

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

UNITED STATES OF AMERICA,)	
)	April 24, 2018
)	
- versus -)	Greenville, SC
)	
CHARLEY DEAN HILL,)	8:17-1187-1
)	
Defendant.)	

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE HENRY M. HERLONG, JR.
SENIOR UNITED STATES DISTRICT JUDGE, presiding

A P P E A R A N C E S:

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The proceedings were taken by mechanical stenography and
the transcript produced by computer.

1 Tuesday, April 24, 2018

2 **THE COURT:** We'll take up the Hill matter now.

3 **MR. STEPHENS:** Your Honor, if it please the
4 Court? Before we begin with any substantive matters, if I
5 might put a couple of things on the record about who is
6 representing the Government in this case. This case has
7 bounced around the Department of Justice for some time.
8 This young lady standing next to me, Jessee
9 Alexander-Hoeppner, was assigned the case --

10 **THE COURT:** What's the last name?

11 **MR. STEPHENS:** Alexander-Hoeppner,
12 H-O-E-P-P-N-E-R. She was assigned to the case about three
13 months ago. And she is the primary attorney representing
14 the Department of Justice on the case. I was asked about
15 two weeks ago to become involved in the case. She and
16 I --

17 **THE COURT:** Well, she's way up in Washington.
18 I'm going told hold you responsible.

19 **MR. STEPHENS:** Yes, sir, Your Honor, I
20 understand that fully. But, Your Honor, I'm just saying
21 we are in for the duration. It's not going to be switched
22 around or changed any more.

23 **THE COURT:** Thank you.

24 **MS. ALEXANDER-HOEPNER:** Thank you, Your Honor.

25 **THE COURT:** Well, everybody can get to the

1 tables.

2 Ms. Hoepfner, I would like to discuss with you
3 what I understand to be matters which involved, I guess
4 you would say, a timetable in this matter. It is the
5 Government's position as I understand it that there began
6 an investigation in Iraq in the early part of 2010; is
7 that correct?

8 MS. ALEXANDER-HOEPFNER: Yes, Your Honor.

9 THE COURT: And this defendant, would you say,
10 was also one of the subjects of the investigation?

11 MS. ALEXANDER-HOEPFNER: That's correct, Your
12 Honor.

13 THE COURT: And there was an interview February
14 the 11th, 2010, of this defendant by the FBI of which is
15 the basis of this indictment for 18 USC 1001; is that
16 right?

17 MS. ALEXANDER-HOEPFNER: That's correct.

18 THE COURT: And then there's a question about
19 the defendant's motion to suppress which I will get to
20 later.

21 Now, as I understand it, following the interview
22 of Mr. Hill, the United States made an initial request to
23 Iraq for documents of legal assistance, I guess, mainly
24 for documents; is that right?

25 MS. ALEXANDER-HOEPFNER: That's correct, Your

1 Honor.

2 THE COURT: And that was done some
3 four-and-a-half years after Mr. Hill was interviewed; is
4 that right?

5 MS. ALEXANDER-HOEPNER: Approximately, yes,
6 Your Honor.

7 THE COURT: And not that it matters, but it
8 might. Is there a reason for that time lag?

9 MS. ALEXANDER-HOEPNER: Your Honor, I was not
10 involved with that investigation.

11 THE COURT: Well, now, I appreciate you coming
12 down here. And it has been represented by Mr. Stephens,
13 in whom I have great confidence, that you are totally
14 responsible for this case.

15 MS. ALEXANDER-HOEPNER: I am.

16 THE COURT: And I realize you may not have been
17 even out of undergraduate school at that time; is that
18 right?

19 MS. ALEXANDER-HOEPNER: I'm older than I look,
20 Your Honor.

21 THE COURT: Pardon?

22 MS. ALEXANDER-HOEPNER: I'm older than I look,
23 Your Honor. My understanding of --

24 THE COURT: Well, you weren't with the
25 Department of Justice then?

1 MS. ALEXANDER-HOEPFNER: I was not, no.

2 THE COURT: But anyway, you are responsible for
3 the Department of Justice in this case. And I don't want
4 to hear again that you weren't involved in something. You
5 can just tell me you don't know if you don't know. But as
6 I understand it from a factual standpoint, I just -- I
7 want to go down a timeline with you to see that I've got
8 it right.

9 MS. ALEXANDER-HOEPFNER: Yes, Your Honor.

10 THE COURT: He was interviewed in February of
11 2010. And August the 10th, 2014, my notes indicate that
12 there was an official request made to Iraq for legal
13 assistance.

14 MS. ALEXANDER-HOEPFNER: Yes, Your Honor.

15 THE COURT: Question, why? What happened in the
16 four-and-a-half years while this request was not made
17 prior to that?

18 MS. ALEXANDER-HOEPFNER: My understanding of
19 what happened at that point was that shortly after the
20 interview that took place in February 2010, Mr. Hill was
21 actually for a period of time cooperating with the
22 Government's investigation that included an investigation
23 into his employer while he was in Iraq and other
24 individuals associated with that company and -- pertaining
25 to his actions and those other employees' actions.

1 **THE COURT:** So is it your impression then that
2 the Government did not need documents and information from
3 Iraq in its case, in its investigation?

4 **MS. ALEXANDER-HOEPFNER:** It did need these
5 documents as well. My understanding is that there was a
6 great deal of investigation going on prior to that request
7 from sources that were not requiring the assistance of the
8 Government in Iraq.

9 **THE COURT:** Well, as you -- you understand what
10 is made in the pleadings which have been filed, it has
11 been alleged and it appears to be the case that there is a
12 five-year statute of limitations. So if the investigation
13 was a lot more than just his interview in February of
14 2010, the investigation began prior to the interview or
15 maybe that's when it began, I don't know. But
16 irrespective of that, the statute of limitations would
17 have run five years from that day, which would have been
18 February of 2015.

