IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. **JULIA BEATRICE KELEHER [1]**, Defendant.	CRIMINAL CASE NO.: 20-019 (FAB)

JULIA BEATRICE KELEHER'S MOTION TO DISMISS THE INDICTMENT

COMES NOW the defendant, Julia Beatrice Keleher, through her undersigned counsel, and respectfully files this motion to dismiss the indictment against her, pursuant to Rule 12(b)(3) of the Federal Rules of Criminal Procedure.

As set forth below, the indictment charges Ms. Keleher in eight counts. Count One charges a conspiracy to commit honest services wire fraud (18 U.S.C. § 1349, § 1343, § 1346); Counts Two through Seven charge substantive honest services wire fraud offenses (18 U.S.C. § 1343, § 1346); and Count Eight charges Ms. Keleher with federal program bribery (18 U.S.C. § 666(a)(1)(B)). The offenses of wire fraud involving the honest services of a public official and federal program bribery both require that the public official agree to perform an official act in return for a thing of value. Each of the eight charges in the indictment against Ms. Keleher is based on the same underlying factual allegation, that Ms. Keleher, who was the Secretary of the Puerto Rico Department of Education (PR DOE), accepted a thing of value, financial benefits related to a personal residence, in return for what the indictment characterizes as an official act: agreeing to sign, and signing, a letter on PR DOE letterhead to Individual A, the CEO of Company C, authorizing Company C to acquire 1,034 square feet of the Padre Rufo School. Thus, the

validity of the indictment hinges on whether Ms. Keleher's agreement to sign this letter, and her signing it, constituted an official act of the PR DOE.

However, the Padre Rufo School and its adjacent land did not belong to the PR DOE and the Secretary of the PR DOE had no official role in acting on any request by Company C to acquire any land on which Padre Rufo School sits. As a matter of law, therefore, even assuming (at this juncture) the veracity of the factual allegations in the indictment, Ms. Keleher's letter was, at best, an expression of support, or lack of objection to, Company C's acquisition of the property. It was not be a decision by Ms. Keleher on a matter before her in her official capacity as Secretary of PR DOE.

A public official's expression of support or non-objection on a matter for which she has no decision-making authority is not itself an official act. Accordingly, while the indictment sets forth the alleged *quid* (a thing of value in the form of a financial benefit pertaining to a personal residence), as a matter of law, it falls to allege the *quo* (an agreement to undertake an official act). Each count against Ms. Keleher therefore fails to state an offense because it does not allege all of the elements of the offense charged. The indictment must be dismissed.

ARGUMENT

A. The indictment

On January 14, 2020, Ms. Keleher was charged with Conspiracy to Commit Honest Services Wire Fraud (18 U.S.C. § 1349, § 1343, § 1346), substantive Honest Services Wire Fraud (18 U.S.C. § 1343, § 1346), and Federal Program Bribery (18 U.S.C. §§ 666(a)(1)(B)). The following factual recitation is borrowed from the indictment: Ariel Gutierrez-Rodriguez was a consultant who provided services to Company A, a corporation dealing in real estate; and Company B, which operated out of the same office and had the same president as Company A. (2020 Indictment ¶¶ 9–

10, 14.) Company C owned a luxury apartment complex called "Ciudadela." Individual A was the chief executive officer of Company C. Individual A also served as the president of Company D, a nonprofit that promoted education-related initiatives on the island.

In May 2018, Mr. Gutierrez-Rodriguez and others—on behalf of Company A, Company B, and Company C—allegedly communicated with a PR DOE employee at the "Padre Rufo School" to obtain that employee's assent to the ceding of 1,034 square feet of the Padre Rufo School to Company C. (*Id.* ¶¶ 26–27.) Mr. Gutierrez-Rodriguez sent the employee the draft text of a letter addressed to Ms. Keleher, the then-Secretary of PR DOE, providing that employee's assent to cede 1,034 square feet of the Padre Rufo School to Company C. (*Id.* at ¶ 28.) The PR DOE employee alleged signed the letter, dated June 8, 2018. (*Id.*)

