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DJS: USAO 2018R00165

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA

v.

**GOL LINHAS AÉREAS
INTELIGENTES, S.A.,**

Defendant

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CRIMINAL NO. PJM 22-cr-325

**(Conspiracy to Violate the Foreign
Corrupt Practices Act, 18 U.S.C.
§§ 371 and 3551 et seq.)**

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INFORMATION

COUNT ONE

(Conspiracy to Violate the Foreign Corrupt Practices Act)

The United States charges that:

Introduction

At times material to this Information:

1. The Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Sections 78dd-1, *et seq.*, was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign government official for the purpose of obtaining or retaining business for, or directing business to, any person. The FCPA’s accounting provisions, among other things, require that every issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or required to file periodic reports with the United States Securities and Exchange Commission (“SEC”) under Section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d) (hereinafter, “issuer”), make and keep books, records, and accounts that

accurately and fairly reflect the transactions and disposition of the issuer's assets, and prohibit the knowing and willful falsification of an issuer's books, records, or accounts. 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

2. Defendant **GOL LINHAS AÉREAS INTELIGENTES S.A.** ("**GOL**") was a Brazilian airline headquartered in São Paulo, Brazil. At the time of the conduct described below, **GOL** was the largest air transportation and travel services group in Brazil and operated Latin America's largest low-cost airline. **GOL**'s shares were listed on the New York Stock Exchange, and **GOL** was an "issuer" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-1.

3. "GOL Director," an individual whose identity is known to the United States and **GOL**, was a Brazilian citizen and member of **GOL**'s Board of Directors. GOL Director was a "director" of an "issuer," as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-1(a).

4. "GOL Executive," an individual whose identity is known to the United States and **GOL**, was a high-level executive at **GOL**. GOL Executive was an "officer" and "employee" of an "issuer," as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-1(a).

5. "Brazilian Political Party," the identity of which is known to the United States and **GOL**, was a political party in Brazil. Brazilian Political Party was a "foreign political party" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-1(a)(2).

6. "Brazilian Official 1," an individual whose identity is known to the United States and **GOL**, was a high-ranking official in the legislative branch of the Brazilian government

between in or about 2003 and in or about 2016, and a member of Brazilian Political Party.

Brazilian Official 1 was a “foreign official” as that term is defined in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1)(A).

7. “Brazilian Official 2,” an individual whose identity is known to the United States and **GOL**, was a high-ranking official in the government of the Federal District of Brasilia (“Brasilia”) between in or about 2011 and in or about 2014, and a member of Brazilian Political Party. Brazilian Official 2 was a “foreign official” as that term is defined in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1)(A).

8. “Intermediary,” an individual whose identity is known to the United States and **GOL**, was a Brazilian businessman who was a close associate of Brazilian Official 1. Intermediary was an “agent” of an “issuer” as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-1(a).

9. “Brazilian Official 1 Companies,” entities whose identities are known to the United States and **GOL**, were companies owned and controlled by Brazilian Official 1 that operated websites with content directed at religious community groups.

10. “Employee 1,” an individual whose identity is known to the United States and **GOL**, was an individual who negotiated and liaised with **GOL** with respect to advertising on the Brazilian Official 1 Companies’ websites.

11. “Consulting Company,” an entity whose identity is known to the United States and **GOL**, was a purported consulting company owned and controlled by Consulting Company Owner (defined below).

12. “Consulting Company Owner,” an individual whose identity is known to the

United States and **GOL**, was an associate of Brazilian Official 2.

13. “Intermediary Company 1,” an entity whose identity is known to the United States and **GOL**, was a company owned and controlled by Intermediary.

14. “Intermediary Company 2,” an entity whose identity is known to the United States and **GOL**, was a purported road transportation company affiliated with Intermediary.

15. “Intermediary Company 3,” an entity whose identity is known to the United States and **GOL**, was a purported investment company registered in Delaware and controlled by Intermediary (together with Intermediary Company 1 and Intermediary Company 2, “the Intermediary Companies”).

