

# FCPA and Jail – Are Corporate Officers Really at Risk?

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On Oct. 31, James McClung, a former Louis Berger International Inc. executive, self-surrendered to the Bureau of Prisons to begin his year-and-a-day sentence for violations of the Foreign Corrupt Practices Act (FCPA). McClung, the senior vice president for the New Jersey-based construction management firm, was responsible for the company's operations in India and later in Vietnam. McClung and another former Louis Berger executive pleaded guilty in June 2015 to FCPA charges in connection with a scheme to bribe foreign officials in India and Vietnam to secure their assistance in awarding business to the company. McClung was sentenced on July 7, 2016 in New Jersey federal court by District Judge Mary L. Cooper.

McClung's prison sentence for FCPA violations cannot be described as unique, as he is in the company of a growing number of individuals – both U.S. citizens and foreign nationals – who have received prison sentences for FCPA violations in recent years. Importantly, McClung's prosecution came before the Department of Justice (DOJ) began ratcheting up its FCPA prosecution efforts over the last year, most recently with the launch of its new Pilot Program in April and the Yates Memorandum in September 2015.

With this increased focus on prosecution of FCPA violations and the DOJ's renewed commitment to bring these violations to light, a question arises as to whether individuals, separate and apart from the companies for which they work, are really at risk as targets of investigation – and the answer is plainly yes. A quick review of DOJ statistics over the last few years reveals an alarming trend of individual prosecutions of both U.S. citizens and foreign nationals, with prison sentences ranging from a few months to 15 years for FCPA violations. On Dec. 16, 2015, Vincent Eduardo Garcia, a former regional director of the technology company SAP International Inc., was sentenced to 22 months in prison for his role in a scheme to bribe Panamanian officials to secure the award of government technology contracts.

Garcia, a U.S. citizen residing in Miami, pleaded guilty to one count of conspiracy to violate the FCPA. In his plea, Garcia admitted that in late 2009, to secure a multimillion-dollar contract for SAP, he conspired with others to bribe two Panamanian government officials directly and a third through an agent, making use of sham contracts and false invoices to disguise the true nature of the bribes. Garcia's prison sentence was not his only penalty as he also paid \$85,965 plus prejudgment interest in disgorgement to the Securities and Exchange Commission (SEC).

Garcia was certainly not alone in 2015. Several employees of the New York-based broker-dealer Direct Access Partners were also sentenced to prison time in 2015. Benito Chinaea and Joseph DeMeneses received four-year sentences, Jose Alejandro Hurtado received a three-year sentence, and Ernesto Lujan and Tomas Alberto Clarke Bethancourt received two-year sentences, all in connection with their scheme to bribe a senior official in Venezuela's state economic development bank, Banco de Desarrollo Económico y Social de Venezuela (Bandes).

The prison sentences received by individuals in FCPA cases date back further than 2015 and extend to more than just a few years of imprisonment. In October 2011, Joel Esquenazi, former president of Terra Telecommunications Corp., was given a 15-year sentence for his role in a scheme to pay bribes to Haitian government officials at Telecommunications D'Haiti S.A.M. (Haiti Teleco), a state-owned telecommunications company. In 2010, Charles Paul Edward Jumet, former vice president of Ports Engineering Consultants Corp., was sentenced to 87 months in prison for paying bribes to former Panamanian government officials to secure maritime contracts. These prison sentences have also been imposed on foreign nationals. In 2012, Manuel Caceres, a citizen of Honduras and a lawful permanent resident of the U.S., received a 23-month sentence for bribes to government officials in Honduras in connection with his role as the vice president of business development for Miami-based telecommunications company Latin Node Inc.

