct or confers extraterritorial jurisdiction. *See, e.g.,* 18 U.S.C. § 1957(d)(2) (criminalizing transactions in money from criminally derived property that "[take] place outside the United States"); 18 U.S.C. § 351(i) ("There is extraterritorial jurisdiction over the conduct prohibited by this section," *i.e.,* assassination of government officials); *see also RJR Nabisco*, 136 S. Ct. at 2101-02 (holding that these two statutes rebutted the presumption against extraterritoriality).

B. APPLICATION TO THE FOREIGN EXTORTION PREVENTION ACT

As discussed above, the Interstate Commerce Clause provides a constitutional basis for statutes that apply to extraterritorial conduct or actors, so long as the activity is "economic" and, "taken in the aggregate," has a substantial effect on interstate commerce. *See Morrison,* 529 U.S. at 613; *Raich*, 545 U.S. at 22. FEPA expressly invokes Interstate Commerce Clause authority by stating:

> It shall be unlawful for any foreign official or person selected to be a foreign official to corruptly demand, seek, receive, accept, or agree to receive or accept, directly or indirectly, anything of value personally or for any other person or nongovernmental entity, by making use of the mails or any means or instrumentality of interstate commerce, from any person (as defined in section 104A of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–3), except that that definition shall be applied without regard to whether the person is an offender) while in the territory of the United States, from an issuer (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)), or from a domestic concern (as defined in section 104 of the Foreign Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2))...in connection with obtaining or retaining business for or with, or directing business to, any person.

FEPA's nexus requirement, therefore, is functionally the same as the requirement drawn from the Interstate Commerce Clause that the regulated activity affect interstate commerce. This reference to Congress's vast regulatory power over interstate commerce is sufficient to establish the nexus between the proscribed conduct and the United States. As discussed above, there are other criminal statutes that rely upon interstate commerce that reach conduct committed extraterritorially. And because the economic conduct FEPA regulates (foreign bribery schemes), when taken in the aggregate, would clearly have a substantial effect on interstate commerce—for example, by putting U.S. companies at a competitive disadvantage—FEPA is clearly a constitutional exercise of Congress's power to regulate interstate commerce under the Interstate Commerce Clause. In turn, congressional findings demonstrating these effects would likely be sufficient to provide a rational basis for Congress to conclude that the conduct FEPA regulates has a substantial effect on interstate commerce. *See Baston*, 818 F.3d at 668 (holding that "Congress had a 'rational basis' to conclude" that sex trafficking – "even when it occurs exclusively overseas – is 'part of an economic class of activities that have a 'substantial effect' on commerce between the United States and other countries") (citations omitted)).

Finally, FEPA provides that "[a]n offense under paragraph (1) shall be subject to extraterritorial Federal jurisdiction." This clear expression of congressional intent to overcome the presumption against extraterritoriality, as well as the law's clear application to foreign conduct, are more than sufficient to overcome the presumption against extraterritoriality.

FEPA need not, but could, also include an express invocation of the Foreign Commerce Clause. Many existing extraterritorial criminal statutes rely upon the Foreign Commerce Clause in addition to the Interstate Commerce Clause. *See, e.g.,* 15 U.S.C. § 1 (the Sherman Act); 18 U.S.C. § 1956 (money laundering); 18 U.S.C. § 1591(a) (sex trafficking);18 U.S.C. § 2423 (transportation with intent to engage in criminal sexual activity); 18 U.S.C. § 1962 (the RICO Act); 18 U.S.C. § 1959 (Violent Crime in Aid of Racketeering Act). Adding an express invocation of the Foreign Commerce Clause would be consistent with these statutes.[8] *See, e.g.,* 15 U.S.C. §§ 1, 6a (Foreign Trade Antitrust Improvements Act ("FTAIA")) (limiting the Sherman Act's extraterritorial reach to conduct that "has a direct, substantial, and reasonably foreseeable effect" on "import trade or import trade or import commerce with foreign nations" or on domestic commerce). Other federal statutes invoke foreign commerce authority and expressly apply extraterritorially without limitation. *See, e.g.,* 18 U.S.C. § 2339D(b)(5) (receipt of military training from a