Overview of the Bribery Scheme

16. Between in or about 2012 and in or about 2013, **GOL**, together with others, including GOL Director and Intermediary, knowingly and willfully conspired and agreed with others to corruptly offer and pay approximately \$3.8 million in bribes to Brazilian government officials, including Brazilian Official 1 and Brazilian Official 2, to secure an improper advantage in order to obtain and retain business for **GOL**, specifically, to ensure the passage of two pieces of legislation by the National Congress of Brazil and the Legislative Chamber of the Federal District of Brasilia, respectively. These pieces of legislation involved certain payroll tax and fuel tax reductions that financially benefitted **GOL**, along with other airlines.

A. Background

17. In or around 2010, GOL Director attempted to obtain financing from a Brazilian state-owned financial services institution for the benefit of a highway concession in which GOL Director’s family had a financial interest.

18. To assist with that endeavor, GOL Director was introduced to Intermediary by a mutual acquaintance. Intermediary told GOL Director that he could assist GOL Director in obtaining the financing in exchange for a fee paid to Intermediary. GOL Director agreed and ultimately paid approximately R\$4,000,000 (approximately US\$2.2 million) to obtain the financing. Soon after agreeing to make the payment, GOL Director learned that a portion of the fee would be paid as a bribe to officials at the state-owned financial services institution and others.

19. Subsequently, Intermediary informed GOL Director that he was looking for people to donate R\$10,000,000 (approximately US\$5.4 million) to a São Paulo mayoral candidate who was a member of Brazilian Political Party. GOL Director understood that such a payment would be a bribe for the benefit of Brazilian Political Party and Brazilian Official 1. GOL Director further understood that the R\$4,000,000 GOL Director had already committed to paying through Intermediary to the state-owned financial services institution would count toward the R\$10,000,000 bribe payment.

20. In exchange for the bribe payments, GOL Director asked Intermediary and Brazilian Official 1 for assistance in passing legislation that would benefit **GOL**—in particular, legislation that would add the air and road transportation industries to Brazil's alternative payroll tax program, a national economic stimulus program that would result in a significant reduction of payroll taxes that **GOL** and GOL Director's road transportation company would be required to pay.

21. In addition, in exchange for the bribes discussed above, as well as additional bribes promised to Brazilian Official 2, GOL Director asked Intermediary, Brazilian Official 1,

and Brazilian Official 2 for assistance in passing legislation that would reduce the aviation fuel tax in the Federal District of Brasilia for the air transport industry, including **GOL**.

22. Intermediary facilitated the bulk of the bribe payments related to the alternative payroll tax legislation and the aviation fuel tax legislation. For these services, Intermediary retained one-third of the bribes as a fee. Intermediary passed the other two-thirds to Brazilian Official 1, usually in cash using a Brazilian “doleiro,” that is, an individual who served as a professional money launderer and black market money exchanger. Brazilian Official 1, in turn, distributed a portion of the bribes to other members of Brazilian Political Party.

B. Overview of the Alternative Payroll Tax Program Aspect of the Bribe Scheme

23. In or about 2011, the Brazilian government was developing an economic stimulus program that included tax cuts and incentives to boost domestic employment. Among other things, the program would reduce payroll taxes for labor-intensive industries by introducing an alternative payroll tax regime beneficial to qualifying companies.

24. In or about 2012, GOL Director approached Brazilian Official 1 directly about including the air and road transportation industries in the alternative payroll tax program, in exchange for, in part, the R\$10,000,000 (approximately US\$5.4 million) in bribes that GOL Director had committed to paying to Brazilian Official 1 and Brazilian Political Party. If the transportation industries were added to the alternative payroll tax program, GOL Director expected that **GOL** and other companies in the air and road transport industries would benefit. After GOL Director and Brazilian Official 1 agreed to this aspect of the bribery scheme, Intermediary became involved to serve as a facilitator and intermediary for the bribe payments.

