

**MARCH 3, 2022**For more information,  
contact:Brandt Leibe  
713-751-3235  
202-626-8983  
[bleibe@kslaw.com](mailto:bleibe@kslaw.com)Grant Nichols  
512-457-2006  
202-626-8973  
[gnichols@kslaw.com](mailto:gnichols@kslaw.com)Lucas Fields  
202-626-2399  
[lfields@kslaw.com](mailto:lfields@kslaw.com)Russell Martinez  
213-443-4318  
[rmartinez@kslaw.com](mailto:rmartinez@kslaw.com)Rafaela Calcena  
212-556-2353  
[rcalcena@kslaw.com](mailto:rcalcena@kslaw.com)

King &amp; Spalding

Houston  
1100 Louisiana Street  
Suite 4100  
Houston, Texas 77002  
Tel: +1 713 751 3200Austin  
500 W. 2<sup>nd</sup> Street  
Suite 1800  
Austin, TX 78701  
Tel: +1 512 457 2000Washington, D.C.  
1700 Pennsylvania Avenue, NW  
Suite 900  
Washington, D.C. 20006  
Tel: +1 202 737 0500

## H2 2021: Latin America Enforcement Review

To close out 2021, enforcement authorities throughout the Americas continued to investigate fraud, corruption, and other misconduct across the region. For 2022, we expect an uptick of anticorruption investigations as a result of the U.S. Strategy on Countering Corruption announced by President Biden in December 2021. In particular, we expect a greater number of enforcement matters concerning Latin America, as the United States Department of Justice (“DOJ”) remains focused on the region. Below are some of the highlights of the last part of 2021.

### **Biden Administration Corruption Policies Take Shape**

A year into Joe Biden’s presidency, his administration’s approach to anti-corruption appears to be coming into focus. While it remains to be seen how the President Biden’s anticorruption policies will be carried out, many experts agree that they mark a shift from the previous administration’s anticorruption policies.<sup>1</sup> The Biden Administration’s posture towards Latin America will be a barometer for determining how aggressive the administration intends to be in enforcing U.S. anticorruption laws.

On June 3, 2021, The White House published its first national security study memorandum which announced the fight against corruption as a core United States national security interest.<sup>2</sup> The memo directed several federal departments and agencies “to review and send to President Biden a report and recommendation in 200 days on how the government and its partners can modernize, coordinate, and further resource efforts to better fight corruption...”<sup>3</sup>

These departments and agencies performed their review and on December 6, 2021, published a 38-page memorandum titled, United States Strategy on Countering Corruption.<sup>4</sup> According to this memorandum, the U.S. Government will organize its anticorruption efforts around “five mutually reinforcing pillars of work”:

- The first pillar is modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption. To do this, the U.S. Government will enhance corruption-related research, data collection, and analysis to



understand and map corruption networks and their proceeds, and to tailor prevention and enforcement. It will also improve information sharing domestically and internationally and increase focus on the transnational dimensions of corruption throughout the U.S. Government's foreign assistance programs, diplomatic engagement, and partnerships.<sup>5</sup>