19 **MS. ALEXANDER-HOEPFNER:** Yes, Your Honor, so
20 just to clarify factually, my understanding is that the
21 investigation began in late January of 2010. Mr. Hill was
22 interviewed a couple of weeks later.

23 **THE COURT:** Okay. So the statute of limitations
24 on any offenses, whether it's Mr. Hill or anybody else,
25 would have run -- well, at the least -- well, let me say,

1 you began an investigation of crimes which had already
2 been committed, correct?

3 **MS. ALEXANDER-HOEPFNER:** Yes, Your Honor.

4 **THE COURT:** And you don't know when they would
5 have been committed, but if they were back in 2014, the --
6 I mean, 2009, the statute would have run -- could have
7 already run in August of 2014?

8 **MS. ALEXANDER-HOEPFNER:** So my -- the
9 Government's position as we've laid out in our previous
10 filing, but I'm happy to discuss in more detail
11 particularly in light of the more particularized motion we
12 received last week from the defense, is that the statute
13 of limitations, while five years in general, was tolled.
14 And there have been two bases under which --

15 **THE COURT:** Oh, I'm going to get to all the
16 tolling.

17 **MS. ALEXANDER-HOEPFNER:** Okay.

18 **THE COURT:** I'm going to get to that. I'm
19 trying to get a grasp --

20 **MS. ALEXANDER-HOEPFNER:** Yes, Your Honor.

21 **THE COURT:** -- on -- well, let me ask you this.
22 This defendant worked for a company who had, as I
23 understand it, generally certain security aspects and had
24 a contract with the federal government; is that right?

25 **MS. ALEXANDER-HOEPFNER:** That's correct.

1 **THE COURT:** And it appears that there was
2 suspicions that there was some wrongdoing as far as funds
3 between that company or Mr. Hill involving the security
4 work in Iraq; is that right?

5 **MS. ALEXANDER-HOEPNER:** Generally speaking,
6 yes.

7 **THE COURT:** So at some point -- at some point
8 the suspected wrongdoing would have occurred sometime in
9 2009.

10 **MS. ALEXANDER-HOEPNER:** Yes, Your Honor. My
11 understanding is it may have been continuing up until the
12 point of his termination in 2010.

13 **THE COURT:** Right.

14 **MS. ALEXANDER-HOEPNER:** But it certainly was
15 going on in 2009.

16 **THE COURT:** Okay. Well, we can move on from
17 there. Irrespective of that, the Government waited until
18 the statute -- five-year statute of limitations had almost
19 run before it even requested information from the
20 Government of Iraq; is that right?

21 **MS. ALEXANDER-HOEPNER:** That's correct.

22 **THE COURT:** All right. And then that was in
23 August. And in September, the Government filed an ex
24 parte motion to the District Court in Nevada for 3292,
25 Section 3292 tolling.

1 MS. ALEXANDER-HOEPFNER: Yes, Your Honor.

2 THE COURT: In which it set forth that it was
3 investigating all types of wrongdoing and set it forth and
4 said in addition thereto, or so to speak.

5 MS. ALEXANDER-HOEPFNER: Yes.

6 THE COURT: All right. So going back, you don't
7 know why there was a four-and-a-half year delay before
8 information was requested from the Government of Iraq?

9 MS. ALEXANDER-HOEPFNER: I can only speculate,
10 Your Honor.

11 THE COURT: Well, you've looked at the file.

12 MS. ALEXANDER-HOEPFNER: I have. I have looked
13 at certain documents. It's a very voluminous file
14 pertaining to the entire investigation. But my
15 understanding is that there was -- there were other
16 investigative steps being taken. In general, as well,
17 these requests to foreign countries can actually have a
18 fairly long lead time before they're officially conveyed
19 as well. So my guess would be that the decision to make
20 the request to the --

21 THE COURT: Well, and I don't know whether this,
22 whether it matters, but it seems -- it may be that it's
23 disingenuous if you're telling me it's typical practice
24 for the Government when it's involving crimes involving
25 foreign countries to let the five-year statute almost run

1 before it requests a condition where they can go to the
2 court for a Section 3292 tolling.

3 **MS. ALEXANDER-HOEPFNER:** That's not what I'm
4 saying. I'm just saying that although it was getting
5 closer towards the end of that period, the process would
6 have been started prior to the date on which it was
7 conveyed. I would also note that the statute itself only
8 require -- and by the statute itself, I mean 1392, only
9 requires that the application be filed prior to the
10 running. It doesn't require a specific time within the
11 statutory period that that request has to be filed. And
12 this was, it's undisputed, filed before the statute would
13 have run.

14 **THE COURT:** Well, it has to be filed before the
15 statute runs.

16 **MS. ALEXANDER-HOEPFNER:** Right.

17 **THE COURT:** Sure, the five-year statute. All
18 right. So they granted you relief. And the maximum under
19 the statute is three years.

20 **MS. ALEXANDER-HOEPFNER:** Yes, that's right.

21 **THE COURT:** All right. And maybe you can
22 explain this. And I'm not sure whether it matters or not.
23 It could matter if you get credit for it. But in
24 September -- well, the district court granted the 3292
25 tolling September the 12th. And two weeks later, the

1 Government entered into a -- some 25 or 26-day tolling
2 agreement with the defendant.

3 MS. ALEXANDER-HOEPFNER: Your Honor, the -- no,
4 the month is correct, the year is not.

5 THE COURT: What did I say, '17?

6 MS. ALEXANDER-HOEPFNER: Yes. It was '17 when
7 the tolling orders were entered.

8 THE COURT: I'm sorry.

9 MS. ALEXANDER-HOEPFNER: That's all right.

10 THE COURT: '17. Tell me. Why was that?

11 MS. ALEXANDER-HOEPFNER: My understanding is
12 that at that point the Government and Mr. Hill were trying
13 to finalize a plea between them and --

14 THE COURT: Well, why did the Government need 26
15 days at that point?

16 MS. ALEXANDER-HOEPFNER: Because I believe the
17 three-year -- working under the assumption that the
18 statute had been tolled for three years, there was a
19 concern about that approaching deadline. So they were
20 trying to --

21 THE COURT: Well, now wait a minute. Bear with
22 me and correct me when I'm wrong. If the five years went
23 to '15, 2015, then three years would have gone to 2018.

