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12 UNITED STATES DISTRICT COURT
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14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 JEFFREY FORTENBERRY,

18 Defendant.

Case No. 2:21-cr-00491-SB

GOVERNMENT'S OPPOSITION TO
MOTION TO DISMISS FOR LACK OF
VENUE; EXHIBITS A-C

Hearing Date: 11/23/2021

Hearing Time: 8:00 a.m.

[Defendant's Estimated Length: 1 hour]

Indictment: 10/19/2021

Pretrial Conference: 12/7/2021 at 8:00 a.m.

Trial: 12/14/2021 at 8:00 a.m.

Last Day: 12/29/2021

23 Plaintiff, United States of America, by and through its counsel of record, the
24 Acting United States Attorney for the Central District of California and Assistant United
25 States Attorneys Mack E. Jenkins and Susan S. Har, hereby files its opposition to
26 defendant JEFFREY FORTENBERRY's ("defendant") motion to dismiss for lack of
27 venue.
28

1 This opposition is based upon the attached memorandum of points and authorities,
2 the supporting exhibits, the files and records in this case, and such further evidence and
3 argument as the Court may permit.

4 Dated: November 9, 2021

Respectfully submitted,

5 TRACY L. WILKISON
6 Acting United States Attorney

7 SCOTT M. GARRINGER
8 Assistant United States Attorney
9 Chief, Criminal Division

10 /s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant, the Honorable JEFFREY FORTENBERRY (“defendant”), a U.S. Congressman sworn to serve his country and constituents, repeatedly lied in recorded statements to Los Angeles federal investigators conducting a criminal inquiry into illegal foreign and conduit contributions after the evidence led them literally to defendant’s doorstep. Defendant was a subject of the investigation because he received illegal foreign contributions from Nigerian billionaire Gilbert Chagoury, as part of Chagoury’s scheme to influence U.S. politicians. It is undisputed that defendant’s campaign received the illicit money. It is undisputed that defendant’s statements to investigators regarding this topic were false. It cannot be credibly disputed that such statements were material—indeed, they went to the heart of the investigation and were intended by defendant to minimize his knowledge of any wrongdoing and his campaign’s acceptance of illegal foreign funds. When confronted, defendant, realizing the peril of his situation but failing to realize the strength of the government’s evidence, elected to eschew his oath and instead began his ill-fated campaign of concealment and lies.

Since 2015, the FBI, IRS, and the United States Attorney’s Office (“USAO”) in the Central District of California (“CDCA”) have been investigating individuals operating within CDCA (the “CDCA Subjects”) to route illegal foreign and conduit campaign contributions to various federal politicians, including to defendant (the “CDCA Investigation”). Defendant, an influential politician¹, (1) received illegal foreign and conduit contributions from the CDCA Subjects during a fundraiser in CDCA; (2) pushed to arrange for another fundraiser in CDCA with the CDCA Subjects, even after discussing the illegal source of the funds from the prior CDCA fundraiser with one of the CDCA Subjects; and (3) repeatedly and materially lied to and misled CDCA

¹ As a longtime Congressman, defendant serves on powerful committees that, among other things, appropriate all the expenditures made by the government and fund diplomatic operations and security assistance to foreign governments.

1 agents and prosecutors about the true source of the contributions from his CDCA
2 fundraiser and the involvement of the CDCA Subjects: a central focus of the CDCA
3 Investigation.²

4 Notwithstanding defendant's multiple lies to CDCA agents and prosecutors and
5 acts to obstruct the ongoing CDCA Investigation, defendant now complains that it would
6 be a "gross abuse of power" to require him to stand trial in the very district with which
7 he interfered. Neither the case law nor common sense support his breathless hyperbole.
8 Venue lies where the essential conduct constituting the offense took place. Scheming to
9 conceal or falsify material facts and making materially false statements are the essential
10 conduct elements of the charged section 1001 offenses. And because materiality is
11 defined in terms of its effects on "the decision of the decisionmaking body to which [the
12 statement] was addressed," venue is proper where the effects of the defendant's material
13 lies were felt. United States v. Peterson, 538 F.3d 1064, 1072 (9th Cir. 2008) (citation
14 omitted). Here, venue is proper in the Central District of California because that is
15 where defendant directed his criminal scheme and false statements—towards CDCA
16 investigators and the CDCA Investigation—and where the effects and harm of
17 defendant's obstructive conduct could be and were felt. And, as will be proven at trial,
18 venue here is additionally proper because defendant's criminal conduct continued into
19 this district, where his false statements were received, reviewed, discussed, and acted
20 upon by the affected investigative agencies.

21 Defendant's motion to dismiss should be rejected for what it actually is: a thinly
22 veiled attempt to forum shop away from the very district into which he so willingly
23 reached to obstruct an ongoing criminal investigation in the hopes of obtaining a friendly
24
25
26

27 ² Defendant is charged with a scheme to falsify and conceal materials, in violation
28 of 18 U.S.C. § 1001(a)(1) (Count One), and making false statements, in violation of 18
U.S.C. § 1001(a)(2) (Counts Two and Three). (Dkt. No. 1 ("Indictment").)

1 jury pool where he serves as an elected politician.³ Defendant's reliance on an incorrect
2 understanding and application of venue law is fatal to his motion.

3 II. STATEMENT OF FACTS

4 This case arises out of a significant federal criminal investigation in the CDCA
5 that resulted in several subjects admitting their criminal conduct and entering into
6 resolutions with the government.⁴

7 Because defendant's criminal acts were directed at, sought to obstruct, and
8 actually affected the CDCA Investigation in this district, the pertinent facts concerning
9 that investigation are set forth here. A Rule 12(b)(3)(A)(i) pretrial motion challenging
10 venue must be denied if the indictment, taken as true, alleges sufficient facts on its face
11 to sustain venue. United States v. Ghanem, 993 F.3d 1113, 1120 (9th Cir. 2021). As
12 explained below, the facts alleged in the indictment sufficiently plead venue, and this
13 Court should deny defendant's motion based on those allegations alone. At trial, venue
14 is a question of fact that must be proven by a preponderance of the evidence. United
15 States v. Lukashov, 694 F.3d 1107, 1120 (9th Cir. 2012). Accordingly, the government
16 proffers some of the facts that it expects to prove at trial, including facts that would
17 support a jury finding of venue.

18
19
20 ³ Defendant's attempt to recast his plight as a victim of "opportunistic venue
21 shopping" by the government (Mot. at 2) is more hyperbole better befitting a political
22 stump speech than is reflective of the facts of his case. The facts unequivocally
23 establish that the CDCA investigators faithfully followed all of the evidence of (now
24 proven) crimes committed in this district wherever that evidence led. Defendant's self-
25 inflicted consequence of being "drag[ged] across the country to face a jury of
26 Californians" (*id.*) materialized because he chose to repeatedly lie in voluntary
27 interviews to CDCA investigators investigating him.

28 ⁴ See, e.g., United States v. Toufic Baaklini, Case No. 2:21-CR-00160-DMG,
Deferred Prosecution Agreement (C.D. Cal. Mar. 31, 2021); United States v. Joseph
29 Arsan, Case No. 2:21-CR-00159-PSG, Deferred Prosecution Agreement (C.D. Cal. Mar.
30 31, 2021); see also [https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged)
31 [and-two-associates-resolve-federal-probe-alleged](https://www.justice.gov/usao-cdca/pr/lebanese-nigerian-billionaire-and-two-associates-resolve-federal-probe-alleged) (links to full agreements for Gilbert
32 Chagoury and Ray LaHood).

33 Filed concurrently with this opposition are Exhibits A-C. Exhibit A is the Factual
34 Basis for Chagoury's Deferred Prosecution Agreement; Exhibit B is the Factual Basis
35 for Baaklini's Deferred Prosecution Agreement; and Exhibit C is the Factual Basis for
36 Ray LaHood's Non-Prosecution Agreement.