25. On or about June 27, 2012, as a result of the bribery scheme and with the

influence of Brazilian Official 1 and other officials in Brazilian Political Party, the Brazilian legislature expanded the new law to include the air transport industry, including **GOL**. On or about September 17, 2012, the Brazilian President signed the amended legislation, and it became effective on January 1, 2013.

26. **GOL** corruptly obtained tax savings of at least the approximate equivalent of US\$39.7 million from the air transport industry's inclusion in the alternative payroll tax program.

C. Overview of the Brasilia Aviation Fuel Tax Aspect of the Bribe Scheme

27. In or about 2013, Intermediary approached **GOL** Director about lowering the aviation fuel tax in the Brazilian state of Mato Grosso. **GOL** Director told Intermediary that lowering the fuel tax in Mato Grosso would not be helpful because **GOL** did not have much business there. Instead, **GOL** Director asked Intermediary about lowering the fuel taxes in the Federal District of Brasilia, where **GOL** had many flights. **GOL** Director understood that this request would be in furtherance of and in exchange for, at least in part, the R\$10,000,000 in bribes that **GOL** Director had committed to paying to Brazilian Official 1 and Brazilian Political Party, of which R\$4,000,000 were related to backing from the state-owned financial services institution for the financial support to the highway concession.

28. Intermediary also told **GOL** Director that he knew Brazilian Official 2, a high-ranking official in the government of Brasilia who might be able to help with the legislation **GOL** Director wanted. In furtherance of the scheme, Intermediary arranged for **GOL** Director and Brazilian Official 2 to meet.

29. In or about 2013, **GOL** Director met with Brazilian Official 2, Brazilian Official

1, and another politician in Brazilian Political Party at the home of Brazilian Official 2 to discuss the scheme. At the meeting, GOL Director agreed to pay bribes of R\$1,000,000 for the benefit of Brazilian Official 2 that were in addition to the promised bribe payments for the benefit of Brazilian Official 1 and Brazilian Political Party, in exchange for acts that ensured the passage of legislation that lowered the fuel tax in Brasilia.

30. GOL Director and Brazilian Official 2 agreed that the additional bribes would be paid through a fake tax consulting services agreement between **GOL** and Consulting Company, which was controlled by Consulting Company Owner, a close associate of Brazilian Official 2. In furtherance of the scheme, GOL Director arranged for **GOL** to receive a work proposal and a draft consulting contract and to make bribe payments as described further below.

31. In or about April 2013, the government of Brasilia enacted a law that lowered Brasilia's aviation fuel tax rate from 25 percent to 12 percent. **GOL** received a tax savings of at least the approximate equivalent of US\$12.24 million from the corruptly obtained fuel tax legislation.

32. In furtherance of the scheme to pay bribes in connection with the alternative payroll tax program and the Brasilia aviation fuel tax, Intermediary and GOL Director discussed the bribe payments in person, by text message, and by phone, including how much to pay, when to make the payments, and how to make the payments. Intermediary, in turn, discussed the bribe scheme with Brazilian Official 1 in person, by phone, and via an ephemeral U.S.-based messaging program that transmitted the messages using servers located in the United States.

33. GOL Director caused GOL to make corrupt payments, including to Brazilian Official 1, Brazilian Official 2, and Brazilian Political Party, in at least three ways: (1) purported

advertising placement payments from **GOL**, or on behalf of **GOL**, to the Brazilian Official 1 Companies controlled by Brazilian Official 1; (2) payments from **GOL**, or on behalf of **GOL**, to companies owned or controlled by Intermediary, which GOL Director understood would be passed on, at least in part, as bribes; and (3) payments from **GOL** to Consulting Company for the benefit of Brazilian Official 2.