[7] The Supreme Court in *Morrison v. National Australia Bank Ltd.,* 561 U.S. 247 (2010), clarified that extraterritoriality does not implicate subject-matter jurisdiction. While noting that several Circuit Courts of Appeals had held that extraterritoriality was a question of subject-matter jurisdiction, the Court stated that the extraterritorial reach of a statute "is to ask what conduct [the statute] prohibits, which is a merits question" rather than a question of the power of the court to hear the case. *Id.* at 254.

[8] Doing so would also assist in avoiding potential Fifth Amendment issues, as discussed in section B.1 *infra.*

foreign terrorist organization); 18 U.S.C. § 2332b(b)(1)(B) (acts of terrorism transcending national boundaries). Still others invoke foreign commerce authority and expressly apply extraterritorially if certain conditions are met. *See, e.g.,* 18 U.S.C. § 1591(a)(1) (sex trafficking, which under 18 U.S.C. § 1596 applies extraterritorially if the alleged offender is a U.S. national or permanent resident or is present in the United States); 18 U.S.C. § 175c(b)(1) (regarding variola virus, which under 18 U.S.C. § 175 applies extraterritorially if the offense is committed by or against a U.S. national). However, these statutes generally target universally condemned crimes against humanity, not commercial activity alone.

II. POTENTIAL LIMITING FACTORS ON THE EXTRATERRITORIAL REACH OF AMERICAN CRIMINAL LAW

A. FIFTH AMENDMENT DUE PROCESS CONSIDERATIONS

The Fifth Amendment, to the extent it applies to foreign criminal defendants based outside the territorial United States, could be used by courts to rein in an extraterritorially applied criminal statute if wielded too broadly.

The concept of personal jurisdiction, requiring "minimum contacts" with a forum, does not arise in the criminal context. *See United States v. Ali,* 718 F.3d 929, 944 (D.C. Cir. 2013). A criminal defendant present in a United States court—even if forcibly brought there—will fall within a court's jurisdiction. *See, e.g., United States v. Pryor,* 842 F.3d 441, 448 (6th Cir. 2016); *United States v. Rendon*, 354 F.3d 1320, 1326 (11th Cir. 2003); *United States v. Rosenberg*, 195 F.2d 583, 602 (2d Cir. 1952). Nevertheless, some criminal defendants have argued that the Fifth Amendment's Due Process Clause provides its own "minimum contacts" requirement, arguing that it would violate their due process rights to try them as non-U.S. citizens or residents for conduct that did not occur in the U.S. or affect U.S. interests. Although courts have thus far been reluctant to dismiss indictments on this basis, they have generally supported the notion that the Fifth Amendment could limit the United States' power to prosecute foreign defendants for conduct committed wholly abroad.

While so far this Fifth Amendment doctrine has been fairly ineffectual for defendants, it is conceivable that it could develop into a viable tool for defendants should a statute like FEPA be applied broadly to extraterritorial foreign officials for actions taken wholly outside the United States.

i. The Fifth Amendment's Application to Non-Resident Alien Defendants

Although the Supreme Court has not addressed the question directly, case law to date indicates that non-resident alien criminal defendants have rights under the Fifth Amendment. For example, in *United States v. Verdugo-Urquidez*, the Supreme Court held that the Fourth Amendment did not apply to extraterritorial searches of alien defendants. 484 U.S. 259, 271 (1990). However, the Court's holding did not extend to the Fifth Amendment, because the Fifth Amendment provides "fundamental trial right[s]" to criminal defendants, which therefore apply when a non-resident alien is present in the United States, as opposed to the alleged Fourth Amendment violation, which occurred outside the United States. *Id.* at 264. As Justice Kennedy stated in his concurring opinion, "[t]he United States is prosecuting a foreign national in a court established under Article III, and all of the trial proceedings are governed by the Constitution. All would agree . . . that the dictates of the Due Process Clause of the Fifth Amendment protect the defendant." *Id.* at 278 (Kennedy, J., concurring).