On or about June 7, 2018, Ms. Keleher allegedly signed a lease agreement with a promise-to-purchase term for a two-bedroom apartment in the Ciudadela complex. (*Id.* ¶ 16.) Per the lease-to-purchase agreement, Ms. Keleher was permitted to occupy the apartment until August 15, 2018, for the nominal amount of $1.00. (*Id.*) Ms. Keleher was to then purchase the apartment for $297,500. (*Id.*) She was to receive a discount of $12,000 off the sales price as an incentive bonus for the purchase. (*Id.*) Although the agreement was meant to expire on August 15, Ms. Keleher remained living in the apartment without paying additional rent until she completed the purchase on or about December 4, 2018. (*Id.*)

Ms. Keleher allegedly did not disclose in her financial disclosure statements with the Puerto Rico Office of Government Ethics that she was permitted to occupy the apartment for $1.00 until she purchased it, or that she was to receive $12,000 off the price as an incentive bonus for the purchase. (*Id.* ¶ 17.)

In July 2018, Mr. Gutierrez-Rodriguez drafted a letter and sent it to Ms. Keleher; the letter was from Ms. Keleher to Individual A, the CEO of Company C, authorizing Company C to acquire 1,034 square feet of the Padre Rufo School for its business purposes. (*Id.* at ¶ 29.) Ms. Keleher allegedly caused the letter to be placed on DOE letterhead and then affixed her signature to it. (*Id.*)[1]

In Count One, the indictment alleges a conspiracy between Mr. Gutierrez-Rodriguez and Ms. Keleher to commit honest services wire fraud. According to the indictment: "It was a purpose of the conspiracy for [1] JULIA BEATRICE KELEHER *to use her official position* as the Secretary of Education to enrich herself by soliciting and accepting gifts, payments, and things of value from others, known and unknown to the Grand Jury, and for others to enrich themselves *by obtaining favorable official action* for themselves and their companies through corrupt means." *Id.* at ¶ 20 (emphasis added). Specifically, Ms. Keleher allegedly accepted the "receipt of financial benefits in connection with her lease and purchase of an apartment in Ciudadela in exchange for [l] JULIA BEATRICE-KELEHER's signing a letter purporting to give 1,034 square feet of the Padre Rufo School to Company C." *Id.* at ¶ 21. The indictment thus specifies what it characterizes as the alleged official action by Ms. Keleher as follows:

> On or about July 17, 2018, [2] ARIEL GUTIERREZ-RODRIGUEZ sent via email the draft text of a letter addressed to Individual A from [1] JULIA BEATRICE KELEHER authorizing Company C to acquire 1,034 square feet of the Padre Rufo School for its business-related purposes. [1] JULIA BEATRICE KELEHER caused the text to be placed

[1] The letter signed by Ms. Keleher on PR DOE letterhead was produced by the Government in discovery. A certified translation of the letter is attached as Exhibit A. The sentence in the letter that Paragraph 29 of the indictment characterizes as Ms. Keleher "authorizing Company C to acquire 1,034 square feet of the Padre Rufo School for its business-related purposes" states: "based on the endorsements issued by the Municipality [of San Juan] and the DTOP [the Spanish acronym for the Department of Transportation and Public Works] for the expansion of Antonsanti Street, we hereby endorse your request and we authorize you to proceed with the construction to provide better road way to the Padre Rufo School and to all the residents of the sector."

> on PR DOE letterhead largely as drafted by [2] ARIEL GUTIERREZ-RODRIGUEZ, and affixed her signature.

Id. at ¶ 29.

Counts Two through Seven of the indictment charge substantive honest services wire fraud offenses, with each count specifying a wire allegedly sent in furtherance of the scheme set forth in Count One.

Count Eight re-alleges the paragraphs that are set forth in support of Count One and charges Ms. Keleher with federal program fraud. Count Eight alleges that Ms. Keleher "did corruptly solicit and demand for her own benefit, and accepted and agreed to accept things of value from [2] ARIEL GUTIERREZ-RODRIGUEZ and others known and unknown to the Grand Jury, namely: a lease with a promise to purchase agreement allowing her to occupy an apartment in Ciudadela for $1.00, and a $12,000.00 incentive bonus to purchase an apartment in Ciudadela, intending to be influenced and rewarded in connection with a transaction that involved $5,000.00 or more, that is, Company C's acquisition of 1,034 square feet of the Padre Rufo School from the PR DOE. All in violation of Title 18, United States Code, Section 666(a)(l)(B)." Indictment at ¶ 34.[2]

B. As a matter of law, PR DOE did not own the Padre Rufo School and the authority of the Secretary of PR DOE did not encompass the ability to give to Company C, or allow Company C to acquire, 1,034 square feet of the Padre Rufo School.