1 **A. Overview of CDCA Investigation into Illegal Campaign Contributions**
 2 **and Foreign Influence by Subjects Residing and/or Operating in the**
 3 **Central District of California**

4 The CDCA Investigation has focused on illegal foreign and conduit contributions
 5 and foreign influence schemes orchestrated by several subjects residing and/or operating
 6 within CDCA. (Indictment ¶ 1.) As is relevant to this opposition, the CDCA Subjects
 7 are:

- 8 • **Gilbert Chagoury**, a Nigerian-born, billionaire businessperson of Lebanese
 9 descent. (Indictment ¶ 3.) Up until approximately 2015, Chagoury
 10 maintained a residence in Los Angeles County. As a foreign national,
 11 Chagoury was prohibited from making donations and contributions directly
 12 or indirectly in support of any candidate for federal elected office in the
 13 United States. (*Id.*) Defendant knew of Chagoury, knew he was a foreign
 14 national, socially met Chagoury in person at least twice, and would pass on
 15 his regards to Chagoury via Baaklini. (*See id.* ¶ 10.)
- 16 • **Toufic Baaklini**, a United States-based businessman who served as a proxy
 17 for Chagoury and assisted him with financial and political dealings in the
 18 United States. (Indictment ¶ 4.) Defendant had a personal and professional
 19 relationship with Baaklini. (*See* Ex. B.)
- 20 • **Individual H**, a resident of Los Angeles with ties to Chagoury and
 21 Baaklini. (Indictment ¶ 5.) Defendant's campaign was introduced to
 22 Individual H through Baaklini.

23 This investigation began in 2015 when Los Angeles FBI learned of suspicious
 24 wire transfers from Chagoury to Individual H, who then routed similar amounts of
 25 money close in time to the campaign of a U.S. Representative in California. (*See* Ex. A.
 26 at 2-3.)

27 Through the course of the CDCA Investigation, CDCA agents and prosecutors
 28 learned that the CDCA Subjects had conspired to funnel Chagoury's money to the
 campaigns of political candidates whom Chagoury favored because they shared a
 common political and/or religious cause. (Ex. A. at 2.) The CDCA Investigation
 revealed that from 2012 to 2016, Chagoury provided approximately \$180,000 in illegal
 political contributions to four different United States political candidates—including
 defendant—with the assistance of Baaklini, Individual H, and others. (*See* Exs. A, B.)

1 The CDCA Investigation also revealed that Chagoury, with the assistance of Baaklini,
2 routed an additional \$50,000 to then-United States Secretary of Transportation Ray
3 LaHood, in the form of a purported “loan” that was never disclosed as required on
4 LaHood’s government ethics forms and was not paid back until after LaHood resolved
5 his case with the CDCA. (See Ex. C.)

6 As part of the investigation, CDCA agents and prosecutors sought to learn
7 whether and when any of the recipient politicians were aware of the illicit contributions
8 to their campaigns; whether any person sought to impermissibly influence the recipient
9 politician in exchange for the contribution; and whether any recipient politician took any
10 official acts in connection with the illicit contributions. (Indictment ¶ 1.)

11 **B. 2016: CDCA Subjects Funnel Illegal Campaign Contributions to**
12 **Defendant at a Fundraiser in Los Angeles**

13 In 2016, Chagoury arranged to funnel \$30,000 of his money to defendant’s
14 campaign. (Indictment ¶ 11; Ex. A at 4-5.) To conceal the fact that he was the source of
15 this contribution, Chagoury arranged for the funds to be delivered to Baaklini, who then
16 provided that money in cash to Individual H to fund defendant’s campaign. (Id.; see also
17 Ex. B at 2-3.) In January 2016, Baaklini provided Chagoury’s \$30,000 in cash to
18 Individual H at a restaurant in Los Angeles and further instructed Individual H to host a
19 fundraiser for defendant during which other individuals (conduits recruited by Individual
20 H) would contribute Chagoury’s money to defendant’s campaign. (Indictment ¶ 11; Ex.
21 A at 4-5; Ex. B at 2-3.)

22 As instructed by Baaklini, Individual H hosted a fundraiser for defendant on
23 February 20, 2016. (Indictment ¶ 11.) Defendant attended the fundraiser, which took
24 place in Los Angeles. (Id.) The fundraiser raised a total of \$33,400, which defendant
25 later stated was a significant haul for an out-of-state representative. Of that amount,
26 \$30,200 was contributed by six conduits who had been recruited by Individual H and
27 reimbursed with Chagoury’s money. (See id.; Ex. A at 4-5; Ex. B at 2-3.)
28

1 Following the fundraiser and after being confronted by the FBI, Individual H
2 began cooperating in the CDCA Investigation. (Indictment ¶ 13.) The scope of the
3 CDCA Investigation included determining (among other things) if and when defendant
4 knew about the illegal funds he received in Los Angeles and whether defendant had any
5 communications with Chagoury or Baaklini about the funds he received in Los Angeles.
6 (Id. ¶ 12.)

7 **C. 2018: Defendant Pushes a CDCA Subject to Host Another Fundraiser**
8 **in Los Angeles for Him**

9 Defendant was up for re-election in November 2018. In the spring of 2018,
10 defendant reached out to Individual H. (Indictment ¶ 14.) On a recorded call on April 9,
11 2018, after inquiring about how the “community in L.A.” was doing, defendant asked
12 Individual H to host another fundraiser in Los Angeles for him. (See id.) Individual H
13 agreed to speak to one of their mutual acquaintances about it.

14 Following up on defendant’s request for another Los Angeles fundraiser to
15 support his reelection, Individual H called defendant on June 4, 2018. (Indictment ¶ 14.)
16 Unbeknownst to defendant at the time, the call was surreptitiously recorded at the
17 direction of the FBI. During that call, Individual H expressly and repeatedly discussed
18 with defendant that, during the last fundraiser, \$30,000 in cash had been provided by
19 Baaklini (originating from Chagoury) and provided to defendant through conduit donors
20 whom Individual H reimbursed using Chagoury/Baaklini’s cash. (Id. ¶¶ 14-15.)

21 As the jury will hear from the recording of that call, defendant did not express
22 surprise or concern or seek clarification about Individual H’s admissions that illegal
23 foreign cash had been funneled to his campaign. Instead, defendant simply continued to
24 push for the second fundraiser, explaining that he hoped to “have some continuation of
25 the fine generosity” that he had received from the first (illicitly funded) fundraiser and
26 offering to speak with his friend Baaklini—a key facilitator of the illegal contributions to
27 defendant’s campaign—to see if he could again “help” with the fundraiser. (See
28 Indictment ¶ 19(b)(iii).) The call concluded with defendant noting that he had told

1 Baaklini to deliver his regards to Chagoury, who defendant correctly understood was
2 “still in Paris.”

3 After the call with Individual H, in which the host of the fundraiser confirmed the
4 illegal source of the \$30,000 defendant had accepted into his campaign, defendant did
5 not amend any of his disclosures regarding the contributions to account for the true
6 donors or disgorge the funds as required by the Federal Election Commission.
7 (Indictment ¶ 16.)

