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

14	UNITED STATES OF AMERICA,	)	CR No. 09-81-GW
		)	
15	Plaintiff,	)	<u>GOVERNMENT'S RESPONSE IN</u>
		)	<u>OPPOSITION TO DEFENDANTS' MOTION</u>
16	v.	)	<u>TO DISMISS THE INDICTMENT;</u>
		)	<u>DECLARATION OF JONATHAN E. LOPEZ</u>
17	JUTHAMAS SIRIWAN,	)	
	aka "the Governor," and	)	<u>Hearing Date:</u> October 20, 2011
18	JITTISOPA SIRIWAN,	)	<u>Hearing Time:</u> 8:30 a.m.
	aka "Jib,"	)	
19		)	
	Defendants.	)	
20		)	
21		)	

22 Plaintiff United States of America, through its counsel of  
 23 record, hereby files its Response in Opposition to defendants'  
 24 Motions to Dismiss the Indictment. The government's Opposition  
 25 is based upon the attached memorandum of points and authorities,  
 26 the attached declaration of Jonathan E. Lopez, the files and  
 27 records in this matter, as well as any evidence or argument  
 28 presented at any hearing on this matter.



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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 **SUMMARY OF ARGUMENT**

4 On January 28, 2009, a federal grand jury returned an eight-  
5 count sealed Indictment against defendants.<sup>1</sup> The Indictment  
6 charged defendants with one count of conspiring to conduct  
7 international wire transfers intended to promote specified  
8 unlawful activities in violation 18 U.S.C. §§ 1956(h) and  
9 (a)(2)(A), (Count 1); and seven substantive international  
10 promotion money laundering offenses, in violation of 18 U.S.C. §§  
11 1956(a)(2)(A) and 2, (Counts 2-8). The Indictment also includes  
12 a forfeiture count (Count 9).

13 Defendants have moved to dismiss the Indictment pursuant to  
14 Rule 12(b)(3) of the Federal Rules of Criminal Procedure on  
15 various perceived substantive and jurisdictional deficiencies.  
16 Upon analysis of defendants' arguments, it is quickly evident  
17 that, in support of their positions, defendants routinely  
18 conflate and confuse multiple statutes, interpret and argue the  
19 elements of uncharged statutes, and ignore case law relevant to  
20 the statutes actually charged.

21 In sum, defendants argue that (1) the Indictment fails to  
22 allege a distinct money laundering violation because of what  
23 defendants refer to as a "double duty" issue<sup>2</sup> and that the

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25 \_\_\_\_\_  
26 <sup>1</sup> The Indictment against defendants was unsealed on January  
19, 2010.

27 <sup>2</sup> That is, the payments charged in the Indictment are part of  
28 the FCPA scheme and, therefore, cannot also be part of a money  
laundering offense.

1 government is exploiting the "ambiguity" in the phrase "to  
2 promote the carrying on" of specified unlawful activity; (2) the  
3 specified unlawful activities relating to the money laundering  
4 charges are improper and that the government is really trying to  
5 charge Foreign Corrupt Practices Act ("FCPA")<sup>3</sup> offenses; (3)  
6 there are jurisdictional issues with the charges in the  
7 Indictment; and (4) Thailand is the proper forum to review these  
8 allegations, not the United States. Each of defendants'  
9 arguments are wholly without merit and Defendants' motion should  
10 be denied.

11 Throughout the motion to dismiss, defendants focus on and  
12 cite case law concerning the wrong statutes, and ignore the clear  
13 dictates of the statutes charged. Defendants' first argument is  
14 a prime example of this infirmity. It is perfectly permissible  
15 under § 1956(a)(2)(a) for acts (such as wire transfers) that are  
16 an integral part of the underlying specified unlawful activity  
17 (in this case FCPA offenses), to also serve as the basis for a  
18 distinct § 1956(a)(2)(A) money laundering offense. *See United*  
19 *States v. Savage*, 67 F.3d 1435, 1440 (9th Cir. 1995).

20 Defendants' arguments of perceived merger and "double duty"  
21 issues may pertain to offenses charged under other provisions of  
22 the money laundering laws where proceeds of an underlying offense  
23 must be first be generated before a money laundering charge can  
24 apply, but not § 1956(a)(2)(A), which has no such requirement.  
25 Inexplicably, defendants do not spend any time in their motion  
26 discussing or analyzing § 1956(a)(2)(A). Rather, in what appears

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28 <sup>3</sup> 15 U.S.C. § 78dd-1, et seq.

1 to be an attempt to lump together all money laundering statutes,  
2 defendants analyze and cite cases that discuss the elements of  
3 either § 1956(a)(1)(A) or § 1957 (provisions which might present  
4 merger issues, and do have a ill-gotten gains or "proceeds"  
5 requirement).<sup>4</sup> Neither of those statutes, however, is charged in  
6 the Indictment.

7 Defendants' claims of "ambiguity" within the promotional  
8 aspect of the money laundering statutes are equally flawed.  
9 There is no ambiguity surrounding promotion, and the Indictment's  
10 charges in this area are consistent with well-developed case law  
11 in the Ninth Circuit. Defendants, however, once again fail to  
12 rely on this case law and instead retreat to a litany of  
13 irrelevant and out-of-circuit § 1956(a)(1)(A) cases for support.

14 Defendants' second claim, that the specified unlawful  
15 activities set forth in the Indictment are improper or otherwise  
16 deficient similarly relies on muddled interpretation of the  
17 statutes involved. There are two specified unlawful activities  
18 (each, an "SUA") that defendants are alleged to have intended to  
19 promote through their international wire transfers: (1)  
20 violations of the FCPA, specifically enumerated as an SUA at 18  
21 U.S.C. § 1956(c)(7)(D); and (2) an offense against a foreign  
22 nation - bribery of a public official, or the misappropriation,  
23 theft, or embezzlement of public funds by or for the benefit of a  
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25 <sup>4</sup> Indeed, only two of the ten cases they cite for their  
26 incorrect propositions in this area even relate to § 1956(a)(2)(A)  
27 (*United States v. Savage*, 67 F.3d 1435 (9th Cir. 1995) and *United*  
28 *States v. Moreland*, 622 F.3d 1147 (9th Cir. 2010)). In these cases,  
defendants fail to point to anything relating to such discussions.  
They instead focus on other, irrelevant, holdings.

1 public official, specifically enumerated as an SUA at 18 U.S.C. §  
2 1956(c)(7)(B)(iv). The Indictment sets forth two different Thai  
3 statutes that apply under § 1956(c)(7)(B)(iv): Thai Penal Code  
4 Section 152, and Thai Penal Code Section 149. Both are  
5 corruption offenses in Thailand.

6 Defendants' arguments against the FCPA-SUA are based  
7 primarily on the same misplaced and incorrect merger arguments  
8 they set forth in their first claim. As noted above, the money  
9 laundering offenses charged in the Indictment are familiar and  
10 appropriately charged, and distinct from the FCPA offenses  
11 committed by the Greens. Contrary to defendants' arguments, the  
12 government is not charging the defendants with FCPA violations.  
13 Defendants are being charged with the separate and distinct crime  
14 of promoting the Greens' FCPA violations, which serve as one of  
15 the two "specified unlawful activities" in this case.

16 Inexplicably, defendants simply ignore case law directly on  
17 point, *United States v. Bodmer*, 342 F. Supp. 2d 176 (S.D.N.Y.  
18 2004), where similarly, a defendant - who could not be charged  
19 with FCPA offenses - was charged with conspiring to commit  
20 international promotion money laundering, the same charge in the  
21 instant Indictment. In *Bodmer*, the court held that the  
22 defendant's exemption from being criminally sanctioned for FCPA  
23 offenses is "irrelevant to proving that he transported money in  
24 furtherance of FCPA violations." *Id.* at 191. As the court in  
25 *Bodmer* reaffirmed, § 1956(a)(2)(A) money laundering is a  
26 completely distinct offense from the FCPA containing different  
27 elements. *Id.*

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1 As for defendants' claims against the second SUA, defendants  
2 appear to concede that Thai Penal Code Section 149 is properly  
3 alleged in the Indictment, as they only take issue with the  
4 portion of the Indictment that relates to Thai Penal Code Section  
5 152 and make no argument against Thai Penal Code Section 149.  
6 With respect to Thai Penal Code Section 152, defendants claim  
7 that the government has mis-translated the code and that it does  
8 not really relate to an embezzlement offense, but rather, an  
9 honest services offense. Defendants' miss the point that even  
10 under their interpretation, Thai Penal Code Section 152 is still  
11 a corruption offense in which the foreign official is obtaining a  
12 benefit as a result of her official action. This fits squarely  
13 within the SUA of "the misappropriation, theft, or embezzlement  
14 of public funds by or for the benefit of a public official," as  
15 specifically enumerated as an SUA at 18 U.S.C. §  
16 1956(c)(7)(B)(iv)

17 Defendants' third argument, their jurisdictional claims,  
18 similarly suffer from the issue of analyzing the wrong statute.  
19 Defendants' claims are based on the civil penalty jurisdiction  
20 laid in 18 U.S.C. § 1956(b), and completely ignore the criminal  
21 jurisdictional authority for § 1956 offenses specifically set  
22 forth explicitly in 18 U.S.C. § 1956(f).

23 Lastly, defendants claim improper forum due to principles of  
24 statutory construction, international law and Thailand's alleged  
25 sole jurisdiction over the alleged corrupt acts of its officials,  
26 like the arguments before them, fail under scrutiny. Defendants'  
27 statutory construction arguments ignore the express intent of  
28

1 Congress and are unnecessary to determine the appropriateness of  
2 the charges at hand. Similarly, defendants' international law  
3 and sole jurisdiction arguments misapply the principles of  
4 international law and assume facts that are not established or  
5 supported - such as defendants' claim that Thailand has exerted  
6 sole jurisdiction of the offenses alleged in the Indictment.  
7 Thailand has not yet been asked to even review the charges set  
8 forth in the Indictment, let alone exert sole jurisdiction over  
9 them. Defendants' arguments in this area are another attempt to  
10 confuse and muddle issues that are otherwise straightforward.

11 Defendants' entire motion is based on a tortured analysis,  
12 or, in certain areas, a complete lack of analysis, of the charges  
13 actually set forth in the Indictment. The Indictment presents  
14 valid allegations that are properly charged in accordance with  
15 Fed. R. Crim. P. 7(c). There is no basis to dismiss this  
16 Indictment and defendants' motion should be DENIED.