Accordingly, many federal courts have acknowledged that non-resident defendants have due process rights when tried for violations of U.S. criminal law. *See, e.g., United States v. Baston*, 818 F.3d 651, 669 (11th Cir. 2016); *United States v. Hayes*, 99 F. Supp. 3d 409 (S.D.N.Y. 2015) (rejecting government argument that the Fifth Amendment was inapplicable to a Swiss citizen being tried for criminal activity conducted abroad); *United States v. Al Kassar*, 660 F.3d 108, 118 (2d Cir. 2011) ("When Congress so intends, we apply a statute *extraterritorially as long as doing so does not violate due process.")*; *In re Hijazi,* 589 F.3d 401, 406-12 (7th Cir. 2009) (emphasis added).

ii. Due Process Limitations on Extraterritorial Application of U.S. Criminal Law

The Due Process Clause prohibits the exercise of extraterritorial jurisdiction over a defendant when it would be "'arbitrary or fundamentally unfair.'" *Baston*, 818 F.3d at 669 (quoting *United States v. Ibarguen-Mosquera*, 634 F.3d 1370, 1378 (11th Cir. 2011)); *see, e.g., Al Kassar*, 660 F.3d at 118; *United States v. Rojas*, 812 F.3d 382, 393 (5th Cir. 2016); *United States v. Mohammed-Omar*, 323 F. App's 259, 261 (4th Cir. 2009); *United States v. Medjuck*, 156 F.3d 916, 918 (9th Cir. 1998); *United States v. Davis*, 905 F.2d 245, 248-49 (9th Cir. 1990). To assess whether jurisdiction would be "arbitrary or fundamentally unfair," courts generally analyze two concerns: nexus and notice.

According to many courts, the Fifth Amendment requires a "sufficient nexus between the defendant and the United States." *Al Kassar,* 660 F.3d at 118; *see, e.g., Baston,* 818 F.3d at 668-70 ("The Due Process Clause requires at least some minimal contact between a State and the regulated subject."); *United States v. Clark*, 435 F.3d 1100, 1108 (9th Cir. 2006).[9] One method to demonstrate this nexus is showing that "the aim of that [extraterritorial] activity is to cause harm inside the United States or to U.S. citizens or interests." *Al Kassar,* 660 F.3d at 118; *see Davis,* 905 F.2d at 249. Other courts rely on international law to assess whether "contacts are adequate to support the U.S. proceeding," typically leading to

[9] Other circuits, like the First and Third Circuits, have held that the Fifth Amendment does not impose a nexus requirement where a statute does not explicitly contain one. *See United States v. Cardales,* 168 F.3d 548, 552 (1st Cir. 1999) (addressing the Maritime Drug Law Enforcement Act); *United States v. Martinez-Hidalgo,* 993 F.2d 1052 (3d Cir. 1993) (same).

the same result: where the conduct "has substantial, direct, and foreseeable effect upon or in" the United States, or was intended to have such effect, jurisdiction is appropriate. *Hijazi,* 589 F.3d at 412 (quoting Restatement (Third) of Foreign Relations Law § 403(2)); *United States v. Nippon Paper Indus. Co.,* 109 F.3d 1, 7 (1st Cir. 1997) (citing Restatement (Third) of Foreign Relations Law § 415(2)). Still, this is merely a *sufficient* basis on which to demonstrate nexus, not a necessary one. *See Ali*, 718 F.3d 944-45. Where a foreign official solicits or accepts a bribe from a U.S. company, there is a clear argument that the requisite "harm inside the United States" is present via the economic loss caused to the company, the relevant industry, and/or the broader economy.