24 MS. ALEXANDER-HOEPFNER: Yes, sir. So we were
25 in the --

1 **THE COURT:** And in September of '17 you asked
2 for 26 days, you went to him and got twenty -- an
3 agreement of 26 days.

4 **MS. ALEXANDER-HOEPNER:** My understanding is
5 that they were trying to minimize the amount of time being
6 requested to what they thought they needed and not some --

7 **THE COURT:** But -- I know. But you still had
8 until, say, February of '18.

9 **MS. ALEXANDER-HOEPNER:** I think that the theory
10 was just because they wanted to leave a buffer just in
11 case that, as ended up being the situation, the plea did
12 not come to fruition.

13 **THE COURT:** Well, then you've got another
14 agreement with him for ten days.

15 **MS. ALEXANDER-HOEPNER:** Yes, because again --

16 **THE COURT:** And still -- you're still in -- back
17 in '17 and you've still got all the way to February,
18 arguably, of '18.

19 **MS. ALEXANDER-HOEPNER:** My understanding is my
20 colleagues were trying to anticipate possible
21 eventualities in not being able to resolve the plea, which
22 is what, in fact, happened later in 2017.

23 **THE COURT:** Well, see, that's what I cannot
24 comprehend. Because if you go to him in September of '17
25 and you ask for 26 days, and you've got until February of

1 '18, I mean, either he's going to enter a plea or -- a
2 plea agreement or he's not. And if he's not, you still
3 had time. You still had, what, five months? And then you
4 go back to him after the 26 days and say we need ten more
5 days but you still had until February of '18.

6 **MS. ALEXANDER-HOEPFNER:** Your Honor, my
7 understanding is just my colleagues were trying to build
8 in a little bit more time as these things can sometimes
9 take a little bit more time than anticipated. And because
10 plea negotiations were active and ongoing at that point,
11 and the parties were willing to enter a --

12 **THE COURT:** Well, it makes -- anyway. Okay.

13 So it brings us to where we are now. And the
14 defendant has moved to dismiss because the indictment has
15 been brought outside the statute of limitations. And for
16 the indictment to have been within the statute of
17 limitations, you have to add together the five-year
18 statute of limitations, and add to that the maximum under
19 3292, and then add to that at least one or both of these
20 total of 36 days tolling agreements, right?

21 **MS. ALEXANDER-HOEPFNER:** Yes, Your Honor. It
22 was a couple of days beyond the eight years under the
23 tolling agreement.

24 **THE COURT:** So even under the ten-year and -- I
25 mean -- excuse me, the five-year and the three-year, it

1 still was brought outside the time?

2 **MS. ALEXANDER-HOEPFNER:** Yes, it turns out my
3 colleagues were a little bit prescient in that.

4 **THE COURT:** Pardon?

5 **MS. ALEXANDER-HOEPFNER:** My colleagues were a
6 little bit prescient in anticipating the need for some
7 additional tolling.

8 **THE COURT:** I don't understand that word you
9 said. Pressured?

10 **MS. ALEXANDER-HOEPFNER:** Prescient. I just
11 meant that they had correctly anticipated they might need
12 more time, so they --

13 **THE COURT:** When?

14 **MS. ALEXANDER-HOEPFNER:** When executing the
15 tolling agreements in the fall of 2017.

16 **THE COURT:** Okay. I can hear from you fully
17 later.

18 But on what we've just discussed, do you have
19 any comments at this time?

20 **MR. FINDLING:** Ms. Goldberg will address that
21 with Your Honor.

22 **MS. GOLDBERG:** Yes, Your Honor. I mean, I think
23 at first with respect to --

24 **THE COURT:** Excuse me, I didn't mean to
25 interrupt you. Were you involved, you and your lawyers,

1 involved at that point? Or were the --

2 **MS. GOLDBERG:** We were not, Your Honor.

3 **THE COURT:** -- other lawyers --

4 **MS. GOLDBERG:** We were more recently retained.

5 **THE COURT:** Okay. Okay.

6 **MS. GOLDBERG:** With all due respect to the
7 Government and Ms. Alexander-Hoepfner and her --

8 **THE COURT:** Turn that up, please.

9 **MS. GOLDBERG:** -- and her inability to know what
10 happened before she got involved, the last counsel for the
11 Government who was here at the last pretrial conference
12 held here was involved at the time when these initial
13 requests were made. And if the Government wanted to meet,
14 which is their burden in this situation, to, obviously,
15 show that the statute of limitations has not been tolled,
16 Mr. Fuhr could be here to explain to the Court why these
17 lapses of four-and-a-half years occurred. But
18 Ms. Alexander-Hoepfner, obviously, had no knowledge before
19 she got here. And again, they cannot show the Court
20 today, which is their burden, why that lapse happened.

21 I do want to point out a couple of issues. And
22 we can get into the tolling and the 3292 and whether that
23 applies or not, which, obviously, we do not concede does.
24 But I do want to point to a couple of issues in the
25 statute itself.

1 THE COURT: Well, now, I was going to get into
2 that. But, I mean, on this --

3 MS. GOLDBERG: Okay.

4 THE COURT: -- timeline --

5 MS. GOLDBERG: Right. And, Your Honor, to that
6 issue, I believe that the suspension should have begun
7 when the request was made, which was July 29th, 2014,
8 which I believe was the date of the official request.

9 THE COURT: Now start over. Say that again.

10 MS. GOLDBERG: I believe the date of the
11 official request to the competent authority of Iraq that
12 was made by the Government, I believe that the date was
13 July 29th, 2014.

14 THE COURT: Wait a minute, let me see what my
15 notes say.

16 MS. GOLDBERG: That was the date of the...

17 THE COURT: I've got August the 10th, 2014,
18 official request made to Iraq. And that's why I asked
19 her, that's four-and-a-half years after -- well, after he
20 was interviewed.