The DOJ is not alone in its increased efforts to investigate and prosecute individuals for violations of the FCPA. In 2010, the SEC's Enforcement Division created a specialized unit to further enhance enforcement of the FCPA, and it has brought many enforcement actions to date, including against individual defendants. In September 2016, CEO Daniel Och of Och-Ziff Capital Management Group agreed to pay nearly \$2.2 million to settle SEC charges in connection with the payment of bribes to high-level government officials in Africa. Also in 2016, Jun Ping Zhang, the former chairman/CEO of Harris Corp.'s subsidiary in China, agreed to pay a \$46,000 penalty for violating the FCPA by facilitating a bribery scheme that provided illegal gifts to Chinese government officials in order to obtain business for the company. The action against Zhang is particularly notable as the SEC pursued only the individual, declining to bring an enforcement action against Harris Corporation due to the company's fulsome cooperation. And just like with DOJ prosecutions, foreign nationals find themselves as the targets of these SEC enforcement actions. Mikhail Gourevitch, a dual Canadian and Israeli citizen and a former engineer at Nordion Inc., agreed to settle FCPA charges with the SEC this year by paying \$100,000 in disgorgement, \$12,950 in prejudgment interest and a \$66,000 penalty. In 2011, the SEC charged seven former Siemens executives for their involvement in the company's bribery scheme to retain a \$1 billion government contract to produce national identity cards for Argentine citizens. Of the seven defendants, five were German citizens and two were Argentine citizens.

The DOJ and SEC have made clear that they intend to take individuals' FCPA violations more seriously, and their prosecutions and enforcement actions demonstrate that the threat is real. Clearly, the response to this threat cannot be to wait until a government investigation surfaces. Employees must be proactive and take steps to mitigate risks now, including concretely documenting the propriety of their actions, paying attention to red flags, and complying fully with the company's compliance policies. Additionally, if questions remain, the employee should insist on securing and documenting legal advice from counsel specializing in FCPA matters.

The chart below offers a more detailed review of the recent prison sentences imposed in FCPA prosecutions:

Sentence Date	Case Title	Individual	Nationality	Individual Title	FCPA Bribery	Penalties
July 7, 2016	<i>United States v. James McClung</i> , No. 15-CR-00357-MLC	James McClung	U.S. residing in Dubai, United Arab Emirates	Senior Vice President of Louis Berger International, responsible for operations in India and Vietnam	Officials in India, Indonesia, Vietnam, and Kuwait	<b>(1) One-year-and-one-day sentence</b>
Dec. 16, 2015	<i>United States v. Vincente Eduardo Garcia</i> , No. 15-CR-00366	Vincente Eduardo Garcia	U.S.	Regional director of SAP International Inc.	Panamanian officials	<b>(1) 22-month sentence;</b> (2) disgorgement of \$85,965 in SEC action
Dec. 15, 2015	<i>United States v. Vadim Mikerin</i> , No. 8:14-CR-00529-TDC	Vadim Mikerin	Russian official residing in Maryland	Director of Pan-American department of JSC Technabexport (TENEX)	Money laundering by arranging more than \$2 million in payments to influence awarding of contracts with Russian state-owned nuclear energy corporation	(1) <b>48-month sentence;</b> (2) forfeit of \$2,126,622.36
Dec. 15, 2015	<i>United States v. Jose Alejandro Hurtado</i> , No. 13-CRIM-673	Jose Alejandro Hurtado	U.S.	Employee of Direct Access Partners	Senior official in Venezuela's state economic development bank, Banco de Desarrollo Económico y Social de Venezuela (Blandes)	(1) <b>Three-year sentence;</b> (2) forfeit of \$11.9 million
Dec. 4, 2015	<i>United States v. Ernesto Lujan</i> , No. 13-CR-671  <i>United States v. Tomas Alberto Clarke Bethancourt</i> , No. 13-CRIM-670	Ernesto Lujan  Tomas Alberto Clarke Bethancourt	U.S.  U.S.	Managing partner at NY-based Direct Access Partners  employee	Senior official in Venezuela's state economic development bank, Banco de Desarrollo Económico y Social de Venezuela (Blandes)	(1) <b>Two-year sentence;</b> (2) forfeit of \$18.5 million for Lujan and \$5.8 million for Clarke
March 27, 2015	<i>United States v. Benito Chinaea</i> , No. 14-CR-240-DLC	Benito Chinaea  Joseph DeMeneses	U.S.  U.S.	CEO of Direct Access Partners  Managing director	Senior officials in Venezuela's state economic development bank, Banco de Desarrollo Económico y Social de Venezuela (Blandes)	(1) <b>Four-year sentence;</b> (2) forfeit of \$3,636,432 by Chinaea and \$2,670,612 by DeMeneses
May 3, 2013	<i>United States v. James K. Tillery &amp; Paul G. Novak</i> , No. 08-CR-022	Paul G. Novak	U.S.	Consultant for Willbros International, subsidiary of Houston-based Willbros Group Inc.	Government officials of Federal Republic of Nigeria and officials from Nigerian political party	(1) <b>15-month sentence;</b> (2) two years' supervised release; (3) \$1 million fine
Dec. 17, 2012	<i>United States v. David Edmonds</i> , No. 09-CR-077-JVS	David Edmonds	U.S.	Vice President of Control Components Inc.	Corrupt payments to foreign officials at state-owned entities in places such as China, Malaysia, and United Arab Emirates	(1) <b>Four-month sentence;</b> (2) \$20,000 fine; (3) four months' home detention; (4) three years' supervised release
Nov. 5, 2012	<i>United States v. Stuart Carson</i> , No. 09-CR-077-JVS	Stuart Carson	U.S.	CEO of Control Components Inc.	Corrupt payments to foreign officials at state-owned entities in China, Malaysia, and United Arab Emirates	(1) <b>Four-month sentence;</b> (2) \$20,000 fine; (3) eight months' home detention; (4) three years' supervised release
Aug. 24, 2012	<i>United States v. Richard T. Bistrong</i> , No. 10-CR-021-RJL	Richard Bistrong	U.S.	Vice President for International Sales of Armor Holdings Inc.	Knowingly falsified books, records, and accounts of the company, an issuer within the meaning of the FCPA	(1) <b>18-month sentence;</b> (2) 36 months' supervised release
Aug. 16, 2012	<i>United States v. Garth Peterson</i> , No. 12-CR-224	Garth Peterson	U.S.	Morgan Stanley Managing Director	Conspiracy to evade company's internal accounting controls	(1) <b>Nine-month sentence;</b> (2) three years' supervised release