17 **II.**

18 **DISCUSSION**

19 A. THE INDICTMENT PROPERLY CHARGES LEGITIMATE FAMILIAR MONEY  
20 LAUNDERING OFFENSES

21 Contrary to defendants' claims, the charges set forth in the  
22 Indictment do not represent any type of recently developed novel  
23 approach to charging foreign officials, nor do these charges  
24 attempt to exploit any ambiguities within the money laundering  
25 statutes. As demonstrated below, these charges are familiar and  
26 properly alleged. Defendants' claims otherwise disregard the  
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1 offenses charged and the extensive case law interpreting those  
2 offenses.

3 **1. Defendants' Claims Ignore a Fundamental Aspect of 18**  
4 **U.S.C. § 1956(a)(2)(A): There Is No Requirement For**  
5 **Separate Ill-Gotten Gains or "Proceeds" to Be Obtained**  
6 **Before the Statute Can Be Charged**

7 Defendants' first claim is that government has failed to  
8 allege a "distinct MLCA violation" and that the "Indictment fails  
9 for lack of an independent MLCA violation." Def. Mot. at 1, 5.  
10 In support of these allegations, defendants rely on the well-  
11 known concept that "the offense of money laundering must be  
12 separate and distinct from the underlying offense that generated  
13 the money to be laundered." Def. Mot. at 3-5. In support of  
14 this argument, defendants consistently reference the concept of a  
15 "completed predicate offense" in an attempt to reinforce the  
16 misplaced notion that money to be laundered first needs to be  
17 generated by a separate and distinct crime. This concept of the  
18 need to generate, as defendants state "ill-gotten gains" (Def.  
19 Mot. at 5), before the government can charge a defendant with  
20 money laundering applies to many offenses within the MLCA. It  
21 **does not**, however, apply to the offense defendants are actually  
22 charged with in the Indictment - 18 U.S.C. § 1956(a)(2)(A).<sup>5</sup>

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23 <sup>5</sup> Defendants cite to the "MLCA" repeatedly in their motion as  
24 a reference to the crimes charged in the Indictment. The MLCA, or  
25 Money Laundering Control Act, is a **set of many distinct offenses,**  
26 each with **different elements**, not just one all-encompassing  
27 statute. Defendants are not charged with violating the MLCA, they  
28 are charged with violating § 1956(a)(2)(A) - International  
Promotion Money Laundering, a specific offense within the MLCA that  
contains very different elements from other offenses within the  
MLCA. Defendants never draw this distinction; instead, in attempt  
to blur the lines of all the MLCA offenses, defendants consistently

1 18 U.S.C. § 1956(a)(2)(A) has no requirement that dirty  
2 money or "proceeds" of criminal activity (completed predicate  
3 offense) be generated prior to a violation of that statute, or  
4 that there be any "ill-gotten" gains at all. Section  
5 1956(a)(2)(A) states:

6 (2) **Whoever** transports, transmits, or **transfers**, or attempts  
7 to transport, transmit, or transfer **a monetary instrument or**  
8 **funds from a place in the United States to or through a**  
9 **place outside the United States** or to a place in the United  
10 States from or through a place outside the United States -

11 (A) **with the intent to promote the carrying on of specified**  
12 **unlawful activity...**shall be sentenced...

13 (emphasis added).

14 To prove a violation of 18 U.S.C. § 1956(a)(2)(A), the  
15 government must prove the following elements:

16 First: The defendant transported money from a place in  
17 the United States to or through a place outside  
18 the United States; and

19 Second: The defendant acted with the intent to promote the  
20 carrying on of unlawful activity.<sup>6</sup>

21 In contrast, § 1956(a)(1)(A), on which defendants  
22 erroneously rely, has very different elements. The elements of a  
23 § 1956(a)(1)(A) are as follows:

24 First: The defendant [conducted] [intended to conduct] a  
25 financial transaction involving property that  
26 represented the proceeds of [specify prior,  
27 separate criminal activity];

28 Second: The defendant knew that the property represented  
the proceeds of [specify prior, separate criminal  
activity]; and

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cite to the MLCA as a whole.

<sup>6</sup> See Jury instructions, *United States v. Green et al.*, CR-08-59-GW (CDCA 2008), DE 288; Ninth Circuit Model Jury Instructions No. 8.148 (2010) [Transporting Funds to Promote Unlawful Activity].

1 Third: The defendant acted with the intent to promote the  
2 carrying on of [specify unlawful activity being  
promoted].<sup>7</sup>

3 The first and second element above clearly require that the  
4 financial transaction conducted involve proceeds of the specified  
5 unlawful activity.

6 Section 1956(a)(2)(A), however, manifestly has no such  
7 requirement that the money or funds transported internationally  
8 be proceeds of the SUA defendants are alleged to be promoting -  
9 or any SUA for that matter.<sup>8</sup> Prosecutors must only establish  
10 that the defendant transmitted, or attempted to transmit, funds  
11 with the "intent to promote the carrying on of specified unlawful  
12 activity."<sup>9</sup> Those funds can be entirely clean money, that is,  
13 not generated from the SUA, or, alternatively, can indeed be  
14 money generated from the SUA. For the purposes of promoting a  
15 SUA under § 1956(a)(2)(A), the source of the funds that serve as  
16 the basis for that promotion is completely irrelevant.<sup>10</sup> As  
17 discussed further in the merger/double duty section of this  
18 response, the lack of a proceeds element similarly means there is

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21 <sup>7</sup> See Ninth Circuit Model Jury Instructions No. 8.146 (2010)  
[Financial Transaction to Promote Unlawful Activity].

22 <sup>8</sup> This fact was specifically stated in the *Green* jury  
23 instructions as part of the § 1956(a)(2)(A) charge (DE 288).

24 <sup>9</sup> Under § 1956(a)(2)(A), defendants do not have to have any  
25 involvement in the specified unlawful activities. See *United*  
26 *States v. Hamilton*, 931 F.2d 1046, 1052 (2d Cir. 1991)(noting that  
"a person could, in effect, violate section 1956(a)(2) without  
actually participating in an unlawful transaction).

27 <sup>10</sup> Unlike the second element in a § 1956(a)(2)(A) charge,  
28 there is no "knowledge" requirement in § 1956(a)(2)(A).

1 **no requirement** that a separate and distinct SUA be completed  
2 prior to charging a § 1956(a)(2)(A) violation.<sup>11</sup>

3 The lack of a proceeds element and its implications is best  
4 explained by *United States v. Piervinanzi*, 23 F.3d 670 (2d Cir.  
5 1994), *cert. denied*, 513 U.S. 900 (1994). In *Piervinanzi*, the  
6 defendant was charged and found guilty of conspiracy, attempted  
7 bank fraud, and attempted money laundering in connection with the  
8 defendant's attempt to conduct a fraudulent and unauthorized wire  
9 transfer of money from a bank in the United States to an overseas  
10 account. This conduct served the basis of both the bank fraud  
11 and money laundering charges. Specifically, the money laundering  
12 violations charged were international promotion money laundering  
13 pursuant 18 U.S.C. § 1956(a)(2)(A) and 2 (similar to the  
14 defendants in this case) as well violations of 18 U.S.C. § 1957.  
15 As in this case, the defendant in *Piervinanzi* claimed that "the  
16 asserted criminal laundering activity, the overseas transfer of  
17 bank funds, was simply a component of the bank fraud that  
18 conspirators attempted to perpetrate," and that "there was no  
19 analytically distinct 'secondary' activity, thus no money  
20 laundering." *Id.* at 677. The court rejected the defendant's  
21 argument and found that the "conduct at issue falls within the  
22 prohibition of statute [§ 1956(a)(2)(A)]." *Id.* at 679. The  
23 court stated that

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25  
26 <sup>11</sup> That is not to say that the SUA need not be a separate and  
27 distinct crime. Only that the SUA defendants, activity need not be  
28 a crime the *defendants* committed, nor does that crime necessarily  
need to be completed or have generated proceeds prior to a  
violation of § 1956(a)(2)(A).

1 1956(a)(1)...requires first that the proceeds of  
2 specified unlawful activity be generated, and second  
3 that the defendant, knowing the proceeds to be tainted,  
4 conduct or attempt to conduct a financial transaction  
5 with these proceeds with the intent to promote  
6 specified unlawful activity.

7 By, contrast, § 1956(a)(2)(A) **contains no requirement**  
8 **that "proceeds" first be generated by unlawful**  
9 **activity, followed by a financial transaction with**  
10 **those proceeds**, for criminal liability to attach.  
11 Instead, it penalizes overseas transfers with intent to  
12 promote the carrying on of specified unlawful activity.

13 *Id.* At 680 (emphasis added). The court further stated:

14 The clearly demarcated two-step requirement which  
15 *Piervinanzi* advocates in the construction of 1956(a)(2)  
16 **is apparent in other provisions of the federal money**  
17 **laundering statutes, but not in 1956(a)(2)**. We have no  
18 authority to supply the omission.

19 *Id.* (emphasis added).

20 A review of the legislative history of this statute  
21 demonstrates that Congress was well-aware of this difference. As  
22 pointed out in *Piervinanzi*, the Senate report for this bill  
23 explains that § 1956(a)(2)(A) is "designed to illegalize  
24 international money laundering transactions" and "covers  
25 situations in which money is being laundered ... by transferring  
26 out of the United States." *Id.* at 680-81; S. Rep. No. 433, 99<sup>th</sup>  
27 Cong., 2d Sess., at 11 (Sept. 3, 1986). The Senate Report's  
28 discussion is silent about any requirement that the funds be  
proceeds of some distinct criminal activity. Instead, it states  
that § 1956(a)(2)(A) is violated when a defendant "engages in an  
act of transporting or attempted transporting and either intends  
to facilitate a crime or knows that the transaction was designed  
to facilitate a crime." *Id.* By contrast, again as pointed out

1 in *Piervinanzi*, the Senate Report explains that § 1956(a)(1)  
2 "requires that the property involved in a transaction must in  
3 fact be proceeds of 'specified unlawful activity.'" *Id.* at 681.;  
4 S. Rep. No. 433 at 9-10.