8 **D. March 2019: Defendant Lies to and Misleads CDCA Agents about the**
9 **Contributions He Received from the CDCA Subjects**

10 Given defendant’s receipt of illegal campaign contributions, defendant’s response
11 to the June 4 call with Individual H, and defendant’s failure to take any corrective steps
12 following the June 4 call, there were common sense and compelling investigative needs
13 for CDCA agents to travel to Nebraska to see if defendant would interview with the
14 agents as part of the CDCA Investigation. (See Indictment ¶ 20.) The interview, which
15 took place on March 23, 2019, was surreptitiously recorded. And as the jury will hear
16 from that recording, after the agents established they were from California and advised
17 defendant that the interview was voluntary⁵ and that it was a crime to lie to federal
18 agents, defendant proceeded to mislead the CDCA agents and make repeated false
19 statements about matters material to the CDCA Investigation during the approximately
20 20-minute interview.⁶

21 The CDCA agents’ questions focused on the CDCA Subjects and the 2016
22 fundraiser in Los Angeles. Defendant repeatedly denied knowing about any illegal
23 conduit contributions to his campaign, including after being specifically asked about
24 Individual H and Baaklini. (Indictment ¶ 19(a)(i), ¶ 20.) He denied receiving money
25 from Chagoury. (Id. ¶ 19(a)(iii).) Defendant also falsely stated that “the only people

26 ⁵ The jury will also hear that defendant asked for and received the presence of
27 local Nebraska police to serve as his escort during his voluntary interview with CDCA
investigators.

28 ⁶ Contrary to defendant’s suggestion, this is not a case in which defendant merely
“uttered” a single false statement or two. (See Mot. at 5.)

1 [he] received money for are on the financial disclosure.” (*Id.* ¶ 19(a)(ii), ¶ 20(b)-(c).) At
 2 the conclusion of the interview, defendant asked the CDCA agents how to get in touch if
 3 he recalled additional information, and the CDCA agents provided defendant with a
 4 California phone number.

5 **E. July 2019: Defendant Requests Another Interview with CDCA Agents**
 6 **and Prosecutors and Doubles Down on His Lies to Them about Matters**
 7 **Material to the CDCA Investigation**

8 Following the March 23 interview, defendant (through counsel) proactively
 9 reached back into this district and requested another interview with CDCA agents and
 10 prosecutors. At the defense’s request, the interview took place in Washington, D.C. on
 11 July 18, 2019, at the offices of defendant’s then counsel. Defendant was again advised
 12 that the interview was voluntary and that it was a crime to lie to the federal government.

13 During the approximately two-hour, consensually recorded interview, defendant,
 14 despite inviting CDCA agents and prosecutors across the country on a promise of
 15 additional information, instead further misled the CDCA agents and prosecutors and
 16 obstructed the CDCA Investigation. Defendant stated that he had a call with Individual
 17 H about the 2016 fundraiser,⁷ but misleadingly claimed that Individual H had made only
 18 a vague comment referencing Chagoury that caused him some undecipherable
 19 “concern.” (Indictment ¶ 19(b)(iii).) Defendant expressly denied that Individual H told
 20 him that Baaklini had given Individual H \$30,000 cash for the 2016 fundraiser. (*Id.*
 21 ¶ 21(a).) Defendant also falsely stated that he was not aware of any illicit donations
 22 made during the 2016 fundraiser. (*Id.* ¶ 21(b).) Defendant went so far as to proclaim
 23 that if he had heard that Baaklini had given Individual H \$30,000 cash to help fund the
 24 fundraiser (a direct quote from Individual H during defendant’s call), that would have
 25 been “horrifying.” (*Id.* ¶ 19(b)(iv).) Defendant also misleadingly stated that he had
 26 ended the call after Individual H made the “concerning” comment when, in fact,
 27

28 ⁷ At the time of the interview, defendant was still unaware that the FBI had
 recorded the call or that Individual H was cooperating with the government.

1 defendant persisted in his goal of obtaining another Los Angeles fundraiser hosted by
2 Individual H and facilitated by Baaklini. (*Id.* ¶ 19(b)(iii).)

3 Defendant’s scheme to falsify and conceal facts, as well as his false statements,
4 were capable of impacting and, in fact, impacted the CDCA Investigation and the
5 decisions of the CDCA agents and prosecutors. (Indictment ¶¶ 18, 20, 21.) As a direct
6 result of defendant’s criminal acts, CDCA agents and prosecutors conducted additional
7 interviews of multiple witnesses, including Baaklini and Chagoury, to discuss defendant
8 and determine possible motives for his lies; obtained and reviewed additional
9 communications amongst witnesses and phone-related data; and re-analyzed previously
10 obtained evidence.

11 **III. SECTION 1001 VENUE LAW**

12 “[V]enue law grows out of important concerns that a criminal jury trial be held
13 near the place where the crime was committed and where prosecution can conveniently
14 proceed.” *United States v. Angotti*, 105 F.3d 539, 541 (9th Cir. 1997), abrogated on
15 other grounds by United States v. Cabrales, 524 U.S. 1 (1998). When there is no express
16 venue provision in a criminal statute, as is the case with 18 U.S.C. § 1001 and thus all
17 counts charged here, venue is determined by the “locus delicti”; that is, “the nature of the
18 crime alleged and the location of the act or acts constituting it.” *Cabrales*, 524 U.S. at 6–
19 7 (citation omitted). Under this two-part inquiry, courts must first identify the conduct
20 that constitutes the offense (the nature of the crime) and then discern the location of the
21 commission of the criminal acts. *United States v. Pace*, 314 F.3d 344, 349 (9th Cir.
22 2002). In evaluating the first prong—the “nature of the crime”—courts look to the
23 “essential conduct elements” of the offense. *See United States v. Rodriguez-Moreno*,
24 526 U.S. 275, 280 (1999).

25 Under section 1001(a), “whoever, in any matter within the jurisdiction of the
26 executive, legislative, or judicial branch of the Government of the United States,
27 knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or
28 device a material fact [or] (2) makes any materially false, fictitious, or fraudulent

statement or representation” violates the statute. The jurisdictional language, which is phrased separately from the prohibited conduct, is a predicate circumstance of the conduct, rather than an essential conduct element. United States v. Oceanpro Indus., Ltd., 674 F.3d 323, 329 (4th Cir. 2012). Similarly, the mens rea requirement is a circumstance element that does not contribute to determining the locus delicti of the crime. Id. (citation omitted).

Thus, the essential conduct element of a section 1001 violation is the making of materially false statements, or the concealing of material facts. The majority of circuits have reached this same conclusion. In addition to holding that materiality is an essential conduct element of the offense, the majority of circuits have also held that venue lies where the impact of that materiality is felt. See United States v. Salinas, 373 F.3d 161, 167 (1st Cir. 2004) (“Section 1001 explicitly criminalizes only those false statements that are material. When materiality is a critical component of the statutory definition, it makes perfect sense to consider the crime as continuing into the district in which the effects of the false statement are felt. After all, since materiality is an element of the offense, a defendant cannot be convicted under section 1001 unless and until such a connection can be shown.” (citation omitted))⁸; United States v. Coplan, 703 F.3d 46, 78-80 (2d Cir. 2012) (venue is proper in the Southern District of New York where false statements made to IRS investigators in Tennessee were conveyed to or had effect on IRS investigators working in SDNY; “[T]he essential conduct prohibited by § 1001(a)(2) is the making of a materially false, fictitious, or fraudulent statement. . . . Proving the materiality of [defendant’s] false statements in Tennessee necessarily requires evidence that those statements were conveyed to or had an effect on the IRS investigators working in the Southern District of New York.”); United States v. Candella, 487 F.2d 1223, 1227-28 (2d Cir.1973) (same); Oceanpro Indus., Ltd., 674 F.3d at 329 (“[E]ssential

⁸ Defendant protests that Salinas is dicta, but dicta “may be followed if sufficiently persuasive,” even if it is not controlling. Kirtsaeng v. John Wiley & Sons, Inc., 568 U.S. 519, 548 (2013).

conduct prohibited by the statute is ‘making any materially false statement’” and because “the essential conduct constituting the offense inherently references the effects of that conduct, venue is proper in the district where those prescribed [sic] effects would be felt.” (citation omitted)); United States v. Ringer, 300 F.3d 788, 792 (7th Cir. 2002) (fact that defendant’s false statements in Kentucky were reasonably likely to affect an investigation in Indiana established venue in Indiana for charged section 1001 violation).