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June 6, 2012	<i>United States v. Manuel Salvoch</i> , No. 10-CR-20893	Manuel Salvoch	U.S.	CFO of Florida-based telecommunications company Latin Node Inc.	Government officials in Honduras	(1) <b>10-month sentence</b> ; (2) six months' home monitoring; (3) three years' supervised release
April 19, 2012	<i>United States v. Manuel Caceres</i> , No. 1:10-20881-CR—LENARD-2	Manuel Caceres	Citizen of Honduras; lawful permanent resident of U.S.	Vice President Business Development of Latin Node Inc.	Government officials in Honduras	(1) <b>23-month sentence</b> ; (2) one year's supervised release
Feb. 23, 2012	<i>United States v. Jeffrey Tesler, et al.</i> , No. 09-CR-098	Jeffrey Tesler	U.K. residing in London	Consultant to Kellogg, Brown & Root Inc.	Nigerian government officials	(1) <b>21-month sentence</b> ; (2) two years' supervised release; (3) \$25,000 fine; (4) forfeit of \$149 million
Feb. 23, 2012	<i>United States v. Albert Jackson Stanley</i> , No. 08-CR-597	Albert "Jack" Stanley	U.S.	Chairman and CEO of Kellogg, Brown & Root Inc.	Nigerian government officials	(1) <b>30-month sentence</b> ; (2) \$10.8 million in restitution; (3) three years' supervised release
Dec. 22, 2011	<i>United States v. Ousama M. Naaman</i> , No. 08-CR-246-ESH	Ousama Naaman	Lebanese/ Canadian dual national	Agent to U.S. publicly traded chemical company Innospec Inc	Iraqi government officials	(1) <b>30-month sentence</b> ; (2) \$250,000 fine
Oct. 25, 2011	<i>United States v. Joel Esquenazi, et al.</i> , No. 09-CR-21010-JEM	Joel Esquenazi	U.S.	President of Terra Telecommunications Corp.	Haitian government officials at Telecommunications D'Haiti S.A.M. (Haiti Teleco), state-owned telecommunications company	(1) <b>15-year sentence</b> ; (2) forfeit of \$3.09 million with co-defendant
Oct. 25, 2011	<i>United States v. Carlos Rodriguez, et al.</i> , No. 09-21010-JEM	Carlos Rodriguez	U.S.	Executive Vice President of Terra Telecommunications Corp.	Haitian government officials at Telecommunications D'Haiti S.A.M. (Haiti Teleco), state-owned telecommunications company	(1) <b>84-month sentence</b> ; (2) forfeit of \$3.09 million with co-defendant
Sept. 7, 2011	<i>United States v. Jorge Granados, et al.</i> , No. 10-CR-20881	Jorge Granados	U.S.	CEO of Latin Node Inc.	Former government officials in Honduras	(1) <b>46-month sentence</b> ; (2) two years' supervised release
Jan. 21, 2011	<i>United States v. Antonio Perez</i> , No. 09-CR-20347-JEM	Antonio Perez	U.S.	Controller of Miami-Dade County telecommunications company	Haitian government officials at Telecommunications D'Haiti S.A.M. (Haiti Teleco), state-owned telecommunications company	(1) <b>24-month sentence</b> ; (2) two years' supervised release; (3) forfeit of \$36,375 Judgment amended on Dec. 14, 2011 to <b>10-month sentence</b>
Dec. 2, 2010	<i>United States v. Leo Winston Smith</i> , No. 07-CR-069-AG	Leo Winston Smith	U.S.	Director of Sales and Marketing for Pacific Consolidated Industries LP (PCI)	Bribery of U.K. Ministry of Defense official	(1) <b>Six-month sentence</b> ; (2) six months' home confinement; (3) \$7,500 fine; (4) three years' supervised release
Sept. 15, 2010	<i>United States v. Nam Quoc Nguyen, et al.</i> , No. 08-CR-522-TJS	Nam Quoc Nguyen	U.S.	President and owner of Nexus Technologies Inc.	Vietnamese government officials	(1) <b>16-month sentence</b> ; (2) two years' supervised release
	<i>United States v. An Quoc Nguyen</i> , No. 08-CR-522	An Quoc Nguyen	U.S.	Employee of Nexus Technologies Inc.		(1) <b>Nine-month sentence</b> ; (2) three years' supervised release