5 This critical difference in § 1956(a)(2)(A) has been well-  
6 understood for over 25 years. See *United States v. Savage*, 67  
7 F.3d 1435, 1440-142 (9th Cir. 1995)(analysis of § 1956(a)(2)(A)  
8 violation which does not have a proceeds element, as compared to  
9 analysis of § 1956(a)(2)(B) violation which does)<sup>12</sup>; *United*  
10 *States v. Moreland*, 622 F.3d 1147, 1167 (9th Cir. 2010)(noting  
11 that while § 1956(a)(2)(B) requires a showing of "proceeds," §  
12 1956(a)(2)(A) does not); *United States v. Bush*, 626 F.3d 527, 536  
13 (9th Cir. 2010)(noting that it is irrelevant whether profits of  
14 the illegal activity were involved). As stated in *United States*  
15 *v. Krasinski*, "[T]he absence of a 'proceeds' requirement in §  
16 1956(a)(2)(A) reflects that Congress decided to prohibit any  
17 funds transfer out of the country that promotes the carrying on  
18 of certain unlawful activity." 545 F.3d 546, 551 (7th Cir. 2008).  
19 Moreover, even if the "monetary instrument or funds" of a §  
20 1956(a)(2)(A) charge, might, actually be "proceeds of unlawful  
21 activity," does not change the fact that § 1956(a)(2)(A) and §  
22 1956(a)(1)(A) were passed to address two completely different

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24 <sup>12</sup> Defendants quote *Savage* for the proposition that "Congress  
25 intended the money laundering statute to be a separate crime  
26 distinct from the underlying offense that generated the money to be  
27 laundered." Def. Mot. at 5. Defendants fail to point out that  
28 this passage occurs during the court's discussion of the proceeds  
requirement of the § 1956(a)(2)(B) violations, **not** with respect to  
§ 1956(a)(2)(A), the statute defendants are charged with in this  
case.

1 problems. *United States v. Hamilton*, 931 F.2d 1046, 1050-51 (2d  
2 Cir. 1991).

3 Emphasizing the purported need for a "separate and distinct  
4 crime" from **"the underlying offense that generated the money to  
5 be laundered"** (Def. Mot. at 3-4), defendants incorrectly imply  
6 that criminal money must be generated to be laundered in the  
7 first instance. This requirement may apply to other uncharged  
8 money laundering statutes, but is wholly irrelevant here, as  
9 there is no such requirement.

10 **2. "Double Duty" Is Permissible Under 18 U.S.C. §**  
11 **1956(a)(2)(A); Contrary to Defendants' Assertions There**  
12 **Is No Merger Problem**

13 Defendants also claim that the § 1956(a)(2)(A) forces each  
14 wire transfer to improperly pull "double duty," by serving both  
15 as an alleged bribe payment and a monetary transaction designed  
16 to promote the carrying of the very same bribe. Defendants state  
17 that the government improperly has the "predicate crime and the  
18 money laundering charges to distill wholly into the very same  
19 crime, which the law does not allow." Def. Mot. at 5.

20 Defendants are simply wrong, and once again basing their  
21 arguments on an analysis of a different, uncharged, money  
22 laundering statute. The law **does** allow the same transaction in a  
23 § 1956(a)(2)(A) offense to pull, as the defendants say, "double  
24 duty." This is not a § 1956(a)(1) case and the arguments  
25 defendants advance on pages 3-10 of their motion are entirely  
26 irrelevant because they do not address the statute charged.

27 The issue of merger under § 1956(a)(2)(A) is well-settled  
28 law. In a § 1956(a)(2)(A) charge, the monetary transfer that is

1 the basis of the international promotion money laundering  
2 transaction can also serve as the basis of a separate charge  
3 alleging as an offense the very SUA being promoted. This has  
4 long been settled law. *Piervinanzi*, 23 F.3d at 679. As  
5 mentioned previously, in the *Piervinanzi* case, the defendant was  
6 found guilty of attempted bank fraud and attempted money  
7 laundering under § 1956(a)(2)(A). The defendant argued that "the  
8 overseas transmission of funds [§ 1956(a)(2)(A) violation]  
9 'merges' with the underlying bank fraud, precluding independent  
10 liability under 1956(a)(2)." *Id.* The court squarely rejected  
11 the defendant's merger argument and held that the act of  
12 attempting to fraudulently transfer funds out of the bank (the  
13 bank fraud) was analytically distinct from the attempted  
14 transmission of those funds overseas (the § 1956(a)(2)(A)  
15 violation), and was therefore itself independently illegal. *Id.*

16 The logic and reasoning in *Piervinanzi* has been widely  
17 embraced. Indeed, there is ample case law that says merger  
18 issues do not apply to § 1956(a)(2)(A) charges and that the same  
19 transactions that serve as the basis for the SUA can also serve  
20 as the basis for an international promotion money laundering  
21 charge under § 1956(a)(2)(A) in that the crimes being charged are  
22 analytically distinct. See *Krasinski*, 545 F.3d at 551 (at least  
23 some activities that are part and parcel of underlying offense  
24 can be considered to promote carrying on of unlawful activity);  
25 *Moreland*, 622 F.3d at 1166-67 (finding merger issue with respect  
26 to 1956(a)(1)(A) charges, but not 1956(a)(2)(A) charges, which  
27 "stand on different ground"); *Savage*, 67 F.3d at 1440-41

28

1 (1956(a)(2)(A) charge has as SUA being promoted mail and wire  
2 fraud transactions charged in indictment); *United States v.*  
3 *Anvari-Hamedani*, 378 F. Supp. 2d 821, 832-33 (N.D. Ohio  
4 2005)(eight counts of 1956(a)(2)(A) violations are proper even  
5 though counts mirror eight other counts charging the SUA being  
6 promoted as "the two actions are independently illegal and do not  
7 merge"); *United States v. Esfahani*, 2006 WL 163025, \*4 (N.D. Ill.  
8 2006)(no merger where counts one hundred through one hundred  
9 ninety-one are based on same transfer of funds found in counts  
10 two through ninety three).

11 Curiously, not one case in defendants' motion to dismiss  
12 discusses any aspect of § 1956(a)(2)(A), let alone the discussion  
13 within those cases stating that there is no merger issue with a §  
14 1956(a)(2)(A) charge. Defendants' claims and the cases they cite  
15 through the first 8 pages of their motion are all based on an  
16 analysis of § 1956(a)(1)(A). As such, defendants completely fail  
17 to address the elements of § 1956(a)(2)(A), choosing instead to  
18 discuss a statute the government did not even charge.

19 Defendants also incorrectly claim that the Indictment  
20 improperly has both the MLCA's and the FCPA's statutory terms  
21 require a monetary transfer as an "essential element." Def. Mot.  
22 at 4. Defendants' argument here fail because, as an initial  
23 matter, their basic premise is incorrect: the FCPA **does not**  
24 require a monetary transfer as an essential element. All the  
25 FCPA requires is a **promise** or **offer** of something "of value,"  
26 which can be a gift, an offer to do some act in return, or, as  
27 the statute says, "anything of value" - it does not have to be  
28

1 monetary, nor does there need to be an actual transfer. See 15  
2 U.S.C. § 78dd-1, et seq. Defendants' claims of a shared  
3 "essential element" are flat out wrong.

4 Even if there was a shared element between the two statutes,  
5 it is unclear what effect defendants believe that fact would  
6 have.<sup>13</sup> Defendants incorrectly claim the existence of a shared  
7 element, yet cite no authority for the effect of that  
8 proposition. The standard to be applied when the same act or  
9 transaction constitutes a violation of two distinct statutory  
10 provisions has been set out in *Blockburger v. United States*, 284  
11 U.S. 299 (1932). The Supreme Court in *Blockburger* stated that  
12 whether there are two offenses or only one depends on whether  
13 each provision requires proof of a fact which the other does not.  
14 *Id.* at 304. As the Ninth Circuit has said, in applying  
15 *Blockburger*, "it matters not that there is 'substantial overlap'  
16 in the evidence used to prove the two offenses, so long as they  
17 involve different statutory elements." *United States v. Kimbrew*,  
18 406 F.3d 1149, 1151 (9th Cir. 2005). Regardless, defendants'  
19 conclusory argument on this issue serves no purpose. As is  
20 evident from the statutes themselves, and as explicitly  
21 recognized in *Bodmer*, the FCPA and § 1956(a)(2)(A) have very  
22 different statutory elements. 342 F. Supp. 2d 176 at 189. Not  
23 to mention, the FCPA is not even charged in the Indictment.<sup>14</sup>

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26 <sup>13</sup> This is especially true given that defendants are not  
even charged with an FCPA violation.

27 <sup>14</sup> Even in cases where both statutes were charged, such as  
28 *United States v. Green*, the charges are proper.

1           **3. The Promotion Aspect of 18 U.S.C. § 1956(a)(2)(A) Is**  
2           **Properly Charged**

3           Defendants, in another attempt to incorporate their  
4           misdirected merger argument, allege that the government is  
5           reading the statutory promotion phrase "in an overly literal way  
6           as to extend MLCA liability to the transactions that consummate  
7           the alleged predicate bribes themselves" thereby "eluding the  
8           essential requirement that a separate act of promotion be  
9           alleged." Def. Mot. at 10. Defendants further allege that the  
10          phrase "to promote the carrying on of" is "ambiguous." Def. Mot.  
11          at 2. Defendants are incorrect on all points. The promotion  
12          clause of § 1956(a)(2)(A) is neither ambiguous nor is the  
13          government relying on the statute in an overly literal way.  
14          Rather, the government is relying and interpreting the statute  
15          and the promotion clause in accordance with the extensive body of  
16          case law on promotion as applied to § 1956(a)(2)(A) charges.

17          Defendants, in making their allegations, fail to discuss or  
18          address in any fashion how the courts have interpreted  
19          "promotion" with respect to § 1956(a)(2)(A). Instead, defendants  
20          yet again rely on cases interpreting a different offense all  
21          together - § 1956(a)(1)(A) - for their arguments.<sup>15</sup> In addition,  
22          the whole premise of their argument is based on a merger theory  
23          that does not apply to § 1956(a)(2)(A) cases. In any event, the  
24          government, as set forth below, has properly charged defendants  
25          with "promotion" under § 1956(a)(2)(A).

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26                   <sup>15</sup> While the intent to promote language appears in both  
27                   statutes, defendants chose to ignore the § 1956(a)(2)(A) cases  
28                   (including cases directly on point in this Circuit) and instead  
                 solely rely on out-of-circuit § 1956(a)(1)(A) cases.

1 Intent to promote the carrying on of a specified unlawful  
2 activity under 18 U.S.C. § 1956(a)(2)(A) can be proven in several  
3 different ways. In *Moreland*, the Ninth Circuit held that an  
4 intent to promote can be found under § 1956(a)(2)(A) when there  
5 is an overseas transfer that carries out the underlying fraud, or  
6 when the transfer is for the purpose of hiding the funds. 622  
7 *F.3d* at 1167, 1170. The defendant in that case was convicted of  
8 mail fraud, wire fraud, conspiracy, and money laundering in  
9 connection with a pyramid scheme. The defendant transferred  
10 money from accounts containing the victims' investment funds into  
11 his own accounts to pay salary and personal expenses. *Id.* at  
12 1153. The § 1956(a)(2)(A) counts involved transfers from one of  
13 the corporate accounts in Washington to three accounts in the  
14 Bahamas. While the court dismissed certain § **1956(a)(1)(A)**  
15 charges under a separate proceeds issue, the court found the  
16 convictions under § **1956(a)(2)(A)** were proper "because Moreland  
17 agreed to transfer funds outside of the United States in order to  
18 carry on his fraud." *Id.* at 1169. The court held that the  
19 "promotion" element was satisfied because the purpose of  
20 transferring funds out of the country was to "hide the funds from  
21 the government, which promoted the fraudulent scheme." *Id.* at  
22 1170.