- The second pillar is curbing illicit finance. To achieve this, the Biden Administration plans to address deficiencies in the U.S. anti-money laundering regime by collecting beneficial ownership information on those who control anonymous shell companies and by increasing transparency in real estate transactions. The government will also work with allies and partners to address governance weaknesses and other deficiencies, including information sharing and law enforcement cooperation.<sup>6</sup>
- The third pillar is holding corrupt actors accountable. This will involve enhancing enforcement efforts and expanding cooperation with other jurisdictions to enforce the FCPA, money laundering statutes, and forfeitures. The memorandum sets forth a plan to update the tools available to prosecute corrupt actors, such as working with Congress to criminalize the demand side of bribery, and to enact other tools like the Kleptocracy Asset Recovery Rewards Program that will enhance the U.S. Government's ability to identify and recover stolen assets. The memorandum also describes a plan to launch an interagency Democracies Against Safe Havens Initiative to coordinate actions on law enforcement, sanctions, and visa restriction implementation.<sup>7</sup>
- The fourth pillar is preserving and strengthening the multilateral anticorruption architecture. To do this, the U.S. Government will bolster anticorruption institutions and implementation of existing multinational frameworks such as the Organization for Economic Cooperation and Development (OECD), the Organization of American States (OAS), and the United Nations, including through enhanced implementation of the United Nations Convention Against Corruption (UNCAC).<sup>8</sup>
- The fifth pillar is improving diplomatic engagement and leveraging foreign assistance resources to advance policy goals. To do this the U.S. Government will elevate and expand the scale of diplomatic engagement and foreign assistance, including by developing U.S. embassy-specific strategies for bilateral and public diplomacy to support local and U.S. government-funded anticorruption initiatives, protect anticorruption advocates, improve security assistance, and integrate anticorruption considerations into military planning, analysis and operations.<sup>9</sup>

Following the publication of the Memorandum, President Biden hosted the Summit for Democracy from December 8 to 10, during which he announced the Presidential Initiative for Democratic Renewal, along with initiatives from U.S. Department of State that will complement the President's efforts. The State and Justice Departments will also deploy anticorruption experts to build capacity in partner countries to investigate, prosecute, and adjudicate corruption.<sup>10</sup>

Notably absent from the Democracy Summit were the countries of Guatemala, El Salvador, and Honduras.<sup>11</sup> The Biden Administration's decision not to invite these countries appears to reflect the administration's aggressive posture towards these countries' lackluster anticorruption efforts. In Guatemala, the Congress passed laws protecting its members from prosecution for corruption, while its Attorney General impeded corruption investigations of Guatemalan politicians.<sup>12</sup> In Honduras, then-President Juan Orlando Hernandez was named as a co-conspirator by U.S. prosecutors in a narco-trafficking trial involving his brother.<sup>13</sup> In El Salvador, President Nayib Bukele announced his country would end a cooperation agreement with the Organization of American States for a program designed to combat corruption there.<sup>14</sup>

### **DOJ's Anticorruption Task Force Continues to Develop Resources: Implements Tip Line**

As part of the Biden Administration's new anticorruption efforts described above, on October 15, 2021, DOJ announced additional efforts to combat corruption in the Northern Triangle countries of Guatemala, El Salvador, and Honduras. The DOJ created a tip line to help assist its Anticorruption Task Force fight corruption by putting in place a resource that



allows anyone with information about corrupt actors in El Salvador, Guatemala, and Honduras who are violating U.S. laws or moving proceeds of their crimes in or through the United States to report concerns to U.S. authorities in Spanish or English.<sup>15</sup>

The announcement followed DOJ's creation of the Anticorruption Task Force in June 2021, shortly after President Biden issued a statement establishing the fight against corruption as a core U.S. national security interest.<sup>16</sup>

This Task Force includes representatives from the DOJ Criminal Division's Foreign Corrupt Practices Act (FCPA) Unit, as well as the Kleptocracy Asset Recovery Initiative in the International Unit of the Money Laundering and Asset Recovery Section (MLARS), which is focused on recovering assets linked to foreign corruption and prosecuting related money laundering, and the Narcotic and Dangerous Drug Section (NDDS). The Task Force is also supported by agents from the FBI's International Corruption Unit, the U.S. Drug Enforcement Administration, and the U.S. Department of Homeland Security.<sup>17</sup>

### **Sons of former Panamanian president plead guilty in connection with the Odebrecht scheme**

More than five years after the *Odebrecht* settlement in the U.S.,<sup>18</sup> its consequences continue to ripple throughout the region, including most recently, in Panama. In December 2021, Ricardo Martinelli Linares and Luis Martinelli Linares, sons of the former President of Panama Ricardo Martinelli, pleaded guilty to conspiracy to commit money laundering in U.S. Federal District Court in Brooklyn, New York.<sup>19</sup>

DOJ had originally charged the Martinelli brothers in June 2020.<sup>20</sup> Following his arrest and extradition from Guatemala, Luis Martinelli Linares pleaded guilty to a charge of conspiracy to commit money laundering related to his role in an Odebrecht-related scheme on December 2, 2021. His brother, Ricardo Martinelli Linares, was extradited from Guatemala to the U.S. on December 10, 2021.