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Aug. 12, 2010	<i>United States v. Gerald Green, et al.</i> , No. 08-CR-059-GW  <i>United States v. Patricia Green</i> , No. 08-CR-059-GW	Gerald Green (husband)  Patricia Green (wife)	Born in South Africa but naturalized citizen of U.S. Born in Mexico but naturalized citizen of U.S.	L.A.-area film executives	Kickbacks to former governor of Tourism Authority of Thailand in exchange for certain contracts	(1) <b>Six-month sentence</b> ; (2) \$1,700 special assessment for Gerald and \$1,900 for Patricia; (3) \$250,000 in restitution; (4) three years' supervised release
July 30, 2010	<i>United States v. Juan Diaz</i> , No. 09-CR-20346-JEM	Juan Diaz	U.S.	Businessman with Miami-Dade County telecommunications company	Haitian government officials at Telecommunications D'Haiti S.A.M. (Haiti Teleco), state-owned telecommunications company	(1) <b>57-month sentence</b> ; (2) \$73,824 in restitution; (3) forfeit of \$1,028,851; (4) three years' supervised release  Judgment amended on May 21, 2012 to <b>20-month sentence</b>
June 25, 2010	<i>United States v. John W. Warwick</i> , No. 09-CR-449-HEH	John Webster Warwick	U.S.	President of Ports Engineering Consultants Corporation	Former Panamanian government officials	(1) <b>37-month sentence</b> ; (2) forfeit of \$331,000; (3) two years' supervised release
April 19, 2010	<i>United States v. Charles Paul Edward Jumet</i> , No. 09-CR-397-HEH	Charles Paul Edward Jumet	U.S.	Vice President of Ports Engineering Consultants Corporation	Former Panamanian government officials	(1) <b>87-month sentence</b> ; (2) three years' supervised release; (3) \$15,000 fine
Jan. 28, 2010	<i>United States v. Jason Edward Steph</i> , No. 07-CR-307	Jason Edward Steph	U.S.	Executive of Willbros International, subsidiary of Houston-based Willbros Group Inc.	Government officials of Federal Republic of Nigeria and officials from Nigerian political party	(1) <b>15-month sentence</b> ; (2) two years' supervised release; (3) \$2,000 fine
Jan. 28, 2010	<i>United States v. Jim Bob Brown</i> , No. 06-CR-316	Jim Bob Brown	U.S.	Executive of Willbros International, subsidiary of Houston-based Willbros Group Inc.	Government officials of Federal Republic of Nigeria and officials from Nigerian political party	(1) <b>12-months-and-one-day sentence</b> ; (2) two years' supervised release; (3) \$1,000 fine per month while on supervised release

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