23 As in *Moreland*, the Greens, at the direction of defendant  
24 Juthamas Siriwan, transferred bribe payments into overseas  
25 accounts set up by defendant Jittisopa Siriwan.<sup>16</sup> *Id.* ¶¶ 18,

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27 <sup>16</sup> Ample evidence of this fact was presented during the trial  
28 of the Greens before this Court.

1 19. Defendant Juthamas Siriwan directed these payments overseas  
2 into accounts in defendant Jittisopa Siriwan's name in order to  
3 conceal the benefit to herself.<sup>17</sup> *Id.* ¶¶ 18, 29. The overseas  
4 payments enabled defendants to avoid detection and thereby  
5 promoted the Greens' FCPA violations and their own violations of  
6 Thai public corruption laws.

7 Other circuits have similarly held that under Section  
8 1956(a)(2)(A), the promotion prong can be met by activity that  
9 furthers criminal activity. In *Krasinski*, the Seventh Circuit  
10 held that "the promotion element [under § 1956(a)(2)(A)] can be  
11 met by transactions that promote the continued prosperity of the  
12 underlying offense". 545 F.3d at 551. The *Krasinski* court held  
13 that the "international transport of funds contributed to the  
14 drug conspiracy's prosperity and furthered it along."<sup>18</sup> *Id.*

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17 <sup>17</sup> The defense in *Moreland* also argued that Moreland himself  
18 did not wire the funds at issue. The court rejected that argument,  
19 stating that a "rational juror could have concluded that Moreland  
20 was involved in the transfer," and that even for transactions that  
21 "did not directly involve" Moreland, Moreland was liable under a  
*Pinkerton* theory which holds a conspirator criminally liable for  
the substantive offenses committed by a conspirator when they are  
reasonably foreseeable and in furtherance of the conspiracy. *Id.*  
at 1168-69.

22 <sup>18</sup> See also *United States v. Trejo*, 610 F.3d 308, 314-316  
23 (5th Cir. 2010)(defendant intent to further the progress of the  
24 underlying activity can be proven circumstantially through the  
25 "defendant's involvement in the illegal enterprise thereby  
26 rendering it more likely that he intended to further its progress  
27 by his actions."); *Savage*, 67 F.3d 1435 at 1440 (evidence of intent  
28 to promote a fraudulent scheme under § 1956(a)(2)(A) exists if the  
transfer lends an "aura of legitimacy to the scheme"); *United  
States v. Capligner*, 339 F.3d 226, 233 (4th Cir.  
2003)(1956(a)(2)(A) promotion can be proven by circumstantial  
evidence that the defendant applied unlawful proceeds to promote  
and perpetuate the scheme).

1           The idea that the promotion element can be satisfied by  
2 overseas transfers that complete, or make successful, the very  
3 activity that gave rise to the proceeds that are the subject of  
4 the transaction is well-established in the Ninth Circuit. In  
5 *United States v. Montoya*, 945 F.2d 1068 (9th Cir. 1991), a  
6 California state senator was convicted for racketeering, money  
7 laundering, and other charges arising from an FBI sting  
8 operation. The FBI, through a fictitious front company, gave  
9 Montoya a \$3,000 check derived from the proceeds of the  
10 undercover bribery transaction. *Id.* at 1075. Montoya argued  
11 that the deposit of the check could not have promoted the  
12 unlawful activity (the bribe), because the activity had been  
13 completed upon receipt of the check from the FBI. The Ninth  
14 Circuit rejected Montoya's claims and found that Montoya could  
15 not have made use of the funds without depositing the check;  
16 thus, it concluded that the "deposit of the check amounts to an  
17 intent to promote the carrying on of the specified unlawful  
18 activity." *Id.* at 1076.<sup>19</sup> Like Montoya, the defendants caused  
19 the bribe payments to be deposited and thereby **promoted** the  
20 carrying on of the alleged SUAs.

21           Defendants' attempt to distinguish *Montoya*, calling it a  
22 case "on the extreme."<sup>20</sup> Nevertheless, the "promotion" analysis,

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24           <sup>19</sup> While *Montoya* is a § 1956(a)(1)(A) case, it is helpful to  
25 understanding the genesis of the Ninth Circuit's reasoning on  
26 promotion that has subsequently been extended to § 1956(a)(2)(A)  
27 cases - such as *Savage* and *Moreland*.

28           <sup>20</sup> Defendants' claim that a D.C. Circuit case, *United States*  
*v. Hall*, 613 F.3d 249 (D.C. Cir. 2010) is "the most instructive  
case on the MLCA promotion issue." Def. Mot. at 6. *Hall* is not  
only an out-of-circuit § 1956(a)(1) case, it is premised on a

1 as applied to § 1956(a)(2)(A) offenses, is the law of this  
2 circuit and defendants fail to cite any cases that undermine its  
3 authority.<sup>21</sup>

4 **4. The Rule of Lenity Is Not Implicated by These Familiar  
5 And Often-Used Charges**

6 The crimes alleged in the Indictment are neither novel nor  
7 vague, and there is no basis for invoking the rule of lenity in  
8 this case. Despite defendants' claims to the contrary, the  
9 government's is not trying a "novel approach" to "overcome a  
10 fundamental FCPA limitation." Def. Mot. at 1. Nor is the  
11 government attempting to "exploit a MLCA ambiguity" such that the  
12 rule of lenity must be applied. *Id.* at 10. The litany of §  
13 1956(a)(2)(A) cases the government has cited in this response is  
14 demonstrative of the well-developed landscape supporting the  
15 money-laundering charges in this case.

16 Indeed, the Greens were charged with, and convicted of,  
17 precisely the same money laundering offenses. The only  
18 difference here is that the Greens were also charged with the  
19 underlying FCPA violations. As discussed further in Section B  
20 below, defendants' claim of a "foreign official" exception is

21 \_\_\_\_\_  
22 merger argument, which does not apply to § 1956(a)(2)(A) cases.

23 <sup>21</sup> Defendants cap off their *Montoya* discussion with yet  
24 another conclusory statement that "[N]o court has allowed the  
25 making of a payment that is an essential element of the predicate  
26 unlawful activity - such as a bribe in bribery cases - constitute  
27 promotion of that same activity." Def. Mot. at 7. Defendants make  
28 this claim because *Montoya's* payment was not the direct bribe, but  
proceeds of the bribery activity. This distinction once again  
tries to incorporate an erroneous merger argument. Regardless, and  
as discussed previously, the making of a monetary payment is not an  
essential element of an FCPA offense.

1 unavailing. The entirety of defendants' lenity arguments, as  
2 with the other areas of their § 1956(a)(2)(A) challenges, are  
3 entirely premised on the analysis of elements of statutes that do  
4 not apply to them and were not charged with. As such,  
5 defendants' claims of error, impropriety, and pleas for lenity  
6 should be rejected.

7 B. THE SUAS ARE APPROPRIATELY CHARGED IN THIS CASE

8 Defendants next argue that the two independent specified  
9 unlawful activities set forth in the Indictment are each either  
10 improper or otherwise deficient. Neither claim has merit.  
11 Defendants' arguments again rely on the misplaced merger theory  
12 and an incorrect analysis of the law.

13 **1. The FCPA Is A Proper SUA**

14 Defendants allege that the international promotion money  
15 laundering charges set forth in the Indictment are "aimed at  
16 overcoming a fundamental FCPA limitation" in that the FCPA does  
17 not criminalize a foreign public official's receipt of a bribe.  
18 Def. Mot. at 1. Defendants further assert that if the  
19 "government wishes to extend U.S. criminal penalties to foreign  
20 officials accepting a bribe, it must go back to Congress." *Id.*  
21 at 10. Defendants once again ignore that the charges set forth  
22 in the Indictment simply do not charge them with accepting a  
23 bribe, or conspiring to violate the FCPA. Rather, defendants are  
24 charged with the separate, and entirely analytically distinct,  
25 crime of international transportation money laundering to promote  
26 **the Greens'** violation of the FCPA. That defendant Juthamas  
27 Siriwan was a foreign official at the time of these offenses, and  
28

1 therefore, not charged under the FCPA does not change the  
2 analysis.<sup>22</sup>

3 As discussed previously, and, as set forth by *Bodmer*, 342 F.  
4 Supp. 2d 176, this type of promotional money laundering violation  
5 is an appropriate and well-established crime separate and apart  
6 from the Greens' FCPA violations. The defendant in *Bodmer* was a  
7 foreign citizen and agent of a domestic concern. He was charged  
8 with violations of the FCPA, **as well as** conspiracy to violate  
9 international promotion money laundering under 18 U.S.C. §§  
10 1956(a)(2)(A), and (h), with the FCPA as the specified unlawful  
11 activity (the same  
12 offenses defendants are charged with in the instant Indictment).  
13 The court found that at the time of the defendant's conduct, pre-  
14 1998, the FCPA prohibited the prosecution of foreign nationals  
15 acting as agents of domestic concerns. *Id.* at 189. Yet despite  
16 the prohibition of the FCPA prosecution, the court held that:

17 "whether *Bodmer* violated the FCPA, and the fact that he  
18 cannot be criminally sanctioned for that conduct, **is**  
19 **irrelevant** to proving that he transported money in  
20 furtherance of FCPA violations."

21 *Id.* at 191 (emphasis added). That foreign officials cannot face  
22 liability for FCPA offenses does not give foreign officials a

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23  
24 <sup>22</sup> While defendant Jittisopa Siriwan was an employee of the  
25 Tourism Authority of Thailand for a period of time, the evidence at  
26 the *Green* trial showed that she was not being bribed to influence  
27 her official acts, and she neither influenced a decision in order  
28 to assist the Greens in obtaining or retaining business nor did she  
ever act in a official capacity with respect to the conduct charged  
in the Indictment. Therefore, defendant Jittisopa Siriwan cannot be  
encompassed within any of defendants' arguments on this point.

1 free pass to commit other, entirely separate, crimes. The court  
2 in *Bodmer* continued:

3 The statute clearly penalizes the *transportation of*  
4 *monetary instruments* in promotion of unlawful activity,  
5 not the underlying unlawful activity; in passing the  
6 money laundering statute, Congress determined that the  
7 transportation of monetary instruments in promotion of  
8 unlawful activity itself constitutes a crime.