PR DOE does not own the Padre Rufo School and has no authority under its enabling statute to cede or sell public land. *See* 3 P.R.L.A. § 9801, *et seq.* Indeed, the indictment does not allege, nor could it, that the provision by Ms. Keleher of the letter to Company C referenced

[2] Count Eight should be dismissed for independent reasons as set forth in Ms. Keleher's separate motion to dismiss the count.

in Paragraph 29 of the indictment constituted an "adjudication" of any right or obligation of any party or that as such it was subject to review – judicial or otherwise. *See* 3 P.R.L.A. §§ 2102(b), (g), and (l), and 2171. It is therefore clear as a matter of law, as explained in greater detail below, that such a letter did not constitute an "official act" for purposes of the wire fraud or federal program bribery statutes. The indictment does not allege (and could not) that the PR DOE owned the land at issue in the indictment, and the law makes equally clear that the authority of the Secretary of PR DOE has never included the ability to cede or sell property. Accordingly, Ms. Keleher did not have the authority to give to Company C, or allow Company C to acquire, 1,034 square feet of the Padre Rufo School. The Puerto Rico Educational Reform Law, also known as Law No. 85 of March 29, 2018 ("Law 85-18"), as amended, establishes that the Governor of Puerto Rico appoints the Secretary of PR DOE pursuant to the Constitution of Puerto Rico. 3 L.P.R.A. § 9802a. The Secretary of PR DOE is responsible for establishing the vision, mission, priorities and goals of Puerto Rico's public education system by enacting norms, regulations, administrative orders or directives, in accordance with the law and without affecting the rights of PR DOE's school teachers, as defined by Article 2.12(a) of Law No. 85-2018. *See id.*

Specifically, Article 2.04 of Law No. 85-2018 establishes the duties, responsibilities, and functions of the Secretary of PR DOE. 3 L.P.R.A. § 9802c. Article 2.04 provides that the Secretary of PR DOE is responsible for the efficient and effective administration of Puerto Rico's public education system in accordance with the law, a duly established educational policy, and the public policy adopted by the Governor of Puerto Rico and Puerto Rico's legislative bodies, to implement the fundamental right to an education as recognized by Article II, Section 5 of the Constitution of Puerto Rico. *See id.* To achieve an efficient and effective administration

of Puerto Rico's public education system, Article 2.04 circumscribes the Secretary of PR DOE's authority into sixty-four (64) specific functions.

In connection with the public schools that PR DOE operates, the Secretary of PR DOE is authorized to establish, through regulation, the conditions, guarantees and economic terms under which PR DOE may lease school facilities to private entities solely for the purpose of hosting activities therein or offering services compatible with PR DOE's public policy. *See* 3 L.P.R.A. § 9802c at (13). The Secretary of PR DOE is also authorized to establish and regulate the opening, closing, and re-organization of the schools PR DOE operates, on an as-needed basis, *id*. at (14), and develop a strategy and establish methods to effectively manage the school facilities that PR DOE operates. *Id*. at (15). This law, however, does not (under Article 2.04 or otherwise) establish that the Secretary of PR DOE controls the property on which a particular school is situated, nor does it authorize the Secretary of PR DOE to dispose of that property, or otherwise "give" that property to anyone.