District courts in the Ninth and Third Circuits have also reached the same conclusion. See United States v. Zweig, No. 16-CR-00208-WHO-1, 2017 WL 3895708, at *5 (N.D. Cal. Sept. 5, 2017) (“Because materiality is an element of the offense under Section 1001, and a defendant cannot be convicted under Section 1001 without a showing of such materiality, venue may lie where the effect of the statement is felt and it is therefore rendered material.”); United States v. Brennan, 452 F. Supp. 3d 225, 236-237 (E.D. Pa. 2020) (concluding that “§ 1001’s ‘essential conduct’ is making a ‘materially false statement,’ rather than merely making any false statement,” and that “Congress defined § 1001’s essential conduct element in terms of its effect, making the effects-based venue analysis available”).

IV. ARGUMENT

The Indictment alleges that defendant schemed to falsify and conceal material facts and materially lied to CDCA agents and prosecutors about matters affecting the CDCA Investigation. (Indictment ¶¶ 18, 20, 21.) Those alleged acts are the essential conduct criminalized by sections 1001(a)(1) and (a)(2). Because defendant’s materially false statements and scheme were designed to affect and did affect the CDCA Investigation in this district, the locus delicti of defendant’s crimes is this district.

A. Making a Materially False Statement Is Essential Conduct Under Section 1001

Section 1001(a)(2) prohibits “mak[ing] any materially false, fictitious, or fraudulent statement or representation.” Likewise, anyone who “falsifies, conceals, or covers up by trick, scheme, or device a material fact” violates section 1001(a)(1). A

1 conviction under either subsection of section 1001 requires the government to prove that
2 defendant's actions and statements were both false (or constituted concealment) and
3 material. United States v. Gaudin, 28 F.3d 943, 951 (9th Cir. 1994). Materiality is part
4 of the nature, or essence, of the crime. Accordingly, as held by the majority of circuits,
5 the making of any materially false statements (or covering up material facts) is the
6 essential conduct element for purposes of venue analysis. (See Opp'n at 10-11
7 (collecting cases).)

8 Without citing any authority, defendant makes the conclusory assertion that the
9 materiality requirement for a section 1001 charge is "wholly independent of the
10 defendant's conduct" and therefore not an essential conduct element. (See Mot. at 6-7.)
11 This argument fails legally and does not pass a commonsense test. Materiality, like
12 falsity, bears on defendant's conduct—he is the one who must make a materially false
13 statement. See 18 U.S.C. §§ 1001(a)(1), (a)(2). It is the reason why a defendant who
14 chooses to lie about what he had for breakfast (not material) does not commit a federal
15 crime but the defendant who lies about his knowledge regarding subjects who made
16 illegal foreign and conduit contributions to his campaign (material) does. See Brennan,
17 452 F. Supp. 3d at 235 (explaining that materiality is an essential conduct element
18 because "[n]ot all lies are illegal under § 1001—only material lies. Congress drew a line
19 between proscribed and permissible conduct, and it used the word 'materially' to draw
20 that line."). The materiality element defines the defendant's conduct, not happenstance
21 or circumstance.

22 In defendant's quest to limit venue strictly to where the false statement was
23 "made" or "uttered," defendant looks only to the verbs of the statute and ignores the
24 words "material" and "materially." In doing so, defendant impermissibly relies on the
25 restrictive "verb test," against which the Supreme Court has warned. While the "verb
26 test" can be used "as an interpretative tool, it cannot be applied rigidly, to the exclusion
27 of other relevant statutory language. The test unduly limits the inquiry into the nature of
28 the offense and thereby creates a danger that certain conduct prohibited by statute will be

missed.” Rodriguez-Moreno, 526 U.S. at 280 (emphasis added); see also Pace, 314 F.3d at 349 n.2 (same). As a result of defendant’s rigid approach, he characterizes the element conduct offense as making a false statement, as opposed to a materially false statement, thereby missing other relevant statutory language that describes the very conduct prohibited by the statute. This was precisely what the Supreme Court instructed courts not to do.

Even the two minority circuit cases that defendant cites do not compel a contrary conclusion. In United States v. Smith, 641 F.3d 1200 (10th Cir. 2011), the Tenth Circuit held that venue was not proper in Oklahoma (the site of an ongoing investigation) because the defendant made his false statements in Minnesota. Id. at 1208. The court superficially acknowledged the Supreme Court’s admonition against exclusive reliance on the “verb test,” but then incorrectly relied solely on the “verb test” to conclude venue was proper only in the district “where the defendant makes the false statement.” Id. at 1207-08. The Tenth Circuit failed to specifically analyze the materiality element or explain why it excised the word “materially” from a statute that punishes individuals who “makes any materially false . . . statement.” 18 U.S.C. § 1001(a)(2). The unpublished Eleventh Circuit decision in United States v. John, 477 F. App’x 570 (11th Cir. 2012), is even less persuasive. There, the court merely parroted Smith’s flawed reliance on the “verb test” and similarly ignored the materiality requirement of section 1001.⁹ See id. at 572.

The essential conduct prohibited by the statute is making a materially false statement. That conclusion—as shared by the majority of circuits—comports with Supreme Court precedent, adheres to the text of the statute without excluding other

⁹ What actually seemed to trouble the Eleventh Circuit was finding venue in the Northern District of Florida when the defendant “had never been in the Northern District of Florida, placed a call to anyone in the Northern District of Florida, or mailed or sent anything to the Northern District of Florida before she was indicted.” Id. at 571. In that regard, even if John had any weight, it is distinguishable from the present case where defendant had a “community” in CDCA, traveled to CDCA, received illicit campaign funds in CDCA, reached into CDCA to contact Individual H about arranging another fundraiser here, and reached back into CDCA to arrange for his second interview with CDCA investigators.

relevant language, and is consistent with Ninth Circuit law and common sense that the conduct prohibited by section 1001 is the making of a materially false statement and not just making any false statement.

B. Venue Is Proper in the District Affected by Defendant's Material Lies and Obstructive Acts

Congress may, consistent with the venue clauses of Article III and the Sixth Amendment, define the essential conduct elements of a criminal offense in terms of their effects, thus providing venue where those proscribed effects are felt. United States v. Bowens, 224 F.3d 302, 312 (4th Cir. 2000). This approach is consistent with the Supreme Court's observation that Congress may "provide that the locality of a crime shall extend over the whole area through which force propelled by an offender operates." United States v. Johnson, 323 U.S. 273, 275 (1944) (emphasis added); see also Lukashov, 694 F.3d at 1121 (same).

That is precisely what Congress did with section 1001. Materiality within the meaning of that statute asks whether the statement "has a natural tendency to influence, or was capable of influencing, the decision of the decisionmaking body to which it was addressed." Peterson, 538 F.3d at 1072 (quoting Kungys v. United States, 485 U.S. 759, 770 (1988)). By inserting the word "materially" into the conduct-focused language of section 1001, Congress "inherently reference[d] the effects of that conduct," Oceanpro Indus., Ltd., 674 F.3d at 329, and prescribed that a defendant be held to account in the very district affected or influenced by the "force propelled" from defendant's lies, Johnson, 323 U.S. at 275.

Venue is therefore proper where the effect of defendant's false statements is capable of being, or is, felt and rendered material. The majority of circuits are uniform in this conclusion—and for good reason. (See Opp'n at 10-11 (collecting cases).) A defendant who directs his false statements to a decisionmaking body in this district to influence its decisions in this district should be held to account in the very district he sought to influence. The decisionmaker is essentially the victim of the criminal act

1 seeking to illegally impair its decisionmaking.¹⁰ By way of analogy, if a defendant
 2 shoots a gun from one district and hits a victim in a second district, there would be no
 3 dispute that venue was proper in the victim's district. Venue in the district affected by
 4 the false statement makes sense, particularly since proving materiality in a section 1001
 5 case "necessarily requires evidence of the existence of the federal investigation in [the
 6 venued district] and the potential effects of [defendant's] statement on that
 7 investigation." Oceanpro Indus., Ltd., 674 F.3d at 329; see also Ringer, 300 F.3d at 792
 8 ("Proving that the investigation was reasonably likely to be affected by [defendant's]
 9 statements was the keystone to materiality in this case.").