9 *Id.* (emphasis in original quotation).

10 Further, the court in *Bodmer* stated that it would be  
11 illogical for immunity from the FCPA's criminal penalties to  
12 also confer immunity from the money laundering statutes. The  
13 court held that "the government [was] **not** circumventing the  
14 FCPA's limitations on FCPA penalties by charging the defendant  
15 with money laundering." *Id.* at 191 (emphasis added).

16 If immunity from the FCPA's criminal penalties  
17 automatically conferred non-resident foreign nationals  
18 with immunity from the money laundering statute, these  
19 non-resident foreign nationals could openly serve as  
20 professional money launderers of proceeds derived from  
21 violations of the FCPA...

22 *Id.* at 191.

23 The legislative history surrounding the inclusion of  
24 the FCPA as a SUA also supports the conclusion that Congress  
25 never intended to exempt foreign officials from money  
26 laundering prosecutions in instances where the FCPA is the  
27 alleged SUA. When Congress enacted the FCPA in 1977, it did  
28 not provide for the prosecution of foreign officials.<sup>23</sup>

Following the passage of the FCPA and the decision in

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26 <sup>23</sup> See Pub.L. 95-213, Title I (Dec. 19, 1977); *United States*  
27 *v. Castle*, 925 F.2d 831, 831-32 (5th Cir. 1991)(holding that  
28 foreign officials cannot be charged under the FCPA either  
substantively or as part of a conspiracy.)

1 | *Castle*, Congress, in 1992, included the FCPA as a specified  
2 | unlawful activity for money laundering offenses in 18 U.S.C.  
3 | § 1956(c)(7)(D). See Pub.L. 102-550, Title XV (Oct. 28,  
4 | 1992). Congress, in making this addition, could have  
5 | specifically exempted foreign officials from its  
6 | application. Congress, however, declined to do so,  
7 | evidencing an intent **not** to exempt foreign officials from  
8 | money laundering violations that have the FCPA as an SUA.

9 | Further cement this conclusion is the fact that  
10 | Congress made no effort to exclude the FCPA as an SUA when  
11 | it revised the statute again in 2006. In July 2004, the  
12 | *Bodmer* decision was issued stating affirmatively that even  
13 | though a defendant may not be liable for FCPA violations,  
14 | the defendant can still be charged with money laundering  
15 | with the FCPA as the SUA. Two years later, on March 9,  
16 | 2006, Congress enacted and the President signed into law HR  
17 | 3199, The USA Patriot and Improvement Act of 2005. See  
18 | Pub.L. 109-177 (Mar. 6. 2006). Section 403(b) of the Act  
19 | made minor changes to the FCPA SUA in 18 U.S.C. §  
20 | 1956(c)(7)(D), yet Congress did nothing to undo the holding  
21 | in *Bodmer*.

22 | In short, the legislative history and the case law  
23 | surrounding § 1956(a)(2)(A), both generally, as well as  
24 | applied to FCPA violations, squarely support the charges  
25 | against defendants in this case, and flatly rejects  
26 | defendants' claims that the charges are novel or represent a  
27 | case of first impression.

28

1           **2. The Thai Offenses Defendants Promoted Fit Squarely**  
 2           **Within 18 U.S.C. §1956(C)(7)(B)(iv)**

3           Aside from promoting the Green's FCPA violations,  
 4 defendants are also charged with promoting a second,  
 5 separate, specified unlawful activity - an offense against a  
 6 foreign nation involving public corruption. Specifically,  
 7 18 U.S.C. § 1956(C)(7)(B)(iv) includes as an SUA:

8           an offense against a foreign nation involving...

9           bribery of a public official, or the misappropriation,  
 10           theft, or embezzlement of public funds by or for the  
 11           benefit of a public official.

12 *Id.*<sup>24</sup> This provision is meant to be interpreted broadly to  
 13 include all crimes of foreign public corruption. See H.R. Rep.  
 14 No. 107-250, at 55 (2010) ("The additional crimes include **all**  
 15 **crimes of violence, public corruption,** and offense covered by  
 16 existing bilateral extradition treaties.")(emphasis added). The  
 17 Indictment specifies two public corruption offenses under  
 18 Thailand's Penal Code that defendants promoted under §  
 19 1956(C)(7)(B)(iv):

20           Section 149: It is unlawful for any government official of  
 21           the Kingdom of Thailand to accept property or  
 22           any other benefit for exercising or not  
 23           exercising any of official function; and

24           Section 152: It is unlawful for any government official,  
 25           having the duty of managing or looking after  
 26           any activity, to take the interest for the  
 27           benefit of herself or another person  
 28           concerning such activity.

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26           <sup>24</sup> "Bribery of a public official [under § 1956(C)(7)(B)(iv)]  
 27 extends to the individual who offers the bribe as well as to the  
 28 public official who accepts the bribe." *United States v. Lazarenko*,  
 564 F.3d 1026, 1039 (9th Cir. 2009)(emphasis added).

1 Ind. ¶¶ 2,3,15. Defendants are not charged with substantively  
2 violating these offenses; rather, they are charged with promoting  
3 these violations. The government need not prove or allege the  
4 elements of SUA that form the basis for the money laundering  
5 offense charged. *Lazarenko*, 564 F.3d at 1033. Indeed, despite  
6 the government's reference to Thai law in the Indictment, the  
7 government is not required "to plead a specific violation of  
8 foreign law in the Indictment."<sup>25</sup> *Id.*

9 Defendants seem to take issue with two aspects of this  
10 particular SUA. First, defendants allege that the government's  
11 translation of Thai Penal Code Section 152 is incomplete.  
12 Second, defendants claim that the "public funds" language in §  
13 1956(C)(7)(B)(iv) requires that those funds be the property of  
14 the United States from the **United States'** public treasury. Both  
15 of these arguments lack merit. Further, defendants make no  
16 mention of Thai Penal Code 149 (bribery of a public official in  
17 Thailand), the second foreign offense set forth in the Indictment  
18 pursuant 18 U.S.C. § 1956(C)(7)(B)(iv). Defendants' failure to  
19 challenge Thai Penal Code 149 suggests that they recognize, that  
20 at least on this basis, the SUA is legitimate.

21 Defendants' claims that the government has mistranslated  
22 Thai Penal Code Section 152 have no merit. Section 152 is an

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24 <sup>25</sup> The governments' citation to these specific Thai charges  
25 are by no means the only Thai public corruption laws that apply  
26 under this sub-section. These same two citations were made alleged  
27 in the *Green* indictment, however, at trial, the parties stipulated  
28 to these two referenced violations as well as other violations of  
Thai law not specifically referenced, or required to be referenced,  
in the indictment. See *United States v. Green et al.*, CR-08-59-GW  
(CDCA 2008), DE 250.

1 appropriate foreign offense under § 1956(C)(7)(B)(iv) even under  
2 defendants' proffered translation<sup>26</sup>. Defendants allege that  
3 Section 152 states as follows:

4 Any official in charge of managing or supervising any  
5 affair takes advantage, in the nature of conflict of  
6 interests in such affair, for the benefit of himself or  
herself, or any other person shall be liable to  
imprisonment...

7 Def. Mot. at 11. Notwithstanding the fact that the above  
8 translation does not make sense grammatically, the crux of their  
9 proffered translation still makes it a violation for the official  
10 to take advantage of their position for his or her own benefit.  
11 This plainly qualifies as a misappropriation, theft, or  
12 embezzlement of public funds by or for the benefit of a public  
13 official.

14 Defendants claim that the "conflict of interest" language in  
15 their translation makes Section 152 akin to an "honest services"  
16 violation and therefore removes it from the purview of §  
17 1956(C)(7)(B)(iv). Def. Mot. at 12. It does not. First, and as  
18 noted previously, Congress intended § 1956(C)(7)(B)(iv) to be  
19 read broadly to cover "all crimes of public corruption." See  
20 H.R. Rep. No. 107-250, at 55 (2010).<sup>27</sup> Second, whether Section

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22 <sup>26</sup> The government does not concede that its proffered  
23 translation is incorrect. The government's translation comes from  
24 "The Criminal Code, Translated Thai-English, Update 2005-2008",  
translated by Mr. Yonguth V's Yuthankun. As noted previously, this  
translation was stipulated to in the *Green* trial at DE 250.

25 <sup>27</sup> See also *United States v. All Assets Held At Bank Julius*  
26 *Baer*, 571 F. Supp. 2d 1, \*6, \*10-11 (D.D.C. 2008)(reading §  
27 1956(C)(7)(B)(iv) to include a broad range of conduct, including  
28 extortion); See also M. Hagler, *International Money Laundering and*  
*U.S. Law: A Need to "Know-Your-Partner,"* 31 *Syracuse J. Of Int'l*  
*Law & Com.* 227, 228 (2004)(Patriot Act expanded the money

1 152 has a conflict of interest component is entirely irrelevant.  
2 Section 152 clearly penalizes, even under defendants'  
3 translation, obtaining a benefit as a result of official action.  
4 Whether defendants obtained the benefit through exploiting a  
5 conflict of interest, the benefit - that is the misappropriation,  
6 theft or embezzlement of Thai public funds - is an offense  
7 against Thailand under Section 152 and a specified unlawful  
8 activity pursuant to 18 U.S.C. § 1956(C)(7)(B)(iv). Defendants'  
9 attempts to draw parallels to U.S. honest services law (which  
10 still criminalizes the type of "kickback" scheme defendants  
11 perpetrated) is an irrelevant tangent.

12 Defendants' second claim, that the "public funds" referenced  
13 in § 1956(C)(7)(B)(iv) must involve funds that the United States  
14 has "title to, possession of, or control over" is just plain  
15 false. Def. Mot. at 13. The "public funds" language of §  
16 1956(C)(7)(B)(iv) refers to the funds of the foreign nation - as  
17 is borne out by the case law interpreting this provision. See  
18 *Lazarenko*, 564 F.3d at 1029 (funds came from Ukranian treasury as  
19 well as private individuals in United States); *United States v.*  
20 *\$125,938.62*, 537 F.3d 1287 (11th Cir. 2008)(forfeiture  
21 proceedings pursuant to § 1956(C)(7)(B)(iv) where funds came from  
22 Nigerian treasury); *United States v. 2291 Ferndown Lane*, 2011 WL  
23 2441254 (W.D. Va. 2011) (forfeiture proceedings pursuant to §  
24 1956(C)(7)(B)(iv) where funds were New Taiwan dollars). Not one

25  
26  
27 \_\_\_\_\_  
28 laundering laws to extend the list of predicate offenses "to  
include, most notably, any foreign corruption.")