Many non-resident alien defendants also argue that criminal charges violate their due process rights on the basis that they were not sufficiently notified that they might be tried for their conduct in the United States. *See, e.g., United States v. Henriquez,* 731 F.2d 131, 134 n.5 (2d Cir. 1984). Yet "[f]air warning does not require that the defendants understand that they could be subject to criminal prosecution *in the United States* so long as they would reasonably understand that their conduct was criminal and would subject them to prosecution somewhere." *Al Kassar,* 660 F.3d at 119 (emphasis in original); *see also Ali,* 718 F.3d at 944.

To assess whether this requirement is met, many courts look again to international law to determine whether the defendant's conduct complied with international law. *See Baston,* 818 F.3d at 669. For crimes that are "universally condemned," a defendant is on notice that he may be tried in the United States. *See, e.g., United States v. Naik,* 2020 U.S. Dist. LEXIS 16684, at *10 (D.D.C. Feb. 2, 2020) (rejecting defendant's argument that he lacked notice that he could be prosecuted for sexual assault in the United States, given that sexual assault is proscribed in all countries "with a plausible interest in this prosecution"). *Reumayr*, 530 F. Supp. 2d at 1223; *Martinez-Hidalgo,* 993 F.2d at 1056.

There is a strong argument that bribery is a "universally condemned" crime, given criminal statutes adopted worldwide since the 1990s, the stance against corruption adopted by the United Nations in 2004, and the growing number of nations that now criminalize demand-side bribery. Regardless, as with nexus, compliance with international law is a sufficient but not necessary method to satisfy the notice requirements of the Fifth Amendment. *See Baston,* 818 F.3d at 669 (citing *Hartford Fire Ins. Co. v. Cal.,* 509 U.S. 764, 815 (1993) (explaining that Congress "clearly has constitutional authority" to confer extraterritorial jurisdiction in violation of international law if it so chooses)).

In sum, although many courts have recognized due process protections for non-resident aliens charged in U.S. courts, the due process challenge is an uphill battle for a defendant. "[C]ases in which even the extraterritorial application of a federal criminal statute has been 'actually deemed a due process violation' are exceedingly rare, and a defendant's burden 'is a heavy one.'" *Hayes,* 99 F. Supp. 3d at 422 (quoting Ali, 718 F.3d at 944 n.7); *see United States v. Reumayr,* 530 F. Supp. 2d 1210, 1223 (D.N.M. 2008) ("[I]t appears that no federal court has invalidated the extraterritorial application of U.S. law on due process grounds" (citing Lea Brilmayer & Charles Norchi, *Federal Extraterritoriality and Fifth Amendment Due Process,* 105 Harv. L. Rev. 1217, 1221 n.12 (1992))). As the international community continues to act to criminalize the demand side of bribes, defendants' notice argument will likely weaken.

As with other extraterritorially-applied criminal laws, *see* 15 U.S.C. § 78dd (the FCPA); 18 U.S.C. § 1956(f) (money laundering), FEPA contains a jurisdictional provision limiting its scope to defendants engaging in conduct against specific U.S. persons or entities, or that takes place within the United States. Without it, the scope of the potential application of FEPA may have invited challenges on Fifth Amendment grounds that could be more persuasive to courts than those asserted by defendants facing criminal charges thus far. Yet the express inclusion of this provision ensures that FEPA will not test the relationship between the nexus requirement that some courts have acknowledged is required by the Fifth Amendment and Congress's authority to legislate under the Interstate Commerce Clause.

B. TREATIES

Several treaties address transnational bribery and corruption. None would pose an impediment to FEPA. This section summarizes the three anti-bribery and corruption treaties to which the United States is a signatory.[10]

i. The OECD Anti-Bribery Convention

The OECD Convention addresses supply-side bribery only, and therefore, would not be an obstacle to the enactment of FEPA. Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention") art. 1, ¶ 1-2, Dec. 17, 1997, S. Treaty Doc. No. 105-43 (describing the offering of bribes, and the conspiracy, aid, or authorization thereof, and the obligation of parties to the treaty to criminalize such behavior). The Commentaries to the Convention make this even more explicit: the Convention "deals with what, in the law of some countries, is called 'active corruption' or 'active bribery', meaning the offence committed by the person who promises or gives the bribe, as contrasted with 'passive bribery,' the offence committed by the official who receives the bribe."