10 Defendant catastrophizes that by permitting venue in the very districts that
 11 defendants seek to influence by their deceptive and false statements, prosecutors could
 12 manufacture venue "in any district they choose." This argument is baseless. As the
 13 Indictment alleges (and as the discovery provided to the defense establishes), the CDCA
 14 Investigation long predated defendant's false statements. It is because of the well-
 15 established interests and topics of that robust and ongoing investigation (namely, into
 16 illegal foreign and conduit contributions, foreign influence, and bribery schemes) that
 17 defendant's voluntary statements to the investigators were material. In other words,
 18 venue for a potential false statements prosecution was firmly established within this
 19 district by virtue of the long-standing criminal investigation here, which was operating
 20 well before defendant sought to obstruct it, and was where the CDCA agents and
 21 prosecutors took subsequent investigative steps as a direct result of defendant's
 22 obstructive acts.¹¹

24 ¹⁰ Whether the defendant actually achieves his illicit goal is of no moment. United
 25 States v. Serv. Deli Inc., 151 F.3d 938, 941 (9th Cir. 1998) ("The false statement need
 26 not have actually influenced the agency, and the agency need not rely on the information
 27 in fact for it to be material.").

28 ¹¹ Defendant's parade of horrors is equally flawed. Defendant asks where the
 effect of a false statement is felt. (Mot. at 11.) The effect of defendant's false
 statements to CDCA agents and prosecutors about CDCA Subjects who were at the
 center of their CDCA Investigation were felt in the Central District of California.
 Defendant asks who decides where the effect of a statement is felt. (*Id.*) Defendant is
 (footnote cont'd on next page)

1 In sum, this Court should follow the persuasive authorities of the First, Second,
 2 Fourth, and Seventh Circuits and join the other district court in this circuit to address this
 3 issue and find that (1) the essential conduct element of a section 1001 violation is the
 4 making of a materially false statement, and (2) venue lies where the impact of that
 5 materiality is felt.

6 **C. The Indictment Establishes Proper Venue Based on Defendant's**
 7 **Material Lies Affecting This District**

8 The allegations in the Indictment, standing alone and taken as true, are more than
 9 sufficient to plead venue. See Ghanem, 993 F.3d at 1120 (“An indictment does not have
 10 an apparent venue defect if ‘it allege[s] facts which, if proven, would have sustained
 11 venue’ in the district of trial.” (citation omitted)).

12 First, the Indictment alleges that defendant engaged in the essential conduct that
 13 constitutes the charged crimes. Count One alleges that defendant “falsified, concealed,
 14 and covered up by trick, scheme, and device material facts.” (Indictment ¶ 18 (emphasis
 15 added).) Counts Two and Three allege that defendant “made materially false statements
 16 and representations” to the CDCA agents and prosecutors. (Id. ¶¶ 20-21 (emphasis
 17 added).) Second, the indictment alleges that defendant’s essential conduct—that is,
 18 falsifying/concealing/covering up material facts and making materially false
 19 statements—“affect[ed] the Federal Investigation in the Central District of California.”
 20 (Id. ¶¶ 18-21) (emphasis added). Nothing more is needed. See Ghanem, 993 F.3d at
 21 1120.

22 But, as outlined above, the Indictment does provide more. It lays out in great
 23 detail the genesis and nature of the CDCA Investigation; the precise issues and subjects

24 the one who decided to create those effects when he voluntarily made material false
 25 statements to CDCA agents and prosecutors in an effort to obstruct their ongoing
 26 investigation. Defendant asks how this standard applies when the government “takes the
 27 position that it need not prove that the statement influenced it at all.” (Id. at 11-12.) The
 28 answer is that binding Supreme Court and Ninth Circuit precedent defining materiality
 applies, and that the government must prove that defendant’s false statements had the
 natural tendency or ability to influence a federal decisionmaking body within the venue
 district. Here, defendant’s false statements both had the natural tendency to influence
 the CDCA decisionmaking bodies and had the actual effect of influencing those bodies
 pertaining to their decisions and activities in the Central District of California.

1 that the CDCA Investigation was investigating; the chronology and development of the
 2 CDCA Investigation as it related to this defendant; and the specific false statements and
 3 scheme that defendant directed towards the CDCA Investigation concerning the very
 4 same matters that were at the heart of the investigation. Indeed, the Indictment makes
 5 abundantly clear the reasons why defendant's lies and misstatements were material to,
 6 and affected, the ongoing criminal investigation that was well-rooted in this district and
 7 concerned illegal campaign contribution activity taking place within CDCA and
 8 involving the CDCA Subjects. Specifically, the Indictment alleges the following:

- 9 • CDCA investigators were conducting a federal criminal investigation into
 10 illegal political campaign contributions, in violation of federal election
 11 laws, including those made to defendant. (Indictment ¶¶ 1, 6-8.)
- 12 • The subjects of the CDCA Investigation, including a foreign national, were
 13 illegally operating in the CDCA. (Id. ¶¶ 3-5, 6-8, 11.)
- 14 • The investigation sought to uncover whether and when any politicians
 15 including defendant, were aware they had received illegal contributions
 16 and/or whether any politicians, including defendant, had any conversations
 17 about taking certain actions in exchange for the illegal contributions. (Id.
 18 ¶¶ 1, 12.)
- 19 • The CDCA Investigation learned that in January 2016, Chagoury used
 20 Baaklini, who used Individual H, to route \$30,000 to defendant through
 21 conduits during a fundraiser in Los Angeles. (Id. ¶¶ 3, 11.) These acts
 22 violated the same federal election laws that were the subject of the CDCA
 23 Investigation. (Id. ¶¶ 6-8.)
- 24 • Between March and June 2018, defendant reached out to Individual H, a
 25 resident of Los Angeles, to inquire about hosting another fundraiser in Los
 26 Angeles. (Id. ¶¶ 5, 14.) During a call on June 4, 2018, Individual H
 27 expressly told defendant that the \$30,000 from the prior fundraiser was
 28 donated through conduits and probably did come from Chagoury (and thus
 that a crime was committed benefitting his campaign). (Id. ¶ 15.)
 Defendant continued to ask for another Los Angeles fundraiser and,
 following the call, did not amend his filings with the Federal Election
 Commission or disgorge the funds. (Id. ¶¶ 16, 19(b)(iii).)
- As part of defendant's scheme to falsify and conceal material facts, he,
 among other things, falsely stated that he was unaware of any contributions
 made by foreign national to his campaign; that he ended the call with

Individual H after he made a “concerning comment”; and that he would have been horrified if he had learned that Baaklini had provided Individual H with the funds contributed to the CDCA fundraiser. (*Id.* ¶¶ 14-15, 19.)

- On March 23, 2019, defendant made materially false statements in an interview “affecting the Federal Investigation in the Central District of California.” (*Id.* ¶ 20.) Those materially false statements included that defendant was not aware Baaklini had made or directed any illegal contributions to defendant and that all individuals who donated to defendant were publicly disclosed. (*Id.*)
- On July 18, 2019, defendant made materially false statements in an interview “affecting the Federal Investigation in the Central District of California.” (*Id.* ¶ 21.) Those materially false statements included that Individual H had not told him that the \$30,000 came from Baaklini and that he was not aware of any illicit donations made to him during the CDCA fundraiser. (*Id.*)

These allegations, taken as true, amply demonstrate that venue is proper in this district because defendant’s false statements were material to the CDCA Investigation.