On December 14, 2021, Ricardo Martinelli Linares pleaded guilty to conspiracy to commit money laundering for his role in a bribery and money laundering scheme involving Odebrecht. He admitted that he agreed with his brother and others to establish offshore bank accounts in the names of shell companies to receive and disguise over \$28 million in bribe proceeds from Odebrecht for the benefit of his close relative who was a high-ranking public official in Panama.<sup>21</sup> The brothers are being detained while they await sentencing.<sup>22</sup>

These guilty pleas resulted from the cooperation of several countries with U.S. enforcement authorities. The Government of Guatemala assisted with the extradition of the brothers. In addition, the Brazilian enforcement authorities, the Federal Office of Justice in Switzerland, and law enforcement authorities in El Salvador also provided significant cooperation.<sup>23</sup>

The brothers' father, Ricardo Alberto Martinelli Berrocal, who governed Panama from 2009 until 2014, has said he may run for president there again in 2024. Four years after leaving office, he was extradited from the U.S. to Panama to face charges related to an allegedly illegal wiretapping scheme that prosecutors said he had conducted while in office. A Panamanian court absolved him of those charges last November.<sup>24</sup>

As a consequence of the guilty pleas, the government of Panama now wants to recover the Martinelli brothers' ill-gotten gains.<sup>25</sup>

### **Another major corruption scheme in Venezuela**

On October 21, 2021, the U.S. District Court for the Southern District of Florida unsealed charges against five individuals who allegedly participated in a money laundering and bribery scheme affecting several Venezuelan government agencies. The five defendants – Alvaro Pulido Vargas (aka German Enrique Rubio Salas, aka Cuchi) of Colombia;<sup>26</sup> Jose Gregorio Vielma-Mora, former governor of the Venezuelan state of Táchira, of Venezuela; Emmanuel Enrique



Rubio Gonzalez, of Colombia; Carlos Rolando Lizcano Manrique, of Colombia; and Ana Guillermo Luis, of Venezuela – were charged for their alleged roles in laundering \$1.6 billion in bribes to obtain and retain inflated contracts through the *Comité Local de Abastecimiento y Producción* (CLAP), a Venezuelan state-owned and state-controlled food and medicine distribution program for the people of Venezuela.<sup>27</sup>

According to the indictment, the defendants conspired with others to launder the proceeds of a bribery scheme from bank accounts located in Antigua and United Arab Emirates to and through U.S. bank accounts. DOJ alleges that the defendants obtained contracts with Venezuelan governmental entities to import and distribute boxes of food and medicine in Venezuela through CLAP by paying bribes to Venezuelan government officials, including Vielma-Mora, one of the defendants.<sup>28</sup>

Interestingly, DOJ did not bring FCPA charges against the defendants. In this case, DOJ used money laundering statutes to charge a foreign government official, Vielma-More, who allegedly received a bribe.

### **After Lava Jato's end, what is next for Brazilian anticorruption enforcement?**

The largest corruption case in Latin America came to an end in February 2021 with the conclusion of the Lava Jato investigation task force.<sup>29</sup> With that, a question emerged: will Brazil's anticorruption enforcement remain as strong as it has been? As a general matter, we believe that Brazil will continue to prioritize anticorruption enforcement in the aftermath of Lava Jato. Although another investigation of the same magnitude as Lava Jato may be unlikely, Brazilian enforcement authorities have developed sophisticated anticorruption expertise, as well as strong cooperation and assistance with their counterparts in the U.S.