Given the scope of the OECD Convention, the absence of any prohibition, explicit or implicit, regarding the criminalization of demand-side bribery, and the fact that numerous signatories have criminalized demand-side bribery, *see Lucinda A. Low*,

[10] Other major anti-bribery and corruption treaties include the African Union Convention on Preventing and Combating Corruption of July 11, 2003, and the Civil Law Convention on Corruption (1999) and its Additional Protocol. *See generally* Lucinda A. Low, Sarah R. Lamoree, and John London, The Demand Side of Transnational Bribery and Corruption: *Why Leveling the Playing Field on the Supply Side Isn't Enough*, 84 Fordham L. Rev. 563, 579 (2015). However, the United States is not a signatory to these conventions.

Sarah R. Lamoree, and John London, *The Demand Side of Transnational Bribery and Corruption: Why Leveling the Playing Field on the Supply Side Isn't Enough*, 84 Fordham L. Rev. 563, 579 (2015) (compiling examples of laws criminalizing demand-side bribery adopted by various countries, including the U.K., Germany, France, and Poland), the OECD Convention does not pose an obstacle to FEPA.

ii. The Inter-American Convention Against Corruption

The Inter-American Convention Against Corruption likewise would not impede FEPA. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724. Unlike the OECD Convention, the Inter-American Convention expressly contemplates the criminalization of demand-side bribery. *Id.* art. VI, ¶ 1 (the Convention is applicable to "[t]he solicitation or acceptance, directly or indirectly by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions").

However, the Convention only mandates that parties establish jurisdiction over demand-side bribery and other enumerated acts of corruption when they take place in the party's own territory. *Id.* art. V, ¶ 1. That mandate has been construed to cover only offenses committed wholly within the party's territory—a standard that complex anti-bribery and corruption offenses will often fail to meet. Low et al. *The Demand Side of Transnational Bribery and Corruption, supra,* at 573. The establishment of extraterritorial jurisdiction over acts of corruption, in contrast, is optional. Inter-American Convention, art. V, par. 4 ("[t]his Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law").

Thus, the Inter-American Convention Against Corruption mandates the criminalization of only a subset of demand-side bribery, yet explicitly permits the criminalization of much more. Additionally, the Inter-American Convention contemplates criminalization of corruption, including demand-side bribery, within the domestic legal systems of the parties. *See Inter-American Convention*, arts. VI, VII, III, and X. Thus, the Convention both allows for and contemplates legislation like FEPA.

iii. The United Nations Convention Against Corruption

The United Nations Convention Against Corruption likewise would not prohibit the criminalization of demand-side corruption. United Nations Convention Against Corruption, Dec. 9, 2003, 35 I.L.M. 724 (the "U.N. Convention"). The U.N. Convention requires the criminalization of international supply-side corruption, *see id.* art. 16, ¶ 1, but makes optional the criminalization of international demand-side corruption, *see id.* art. 16, ¶ 2 (stating that "[e]ach State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage"). Thus, like the Inter-American Convention, the U.N. Convention both allows for and contemplates legislation like FEPA.

C. DIPLOMATIC IMMUNITY

Diplomatic immunity is a robust, though narrow, doctrine, which, in the context of FEPA, would only be implicated if a diplomat were to be involved in the solicitation or receipt of a covered bribe.

The relevant authority with regard to diplomatic immunity is the Vienna Convention on Diplomatic Relations. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227.[11] The class of individuals who enjoy immunity under the Vienna Convention is very narrow. However, the protections it grants are significant. The Vienna Convention applies, to varying degrees, to diplomatic agents, members of their families, and support staff. Vienna Convention, art. 1. A "diplomatic agent" is defined to include the head of the mission or a member of the diplomatic staff of the mission, *see id.* art. 1(e). Article 29 of the Vienna Convention provides that "the person of a diplomatic agent shall be inviolable" and that they shall not be subject to arrest or detainment. *Id.* art. 29.