D. Venue Is Also Proper in This District Because Defendant’s False Statements Continued Into This District

For the reasons set forth above, the Court need not go further than the Indictment to find that venue is properly pled and to deny defendant’s motion. At trial however, the government will prove an additional ground establishing venue in this district: venue is proper here because defendant’s materially false statements and obstructive acts continued into this district.

Crimes that are not unitary but instead span space and time, may be considered continuing offenses under 18 U.S.C. § 3237(a). *United States v. Corona*, 34 F.3d 876, 879 (9th Cir. 1994). Section 3237(a), in turn, dictates that “[a]ny offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.” Violations of 18 U.S.C. § 1001 may constitute a continuing offense. *See Pace*, 314 F.3d at 352 (“[M]aking’ a false statement to a federal agency is a continuing offense and may be prosecuted in a district not only where the

1 false statement is initially provided but where it is ultimately received.” (citation
2 omitted)); see also Salinas, 373 F.3d at 166-67 (noting that “courts consistently treat
3 section 1001 crimes as continuing offenses”). A continuing offense “does not terminate
4 merely because all of the elements are met.” Lukashov, 694 F.3d at 1121 (citation
5 omitted).

6 When a defendant’s materially false statements and deceptive acts, in violation of
7 section 1001, are received by “the decisionmaking body to which it was addressed,”
8 Peterson, 538 F.3d at 1072, in the district where that body operates, the section 1001
9 offense continues into that district. The Second Circuit decision in United States v.
10 Coplan is instructive on this point. There, the defendant was charged with making false
11 statements to the IRS during a deposition in Tennessee concerning issues pertinent to an
12 ongoing IRS investigation in the Southern District of New York. 703 F.3d at 57, 80.
13 Although the defendant made the false statements in Nashville, “it [did] not follow that
14 the crime then terminated, and that what transpired in Manhattan was irrelevant for
15 venue purposes.” Id. at 79 (quoting Candella, 487 F.2d at 1228). The Second Circuit
16 reasoned that the defendant’s false statements to IRS officials in the Nashville deposition
17 “continued into the Southern District of New York, where his deposition transcript was
18 reviewed and discussed by IRS officials in connection with the ongoing [investigation].”
19 Id. at 80. And because the defendant’s statements “continued to be false and continued
20 to be in the jurisdiction of the United States when they finally reached Manhattan,”
21 venue was proper in the Southern District of New York. Id.¹²

22 The Ninth Circuit is in accord with the Second Circuit’s analysis. In Angotti, the
23 Ninth Circuit held that venue was proper in this district where defendant’s false
24 statements, in violation of 18 U.S.C. § 1014 (fraudulent loan application), were made in
25 the Northern District and then transmitted here. 105 F.3d at 542-44. Citing Candella,
26 the Ninth Circuit held that “the act of making a communication continues until the
27

28 ¹² It is of no consequence whether the statements involved written or oral false
statements, both of which are prohibited under 18 U.S.C. § 1001. Id. at 78 n.32.

1 communication is received by the person or persons whom it is intended to affect or
 2 influence.” Id. (emphasis added). In 2002, after the Supreme Court decisions in
 3 Rodriguez-Moreno and Cabrales, the Ninth Circuit affirmed its reasoning in Agnotti. In
 4 United States v. Pace, the Ninth Circuit held that venue was proper in the District of
 5 Arizona, which received defendant’s false tax return, even though defendant had the
 6 return prepared and signed in Ohio and New York. 314 F.3d at 352. Relying on
 7 Angotti, the Ninth Circuit explained:

8 False statements may be “made” where they are ultimately
 9 received. . . . Thus, the crime of “making” a false tax return
 10 commences when one furnishes information essential to the
 11 return, and is not completed until the information is received
 12 by the party to whom it is addressed. This conclusion is
 13 consistent with Angotti, in which we held that “making” a false
 14 statement to a federal agency is a continuing offense and may
 15 be prosecuted in a district not only where the false statement is
 16 initially provided but where it is ultimately received. In so
 17 holding, we explained: “[t]he statements continued to be false
 18 ... not only when initially presented but also upon arrival[at the
 19 place] where the decision was reached....”

20 ...
 21 For such continuing offenses, venue is proper in any district in
 22 which the continuing conduct has occurred.

23 Id. at 352 (citations omitted) (emphasis added).

24 Even the sole published circuit case on which defendant relies supports the
 25 government’s position. The Tenth Circuit in United States v. Smith, which incorrectly
 26 relied on the verb test, recognized the applicability of the continuing offense doctrine for
 27 section 1001 offenses. 641 F.3d at 1208 (“[G]iving a false statement may be a
 28 continuing offense, where the statement is ‘made’ in more than one district.” (citation
 omitted)). In concluding that there was no venue in Oklahoma, the Tenth Circuit
 emphasized that the agent who interviewed the defendant in Minnesota did not record
the statement or take notes during the interview (both occurred in defendant’s case), and
 thus did not bring the memorialized statements back to Oklahoma, where the

1 investigation was pending. Id. at 1208–09 (“The false statements began, continued, and
2 ended during the interview. The interview was not recorded, transcribed, or otherwise
3 preserved for use in Oklahoma.”). It was under these narrow circumstances that the
4 Tenth Circuit reasoned the defendant’s statements were “made” exclusively in
5 Minnesota. Id. at 1209.

6 At trial, the government expects to present evidence that defendant’s violations of
7 section 1001 were continuing offenses that carried into this district. Defendant’s
8 audience and intended recipient of his false statements were the CDCA agents and
9 prosecutors, whom he knew full well were operating and investigating matters within
10 this district. Cf. Angotti, 105 F.3d at 543 (explaining that, for venue in false statements
11 prosecutions, it is irrelevant whether the defendant “subjectively knew the identity of
12 location of that official; that official is nonetheless the person to whom [the defendant’s]
13 statements were directed”). Defendant’s false statements were “recorded, transcribed,
14 and preserved for use” in the Central District of California where they were utilized to
15 make investigative and charging decisions. See Smith, 641 F.3d at 1208–09. It was in
16 this district that CDCA agents and prosecutors reviewed and discussed defendant’s false
17 statements and made decisions about the next steps in the CDCA Investigation, based on
18 defendant’s criminal conduct. And although the government need not prove that
19 defendant’s actions actually affected the decisionmaking body, his actions had real
20 effect. See Deli Inc., 151 F.3d at 941. As a result of defendant’s scheme and false
21 statements, CDCA agents and prosecutors, among other things, conducted additional
22 interviews of multiple witnesses; obtained and reviewed additional communications and
23 phone-related data; and re-analyzed previously obtained evidence.

24 Because defendant’s criminal offenses were directed towards this district,
25 continued into this district, and directly impacted the investigation within this district,
26 venue is proper here. Under these circumstances, including those that will be proven at
27 trial, defendant should be held to “face a jury of Californians.”
28

1 **V. CONCLUSION**

2 The clear case law set forth by the majority of the circuits and the reasoning
3 explained therein, the specific allegations of this Indictment, and common sense
4 demonstrate that venue is proper here. For the foregoing reasons, the government
5 respectfully requests that this Court deny defendant's motion to dismiss.

Exhibit A

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12 UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

No.

15 Plaintiff,

DEFERRED PROSECUTION
16 AGREEMENT

17 v.

18 GILBERT CHAGOURY,

19 Defendant.

20
21 I. INTRODUCTION

22 1. This Deferred Prosecution Agreement (the "DPA") is entered
23 into between the United States Attorney's Office for the Central
24 District of California ("USAO") and defendant Gilbert Chagoury
25 ("defendant Chagoury"). This DPA is entered into only on behalf of
26 the USAO and cannot bind any other federal, state, local or foreign
27 prosecuting, enforcement, administrative, or regulatory authorities.
28 The USAO has also disclosed in writing to defendant Chagoury's

Beginning in or around June 2012 and continuing through in or around March 2016, GILBERT CHAGOURY ("CHAGOURY"), with the assistance of Toufic Baaklini, Joseph Arsan, Individual H, and others, provided approximately \$180,000 to individuals in the United States that was used to make donations to candidates in United States elections. CHAGOURY knew these funds were used to make contributions to these candidates and, as a result, he violated United States laws by (i) causing federal election campaign contributions exceeding \$25,000 to be made in a single year as a foreign national, in violation of 52 U.S.C. §§ 30109(d) (1) (A), 30121(a) (1) (A); and (iii) causing federal election campaign contributions to be made in the name of another (conduit contributions), in violation of 52 U.S.C. §§ 30109(d) (1) (A), 30122.