PR DOE did not, does not, and has never owned the Padre Rufo School, the land on which it sits, or the land adjacent to it. The Commonwealth of Puerto Rico is the owner of the Padre Rufo School property. In turn, the enabling statute of the Puerto Rico Department of Transportation and Public Works (or "DTOP" by its Spanish acronym) designated DTOP as the custodian of all property belonging to the Commonwealth of Puerto Rico. *See* 3 L.P.R.A. § 411. It also confers on the Secretary of DTOP a series of powers and duties, among which is the prerogative to monitor and manage all state public works, including public buildings. *See* 3 L.P.R.A. § 417 ("The Secretary of Transportation and Public Works shall have charge of all public buildings belonging to the Commonwealth of Puerto Rico and of all Commonwealth public works of whatever kind and name…"). As custodian of the Commonwealth's properties,

DTOP is authorized to sell, exchange, or otherwise transfer the land, which is the property of the Commonwealth, as well as the buildings under its custody. *See* 28 L.P.R.A. § 31(a).

Consequently, as the owner of the Padre Rufo School property, DTOP is the only party authorized to "give" 1,034 feet of the school to Company C or to otherwise allow Company C to acquire that property. *See also* 31 L.P.R.A. § 1111 ("Ownership is the right by which a thing belongs to someone in particular, to the exclusion of all other persons. Ownership confers the right to enjoy and dispose of things without further limitations than those established by the law.").[3]

That being the case , as more specifically discussed below, a letter from the Secretary of PR DOE to the CEO of Company C authorizing the acquisition of this property by Company C had no legal force, did not adjudicate or affect anyone's legal rights or obligations, and, at most, is a non-binding statement of the Secretary of PR DOE supporting Company C's efforts to acquire the property. *See Unlimited v. Mun. de Guaynabo*, 183 D.P.R. 947, 973-975 (2011) (an "endorsement" to a construction project is not binding upon the agency that is considering the construction permit of that project); *Comunidad Especial Las Calandrias v. Junta de Planificación*, 2009 WL 1438156 (TCA) at 12 (the agency with jurisdiction to issue constructions permits is not required to consider other agencies' comments or endorsements before granting permits); *Unigold Development Corp. v. Mun. Autónomo de Cayey*, 2018 WL 7079189 (TCA) (same); *Capó López v. Departamento de Recursos Naturales y Ambientales*, 2005 WL 16660371 (TCA) (an "endorsement" is not an administrative order or resolution subject to

[3] DTOP's authority to control the disposition of the property at issue is precisely why the July 17th letter Ms. Keleher signed predicates her lack of objection to the contemplated project "on the endorsements issued by the Municipality [of San Juan] and the DTOP."

judicial review). As such, the indictment's allegations, which purport to characterize Ms. Keleher's signing of the July 17, 2018 letter as an official act to support the alleged *quid pro quo*, fail as a matter of law.

C. Applicable Standard

Pursuant to Federal Rule of Criminal Procedure 12(b)(3), a defendant may file a pretrial motion, inter alia, to raise defects in instituting the prosecution and in the indictment, including failure to state an offense. Fed. R. Crim. P. 12(b)(3)(B)(v). The United States Supreme Court has interpreted Rule 12 to permit pretrial resolution of a motion to dismiss the indictment when "trial of the facts surrounding the commission of the alleged offense would be of no assistance in determining the validity of the defense." *United States v. Covington*, 395 U.S. 57, 60 (1969). Accordingly, "[i]t is perfectly proper, and in fact mandated, that the district court dismiss an indictment if the indictment fails to allege facts which constitute a prosecutable offense." *United States v. Coia*, 719 F.2d 1120, 1123 (11th Cir. 1983).

Generally, "a motion to dismiss is 'capable of determination' before trial if it involves questions of law instead of questions of fact on the merits of criminal liability." *United States v. Craft*, 105 F.3d 1123, 1126 (6th Cir. 1997); *United States v. Flores*, 404 F.3d 320, 324 (5th Cir. 2005) ("the district court did not err by considering the purely legal question at hand in Flores's pretrial motion"); *United States v. Korn*, 557 F.2d 1089, 1090 (5th Cir. 1977) ("'[t]he propriety of granting a motion to dismiss an indictment under [Fed. R. Crim. P.] 12 by pretrial motion is by-and-large contingent upon whether the infirmity in the prosecution is essentially one of law or involves determinations of fact.'"); *United States v. Jones*, 542 F.2d 661, 664-65 (6th Cir. 1976) (Rule 12 and accompanying notes support decision to dismiss indictment on motion raising legal questions); *See also United States v. Smith*, 866 F.2d 1092, 1097 (9th Cir. 1989) (one of the

purposes of Rule 12(b) is "conservation of judicial resources by facilitating the disposition of cases without trial").