Article 31, moreover, provides that a diplomatic agent "shall enjoy immunity from the criminal jurisdiction of the receiving state." Further, diplomatic agents cannot, *inter alia*, be taxed (Article 34), be compelled to pay into social programs or serve in the military of the host country, (Article 35), or have their personal baggage inspected except under extraordinary circumstances (Article 36). These protections also apply to the families of diplomatic agents, and to a slightly more limited extent the service staff and employees of the mission. *Id.* art. 37.

Under the Vienna Convention, diplomatic immunity attaches to individuals rather than activities. *See id.* arts. 29-31. That is to say that a diplomatic agent would be immune from prosecution because of his or her status as a diplomat, rather than because of their engagement in diplomacy. This is illustrated by the immunity from prosecution diplomats enjoy for acts with little to no bearing on their official function. Hence, if an individual soliciting or receiving a bribe is entitled to diplomatic immunity under the Vienna Convention, he or she would be immune from prosecution under FEPA.

This would not be a problem unique to FEPA—indeed, it is a limitation faced by every other U.S. criminal law, state or federal—nor one with great significance for the enforceability of the statute.

[11] Also implicated is 22 U.S.C. §§ 251-259, which incorporates the protections of the same and applies them to the diplomats of non-signatory nations.

D. ACT OF STATE DOCTRINE

The act of state doctrine prohibits the courts of the United States from declaring invalid the official act of a foreign sovereign. *See W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., Int'l*, 493 U.S. 400, 405 (1990).[12] Because bribery is not an official act, as understood in relevant case law, the doctrine would not present an impediment to the enforceability of FEPA. The doctrine therefore does not present an impediment to the enforceability of the statute.

With regard to foreign officials and employees, the conduct contemplated by FEPA— demand-side bribery—would be excluded from the scope of the act of state doctrine, because courts would not be required to adjudicate an official act of a foreign state in holding a foreign official liable for bribery. In *W.S. Kirkpatrick,* a case concerning bribes paid by a company executive to Nigerian government officials in order to secure a procurement contract in that country, the U.S. Supreme Court held that the conditions necessary for the application of the act of state doctrine were not present. *Id*. at 406. The Court explained that "[a]ct of state issues only arise when a court *must decide*—that is, when the outcome of the case turns upon—the effect of an official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine." *Id*. (emphasis in original).

The effect of the Court's language in *W.S. Kirkpatrick* was to impose two requirements for the act of state doctrine to apply: First, that the case concern the "official action by a foreign sovereign," and second, that the case specifically go to the effect of that action. *Id.* Courts have consistently held that bribes do not meet those prerequisites, and hence, that adjudicating the payment of a bribe is not covered by the act of state doctrine.[13] A judicial determination as to the existence of a bribe does not require that the court pass upon the validity of an official action of a foreign sovereign.

Such is the case with FEPA. While liability under FEPA requires a finding of corruption, and so strongly suggests impropriety, and potentially even invalidity, as to the resulting official act, it does not necessitate it. In other words, proof of a violation of FEPA may call into question the legality of the official act, but the court's legal inquiry will not reach that question. Having held that a payment or other thing of value was corruptly demanded or accepted by the foreign official, there is nothing left for the court to pass upon, such that the act of state doctrine would not be triggered. *See W.S. Kirkpatrick,* 493 U.S. at 406 (stating that "[r]egardless of what the court's factual findings may suggest as to the legality of the Nigerian contract, its legality is simply not a question to be decided in the present suit, and there is thus no occasion to apply the rule of decision which the act of state doctrine requires") (citing *Sharon v. Time, Inc.* 599 F. Supp. 53, 546 (S.D.N.Y. 1984) ("The issue in this litigation is not whether [the alleged] acts are valid, but whether they occurred").