D. Bribe Payments from **GOL** to the Brazilian Official 1 Companies

34. On or about September 26, 2012, Employee 1 sent an email to GOL Director, stating that “[a]s instructed,”¹ he was attempting to confirm the possibility of **GOL** entering into an advertising agreement with the Brazilian Official 1 Companies. On the same day, GOL Director reached out to GOL Executive expressing his support for the proposal.

35. GOL Director told GOL Executive that advertising on the websites of the Brazilian Official 1 Companies would be a fruitful investment and that in order to take full advantage, GOL needed to make the payment quickly to allow for early investment. GOL Director made these representations while knowing that the funds to be paid to the Brazilian Official 1 Companies would be bribe payments for the benefit of Brazilian Official 1.

36. On or about October 10, 2012, Employee 1 sent a proposal to a GOL marketing executive with a payment amount that was not open for negotiation. The Marketing Department considered the payment amount high based on the expected returns, but approved the advertising, and GOL Executive approved the payments, as directed by GOL Director.

37. Between in or about October 2012 and November 2013, **GOL** caused corrupt payments of approximately R\$2.4 million (approximately US\$1.14 million) to be made to the

¹ Unless otherwise noted, all quotations are translated from the original Portuguese.

Brazilian Official 1 Companies for the benefit of Brazilian Official 1.

E. Bribe payments from GOL through the Intermediary Companies

38. In or about early 2013, GOL Director, Brazilian Official 1, and Intermediary agreed that, in addition to the payments to the Brazilian Official 1 Companies, GOL Director would make bribe payments for the benefit of Brazilian Official 1 at Intermediary's direction, to fulfill the R\$10,000,000 in bribes that GOL Director had promised.

39. In furtherance of that agreement and in order to conceal the corrupt purpose of the payments, Intermediary invoiced a **GOL** subsidiary from one of the Intermediary Companies so that GOL Director could arrange for the bribe payments to be sent from **GOL**'s funds. Intermediary then passed approximately two-thirds of those funds to Brazilian Official 1 and Brazilian Political Party as bribes pursuant to the above-described scheme.

40. In furtherance of the scheme, GOL Director authorized and directed **GOL** to make certain payments to Intermediary Companies through his own budget or "Cost Center" at **GOL**, which had been created for GOL Director under the legal department and over which GOL Director had spending discretion without clearly defined controls and limits.

41. For example, GOL Director caused **GOL** to enter into an agreement with Intermediary Company 1. In or about early 2013, GOL Director told GOL Executive that Intermediary Company 1 was an external advisor that could help with obtaining capital investment and requested a payment to be made to Intermediary Company 1 without an underlying contract.

42. In or about 2015, GOL Director asked for a sham consulting agreement with Intermediary Company 1 to be signed and back-dated to 2013. That contract was never signed.

43. Once Intermediary Company 1 was approved as a vendor in **GOL**'s accounting system, GOL Director and Intermediary used it to facilitate the bribe scheme. For example, in or about March 5, 2013, Intermediary invoiced the GOL subsidiary in the amount of R\$295,000 (approximately US\$151,433) for consulting work ostensibly rendered for **GOL** by Intermediary Company 1, but which in reality was never performed.

44. In or about April 2013, GOL Director approached GOL Executive about retaining Intermediary Company 2, telling GOL Executive that previously budgeted payments had been incorrectly entered into the system with the wrong customer number and needed to be re-approved. As a result, GOL Director caused the payment of approximately R\$1,000,000 (approximately US\$496,600) to Intermediary Company 2. GOL Director directed that these payments be made in order to cover taxes on the R\$10,000,000 that Intermediary, Brazilian Official 1, and Brazilian Political Party had paid upon receipt of those bribe payments that were made in exchange for Brazilian Official 1's assistance with the legislation helpful to **GOL**.

45. In furtherance of the scheme, GOL Director also made bribe payments to Brazilian Official 1 and Brazilian Political Party on behalf of **GOL**, and at Intermediary's direction, from other companies that GOL Director controlled.