21 MS. GOLDBERG: Your Honor, and this may be a
22 matter, the date of the request itself is July 29th, 2014.

23 THE COURT: Okay. I don't know where that
24 August 10th came from.

25 MS. ALEXANDER-HOEPFNER: Your Honor, I can

1 address that quickly if you're interested. Generally,
2 what happens is the date on the MLAT request itself is the
3 date it was approved by the United States. It then takes
4 a little time to actually get conveyed to the competent
5 authority. There's translation issues, it has to go
6 through official channels.

7 **THE COURT:** Okay. Well, thereabouts, the end of
8 the summer of 2014.

9 **MS. GOLDBERG:** Thereabouts, Your Honor. And
10 also as per the statute itself, the suspension is to begin
11 on that date and it is to end whenever there's a final
12 action taken by that country, which, obviously again, is
13 the Government's burden here to show. Although they've
14 alleged in their pleadings there was no final action
15 taken, again these are the burdens of the Government to
16 show that these --

17 **THE COURT:** I understand you raised that.
18 Is there any official record that you've
19 submitted of that?

20 **MS. ALEXANDER-HOEPFNER:** There is no official
21 paperwork of that. My colleague, David Fuhr, who was
22 referenced previously, who was involved at the time of the
23 MLAT request and through to the indictment, has conferred
24 with the relevant attorney in the Office of International
25 Affairs, which is the Department of Justice that handles

1 the transmission and receipt of any proceeds from --

2 **THE COURT:** So for whatever it matters, it's the
3 position of the Government that the Government of Iraq
4 never responded.

5 **MS. ALEXANDER-HOEPFNER:** Yes, and that's
6 something that's been --

7 **THE COURT:** And the significance of that is, if
8 that's true, that gives you the full three years.

9 **MS. ALEXANDER-HOEPFNER:** That's correct, Your
10 Honor.

11 **THE COURT:** And is what's-his-name not here
12 because he didn't want to answer my four-and-a-half year
13 question?

14 **MS. ALEXANDER-HOEPFNER:** My understanding is
15 that he had another commitment in a different district
16 today. I'm sure he would have been delighted to come.

17 **THE COURT:** I'm glad to have you, but I'm just
18 curious about that.

19 All right. Tell me why -- let's just get to the
20 meat of the 3292. Isn't -- the defendant's contend that
21 3292 is offense specific.

22 **MS. ALEXANDER-HOEPFNER:** Yes, Your Honor, and it
23 is.

24 **THE COURT:** Do you agree with that?

25 **MS. ALEXANDER-HOEPFNER:** I do but not to the

1 extent that they take offense-specific to mean. If Your
2 Honor were to look at the case law that they themselves
3 cite, for example, one of the cases they cite for this
4 principle is US v. Neill from the District of DC. That
5 case and also US v. Ratti, which relies on that case,
6 acknowledges that -- and this is the quote, While it would
7 be unreasonably formalistic as well as unnecessary to
8 impose a requirement that the Government list by citation
9 the statutes that may have been violated, the request for
10 evidence must nevertheless be reasonably specific in order
11 to elicit evidence of the alleged violations under
12 investigation by the grand jury.

13 The Government contends that what that means is
14 that, yes, the request has to be specific enough to
15 solicit evidence that is relevant to the offense being
16 tolled. But not that either the MLAT request or that the
17 order granting tolling by the district court needs to
18 enumerate specifically the offense that is later charged.

19 **THE COURT:** I agree with that. But that
20 offense -- you're not contending, are you, that once you
21 get a 3292 order that any offense is covered, are you?

22 **MS. ALEXANDER-HOEPFNER:** No, Your Honor. But
23 what the Government is contending is that the evidence
24 requested from the Government of Iraq under the MLAT is in
25 fact relevant to the instant offense. And the reason that

1 is is because the statement that was made to the
2 investigators in the context of this investigation writ
3 large was about what Mr. Hill was allegedly doing with the
4 proceeds of the fraudulent scheme that he was conducting
5 overseas.

6 In order to carry its burden, the Government
7 must show that the statement that was not only false but
8 also material to law enforcement when it was made and the
9 evidence requested of the Government of Iraq included
10 evidence that would go directly to proving, essentially,
11 where Mr. Hill was getting the cash that was -- that is
12 alleged he lied about the disposition of. And --

13 **THE COURT:** He's not charged with illegally
14 obtaining money.

15 **MS. ALEXANDER-HOEPNER:** No, he's not. But the
16 false statement is only material to the --

17 **THE COURT:** Well, the false statement is -- the
18 false statement is a matter of dollars. He says he sent
19 to the United States X amount, 13,000 or something like
20 that.

21 **MS. ALEXANDER-HOEPNER:** He denies sending any
22 money to the United States.

23 **THE COURT:** Oh, I thought he said he sent
24 something.

25 **MS. ALEXANDER-HOEPNER:** No, he claims that an

1 Iraqi colleague of his in Iraq may have sent some money to
2 one of his children. But he personally denied sending any
3 funds himself.

4 **THE COURT:** So you're alleging the false
5 statement was that he actually did send money?

6 **MS. ALEXANDER-HOEPFNER:** That he did and that
7 that statement was material because those proceeds that --
8 the cash that he did in fact send were proceeds of his
9 fraud. And so the evidence being requested from Iraq went
10 directly to establishing why that was material and also
11 that it was false. Being able to show that he had taken
12 steps in his fraud that gave him access to this excess
13 cash that he then disposed of by sending it home is
14 therefore relevant to both aspects that the Government has
15 to prove.