At all times relevant to this factual statement, CHAGOURY was a "foreign national" within the meaning of 52 U.S.C. § 30121(b) and was therefore prohibited from making donations and contributions directly or indirectly in support of any candidate for elective office in the United States.

In the summer of 2012, CHAGOURY agreed to use \$100,000 of his money to contribute through other individuals to a fundraising committee of a then-Presidential candidate (the "Candidate A Fund"). CHAGOURY discussed and agreed with Individual H that Individual H would arrange to have a total of

\$100,000 contributed to the Campaign A Fund and that CHAGOURY would reimburse the \$100,000 contributed to the Campaign A Fund. Individual H made a \$45,000 contribution to the Campaign A Fund on September 4, 2012, and a \$5,000 contribution to the Campaign A Fund on September 6, 2012. CHAGOURY reimbursed Individual H \$50,000 in October 2012. Individual H also recruited Individual I to make a contribution to the Campaign A Fund. Individual I arranged for a \$50,000 contribution to be made to the Campaign A Fund on September 4, 2012, and CHAGOURY reimbursed Individual I in or around September 2012.

In August 2014, CHAGOURY met with Individual H and CHAGOURY expressed to Individual H his interest in contributing to U.S. politicians who share a common cause with CHAGOURY. Individual H suggested that CHAGOURY contribute to U.S. politicians from less-populous states because the contribution would be more noticeable to the politician and thereby would promote increased donor access to the politician. CHAGOURY then directed Individual H to contribute \$20,000 to such a politician and agreed to reimburse the \$20,000 in political contributions. Individual H arranged for multiple individuals to contribute to the re-election campaign of a then-U.S. Representative ("Candidate B") in and around August 2014. On or around September 25, 2014, CHAGOURY, with the assistance of Arsan, directed that a wire transfer in the amount of \$20,000 be made

to Individual H and falsely indicated on the wire information form that the funds were for an "engagement gift," when CHAGOURY knew that the funds were sent to reimburse Individual H for Individual H and others making political contributions to Candidate B.

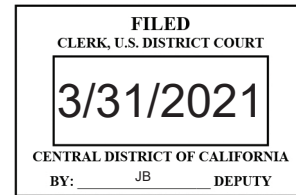
In September 2014, CHAGOURY agreed with Individual H to have Individual H contribute \$30,000 to the fundraising committee for a then-U.S. Representative (the "Candidate C Fund") and CHAGOURY agreed to reimburse Individual H the \$30,000 in political contributions to the Candidate C Fund. CHAGOURY met with Individual H at a conference in Washington, D.C. in September 2014, and suggested to Individual H that Individual H (i) host a political fundraiser for Candidate C; and (ii) to contribute \$30,000 to the Candidate C Fund, which CHAGOURY stated he would reimburse to Individual H. On September 28, 2014, Individual H contributed \$30,000 to the Candidate C Fund. On October 21, 2014, CHAGOURY, with the assistance with Arsan, wired \$30,000 to Individual H and falsely indicated on the wire information form that the funds were for a "wedding gift," when CHAGOURY knew that the funds were sent to reimburse Individual H for making a political contribution to the Candidate C Fund.

In January 2016, CHAGOURY agreed with Individual H to have Individual H arrange for \$30,000 of CHAGOURY's money contributed through other individuals to the re-election campaign of a U.S.

Representative ("Candidate D"). CHAGOURY arranged for \$30,000 to be delivered to Baaklini, which Baaklini understood would be used to fund conduit campaign donations. Baaklini then provided the \$30,000 in cash to Individual H in order to contribute the money to Candidate D's campaign. Baaklini provided the \$30,000 in cash from CHAGOURY to Individual H at a restaurant in Los Angeles, California in January 2016. After receiving the money from CHAGOURY, Individual H, as well as other individuals Individual H recruited, made campaign contributions to Candidate D's campaign fund in February 2016 exceeding \$30,000.

During the course of events described above, CHAGOURY knew that it was illegal both for him to contribute to candidates for elective office in the U.S. and to make contributions in the name of other individuals.

Exhibit B



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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOUFIC JOSEPH BAAKLINI,

Defendant.

No. 2:21-cr-00160 -DMG

DEFERRED PROSECUTION
AGREEMENT

I. INTRODUCTION

1. This Deferred Prosecution Agreement (the "DPA") is entered into between the United States Attorney's Office for the Central District of California ("USAO") and defendant Toufic Joseph Baaklini ("defendant Baaklini"). This DPA is entered into only on behalf of the USAO and cannot bind any other federal, state, local or foreign prosecuting, enforcement, administrative, or regulatory authorities.

Statement of Facts

Between in or around January 2016 and February 2016, TOUFIC BAAKLINI ("BAAKLINI") conspired with Gilbert Chagoury ("Chagoury"), a second individual ("Individual G"), a third individual ("Individual H"), and others to violate United States laws by (i) making federal election campaign contributions exceeding \$25,000 in a single year as a foreign national, in violation of 52 U.S.C. §§ 30109(d)(1)(A), 30121(a)(1)(A); and (ii) making federal election campaign contributions in the name of another (conduit contributions), in violation of 52 U.S.C. §§ 30109(d)(1)(A), 30122.

At all times relevant to this factual statement, BAAKLINI knew that Chagoury, a Nigerian-born, billionaire businessperson of Lebanese descent, was a "foreign national" within the meaning of 52 U.S.C. § 30121(b) and was therefore prohibited from making donations and contributions directly or indirectly in support of any candidate for elective office in the United States.

In January 2016, Chagoury arranged for \$30,000 of his money to be contributed through other individuals to the re-election campaign of a U.S. Representative ("Federal Candidate D"). Chagoury arranged for Individual G to provide \$50,000 in cash to BAAKLINI, which BAAKLINI understood a portion of which would be used to fund conduit campaign donations to U.S. candidates for elective office. BAAKLINI then provided \$30,000 in cash to Individual H in order to contribute the money to Federal

Statement of Facts

Candidate D's campaign. BAAKLINI provided the \$30,000 in cash from CHAGOURY to Individual H at a restaurant in Los Angeles, California in January 2016 and expected Individual H to identify multiple individuals who could contribute the funds to the campaign of Federal Candidate D. After receiving the cash from BAAKLINI, Individual H hosted a fundraiser for Federal Candidate D. During the fundraiser, Individual H, as well as other individuals Individual H recruited and reimbursed using Chagoury's cash, made campaign contributions to Federal Candidate D's campaign fund in February 2016 totaling \$30,200.

During the course of events described above, BAAKLINI knew that it was illegal both for Chagoury to contribute to candidates for elective office in the U.S. and to make contributions in the name of other individuals.

In approximately late February 2016, BAAKLINI saw Federal Candidate D in Washington, D.C. Federal Candidate D approached BAAKLINI and asked BAAKLINI something to the effect of, "Do you think anything was wrong with the [Individual H-hosted] fundraiser?" BAAKLINI replied by falsely stating "no" and then asked "why?". Federal Candidate D further explained the source of his concern was, something to the effect of, "because it all came from the same family."

Following this exchange in late February 2016, BAAKLINI has not communicated in any form with Federal Candidate D or anyone

Statement of Facts

acting on Federal Candidate D's behalf regarding any aspect of the February 2016 Individual H-hosted fundraiser for Federal Candidate D.