Whether Brazilian enforcement authorities will have opportunities to collaborate with U.S. law enforcement officials in the same way as they have in investigations flowing from Lava Jato remains to be seen. The number of FCPA matters initiated by the DOJ in 2021 was much lower than the average – there were only six matters initiated in 2021, while in 2020 and 2019 there were 11 and 219 respectively.<sup>30</sup> Nevertheless, Brazil was the country most frequently implicated in FCPA-related bribery schemes resulting in enforcement actions, with two separate schemes.<sup>31</sup>

The most recent FCPA settlement implicating Brazil is the SEC settlement with WPP plc, the world's largest advertising group, announced in September 2021. WPP has agreed to pay more than \$19 million to resolve charges that it violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA.

According to the SEC, the bribery scheme took place at a WPP subsidiary in India, and subsidiaries in Brazil, Peru, and China also involved. With respect to the subsidiary in Brazil, the SEC alleged improper payments to purported vendors in connection with government contracts in 2016 to 2018. Although WPP policy prohibited paying third parties to assist in obtaining government contracts without WPP's approval, the Brazilian subsidiary made improper payments to vendors to secure government contracts. To avoid detection, WPP's Brazilian subsidiary disguised the payments its books and records to reflect that the vendors performed "bonafide services," like marketing or IT-related services. The SEC noted that the Brazil's Securities and Exchange Commission (*Comissão de Valores Mobiliários - CVM*) assisted in the investigation.<sup>32</sup>

The cooperation and assistance relationship between Brazil and the U.S. seems to remain firm and mature. It is important to keep in mind that Brazil has presidential elections this year and the political situation is dynamic. Whether anticorruption enforcement will be a priority for the coming years may depend on the election results. We will continue to follow enforcement actions in Brazil and keep an eye out for new cross-border investigations.



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<sup>1</sup> Parker Asmann, et al., *GameChangers 2020: Conflicting US Approach to Latin America Organized Crime*, InsightCrime, (December 22, 2020), <https://insightcrime.org/news/analysis/conflicting-us-approach-latin-america/>; Michael J. Camilleri, et al., *How the 'Art of the Deal' Hurt Latin America's Corruption Fight*, Americas Quarterly, (January 30, 2020), <https://www.americasquarterly.org/article/how-the-art-of-the-deal-hurt-latin-americas-corruption-fight/>

<sup>2</sup> Whitehouse.gov, *Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest*, (June 3, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>

<sup>3</sup> Whitehouse.gov, *UNITED STATES STRATEGY ON COUNTERING CORRUPTION*, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>

(The agencies to which this memorandum was directed were the (a) the Office of the Vice President; (b) the Department of State; (c) the Department of the Treasury; (d) the Department of Defense; (e) the Department of Justice; (f) the Department of Commerce; (g) the Department of Energy; (h) the Department of Homeland Security; (i) the Office of Management and Budget; (j) the United States Mission to the United Nations; (k) the Office of the Director of National Intelligence; (l) the Central Intelligence Agency; (m) the Office of the Chairman of the Joint Chiefs of Staff; (n) the United States Agency for International Development; and (o) the National Security Agency.)

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Ted Piccone, *The awkward guests: Parsing the Summit for Democracy invitation list*, Brookings Institute, (December 7, 2021), <https://www.brookings.edu/blog/order-from-chaos/2021/12/07/the-awkward-guests-parsing-the-summit-for-democracy-invitation-list/>

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Washington Office on Latin America, *In Leaving Anti-Corruption Accord, Bukele Moves Close to Unchecked Power in El Salvador*, (June 14, 2021), <https://www.wola.org/2021/06/el-salvador-cicies-oas/>

<sup>15</sup> DOJ, *Justice Department Anticorruption Task Force Launches New Measures to Combat Corruption in Central America*, (October 15, 2021), <https://www.justice.gov/opa/pr/justice-department-anticorruption-task-force-launches-new-measures-combat-corruption-central>.