By contrast, in *Underhill v. Hernandez,* 168 U.S. 250, 254 (1897), distinguished in *W.S. Kirkpatrick,* the act of state doctrine applied to a tort claim for, essentially, wrongful detention of the plaintiff by a military commander. Because holding for the plaintiff would necessarily require finding that the military commander's conduct was tortious, and thus require a predicate finding that the government's conduct was illegitimate, the act of state doctrine was implicated. Similarly, in *Oetjen v. Central Leather Co.,* 246 U.S. 297 (1918), also cited in *W.S. Kirkpatrick,* the Court refused, on the basis of the act of state doctrine, to hold that the expropriation of certain property by the Mexican government was invalid. Likewise, in *Oceanic Exploration Co. v. ConocoPhillips, Inc.,* 2006 U.S. Dist. LEXIS 72231 (D.D.C. 2006), the act of state doctrine barred the plaintiff oil companies' suit because, for the court to find that the plaintiffs had a "right to compete or bid" for certain government contracts issued long before the litigation and procured by a bribe from ConocoPhillips, the court would have not only had to find that there was a bribe, but also that the contracts awarding the concession rights were invalid. As the latter finding went to a sovereign act, the act of state doctrine barred suit.

Like *W.S. Kirkpatrick,* and unlike the examples above, prosecution under FEPA would not trigger the act of state doctrine. Since ruling on whether a bribe was paid would not require a court to "enforce or disturb" the actions of the foreign sovereign, the factual predicate for the act of state doctrine would not exist. *In re Yukos Oil Sec. Litig.,* No. 04 Civ. 5243, 2006 U.S. Dist. LEXIS 78067 (S.D.N.Y. Oct. 25, 2006).

[12] The act of state doctrine would not be relevant to employees and officials of international organizations, as it covers only foreign sovereigns and their agents. *See W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., Int'l*, 493 U.S. 400, 406 (1990) (explaining that one of the limits of act of state doctrine is the necessity that the action be taken by a foreign sovereign).

[13] *See, e.g., Republic of Iraq v. ABB AG*, 768 F.3d 145 (2d Cir. 2014) (citing *W.S. Kirkpatrick* and stating that "[h]ere, similarly, although a finding against the defendants would tend to imply that the Hussein Regime violated its international obligations by corrupting the Programme … no aspect of the Republic's claims turns on the validity of the Hussein Regime's conduct"); *Lamb v. Phillip Morris, Inc.,* 915 F.2d 1024 (6th Cir. 1990) ("[l]ike the bribes underlying the civil RICO and Robinson-Patman Act claims in Kirkpatrick, the payments made by the defendants in this case to induce favorable action in Venezuela may support the plaintiffs' antitrust claims. Because the antitrust claims at issue in this suit merely call into question the contracting parties' motivations and the resulting anticompetitive effects of their agreement, not the validity of any foreign sovereign act, the district court erred in applying the act of state doctrine"); *Mt. Crest, SRL LLC v. Anheuser-Busch InBev SA/NV,* 937 F.3d 1067, 185 (7th Cir. 2019) ("[h]olding Anheuser-Busch and Molson Coors liable … and requiring them to pay damages . . . would not, on its face, invalidate Ontario's chosen regulatory scheme"); *Forum Fin. Group v. President & Fellows of Harvard College,* 173 F. Supp.2d 72 (D. Maine 2001) (act of state doctrine not implicated when "the Contract with the Russian SEC is not itself at issue … rather, it is the alleged tortious interference therewith").

III. HYPOTHETICAL APPLICATIONS OF THE FOREIGN EXTORTION PREVENTION ACT

Hypothetical 1: A senior vice president of project development at Big Oil, Inc., a U.S. public company headquartered in Houston, Texas, with operations in several foreign countries, oversees Big Oil's operations in the Middle East and Asia, and has been in contact with public officials in a number of Central Asian countries regarding plans to develop oil fields in the region. Recently, the VP met with the Minister of Natural Resources of a Central Asian country at a hotel in its capital city to discuss a potential concession agreement with Big Oil. During their conversation, the Minister tells the VP that he is in discussions with several of Big Oil's competitors, and that Big Oil's chances of securing the contract would be enhanced by a "premium" payable to a British Virgin Islands-based company. The VP tells the Minister that the premium should be feasible, and arranges for Big Oil's finance department to issue a $100,000 check to the company. The country ultimately awards the contract to Big Oil.

