



## Judge Imposes 15-Year Sentence in FCPA Case; Appeal to Follow

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A U.S. district judge in the Southern District of Florida recently sentenced Joel Esquenazi, the former president of Terra Telecommunications Corporation, to 15 years in prison – the longest prison term ever handed down in a Foreign Corrupt Practices Act (FCPA) prosecution. Previously, the longest sentence ever handed down for an FCPA conviction was just over seven years.

Esquenazi and Carlos Rodriguez, the former vice president of Terra, were convicted in August for their roles in a scheme to bribe officials of Haiti Teleco, the sole provider of land line telephone service in the country. The defendants paid more than \$890,000 from November 2001 to August 2005 to shell companies to be used for bribes for Haiti Teleco officials. Four other individuals have also been convicted and sentenced for their roles in this case.

The defendants were found guilty of seven FCPA counts, 12 counts of money laundering, one count of money laundering conspiracy, and one count of conspiracy to violate the FCPA and wire fraud. Rodriguez received a seven-year prison sentence for his role in the scheme. The defendants were also ordered to forfeit \$3.09 million.

The FCPA prohibits bribing a foreign government official. It defines the term “foreign official” to include “any officer or employee of a foreign government or any department, agency or instrumentality thereof . . . or any person acting in an official capacity for or on behalf of any such government, department, agency, or instrumentality.” The Department of Justice has maintained that the term “foreign official” includes not only traditional government officials, but also employees of state-owned or state-controlled entities on the theory that they are an instrumentality of the foreign government.

At trial, the defendants’ counsel in the Esquenazi case argued that officers and employees of state-owned enterprises are not “foreign officials” under the FCPA, but the judge disagreed. The judge allowed counsel to present arguments on the issue to the jury, but the jury also did not accept them.

This was one of several cases in which defendants have challenged this broad definition of “foreign official” under the FCPA — without success.

Lawyers for Esquenazi have said that they will appeal the conviction and pursue the question of who actually owns Haiti Teleco. They say that former Haitian Prime Minister Jean-Max Bellerive issued a statement defining Haiti Teleco as a private company and thus not subject to the prohibitions of the FCPA.

[Three district courts that have analyzed the question](#) have looked at varying combinations of factors regarding services provided to citizens, who appoints the key officers, the extent of government ownership and financial support, the extent of obligations and privileges under its country’s laws, and whether the entity is perceived to be providing official functions.



This case will represent the first time that an appeals court will consider this question, and the ruling, whatever it is, will be of considerable interest.

“This sentence – the longest sentence ever imposed in an FCPA case – is a stark reminder to executives that bribing government officials to secure business advantages is a serious crime with serious consequences,” Assistant Attorney General Lanny Breuer said in a statement about the case.

The presentence investigation report indicated that the base offense level for Esquenazi was 40, which would translate to a prison sentence of 24-30 years.

Defense counsel argued in their motion for a variance and downward departure that the guidelines are not well suited for FCPA cases.

“This case is NOT extreme; the conduct is NOT extreme; the amounts of money are NOT extreme – only the guidelines ARE extreme,” defense counsel wrote. They also argued that there had never been an FCPA case in which the actual sentence matched the recommended sentencing guideline and that each FCPA case resulted in a sentence below the guideline. The court granted the defendant’s motion for a downward departure, but the 15-year sentence is still quite a shock.

This case, like several other recent FCPA cases brought by the Department of Justice, shows that the department is committed to enforcing the FCPA and that it will seek stiff sentences.

*Crime in the Suites is authored by the [Ifrac Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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