16 **THE COURT:** Was it the Neill court that said, a
17 district court, quote, Before which a grand jury is
18 impaneled to investigate the offense shall suspend the
19 running of the statute of limitations for the offense --
20 and the offense here would be false statement. If the
21 court finds by a preponderance of the evidence that an
22 official request had been made for such evidence that it
23 reasonably appears to -- appears or reasonably appeared at
24 the time the request was made that such evidence was in a
25 foreign country -- well, there's no evidence -- whether he

1 sent money or not, that evidence was not in a foreign
2 country, was it?

3 **MS. ALEXANDER-HOEPNER:** Well, the evidence that
4 was in the foreign country and that was requested was
5 evidence about -- let me take a step back.

6 **THE COURT:** All right. Let's assume -- let's
7 assume he was involved in a fraud, which you suspected.

8 **MS. ALEXANDER-HOEPNER:** Yes.

9 **THE COURT:** And he did whatever. But he
10 wasn't -- he's not accused of making a false statement
11 about that. He's accused of making a false statement of
12 whether he sent any money home.

13 **MS. ALEXANDER-HOEPNER:** He is, in essence,
14 accused of making a false statement about what he did with
15 the proceeds of his fraud, because the fact that these
16 were the proceeds of his fraud that he was mailing home
17 goes directly to the materiality of the false statement.

18 **THE COURT:** Well, he was -- was he -- what was
19 he asked?

20 **MS. ALEXANDER-HOEPNER:** He was asked whether he
21 mailed any cash home. He was asked that in the context of
22 an interview.

23 **THE COURT:** So he wasn't asked whether he
24 defrauded anyone and sent those proceeds home?

25 **MS. ALEXANDER-HOEPNER:** He was asked a number

1 of questions leading up to the charged false statement
2 that go to whether he defrauded anyone. He was then
3 subsequently asked, And did you ever send any cash home?
4 I'm paraphrasing, I don't have the exact quote in front of
5 me.

6 **THE COURT:** All right.

7 Let me hear from the Govern -- I mean, the
8 defendant on that.

9 **MS. GOLDBERG:** And Your Honor, obviously, it is
10 in the Government's discretion what case they choose to
11 bring. And in this case they chose to bring a 1001
12 violation, a very simple allegation alleging that he lied
13 about whether or not he sent money home. Your Honor, now
14 the Government is making allegations that include fraud
15 and fraudulent activities and where these proceeds came
16 from and all of that. When we were in court on the last
17 status conference --

18 **THE COURT:** Well, isn't it a question of --
19 doesn't his -- you know, there aren't many decisions on
20 this. And obviously, under a 3292, and I think even in
21 this request there was kind of a catch-all, or -- the
22 words were they named certain statutes and certain
23 violations and then say, Or similar crimes, or something,
24 right?

25 **MS. GOLDBERG:** Yes, Your Honor.

1 **THE COURT:** But isn't the question here whether
2 it's -- whether the conduct is -- whether the evidence is
3 related to it or the offense is related?

4 **MS. GOLDBERG:** Your Honor, it --

5 **THE COURT:** After all, isn't the Government
6 saying here the offense is related to it?

7 **MS. GOLDBERG:** That is what they're claiming
8 today. However, when we were here on the last status
9 conference and we stood up here before Your Honor and
10 complained about the 1.8 million documents that were
11 provided to us in this, obviously, lengthy investigation,
12 and 150-plus audio tapes, and all this apparently still
13 ongoing discovery process that, you know, we've -- we've
14 been a part of, the Government stood up here and said,
15 well, this is really just a false statement case. This is
16 a potentially 30-document case. All of that other
17 discovery that you've been given related to the in -- the
18 greater investigation dealing with potential fraud and
19 other allegations, that's not relevant. We're only
20 dealing with a 1001 violation, this simple case.

21 And now the Government wants to get up here
22 before this Court and say, well, when it benefits us, when
23 we have this offense-specific provision that tolls -- that
24 tolls the statute of limitations, when it benefits us,
25 then now that there is a greater investigation that

1 involves fraud, now we need to get into all these other
2 things that are contained within the 1.8 million documents
3 that the defense does not have time or does not have the
4 opportunity at this point to go through to determine
5 whether that's relevant or not.

6 So the Government wants to basically have their
7 cake and eat it, too. They want to say this is a simple
8 case. This is a 30-document case. But at the same time,
9 they say this is a broader case and should be covered by
10 this 3292 provision which, as the Court correctly pointed
11 out, is offense specific.

12 There was, obviously, no 1001 violation noted in
13 the request. There was nothing in the request -- nothing
14 obtained from Iraq relevant to -- to this case itself.
15 This offense allegedly occurred on -- in February of 2010.
16 And no other evidence and no other investigation was
17 necessary after that point. There was --

18 **THE COURT:** Let me ask you this. As I
19 understand it, your client, actually on that very day he
20 was interviewed, was fired, right?

21 **MS. GOLDBERG:** That's correct.

22 **THE COURT:** And he was sent home?

23 **MS. GOLDBERG:** Correct. I think that it was
24 within a couple of days, yes.

25 **THE COURT:** So if there was -- they were

1 investigating a fraud which had -- alleged fraud which had
2 already occurred; is that right?

3 **MS. GOLDBERG:** I believe that the allegation was
4 that it was a greater fraud occurring prior to that date.

5 **THE COURT:** Prior to that date?

6 **MS. GOLDBERG:** Correct.

7 **THE COURT:** So then they indicted him with a
8 false statement upon an interview after the alleged crimes
9 had been committed.

10 **MS. GOLDBERG:** Correct. We believe that that
11 2010 was the end.

12 **THE COURT:** All right. Go ahead, I interrupted
13 you.

14 **MS. GOLDBERG:** And Your Honor, so, obviously, we
15 believe that -- that this -- that this case -- if the
16 Government wanted to bring that greater -- that greater
17 fraud case, if the Government wanted it to be covered by
18 the 3292, again, it's the Government's discretion to do
19 so. They chose to bring this case. They chose to bring
20 the case eight years after it happened to which they
21 needed no further investigation to which they needed
22 further help from Iraq.