1 of the above-referenced cases involved funds belonging to the  
2 United States.

3 Defendants try to support their tortured reading of the law  
4 by citing to 18 U.S.C. § 641 - Embezzlement of Government  
5 Property - a statute that specifically criminalizes the theft of  
6 **United States** government property. Indeed, § 641 explicitly  
7 references the requirement that the property at issue be property  
8 of the United States:

9 Whoever embezzles, steals, purloins, or knowingly  
10 converts to his use ...any record, voucher, money, or  
thing of value **of the United States...**

11 *Id.* (emphasis added). By contrast, 18 § 1956(C)(7)(B)(iv)  
12 contains no such language nor has any court ever drawn this  
13 nonsensical parallel. The two cases defendants cite for their  
14 proposition contain no such holding. Indeed, they do not even  
15 relate to § 1956(c)(7)(B)(iv) or any money laundering offense for  
16 that matter.<sup>28</sup> Defendants' arguments on this point once again  
17 have no relation to the specified unlawful activity or the  
18 charges set forth in the Indictment.

19 Lastly, defendants do not contest the applicability of Thai  
20 Penal Code Section 149 as an appropriate offense against a  
21 foreign nation pursuant to 18 U.S.C. § 1956(C)(7)(B)(iv). On  
22 this ground alone, the SUA is sufficient and properly charged.

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25 <sup>28</sup> Defendants cite *United States v. Kranovich*, 401 F.3d 1107  
26 (9th Cir. 2005) and *United States v. Faust*, 401 F.3d 1107 (9th Cir.  
27 1988). Both cases interpret 18 U.S.C. § 641, where the defendants  
28 were alleged to have stolen United States property, on grounds  
entirely unrelated to money laundering or 18 U.S.C. §  
1956(C)(7)(B)(iv).

1 C. THE MONEY LAUNDERING STATUTES PROVIDE FOR EXTRATERRITORIAL  
2 JURISDICTION FOR THE STATUTES CHARGED

3 Defendants challenge the jurisdictional underpinnings of the  
4 Indictment by arguing that since 18 U.S.C. § 1956(b) (the civil  
5 penalty portion of the money laundering statutes) does not  
6 expressly include a reference to § 1956(h) (conspiracy) or 18  
7 U.S.C. § 2 (aiding and abetting or causing an act to be done),  
8 the Court lacks jurisdiction in this case. Defendants once again  
9 rely and focus on an entirely incorrect part of the statute.  
10 Defendants ignore, and their brief is entirely devoid of citation  
11 to, the provision governing extraterritorial criminal  
12 jurisdiction under Section 1956: § 1956(f). There is plainly  
13 extraterritorial jurisdiction in this case under § 1956(f) and  
14 defendants' efforts to obfuscate this simple fact through  
15 reliance on the **civil penalties** provision of § 1956(b) are  
16 entirely baseless.

17 Section 1956(f) has been part of the statute since it was  
18 first enacted in 1986. § 1956(f) states:

19 (f) There is extraterritorial jurisdiction over the conduct  
20 prohibited **by this section** if --

21 (1) the conduct is by a United States citizen or, in  
22 the case of a **non-United States citizen, the conduct**  
23 **occurs in part in the United States;** and

24 (2) the transaction or series of related transactions  
25 involves funds or monetary instruments of a value  
26 exceeding \$10,000.

27 (emphasis added). Section 1956(f), by its express terms, defines  
28 extraterritorial jurisdiction over criminal prosecutions for  
"conduct prohibited *by this section*." (Emphasis added.) The  
emphasized phrase plainly encompasses conduct prohibited by the

1 conspiracy provisions of § 1956(h) as well as the substantive  
2 provisions of § 1956(a).

3 The legislative history of this provision, as originally  
4 enacted, also explicitly states that it was intended to govern  
5 extraterritorial **criminal** jurisdiction:

6 Section 1956(f) is intended to **clarify the jurisdiction**  
7 **of U.S. courts over extraterritorial acts that could be**  
8 **construed to fall within the scope of section 1956.** It  
9 is not the Committee's intention to impose a duty on  
10 foreign citizens operating wholly outside of the United  
11 States to become aware of U.S. laws. Section (f)  
12 avoids this by limiting **extraterritorial jurisdiction**  
13 **over the offense** to situations in which the interests  
14 of the United States are involved, either because the  
15 defendant is a U.S. citizen **or because the transaction**  
16 **occurred in whole or in part in the United States.**

17 S. Rep. No. 433, 99<sup>th</sup> Cong., 2d Sess., at 14 (Sept. 3, 1986)  
18 (emphasis added). Courts have long recognized that § 1956(f)  
19 provides for extraterritorial criminal jurisdiction against  
20 foreign persons that have violated §§ 1956(a)(2)(A) and (h). The  
21 *Bodmer* case is a perfect example. In *Bodmer*, the defendant was a  
22 Swiss national charged with conspiring to commit international  
23 promotion money laundering pursuant to § 1956(h) in violation of  
24 § 1956(a)(2)(A). 342 F. Supp. 2d at 190. The *Bodmer* court, in  
25 holding that non-resident foreign nationals **did not** have immunity  
26 from the money laundering statutes, stated that Congress had a:

27 [c]learly articulated intention to include foreigners  
28 within the scope of the money laundering statute. See  
18 U.S.C. § 1956(f) (**providing extraterritorial**  
19 **jurisdiction over non-United States citizens who**  
20 **violate the money laundering statute** if part of the  
21 transactions occur in the United States and involve  
22 funds or monetary instruments exceeding a value of  
23 \$10,000).

24 *Id.* at 191 (emphasis added). See also *United States v. Melvyn*  
25 *Arnold Stein*, 1994 WL 285020, at \*5 (E.D. La. Jun. 23, 1994)

1 ("If, as it is alleged in this case, a defendant, who never  
2 enters this country, initiates a transfer of funds from a place  
3 within the United States to place outside the United States,  
4 there will be extraterritorial jurisdiction, because a portion of  
5 the conduct occurred in this country").

6 Section 1956(b) - the provision on which defendants rely -  
7 was also part of the original money laundering statute enacted in  
8 1986. The legislative history reveals the obvious: that  
9 Subsection (b) is limited to **civil penalties** for violations of  
10 Section 1956:

11 Section 1956(b) authorizes the imposition of  
12 **civil penalties** on those found to have  
13 committed any of the acts proscribed in  
14 section (a). As with most civil provisions,  
15 **the standard of proof for imposition of such**  
16 **a penalty is a preponderance of the evidence.**  
17 The maximum amount of such a civil penalty is  
18 the value of the property involved in the  
19 illegal transaction or \$10,000, whichever is  
20 greater. If imposed, such a **civil penalty** is  
21 payable to the United States. This section  
22 does not create a private civil remedy, in  
23 which penalties would be payable to a  
24 prevailing private litigant.

25 S. Rep. No. 433, 99<sup>th</sup> Cong., 2d Sess., at 12 (emphasis added).  
26 Congress added the long-arm **civil** jurisdiction provision of §  
27 1956(b)(2) in 2001 as part of the USA PATRIOT ACT, Pub. L. 107-  
28 56, 115 Stat. 272, § 317. It is most noteworthy that, in doing  
so, Congress did not repeal nor did it amend the **criminal**  
extraterritorial provisions of § 1956(f), which remains in effect  
today.

The fact that § 1956(b) is limited to **civil enforcement** of  
the statute is manifest from the language of the provision  
itself, which vests federal courts with jurisdiction over foreign

1 persons "against whom the action is brought, **if service of**  
2 **process upon the foreign person is made under the Federal Rules**  
3 **of Civil Procedure** or the laws of the country in which the  
4 foreign person is found . . . . (emphasis added)." It would be  
5 nothing short of nonsensical to allow for extraterritorial  
6 **criminal** jurisdiction over foreign persons to be **perfected** upon  
7 "service of process... under the Federal Rules of Civil  
8 Procedure...." Yet this is how defendants insist on reading the  
9 statute while entirely ignoring the provision directly on point,  
10 § 1956(f).

11 Defendants' failure to cite one § 1956(b)(2) in support of  
12 their novel jurisdictional position shows that they are aware  
13 that the civil jurisdictional provisions of § 1956(b)(2) are  
14 entirely inapplicable to the criminal Indictment against them.  
15 Indeed, the only case they cite on this topic, *United States v.*  
16 *Lloyds TSB Bank Plc*, 639 F. Supp. 2d 314 (S.D.N.Y. 2009), relates  
17 to a **civil penalty** the government was seeking to enforce.  
18 Defendants' arguments fail by the express terms of the statute,  
19 and they are unable to find any support in the law for their  
20 tortured mixing and matching of civil and criminal statutes in  
21 this area.

22 Defendants' reliance on § 1956(b)(2)(A) to challenge  
23 jurisdiction with respect to charges based on 18 U.S.C. § 2  
24 offense is flawed for the same reasons. The civil penalty  
25 provisions of § 1956(b)(2)(A) have nothing to do with the  
26 criminal enforcement of international promotion money laundering  
27 under § 1956(a)(2)(A). Section 1956(f) provides this Court with  
28

1 the extraterritorial jurisdiction to prosecute the defendants  
2 and, therefore, the inclusion of 18 U.S.C. 2 is entirely  
3 appropriate. As stated in *United States v. Yakou*, “[a]bsent an  
4 indication from Congress to the contrary, the crime of aiding and  
5 abetting ‘confer[s] extraterritorial jurisdiction to the same  
6 extent as the offense [ ] that underlie[s it].’” 428 F.3d 241,  
7 173 (D.D.C. 2005) (quoting *United States v. Hill*, 279 F.3d 731,  
8 739 (9th Cir. 2002)). Congress has made no such indication and  
9 the charges set forth in the Indictment are proper.

10 Defendants’ misplaced jurisdictional arguments, premised on  
11 the entirely inapplicable provisions of § 1956(b)(2), are without  
12 foundation and should be denied.

13 D. THIS COURT IS THE PROPER FORUM FOR THE INDICTMENT

14 Defendants ask the Court to dismiss the Indictment on the basis  
15 of principles of statutory construction, international law and  
16 the Thai government’s determined judgment that it has sole  
17 jurisdiction over the alleged corrupt acts of its officials.  
18 Defendants’ arguments are without merit and should be flatly  
19 rejected. In support of their arguments, Defendants’ introduce  
20 concepts of customary international law (as set forth by the  
21 Restatement (Third) of Foreign Relations Law) in an attempt to  
22 convince this Court that because Thailand has initiated its own  
23 proceedings against the defendants for violations of its own  
24 laws, the United States lacks the ability to prosecute the  
25 defendants for completely separate violations of United States  
26 law, that are based, in part, on the same conduct.