"District courts may ordinarily make preliminary findings of fact necessary to decide questions of law presented by pretrial motions so long as the trial court's conclusions do not invade the province of the ultimate factfinder." *Craft*, 105 F.3d at 1126; see also Fed. R. Crim. P. 12(b)(1) ("A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits."); Fed. R. Crim. P. 12(b)(3) (noting that certain "defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits").

D. An official act is an element of honest services wire fraud involving a public official.

In *McDonnell v. United States*, 579 U.S. ___, 136 S. Ct. 2355 (2016), the Supreme Court unanimously overturned the conviction of the former Governor of Virginia, who had been charged with conspiracy to commit, and committing, honest services wire fraud. The parties agreed, and the Supreme Court accepted, that the elements of honest services fraud alleging a bribe of a public official encompass the elements of 18 U.S.C. § 201(b)(2), the federal bribery statute, requiring that the public official solicit or accept something of value in return for being influenced in the "performance of any official act." *McDonnell*, slip. op. at 9. The First Circuit has likewise recognized that honest services fraud premised on an alleged bribe of a government official requires that the thing of value be offered or given in return for an official act. *Woodward v. United States*, 905 F.3d 40, 44 (1st Cir. 2018) ("In *McDonnell*, the parties 'agreed that they would define honest services fraud with reference to the federal bribery statute, 18 U.S.C. § 201.' It is implicit in the parties' arguments here that we should do the same.") (internal citation omitted).

E. An official act is an element of program services bribery.

The provision of § 666 with which Ms. Keleher is charged in Count Eight is violated when someone "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of" a covered government agency, *i.e.*, an agency that receives more than $10,000 in federal benefits from a federal program, in this case, the PR DOE. *See* 18 U.S.C. § 666(a)(l)(B). The indictment specifies the transaction at issue in Count Eight as "Company C's acquisition of 1,034 square feet of the Padre Rufo School from the PR DOE." Indictment at ¶ 34.

In specifying that in return for the thing of value (the *quid*), the statute makes clear that the *quo* must be official action of the agency. As this Court recently put it:

> To sustain a conviction pursuant to section 666, the evidence must establish that Carrasco and Mercado agreed to "exchange something of value for influence over *some official conduct* of the recipient." *United States v. Gracie*, 731 F.3d 1, 3 (1st Cir. 2013) and *United States v. Fernández*, 722 F.3d 1, 22 (1st Cir. 2013) ("[F]or bribery, there must be a quid pro quo – a specific intent to give or receive something of value in exchange for *an official act*.").

United States v. Carrasco-Castillo, ____ F.Supp.3d ____, 2020 Westlaw 917003 (D. P.R. February 26, 2020) (emphasis added); *see also United States v. Fernandez*, 722 F.3d 1, 22 (1st Cir. 2013) ("Section 666's post-amendments language . . . imposes punishment on one who gives or offers anything of value to a public official 'with intent ... to influence' an official act"); *United States v. O'Brien*, 994 F. Supp. 2d 167, 187 (D. Mass. 2014) ("In order to prove a bribery offense under § 666, the government must prove that the bribe-giver intended to effect a *quid pro quo*. Although the language in § 201 and § 666 differ somewhat, it appears that both statutes require an "exchange"—that is, a payment for an *official act*, or course of action, such as a

particular vote on a particular piece of legislation.") (internal citations omitted) (emphasis added); *United States v. Jennings*, 160 F.3d 1006, 1015 (4th Cir. 1998) (Affirming conviction under Section 666 "because the evidence was sufficient to prove that [Jennings] intended to influence Morris's *official acts* by paying him money, that is, Jennings intended to engage in a *quid pro quo*.") (emphasis added); *United States v. Zimmerman*, 509 F.3d 920, 927 (8th Cir. 2007) ("Section 666(a)(1)(B) prohibits both the acceptance of bribes and the acceptance of gratuities intended to be a bonus *for taking official action*") (emphasis added).