23 And now they're standing up here and saying that
24 this should be covered under this provision. And,
25 obviously, we believe that it is inapplicable, that this

1 case was -- this case -- the statute of limitations ran in
2 2015. And it's the Government's burden to show that it
3 was not and they have not been able to meet that burden.

4 **THE COURT:** Do you -- well, for what it's worth,
5 do you agree that there was a proper tolling of 36 days?

6 **MS. GOLDBERG:** The only way that that would be
7 proper, Your Honor, is if the 3292 applied.

8 **THE COURT:** Well, I understand it wouldn't tack
9 on. If you don't have the 3292, it doesn't matter. But
10 I'm just saying, just to clarify that that's not -- for
11 the record.

12 **MS. GOLDBERG:** For the record, there were two
13 tolling agreements that were effectuated prior to us
14 becoming Mr. Hill's counsel. It is our opinion that
15 because the 3292 did not apply, that those came outside
16 the statute of limitations anyway.

17 **THE COURT:** I understand.
18 Anything further?

19 **MS. ALEXANDER-HOEPFNER:** Yes, Your Honor. A
20 couple of quick things to clarify. I think defense
21 counsel is conflating the commission of the crime with the
22 evidence the Government needs to prove that crime beyond a
23 reasonable doubt. She's correct that the crime that
24 Mr. Hill is alleged to have committed was completed in
25 terms of his actions as of the interview on February 11th,

1 2010. But that's distinct.

2 THE COURT: Wasn't that subsequent to the
3 alleged crime for which the 3292 was sought?

4 MS. ALEXANDER-HOEPFNER: Well, it's subsequent
5 to his part actively in that. The 3292 --

6 THE COURT: I'm only talking about him.

7 MS. ALEXANDER-HOEPFNER: Yes.

8 THE COURT: That's all we're here for.

9 MS. ALEXANDER-HOEPFNER: Yes.

10 THE COURT: I'm saying wasn't -- wasn't his
11 crime, which he's been indicted for, subsequent to the
12 alleged criminal activity sought to be investigated and
13 for which the 3292 was obtained?

14 MS. ALEXANDER-HOEPFNER: Yes, I believe the
15 Government's understanding was that the fraud was ongoing
16 but that it did not continue past his departure from Iraq.
17 So, essentially, his involvement ceased as of his
18 termination on that day. And then he made the false
19 statement. And then he was --

20 THE COURT: But does it matter? I mean, is
21 there any evidence or does it -- I don't know whether it
22 matters or not that as of the time he was being
23 interviewed, it was an ongoing fraud at that point?

24 MS. ALEXANDER-HOEPFNER: I believe that -- I
25 believe it was ongoing. I -- circumstances in place for

1 him to be --

2 **THE COURT:** Is there any evidence of that?

3 **MS. ALEXANDER-HOEPFNER:** He was still in a
4 position to be taking bribes -- or, I'm sorry, not taking
5 bribes, but taking cash out of the payment process.

6 **THE COURT:** I understand that. Is there any
7 evidence of that?

8 **MS. ALEXANDER-HOEPFNER:** There's no evidence --
9 I can't point you to a specific piece of evidence. My
10 understanding of the evidence that there is is that
11 Mr. Hill's position, which was ongoing, gave him continual
12 access to money that he was skimming off. That he was
13 still in a position to do that and that he was still
14 working with the co-conspirator.

15 **THE COURT:** That's just pure supposition, is it
16 not?

17 **MS. ALEXANDER-HOEPFNER:** But as far as he's
18 concerned, that ends once he's fired.

19 **THE COURT:** Pardon?

20 **MS. ALEXANDER-HOEPFNER:** That ends once he's
21 fired. So he was -- the fraud was ongoing until his
22 termination essentially took him out of his own scheme.

23 **THE COURT:** Does that matter, whether there's
24 any evidence of that?

25 **MS. GOLDBERG:** Your Honor, again, I don't

1 believe it does. I believe, again, this case is a 1001
2 violation. It is a simple matter that if the Government
3 wanted to bring a fraud case, they could have brought that
4 fraud case and we'd be having a different conversation
5 today. But the case before this Court is a 1001
6 violation, which is a statement of whether or not cash was
7 sent back to the United States. There was no evidence
8 that, as I stated before, that it was needed from Iraq.

9 **THE COURT:** Let me ask you -- excuse me. Excuse
10 me.

11 Let me ask you this. Let's assume the
12 Government is investigating a fraud that occurred in 2016.
13 Okay?

14 **MS. ALEXANDER-HOEPFNER:** Okay.

15 **THE COURT:** Well, let me get my hypothetical a
16 little different. Let's assume the Government's
17 investigating a fraud which occurred at certain point and
18 it was over. And two years later, they ask a suspect
19 about it and they lie about it. Is it related to it? Is
20 the false statement related to it?

21 **MS. ALEXANDER-HOEPFNER:** Yes.

22 **THE COURT:** I mean, it's -- it is but it's not
23 offense related to it, is it?

24 **MS. ALEXANDER-HOEPFNER:** I'm sorry, I don't
25 understand what you mean by that.

1 **THE COURT:** Is it a -- is it -- is the 2001
2 false statement offense specific to a fraud prior -- a
3 previous fraud investigation?

4 **MS. ALEXANDER-HOEPNER:** I don't think I
5 understand what offense specific means in this situation.

6 **THE COURT:** Well, it's in the statute.

7 **MS. ALEXANDER-HOEPNER:** So my understanding of
8 what offense specific means in this context is that
9 evidence requested in the MLAT request has to be relevant
10 to the offenses that are tolled. So if in your
11 hypothetical there was an MLAT request made that requested
12 information about a fraud that had ceased two years prior,
13 but that information was also relevant to the false
14 statement, given the Government's burdens to prove the
15 falsity and the materiality of that false statement, then
16 it would be offense specific for the purposes of 3292.

17 **THE COURT:** Are you claiming that -- is the
18 Government claiming here that the false statement is
19 offense specific?