<sup>16</sup> White House, *FACT SHEET: U.S. – Guatemala Cooperation*, (June 7, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/07/fact-sheet-u-s-guatemala-cooperation/>; *Memorandum on Establishing the Fight Against*



*Corruption as a Core United States National Security Interest*, (June 3, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>

<sup>17</sup> DOJ, *Justice Department Anticorruption Task Force Launches New Measures to Combat Corruption in Central America*, (October 15, 2021), <https://www.justice.gov/opa/pr/justice-department-anticorruption-task-force-launches-new-measures-combat-corruption-central>

<sup>18</sup> On December 21, 2016, Odebrecht pleaded guilty in the Eastern District of New York to a criminal information charging it with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act for its involvement in the bribery and money laundering scheme.

<sup>19</sup> DOJ, *Panamanian Intermediary Pleads Guilty for His Role in an International Bribery and Money Laundering Scheme*, (December 14, 2021), <https://www.justice.gov/usao-edny/pr/panamanian-intermediary-pleads-guilty-his-role-international-bribery-and-money-1>.

<sup>20</sup> DOJ, *Two Individuals Charged for Their Role in Bribery and Money Laundering Scheme Involving Former High-Ranking Government Official in Panama*, (July 6, 2020), <https://www.justice.gov/usao-edny/pr/two-individuals-charged-their-role-bribery-and-money-laundering-scheme-involving-former>

<sup>21</sup> Id.

<sup>22</sup> NYT, *Ex-Panama President's Sons Are Extradited to U.S. After Multicountry Chase*, (December 11, 2021) <https://www.nytimes.com/2021/12/11/nyregion/panama-president-sons-charges.html>.

<sup>23</sup> Id.

<sup>24</sup> NYT, *Ex-Panama President's Sons Are Extradited to U.S. After Multicountry Chase*, (December 11, 2021) <https://www.nytimes.com/2021/12/11/nyregion/panama-president-sons-charges.html>.

<sup>25</sup> Reuters, *After guilty pleas, Panama wants to recoup illicit gains from Martinelli sons*, (December 15, 2021), <https://www.reuters.com/world/americas/after-guilty-pleas-panama-wants-recoup-illicit-gains-martinelli-sons-2021-12-16/>.

<sup>26</sup> In July 2019, Alvaro Pulido Vargas was charged with laundering the proceeds of violations of the FCPA in connection with a scheme to pay bribes to take advantage of Venezuela's government controlled-exchange rate. <https://www.justice.gov/criminal-fraud/fcpa/cases/alvaro-pulido-vargas>

<sup>27</sup> DOJ, *Five Individuals Charged with Money Laundering in Connection with Alleged Venezuela Bribery Scheme*, (October 21, 2021), <https://www.justice.gov/opa/pr/five-individuals-charged-money-laundering-connection-alleged-venezuela-bribery-scheme>

<sup>28</sup> *Pulido et. al Indictment*, (October 7, 2021), <https://www.justice.gov/opa/press-release/file/1444001/download>.

<sup>29</sup> MPF, *Lava Jato passa a integrar o Grupo de Ação Especial de Combate ao Crime Organizado no Paraná*, (February 3, 2021), <http://www.mpf.mp.br/pr/sala-de-imprensa/noticias-pr/lava-jato-passa-a-integrar-o-gaeco-no-parana/view>

<sup>30</sup> Stanford, *FCPA year in review*, <https://fcpa.stanford.edu/fcpac-reports/2021-fcpa-year-in-review.pdf>. at 2.

<sup>31</sup> Stanford, *FCPA year in review*, <https://fcpa.stanford.edu/fcpac-reports/2021-fcpa-year-in-review.pdf>. at 4. Amec Foster Wheeler plc; WPP plc.

<sup>32</sup> US Securities and Exchange Commission, *SEC Charges World's Largest Advertising Group with FCPA Violations*, (Sept. 24, 2021), <https://www.sec.gov/news/press-release/2021-191>.