Analysis: This would likely be a straightforward violation of FEPA. The Minister is clearly a "foreign official" as defined in the statute, and directly and explicitly sought and accepted a "thing of value" (U.S. dollars) in order to influence the "performance of an official act" (the award of an oil concession on behalf of the government), thereby acting "corruptly." Although the Minister did not request a bribe explicitly, in the likely view of the U.S. Department of Justice ("DOJ"), his suggestion of a premium, acceptance of the payment, and awarding of the contract to Big Oil shortly thereafter provide strong circumstantial evidence that the payment was solicited with corrupt intent. Moreover, the Minister violated FEPA even though the payment was directed to an offshore entity rather than the Minister personally, and even though the Minister did not make explicit whether he had an interest in it, since FEPA covers bribes solicited "personally or for any other person or non-governmental entity."

Hypothetical 2: The Director of Global Sales at GiantTelecom US, Inc., the U.S. operating subsidiary of GiantTelecom AG, based in Dusseldorf, Germany, has been leading a pitch to the Ministry of Communications in an Eastern European country for a $50 million contract to develop a broadband network in the country's rural northwestern region. During a recent Zoom meeting, a deputy minister in the Ministry of Communications suggested that the Director reach out to a consultant based in the Eastern European country, with whom the deputy minister has worked in the past on similar deals.

The deputy minister also mentions that the consultant happens to be planning a visit to San Diego, where GiantTelecom US is headquartered, following a visit to the Cayman Islands, and would be happy to meet with the Director in person. At a meeting in the Director's office, the consultant tells the Director that the deputy minister is likely to show her gratitude to GiantTelecom US in the contracting process if the company could arrange an internship for the deputy minister's daughter at the offices of GiantTelecom AG's French subsidiary in Paris. The deputy minister asked the consultant to make this request shortly before his trip. The Director arranges for an internship offer, and within a week, is informed that the Ministry of Communications has decided to award the project to GiantTelecom US.

Analysis: Again, the foreign official here would be liable under FEPA. The bribe demand was made against a 'domestic concern' *and* was made within the territory of the United States. The fact that the "thing of value" was conveyed to a third-party intermediary rather than to the deputy director directly would not be a defense, since FEPA prohibits foreign officials from corruptly seeking anything of value "directly or indirectly."

Hypothetical 3: MotorCo is a publicly traded company and auto manufacturer headquartered in Chicago. Recently, MotorCo participated in an RFP from an Asian-based airline to supply vehicles for use in the airline's ground operations at airports around the world. The airline's majority shareholder is the Asian country's Ministry of Transportation, which appoints a majority of the airline's board of directors. During a meeting at a hotel cocktail lounge in the Asian country between MotorCo's Senior Vice President of Sales for the Asia-Pacific Region and the airline's Chief Procurement Officer ("CPO"), the CPO tells the VP that he generally looks favorably on "additional consideration" in contract awards and writes the figure "100K" on a cocktail napkin, which he slides over to the VP's end of the table. MotorCo remits $100,000 to an account specified by the CPO and wins the contract.

Analysis: The CPO would likely be liable under FEPA as the employee of an "instrumentality" of a foreign government, which falls within the statute's definition of a "foreign official." In the FCPA context, whether an entity qualifies as an instrumentality of a foreign government involves a fact-specific analysis of the entity's ownership, control, status, and function. Because the airline in this case is majority-owned by the Asian government, and the government controls the airline's management through its majority representation on its board, the airline would probably be deemed an instrumentality of the country's government under FEPA.

Transparency International U.S.
c/o Open Gov Hub
1100 13th St NW, Suite 800
Washington, DC
20005

info-us@transparency.org
us.transparency.org
Twitter: @TransparencyUSA

TRANSPARENCY INTERNATIONAL U.S.
fighting corruption, promoting democracy