20 **MS. ALEXANDER-HOEPNER:** I think the evidence
21 was related to the specific offense of the 1001, if that's
22 what Your Honor is asking.

23 **THE COURT:** Well, the evidence -- I think courts
24 make a distinction on whether the evidence is related or
25 whether the offense is related.

1 **MS. ALEXANDER-HOEPNER:** So my reading of Neill
2 and of Ratti is that the offense doesn't have to be
3 specifically enumerated.

4 **THE COURT:** I agree with that. And I think --
5 is that the case where they were investigating some kind
6 of fraud and he did tax -- it was a tax violation?

7 **MS. ALEXANDER-HOEPNER:** Right. But that the
8 evidence that was requested --

9 **THE COURT:** And that was offense related?

10 **MS. ALEXANDER-HOEPNER:** Right. And so to -- I
11 guess to that extent, if I'm understanding what Your Honor
12 means by offense related, then, yes, the evidence
13 requested under the MLAT to Iraq was related both to the
14 fraud and to the materiality and falsity of the false
15 statement charged in this case. And so --

16 **THE COURT:** Well, you weren't -- now, wait a
17 minute. The Government was not seeking information in its
18 broadest sense when they made that application for a false
19 statement which had not already been made.

20 **MS. ALEXANDER-HOEPNER:** No, but it was seeking
21 information that -- and, of course, it --

22 **THE COURT:** That's evidence. That's not an
23 offense. That's evidence. They're seeking that -- the
24 Government was seeking evidence.

25 **MS. ALEXANDER-HOEPNER:** The Government was

1 seeking evidence that was related to the specific
2 offenses.

3 **THE COURT:** Yes.

4 **MS. ALEXANDER-HOEPNER:** And those offenses to
5 which the evidence related included the 1001 that is
6 charged here. While it wasn't specifically enumerated,
7 the Government's position is that the evidence being
8 requested from the Iraqi Government, had it been received,
9 could have gone to showing both the falsity and the
10 materiality of the false statement that is in fact
11 charged. Because it would have gone to showing both
12 that --

13 **THE COURT:** What do you mean by -- what are you
14 suggesting when you say an element of this charge you have
15 to show materiality?

16 **MS. ALEXANDER-HOEPNER:** Because the statute
17 requires -- it's a material false statement.

18 **THE COURT:** So in trial you're going to have to
19 prove that -- this fraud?

20 **MS. ALEXANDER-HOEPNER:** No, we don't have to
21 prove the fraud. We have to prove why the false statement
22 mattered, essentially, to use a colloquial term, to law
23 enforcement when it was made.

24 **THE COURT:** And what's your evidence of that?

25 **MS. ALEXANDER-HOEPNER:** Well, we -- we put on

1 evidence at trial of the agents explaining why it mattered
2 to them.

3 **THE COURT:** And what would he say?

4 **MS. ALEXANDER-HOEPFNER:** That it mattered
5 because they were investigating a fraud. And so his lie
6 about, you know, what he was doing essentially with the
7 proceeds of that fraud mattered to their investigation.

8 **MS. GOLDBERG:** And Your Honor, we definitely
9 take issue with that, that anything in this request was
10 related to the 1001 that is charged in this indictment.

11 **THE COURT:** Start over, say that again.

12 **MS. GOLDBERG:** We take issue with the fact
13 that -- we do not believe that there was anything in this
14 official request that was related to the 1001 that is
15 charged in this indictment.

16 **THE COURT:** Well, it couldn't be. That's what
17 I'm saying. That's what -- that's what -- and I realize
18 this is not -- this is not just clearcut one way or the
19 other. But, apparently, everybody agrees the Government
20 was investigating some type of scheme and fraud between a
21 company that had a contract with the Government and
22 charging the Government --

23 **MS. GOLDBERG:** That's correct.

24 **THE COURT:** -- for whatever, getting payment
25 from the Government. And they were suspecting that the

1 Government was being overcharged, certain charges,
2 whatever, were being paid by the Government which were
3 unlawful. It's -- obviously, that's what they were
4 investigating.

5 The intriguing thing to me about this is that's
6 good. I think if that's happening or they suspect it's
7 happening, my tax dollars and your tax dollars are being
8 wasted. And the Government should investigate that and
9 they should prosecute that. Sure, if there's a crime
10 going on.

11 So they're investigating this thing. And for
12 some reason, they wait four-and-a-half years to act -- ask
13 the Government of Iraq for information which they say is
14 critical to the investigation. Now, I don't know whether
15 that matters or not. And then they're investigating it
16 and, apparently, the Government, as far as I know there's
17 been no other -- do you know of any other indictment about
18 this matter?

19 **MS. GOLDBERG:** We're not aware of any other.

20 **MR. FINDLING:** No.

21 **THE COURT:** Okay. So they don't -- and that
22 happens sometimes. It doesn't mean a crime hasn't been
23 committed, but the Government doesn't have enough evidence
24 to charge anyone with embezzlement, fraud, or whatever.
25 So after it's all over, they go interview this person who

1 worked for the company that was suspected of being
2 involved in criminal activity. And they claim he lied
3 about whether he sent money home or not.

4 So when they made the application -- I guess
5 what I'm saying is when they made the application, the
6 intriguing thing is, when they made the application to the
7 Nevada court for this tolling under 3292, they couldn't
8 have been anticipating and -- to investigate -- obviously,
9 it never dealt with the subsequent false statement.

10 **MS. ALEXANDER-HOEPFNER:** And Your Honor --

11 **THE COURT:** That's where I think you have a
12 problem.

13 **MS. ALEXANDER-HOEPFNER:** If I could give Your
14 Honor a couple of --

15 **THE COURT:** And I know you're saying he made a
16 false statement. And it hurt the investigation or would
17 have hurt. And it was rel -- you know, factually it was
18 related to it. But when you make this application to get
19 this tolling agreement to what you're investigating of
20 this crime that has occurred and is ongoing, you
21 couldn't -- even if you put in there false statements,
22 1001, it would have had to be dealing with false
23 statements which had already been made.