27

28

1 In making these claims, Defendants disregard the plain  
2 language of U.S. statutes that specifically provide the  
3 appropriate jurisdiction for the charges set forth in the  
4 Indictment, mis-apply and distort customary international law in  
5 showing that the government's prosecution is "unreasonable," and  
6 completely ignore the firmly rooted and accepted practice of  
7 concurrent jurisdiction - enabling two nations to prosecute  
8 defendants if their conduct violates the laws of both nations.  
9 Moreover, contrary to defendants' assertions, Thailand has not  
10 exercised exclusive jurisdiction in this matter. Thailand's  
11 statute is merely an assertion of its own jurisdiction, it does  
12 not prevent the punishment of the same defendants by a foreign  
13 country (such as the United States) for violations of its own  
14 laws.

15 **1. Defendants' Statutory Construction Analysis Fails: The**  
16 **Presumption Against Extraterritoriality Has Been**  
17 **Rebutted By Section 1956's Plain Text.**

18 Defendants' motion to dismiss alludes only briefly to the  
19 presumption against extraterritoriality (the extraterritorial  
20 application of a statute). Def. Mot. at 19. As the Supreme  
21 Court has recently reiterated, "[i]t is a longstanding principle  
22 of American law that legislation of Congress, unless a contrary  
23 intent appears, is meant to apply only within the territorial  
24 jurisdiction of the United States." *Morrison v. National*  
25 *Australia Bank*, 130 S.Ct. 2869, 2877 (2010). However, this  
26 canon of construction is "a presumption about a statute's  
27 meaning, rather than a limit upon Congress's power to legislate,"  
28 *id.*, and may be rebutted by a "clear indication of

1 extraterritoriality." *Id.* at 2883. See also *United States v.*  
2 *Felix-Gutierrez*, 940 F.2d. 1200, 1204 (citing *United States v.*  
3 *Bowman*, 260 U.S. 94, 98 (1922) (extraterritorial application of a  
4 statute can arise from Congress's expressed intent or by a proper  
5 inference from the nature of the offense)).

6 As discussed at length in Part B of this Response, Congress  
7 has expressly provided for extraterritorial jurisdiction through  
8 § 1956(f). This clear indication of extraterritorial scope in  
9 the text of the statute is sufficient to overcome any presumption  
10 against extraterritoriality that might be implicated through a  
11 statutory construction analysis.

12 Defendants' reliance on the *Charming Betsy* canon of avoiding  
13 a construction of U.S. that conflicts with international law is  
14 similarly unfounded in this case. While the government agrees  
15 with the general proposition that, "[w]here fairly possible, a  
16 United States statute is to be construed as not to conflict with  
17 international law or with an international agreement with the  
18 U.S." *Munoz v. Ashcroft*, 339 F.3d 950, 958 (9th Cir. 2003)  
19 (quoting the Restatement, Section 114 and citing *Murray v.*  
20 *Schooner the Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804)),  
21 the *Charming Betsy* canon is irrelevant for two reasons: first and  
22 most importantly, there is no ambiguity with Congress' intent.  
23 See *United States v. Yousef*, 327 F.3d 56, 92 (2d Cir.  
24 2003)(*Charming Betsy* cannon applicable only when Congressional  
25 intent is ambiguous). In this case, there is absolutely no  
26 ambiguity in Congressional intent as Congress explicitly stated  
27 through § 1956(f) that criminal extraterritorial jurisdiction  
28

1 exists for MLCA offenses, including violations of §  
2 1956(a)(2)(A) and (h). The Court thus has no need to look to the  
3 Restatement, statutory construction, or any other expression of  
4 customary international law, in this case. Secondly, and as  
5 discussed below, *Charming Betsy* is inapplicable because  
6 application of § 1956(a)(2)(A) to defendants' conduct does not  
7 create a conflict with international law or an international  
8 agreement.

9 **2. Application of § 1956(a)(2)(A) to Defendants Does Not**  
10 **Violate Customary International Law**

11 While there is no reason to do so, even if the Court were to  
12 consult customary international law in this case, the  
13 extraterritorial application of § 1956(a)(2)(A) through § 1956(f)  
14 falls well within those norms. Defendants' analysis of those  
15 principles is badly off the mark. International law requires no  
16 more from a nation's exercise of extraterritorial jurisdiction  
17 than that it comport with a recognized basis to prescribe and be  
18 reasonable.<sup>29</sup> The application of § 1956(a)(2)(A) to defendants'  
19 money laundering activities easily meets those standards.

20 As applied by the Ninth Circuit, customary international law  
21 requires a two stage analysis: (1) whether a basis for  
22 jurisdiction to prescribe exists<sup>30</sup>; and (2) whether the exercise

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23  
24 <sup>29</sup> Defendants do not base their claim on any statute, treaty  
25 or convention through which the United States has provided an  
26 individual right under international law principles to attack §  
27 1956(a)(2)(A). Indeed, there is none.

28 <sup>30</sup> The Restatement description of customary international law  
distinguishes between jurisdiction to prescribe (a nation's  
jurisdiction to make its law applicable to a case) and jurisdiction  
to adjudicate (a nation's jurisdiction to subject persons to the

1 of jurisdiction to prescribe is reasonable. *United States v.*  
2 *Vasquez-Velasco*, 15 F.3d 833, 840 (9th Cir. 1994). It is well-  
3 settled under customary international law that "a state has  
4 jurisdiction to prescribe law with respect to...conduct that  
5 wholly or in substantial part, takes place within its territory."  
6 Restatement § 401(a). Here, the defendants knowingly used the  
7 United States' financial system in order to promote two separate  
8 unlawful activities - the Greens' FCPA offenses as well as  
9 defendants' offenses against a foreign nation, that is, Thailand.  
10 Each is specifically enumerated as such within the MLCA and  
11 represents conduct, the promotion of which through international  
12 transfers of money from or to the United States, Congress has  
13 explicitly deemed criminal under the laws of **this** nation.

14 The financial transactions **in the United States** that  
15 defendants caused to promote those SUAs totaled close to  
16 \$1,800,000 from 2002-2007. Ind. ¶ 11. These international  
17 transfers originated from numerous bank accounts within the  
18 Central District of California and were transferred, at the  
19 express direction of defendant Juthamas Siriwan, to numerous bank  
20 accounts all over the world in the name of defendant Jittisopa  
21 Siriwan - including bank accounts in Singapore, the United  
22 Kingdom, and the Isle of Jersey. Ind. ¶ 11, 18, 19.  
23 A basis for jurisdiction plainly exists.

24  
25  
26 \_\_\_\_\_  
27 process of its courts). See §§ 401(a),(b). Although defendants  
28 phrase their argument in terms of whether this court is the "proper  
forum," their real argument concerns U.S. jurisdiction to  
prescribe, as the authorities upon they rely makes clear.

1 Defendants' arguments relate less to the basis of  
2 jurisdiction under customary international law and more to a  
3 challenge of the "reasonableness" of the government's  
4 prosecution. While this Court need not decide that the  
5 government's prosecution in this case is "reasonable," since  
6 Congress has clearly expressed its intention that the statute  
7 apply to conduct committed outside the United States, even if  
8 "reasonableness" under customary international law were at issue  
9 here, the government's prosecution of defendants entirely  
10 satisfies that standard. As demonstrated below, defendants'  
11 arguments rely on a distortion of the facts and self-serving  
12 proclamations that have little or no substance or support.<sup>31</sup>

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13  
14  
15 <sup>31</sup> Customary international law recognizes two additional  
16 bases for jurisdiction to prescribe: (1) jurisdiction on the basis  
17 of effect in the United States, see Restatement § 402(1)(c); and  
18 (2) the "protective principle." See *id.* § 402 cmt. F. Since the  
19 defendants used a bank in the United States to promote the SUAs,  
20 their conduct plainly had serious and harmful effects within this  
21 country. Consequently, jurisdiction under the "effects" basis is  
22 present and consistent with customary international law. In  
23 addition, the United States has a strong national interest in  
24 maintaining the integrity of its financial institutions by  
25 protecting them from being used to commit money laundering offenses  
26 in the United States to promote bribery of foreign government  
27 officials or commit offenses against foreign nations. These  
28 interests justify application of the "protective" basis of  
jurisdiction as well. See, e.g., *Vasquez-Velasco*, 15 F.3d at 840-  
41 (applying 18 U.S.C. § 1959, violent crimes in aid of  
racketeering activity, to defendant's participation in murders of  
two Americans in Mexico comported with international law); *Felix-  
Gutierrez*, 940 F.2d at 1205-06 (conviction for being accessory  
after fact of murder of DEA agent, committed in Mexico, was  
consistent with international law). This case is on even stronger  
footing than those cited above, however, because the statute at  
issue here, § 1956(f), contains a clear Congressional expression of  
extraterritorial application, whereas the statutes applied in the  
cases above did not.

1 Defendants' application of the Restatement's reasonableness  
2 factors does not in any way call into question the reasonableness  
3 of the Indictment or prosecution of defendants. Per § 403 of the  
4 Restatement, whether exercise of jurisdiction over a person or  
5 activity is unreasonable is determined by evaluating all relevant  
6 factors, including, where appropriate:

- 7 (a) the link of the activity to the territory of the  
8 regulating state, i.e., the extent to which the  
9 activity takes place within the territory, or has  
10 substantial, direct, and foreseeable effect upon or in  
11 the territory;
- 12 (b) the connections, such as nationality, residence, or  
13 economic activity, between the regulating state and the  
14 person principally responsible for the activity to be  
15 regulated, or between that state and those whom the  
16 regulation is designed to protect;
- 17 (c) the character of the activity to be regulated, the  
18 importance of regulation to the regulating state, the  
19 extent to which other states regulate such activities,  
20 and the degree to which the desirability of such  
21 regulation is generally accepted.
- 22 (d) the existence of justified expectations that might be  
23 protected or hurt by the regulation;
- 24 (e) the importance of the regulation to the international  
25 political, legal, or economic system;
- 26 (f) the extent to which the regulation is consistent with  
27 the traditions of the international system;
- 28 (g) the extent to which another state may have an interest  
in regulating the activity; and
- (h) the likelihood of conflict with regulation by another  
state.

As set forth below, defendants' proffered arguments with  
respect to these factors fall well short of a showing of lack of  
"reasonableness."