46. For example, on or about May 29, 2013, GOL Director caused a bribe payment of US\$350,000 to be made from a shell company incorporated in the Bahamas owned and controlled by GOL Director through the United States to a Swiss bank account of Intermediary Company 3.

F. Bribe Payments from GOL Through Consulting Company

47. In or about early 2013, GOL Director agreed to make R\$1,000,000 in bribe

payments through Consulting Company for the benefit of Brazilian Official 2 in exchange for acts taken by Brazilian Official 2 in connection with lowering the aviation fuel tax in the Federal District of Brasilia.

48. On or about June 10, 2013, Consulting Company Owner sent a sham proposal for analysis of aviation legislation to a GOL legal executive, copying GOL Director, in order to paper over the existence of the bribe payments in internal **GOL** records.

49. On or about June 11, 2013, Consulting Company Owner sent an email stating that he would need R\$1,237,623.76 in order to reach a net figure of R\$1,000,000. GOL Director responded by email the same day, copying the GOL legal executive, stating: "OK understood. Let's move forward because we are very interested in learning about your work, because we understand this will be the first of several projects together."

50. GOL Director sent the email referenced in paragraph 49 above, while knowing that the true purpose of the R\$1,237,623.76 payment to Consulting Company was to make a bribe payment to Brazilian Official 2 in exchange for his assistance with the aviation fuel tax legislation in Brasilia.

51. Between in or about June 2013 and in or about August 2013, **GOL** caused corrupt payments to be made to Consulting Company in the amount of R\$1,238,000 (approximately US\$552,400) for the benefit of Brazilian Official 2.

52. No contract with Consulting Company was ever signed and the payments were made as purported advances without invoices.

G. The Bribe Payments Caused **GOL**'s Books and Records to be False

53. In connection with the scheme, **GOL** maintained false books, records, and

accounts that did not accurately and fairly reflect the transactions and dispositions of its assets. **GOL** falsely characterized expenses, including corrupt payments to the Brazilian Official 1 Companies, Intermediary Company 1, Intermediary Company 2, and Consulting Company, as advertising expenses and other services in the company's books and records.

54. For example, on or about April 30, 2015, **GOL** filed Form 20-F with the United States Securities and Exchange Commission. The Form 20-F falsely included payments made to the Brazilian Official Companies as "sales and marketing expenses" when a portion of these payments were, in fact, corrupt bribe payments made to Brazilian Official 1 and Brazilian Political Party.

The Conspiracy

55. From in or about 2012 and continuing through in or about 2015, in the District of Maryland and elsewhere, the defendant,

GOL LINHAS AÉREAS INTELIGENTES S.A.,

together with others, did knowingly and willfully conspire to commit an offense against the United States, to wit:

a. being an issuer, to make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, and to a foreign political party and official thereof, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised, directly and indirectly, to a foreign official, and to a foreign political party and official thereof, for purposes of: (i) influencing acts and

decisions of such foreign official, and foreign political party and official thereof, in his, her, or its official capacity; (ii) inducing such foreign official, and foreign political party and official thereof, to do and omit to do acts in violation of the lawful duty of such official and party; (iii) securing any improper advantage; and (iv) inducing such foreign official, and foreign political party and official thereof, to use his, her, or its influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist **GOL** and others in obtaining and retaining business for and with, and directing business to, **GOL** and others, in violation of Title 15, United States Code, Section 78dd-1(a); and

b. to knowingly and willfully falsify and cause to be falsified books, records, and accounts required, in reasonable detail, to accurately and fairly reflect the transactions and dispositions of the assets of **GOL**, an issuer within the meaning of the FCPA, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

Manner and Means of the Conspiracy

56. The manner and means by which **GOL**, GOL Director, Intermediary, and others sought to accomplish the objects of the conspiracy included, among other things, the following:

57. It was part of the conspiracy that Intermediary and GOL Director discussed the bribe payments in person, by text message, and by phone, including how much to pay, when to make the payments, and how to make the payments. Intermediary, in turn, discussed the bribe scheme with Brazilian Official 1 in person, by phone, and via an ephemeral U.S.-based messaging program that transmitted the messages using servers located in the United States.