Exhibit C

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11 UNITED STATES DISTRICT COURT
12
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 NON-PROSECUTION
AGREEMENT OF RAY LAHOOD
15
16

17 I. INTRODUCTION

18 1. This Non-Prosecution Agreement (the "NPA") is entered into
19 between the United States Attorney's Office for the Central District
20 of California ("USAO") and Ray LaHood ("LaHood"). This NPA is
21 limited to the USAO and cannot bind any other federal, state, local
22 or foreign prosecuting, enforcement, administrative, or regulatory
23 authorities.

24 2. This NPA is entered into to resolve the USAO's criminal
25 investigation of LaHood's role and conduct relating to a \$50,000
26 financial transaction between LaHood and Toufic Baaklini in or
27 around June 2012, which includes, but is not limited to, LaHood's
28 failure to include this information in his Office of Government

EXHIBIT A: STATEMENT OF FACTS

LaHood states and agrees that the following facts are true and correct and could be proven beyond a reasonable doubt:

1. From on or about January 23, 2009, until on or about July 1, 2013, LaHood served as the United States Secretary of Transportation.

2. In July 2009, LaHood served as a keynote speaker at the Annual Maronite Convention in Los Angeles, California (the "Convention").

3. Individual A, a priest, was also in attendance at the Convention. During the Convention, Individual A invited LaHood to a private gathering at the California home of Gilbert Chagoury ("Chagoury"), a wealthy international businessman. Chagoury is a foreign national and not a citizen of the United States. At the gathering, LaHood met Chagoury and also met Toufic Baaklini ("Baaklini"), who served as one of Chagoury's representatives in the United States.

4. In 2011 and 2012, LaHood was suffering significant financial difficulties in part due to problems from home remediation and sought funds to conduct home repairs. LaHood met with Individual A in May 2012 to request that Individual A refer LaHood to an individual who would provide LaHood with a \$50,000 loan to help LaHood cover his home repair costs. At their meeting, Individual A suggested to LaHood that Individual A would call Chagoury to ask him to provide a loan to LaHood.

5. Approximately two days after their meeting, Individual A called LaHood by telephone and told him that he had secured a source of funds for LaHood. Individual A told LaHood that upon Individual

1 A's request, Baaklini would facilitate the loan to LaHood of
2 \$50,000. Individual A instructed LaHood to call Baaklini to discuss
3 the terms of the loan. Baaklini told LaHood that because of
4 Individual A's request, he was prepared to provide LaHood with a
5 loan for \$50,000 and that he had consulted a lawyer who advised that
6 a loan to a public official like Mr. LaHood could be permissible.

7 6. On June 1, 2012, Baaklini and LaHood met in Washington,
8 D.C. and Baaklini provided LaHood with a personal check for \$50,000
9 (the "\$50,000 Check"). In the Memo portion of the check, Baaklini
10 wrote "Loan."

11 7. Although it was not expressly discussed with Baaklini,
12 based on the circumstances of LaHood seeking these funds, LaHood
13 understood that Chagoury provided Baaklini with the funds for the
14 \$50,000 Check for LaHood.

15 8. LaHood negotiated the \$50,000 Check and used the funds for
16 home repairs.

17 9. During his tenure as the United States Secretary of
18 Transportation, Mr. LaHood was obligated on an annual basis to
19 submit an Executive Branch Personnel Public Financial Disclosure
20 Report (OGE Form 278) to the United States Office of Government
21 Ethics (OGE). According to the OGE, the OGE Form 278 was designed
22 to ensure transparency for Executive Branch Personnel.
23 Specifically, the OGE website notes that:

24 Transparency is a critical part of government ethics, and
25 Congress has determined that the citizens should know
26 their leaders' financial interests. To facilitate such
27 transparency, Congress enacted the financial disclosure
28 provisions of the Ethics in Government Act. The Act
imposes detailed requirements for public financial
disclosure by senior United States Government officials.

1 10. Among other financial disclosures, Form 278 requires the
2 filer to disclose any liabilities over \$10,000 owed to any one
3 creditor at any time during the reporting period. Form 278 further
4 requires the filer to certify by signature that "the statements I
5 have made on this form and all attached schedules are true, complete
6 and correct to the best of my knowledge."

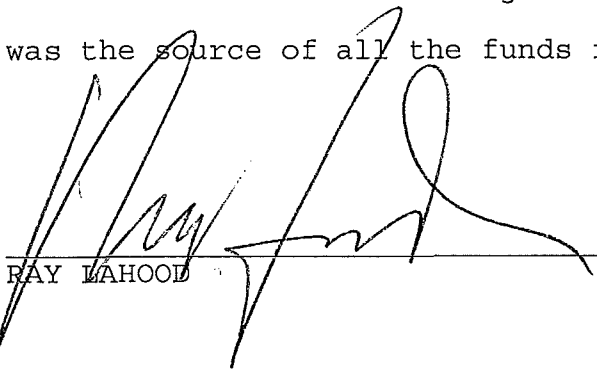
7 11. LaHood knew that he was required to disclose the \$50,000
8 Check on his annual Form 278.

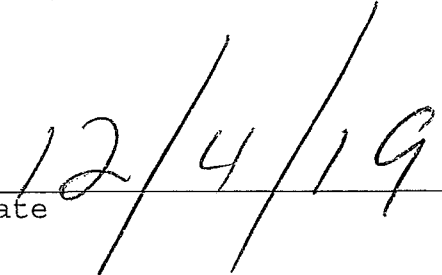
9 12. On May 15, 2013, Mr. LaHood submitted his Form 278 for the
10 calendar year 2012 (the "2012 Form 278"). LaHood reported various
11 liabilities owed on his 2012 Form 278. However, LaHood willfully
12 did not disclose the \$50,000 Check on the 2012 Form 278. Further
13 LaHood falsely certified that the information contained on the 2012
14 Form 278 was complete and correct; LaHood knew this certification to
15 be false because he willfully failed to disclose the \$50,000 Check.

16 13. Following the completion of his tenure as United States
17 Secretary of Transportation in July 2013, Mr. LaHood was required to
18 submit a final Form 278 for the period of 2013 during which he
19 served as a member of the Executive Branch. Accordingly, on July
20 29, 2013, Mr. LaHood submitted a Form 278 for the reporting period
21 from January 1, 2013, through his termination date of July 1, 2013
22 (the "2013 Form 278"). LaHood reported various liabilities owed on
23 his 2013 Form 278. However, LaHood willfully again did not disclose
24 the \$50,000 Check on the 2013 Form 278. Further, LaHood falsely
25 certified that the information contained on the 2013 Form 278 was
26 complete and correct; Mr. LaHood knew this certification to be false
27 because he willfully failed to disclose the \$50,000 Check.

1 14. LaHood failed to disclose the \$50,000 Check in his 2012
2 Form 278 and his 2013 Form 278 because he had reason to believe that
3 Chagoury was the ultimate source of the \$50,000 Check and because he
4 did not want publicly to be associated with this Chagoury who, in
5 2009, was reported to have been on the U.S. "No Fly List."

6 15. In June 2017, FBI Special Agents interviewed LaHood.
7 LaHood initially denied receiving a loan from Baaklini. After he
8 was shown a copy of the \$50,000 Check, LaHood acknowledged receiving
9 the \$50,000 Check from Baaklini. LaHood stated that he received the
10 money from Baaklini as a loan but could not recall any terms of the
11 loan. LaHood acknowledged that he had not repaid Baaklini any
12 amount of the money and Baaklini had not asked to be repaid in the
13 five years since Baaklini provided the \$50,000 Check. In addition,
14 LaHood did not inform the agents that he understood that Chagoury
15 was the source of all the funds for the \$50,000 Check.

16
17
18 
19 RAY LAHOOD

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Date 

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