24 **MS. ALEXANDER-HOEPFNER:** So if I could give Your
25 Honor a hypothetical that I hope will address what you're

1 talking about? I understand Your Honor to be concerned
2 with the fact that we were asking for evidence after the
3 false statement had already been made; is that correct?

4 **THE COURT:** No, you're asking -- I think you're
5 asking -- no, you're asking before it was made. When you
6 went to the Nevada court, he hadn't even been interviewed.

7 **MS. ALEXANDER-HOEPFNER:** No, he had been, Your
8 Honor. This happened a few years --

9 **THE COURT:** Oh, I beg your pardon. I got it --
10 I'm sorry about that. He had been interviewed?

11 **MS. ALEXANDER-HOEPFNER:** Yes, Your Honor.

12 **THE COURT:** You're right. He had been
13 interviewed but you had no idea that you were
14 investigating his false statement.

15 **MS. ALEXANDER-HOEPFNER:** Well, the Government
16 was aware of the false statement and was aware of the
17 relationship.

18 **THE COURT:** Well, be careful, you just hurt
19 yourself there. Because if the Government was aware of it
20 at the time, and they go to the Nevada court and they
21 don't ask for a tolling on that, you purposely -- you just
22 did wrong. I mean, you can't -- if you knew we had a
23 false statement and you needed more time to prove it, and
24 you go to the Nevada court and you leave that out of the
25 application, then you're not covered by it.

1 **MS. ALEXANDER-HOEPFNER:** Well, I mean, the
2 application and the resulting order and the MLAT request
3 itself did include some main, major crimes, arguably more
4 major than 1001, but also did include the catchall I
5 believe it was including but not limited to. So they --
6 no, they did not -- the Government did not --

7 **THE COURT:** That doesn't give you a green light
8 to just do anything. It has to be covered by what you're
9 looking for from the Government of Iraq. That's what this
10 is all about.

11 **MS. ALEXANDER-HOEPFNER:** Right.

12 **THE COURT:** The Government of Iraq has
13 information and it relates to certain crimes. Why would
14 the Government of Iraq possibly had information about him
15 making a false statement on his interview?

16 **MS. ALEXANDER-HOEPFNER:** Because -- because the
17 Government of Iraq had information that would go directly
18 to showing his access to this cash that he then lied about
19 mailing home. And that information -- and therefore, it
20 would -- that if we had -- if the Government -- if the
21 United States Government had gotten from the Government of
22 Iraq the requested information, that information would
23 have been relevant to showing that Mr. Hill's past false
24 statement was both false and material, which is what the
25 thousand and --

1 **THE COURT:** You probably don't know this. Was
2 there any suspicion at the time or during this period of
3 time that -- and maybe you do know it, maybe it's in the
4 file -- that he had made a false statement?

5 **MS. ALEXANDER-HOEPFNER:** It's my understanding
6 that there was suspicion of that, yes.

7 **THE COURT:** That what?

8 **MS. ALEXANDER-HOEPFNER:** But -- at the -- my
9 understanding is that at the time of the MLAT request? Is
10 that what you mean?

11 **THE COURT:** Yes.

12 **MS. ALEXANDER-HOEPFNER:** Yes, that there was.
13 But, nonetheless, it hadn't been charged yet and --

14 **THE COURT:** So you knew -- you thought that he
15 had made a false statement?

16 **MS. ALEXANDER-HOEPFNER:** The Government --

17 **THE COURT:** The Government thought that he had
18 made a false statement?

19 **MR. STEPHENS:** Let me put something on the
20 record if I might, Your Honor. We actually have the agent
21 who interviewed him. And --

22 **THE COURT:** I don't need that.

23 **MR. STEPHENS:** I just want to say that, yes, the
24 agent says we thought he was lying at the time we talked
25 to him.

1 THE COURT: Okay.

2 MS. ALEXANDER-HOEPFNER: Yes.

3 THE COURT: They just started smiling.

4 MS. ALEXANDER-HOEPFNER: Yes, Your Honor. The
5 Government was aware of the -- or suspected the falsity of
6 his statement.

7 THE COURT: Anything further?

8 MS. GOLDBERG: No, Your Honor.

9 THE COURT: Equity is not involved in this, but
10 this certainly is something that makes you think of equity
11 when the Government sandbags for eight years and then
12 charges somebody. This is 2018. And he was just indicted
13 in 2018 for a statement he made in 2010. And this
14 Government has decided that in those types of crimes you
15 only have five years to charge somebody. And he -- the
16 Government doesn't charge him for four-and-a-half years.
17 And then it applies to the Government of Iraq for
18 information concerning a fraud.

19 And now the Court has learned that when that
20 application was made, the Government believed a crime had
21 been committed in Iraq to a federal agent in 2010. And
22 this was four-and-a-half years after the alleged criminal
23 act had been made, the 1001 violation.

24 And the Government now contends that to further
25 bolster the evidence in that 1001 violation, they needed

1 information from the country of Iraq. And in their
2 application they never mention the 1001.

3 And for that reason, the Court finds that this
4 tolling period under 3292 is inappropriate as it pertains
5 to the tolling as to this charge. And as a result, this
6 indictment is brought outside the statute of limitations.
7 Therefore, the Court grants the motion to dismiss.

8 And I need not go into the other -- and I have
9 further -- in that connection, I've looked at the -- I've
10 looked at the wartimes claim. And that does not apply in
11 this case. Clearly, by the statute it doesn't apply. So
12 as a result of that, the Court grants the defendant's
13 motion to dismiss.

14 That's all. Thank you.

15 **MR. STEPHENS:** Thank you, Your Honor.

16 **MS. ALEXANDER-HOEPFNER:** Thank you.

17 ***

18 I certify that the foregoing is a correct transcript from
19 the record of proceedings in the above-entitled matter.

20 s/Karen E. Martin 5/22/2018
21 _____
Karen E. Martin, RMR, CRR Date _____

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