58. It was further part of the conspiracy that GOL Director caused **GOL** to make

corrupt payments, including to Brazilian Official 1, Brazilian Official 2, and Brazilian Political Party, in at least three ways: (1) purported advertising placement payments from **GOL**, or on behalf of **GOL**, to the Brazilian Official 1 Companies controlled by Brazilian Official 1; (2) payments from **GOL**, or on behalf of **GOL**, to companies owned or controlled by Intermediary, which GOL Director understood would be passed on, at least in part, as bribes; and (3) payments from **GOL** to Consulting Company for the benefit of Brazilian Official 2.

Overt Acts

59. In furtherance of the conspiracy, and to achieve the objects thereof, at least one of the conspirators committed, and caused to be committed, in the District of Maryland and elsewhere, at least one of the following overt acts, among others:

a. On or about September 26, 2012, Employee 1 sent an email to GOL Director, stating that “[a]s instructed,” he was attempting to confirm the possibility of **GOL** entering into an advertising agreement with the Brazilian Official 1 Companies.

b. On or about October 10, 2012, Employee 1 sent a proposal to a GOL marketing executive with a payment amount that was not open for negotiation. The Marketing Department considered the payment amount high based on the expected returns, but approved the advertising, and GOL Executive approved the payments, as directed by GOL Director.

c. On or about March 5, 2013, Intermediary invoiced a **GOL** subsidiary in the amount of R\$295,000 (approximately US\$151,433) for consulting work ostensibly rendered for **GOL** by Intermediary Company 1, but which in reality was never performed.

d. On or about May 29, 2013, GOL Director caused a bribe payment of US\$350,000 to be made from a shell company incorporated in the Bahamas owned and

controlled by GOL Director through the United States to a Swiss bank account of Intermediary Company 3.

e. On or about June 10, 2013, Consulting Company Owner sent a sham proposal for analysis of aviation legislation to a GOL legal executive, copying GOL Director, in order to paper over the existence of the bribe payments in internal GOL records.

f. On or about June 11, 2013, Consulting Company Owner sent an email stating that he would need R\$1,237,623.76 in order to reach a net figure of R\$1,000,000.

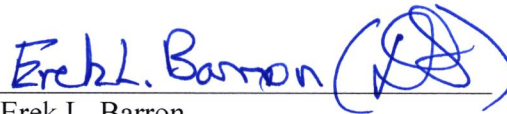
g. On or about June 11, 2013, GOL Director, while knowing that the true purpose of the R\$1,237,623.76 payment referenced in Overt Act F was to make a bribe payment to Brazilian Official 2 in exchange for his assistance with the aviation fuel tax legislation in Brasilia, sent an email response, copying the GOL legal executive, stating: "OK understood. Let's move forward because we are very interested in learning about your work, because we understand this will be the first of several projects together."

h. On or about April 30, 2015, **GOL** filed Form 20-F with the United States Securities and Exchange Commission. The Form 20-F falsely included payments made to the Brazilian Official Companies as purported “sales and marketing expenses” when a portion of these payments were, in fact, corrupt bribe payments made to Brazilian Official 1 and Brazilian Political Party.

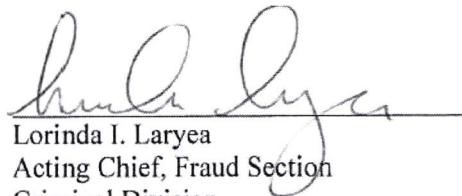
18 U.S.C. § 371

18 U.S.C. § 3551 *et seq.*

Date: September 9, 2022



Erik L. Barron
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