1        Factor (a): In support of this factor, defendants boldly  
2 state that the "center of gravity" of events giving rise to  
3 defendants' culpability is in Thailand. Def. Mot. At 21. In  
4 making this claim, defendants conveniently ignore the \$1,800,000  
5 defendants caused to be wired from the United States to bank  
6 accounts all over the world. Defendants also conveniently ignore  
7 the much larger scope of activity in the United States that  
8 occurred as a direct result of defendant Juthamas Siriwan  
9 awarding contracts to the Greens from 2002-2006, such as the sub-  
10 contracting with third party companies, and the creation of  
11 numerous shell companies to service the tourism contracts. Ind.  
12 ¶¶ 17, 21, 22. They also fail to mention the significant  
13 activity that took place at the Los Angeles office of the Tourism  
14 Authority of Thailand in connection with awarding the contracts  
15 to the Greens.<sup>32</sup> Moreover, while defendants would like to claim  
16 that since the film festival was held in Thailand there is a  
17 strong link to Thailand, the fact remains that the links are much  
18 stronger in the United States and abroad. Indeed, defendants'  
19 kickback money did not even make it back to Thailand. Ind. ¶ 11.

20        Factor (b): Defendants' sole argument in this regard is  
21 that they are Thai citizens residing in their home country.  
22 Defendants fail to cite any authority that stands for the  
23 proposition that prosecution of a foreign national living in his  
24 or her own home country by itself, makes such prosecution  
25 unreasonable.

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27        <sup>32</sup> This fact was proved extensively during the *Green* trial  
28 through the testimony of "Tippi."

1        Factor (c): Defendants incorrectly claim in this category  
2 that as to "the underlying specified acts resting on Thai laws"  
3 that Thailand has "asserted the fullest jurisdiction consistent  
4 with international law." Def. Mot. at 22. Defendants' further  
5 claim that the MLCA has limited jurisdiction. Both assertions  
6 are false. As discussed further in sub-part 3 below, defendants  
7 have provided no evidence that Thailand has asserted its  
8 jurisdiction over this matter in such a way that forecloses  
9 prosecution by the United States. Indeed, Thailand has yet to  
10 even consider the United States' interests in this matter as a  
11 request for extradition has not been transmitted. As for the  
12 scope of United States' jurisdiction, as discussed previously at  
13 length, §1956(f) provides ample jurisdiction to prosecute the  
14 defendants pursuant to the statutes charged.

15        Factors (d)-(f): Defendants' have in fact affirmed the  
16 United States' own interests in prosecuting this case. As  
17 defendants state in their motion, "the United States has an  
18 interest in preventing its financial institutions from being used  
19 to launder proceeds of unlawful activity..." Def. Mot. at 21.  
20 Defendants then attempt to attack that interest through arguments  
21 that once again fall back on their incorrect claims of the  
22 government's perceived lack of jurisdiction and/or defendants'  
23 claims that Thailand has exercised exclusive jurisdiction.  
24 Thailand's alleged assertion of exclusive jurisdiction will be  
25 addressed in sub-part 3 below.

26        Factor (h). Defendants' here attempt to reconcile their  
27 admission that the United States has a legitimate interest in  
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1 this area with their argument that Thailand has a superior  
2 interest. Despite defendants' desire for this to be a  
3 "tie-breaker" situation, it is not. Def. Mot. at 16, 24. On the  
4 contrary, there is no tie to be broken in this case.  
5 International law plainly recognizes that two sovereigns can  
6 reasonably prescribe the same conduct. See Restatement §403(3) &  
7 cmt d ("Exercise of jurisdiction by more than one state may be  
8 reasonable for example, when one state exercises jurisdiction on  
9 the basis of territoriality and the other on the basis of  
10 nationality; or when one state exercises jurisdiction over  
11 activity in its territory and the other on the basis of the  
12 effect of that activity in its territory").

13 Moreover, there is "no conflict of regulation by another  
14 state." Restatement § 403(2)(h). There is no tension between  
15 the Thai bribery laws and the extraterritorial application of §  
16 1956(a)(2)(A). Thailand is pursuing allegations completely  
17 different from those of the United States. As stated in Part B  
18 of this Response, the government is **not** charging the defendants  
19 with violations of bribery or the offenses that serve as the SUAs  
20 being promoted. Defendants are charged with violating United  
21 States money laundering laws for promoting those offenses. That  
22 Thailand wishes to prosecute defendants for whatever violations  
23 of Thai law their conduct represents is not in any way in  
24 conflict with the prosecution of the defendants by the United  
25 States for using its financial system to promote specified  
26 unlawful activities, in violation of § 1956(a)(2)(A). In  
27 addition, and as discussed further below, Section 9 of Thailand's  
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1 Penal Code poses no conflict - concurrent jurisdiction among  
2 nations is a widely recognized and well accepted.

3 **3. Section 9 of Thailand's Penal Code Is Not An Assertion**  
4 **By Thailand Of Sole Jurisdiction Over The Offenses In**  
5 **The Indictment.**

6 Defendants' claim that Thai Penal Code Section 9 is an  
7 assertion of Thailand's superior interests or that it provides  
8 exclusive or sole jurisdiction in this matter so as to prohibit  
9 the United States from prosecuting the defendants is incorrect.

10 Contrary to defendants' suggestions, Thailand has not  
11 claimed a superior interest in this matter, nor has the Thai  
12 government, through Section 9 or otherwise, issued a "determined  
13 judgment that it has sole jurisdiction over alleged corrupt acts  
14 of its officials." Def. Mot. at 16. Indeed, the United States  
15 has not received any indication, formally or informally, that  
16 Thailand has asserted sole jurisdiction over this matter, is  
17 claiming superior interests, or has otherwise expressed  
18 disapproval of the investigation leading up to the Indictment or  
19 the return of the Indictment. (Lopez Decl. ¶2). Thailand is well  
20 aware of the government's investigation into defendants'  
21 violation of United States' money laundering laws and has  
22 provided, via the Mutual Legal Assistance Process and at the  
23 government's request, materials in connection with the  
24 investigation and indictment of the defendants. (Lopez Decl. ¶  
25 3). Thailand has never claimed sole jurisdiction over these  
26 matters. *Id.* at ¶2. It is up to Thailand, not the defendants,  
27 to make assertions of superior interests or sole jurisdiction.

28 Defendants' reliance on Section 9 of the Thai Penal Code is

1 entirely misplaced. Section 9 simply affirmatively states that  
2 government officials that commit offenses "as provided in Section  
3 147 to Section 166 . . . outside the Kingdom shall be punished in  
4 the Kingdom." Def. Mot. at 2. This statute does not imply or  
5 suggest exclusive jurisdiction - it is merely an assertion of its  
6 own jurisdiction. The statute does not prevent the punishment of  
7 the same defendants by a foreign country (such as the United  
8 States) for violations of its own laws. Even assuming that this  
9 was an assertion of sole jurisdiction for those offenses, this  
10 section in no way curtails the government's jurisdiction to  
11 prosecute defendants for violations of its money laundering laws.  
12 To reiterate, the government is **not** prosecuting the defendants  
13 for violation of Section 147 to Section 166 of the Thai Penal  
14 Code. Therefore, Section 9 is completely irrelevant to the  
15 jurisdiction of the United States in this matter.

16 Defendants' claims in this area also completely ignore the  
17 well-accepted practice of concurrent jurisdiction. As the  
18 Permanent Court of International Justice recognized in its  
19 seminal *Lotus* decision, customary international law permits  
20 concurrent jurisdiction. When a course of conduct crosses  
21 national borders "[i]t is only natural that each [nation] should  
22 be able to exercise jurisdiction and to do so in respect of the  
23 incident as a whole. It is therefore a case of concurrent  
24 jurisdiction." *The Case of the S.S. "Lotus,"* P.C.I.J., Ser. A,  
25 No. 10, at 30-31 (1927); see also *United States v. Corey*, 232  
26 F.3d 1166, 1179 (9th Cir. 2000)("[t]hus, concurrent jurisdiction  
27 as such raises no eyebrows among international lawyers.") The  
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1 Restatement itself notes that § 403(3) "applies only when one  
2 state requires what another prohibits, or where compliance with  
3 the regulations of two states exercising jurisdiction  
4 consistently with this section is otherwise impossible. It does  
5 not apply where a person subject to regulation by two states can  
6 comply with the laws of both."). That type of conflict is simply  
7 not present here.

8 Moreover, purported tensions with Thailand arising from the  
9 extraterritorial application of '1956(a)(2)(A) are best left to  
10 the political branches of the respective governments to sort out.  
11 *Id.* at n.9 ("we must presume that the President has evaluated the  
12 foreign policy consequences of such an exercise of U.S. law and  
13 determined that it serves the interests of the United States");  
14 *accord* Restatement, § 403(3), cmt e ("Subsection (3) is addressed  
15 primarily to the political departments of government, but it may  
16 be relevant also in judicial proceedings").

17 In that vein, the United States and Thailand have an  
18 extradition treaty in force which will require the Thailand,  
19 through its own judicial process, to decide whether to approve  
20 defendants' extraditions. Extradition Treaty with Thailand,  
21 U.S.-Thail, Dec. 14, 1983, S. TREATY DOC. NO. 98-16 (1984). In  
22 addition, if the extraditions are approved by the judiciary, the  
23 Thai executive branch will decide whether to actually surrender  
24 the defendants to the United States. In considering the United  
25 States' extradition requests, Thai officials will, *inter alia*,  
26 determine if the defendants' money laundering activities charged  
27 in the Indictment constitute an extraditable offense under the  
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1 treaty (Article 1). Thai officials, even if they approve the  
2 defendants' extraditions, could delay the surrender until any  
3 possible Thai prosecution and sentence has been completed  
4 (Article 12).

5 Perhaps most significantly, Article 4 of the treaty,  
6 entitled "Dual Jurisdiction," provides "The Requested State may  
7 refuse to extradite a person claimed for a crime which is  
8 requested by its laws as having been committed in whole or in  
9 part in its territory, or in a place treated as its territory,  
10 provided it shall proceed against the person for that crime  
11 according to its laws." This provision would allow Thailand to  
12 deny the United States requests for defendants' extraditions if  
13 they choose to prosecute them for money laundering. As a result,  
14 the extradition treaty provides established mechanisms for  
15 Thailand and the United States to accommodate any foreign  
16 relations concerns which either may perceive in this case.

17 Defendants' arguments and conclusory statements in this area  
18 are nothing more than an attempt to convince this Court to ignore  
19 the process for resolving the order of prosecution among nations  
20 (set out through the extradition process), ignore the statutory  
21 authority set out by Congress regarding extraterritorial  
22 application of the MLCA (as set forth by § 1956(h)), and distort  
23 the application of customary international law. There has been  
24 no violation of international law and defendants' motion should  
25 be denied.

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**III.**

**CONCLUSION**

Under the present circumstances, this Court should DENY defendants' motion to dismiss.

DATED: September 9, 2011                      Respectfully submitted,

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