F. Signing a letter on PR DOE letterhead authorizing Company C to acquire 1,034 square feet of the Padre Rufo School is not official action on the part of the Secretary of PR DOE, because, as a matter of law, PR DOE did not own the Padre Rufo School and the Secretary of PR DOE had no official role in the disposition of Padre Rufo School property.

As the Supreme Court set forth in *McDonnell*, there are two elements to an official act:

> First, the Government must identify a "question, matter, cause, suit, proceeding or controversy" that "may at any time be pending" or "may by law be brought" before a public official. Second, the Government must prove that the public official made a decision or took an action "on" that question, matter, cause, suit, proceeding, or controversy, or agreed to do so.

Slip Op. at 14. Thus, here, the indictment must allege that the acquisition of Padre Rufo School property was a matter pending before the Secretary of PR DOE or by law could have been brought before the Secretary of PR DOE. The *McDonnell* Court explained, "'may by law be brought' conveys something within the specific duties of an official's position—the function conferred by the authority of his office." Slip. Op. at 17.

As set forth above, however, as a matter of law, PR DOE did not own the Padre Rufo School Property and the Secretary of PR DOE had no role, official or otherwise, in determining the disposition of that property. Thus, assuming the allegations of the indictment are true, at

most, a letter from the Secretary of PR DOE to the CEO of Company C authorizing the acquisition of this property by Company C is a statement of the Secretary of PR DOE supporting Company C's efforts to acquire the property. Although not alleged in the indictment, the letter could potentially be used by Company C to advocate to the public official before whom the matter of the property acquisition was pending, or might become pending, to take official action in Company C's favor. But a statement by a public official in support of an interested party in a matter in which the public official has no decision-making authority, which might be used by the party in his efforts to obtain official action from a different public official who does have decision making authority, is not itself official action.

As the Supreme Court recognized in *McDonnell*, "a typical meeting, call, or event is not itself a question or matter." Slip Op. at 16-17. Thus, more is required than writing a letter to an interested party expressing support or even expressing support directly to the public official who is the decision maker.

> It is apparent from *Sun-Diamond* that hosting an event, meeting with other officials, or speaking with interested parties is not, standing alone, a "decision or action" within the meaning of §201(a)(3), even if the event, meeting, or speech is related to a pending question or matter. Instead, something more is required: §201(a)(3) specifies that the public official must make a decision or take an action on that question or matter, or agree to do so.

Slip Op. at 19. Thus, in *McDonnell*, the Court held: "Simply expressing support for the research study at a meeting, event, or call—or sending a subordinate to such a meeting, event, or call—similarly does not qualify as a decision or action on the study, as long as the public official does not intend to exert pressure on another official or provide advice, knowing or intending such advice to form the basis for an 'official act.'" Slip Op. at 20.

What is alleged in the indictment falls well short of what the holding in *McDonnell* requires to constitute an official act. As a matter of law, the Secretary of PR DOE was not the decision-maker, that is, the disposition of Padre Rufo School property was not "something within the specific duties of [Ms. Keleher's] official's position—the function conferred by the authority of [her] office." Slip Op. at 17. The indictment does not identify who the decision-maker was, nor does it allege that Ms. Keleher agreed to, or did, communicate with the decision-maker, much less that Ms. Keleher agreed to, or did, exert pressure on the decision-maker to cede the property. Rather, all that is alleged is that she signed a letter on PR DOE letterhead addressed to the CEO of Company C authorizing it to acquire the property, an acquisition that was not legally a matter before her in her official capacity as Secretary of PR DOE. Under *McDonnell*, the issuance of such a letter by Ms. Keleher is an event that does not qualify as official action, in the absence of any allegation that Ms. Keleher intended to use her office to exert pressure on the decision maker. *See United States v. Silver*, 864 F.3d 100, 102 (2d Cir. 2017) ("using government letterhead is not, by itself, a formal exercise of government power on a matter similar to a hearing or lawsuit").

In *United States v. Silver*, 864 F.3d 102 (2d Cir. 2017), the Second Circuit held that a state legislator sending a letter on official letterhead to an interested party in a permit application offering to help navigate the state permit approval, did not satisfy the standards set forth in *McDonnell* for an "official act." Likewise, the state legislator's writing a letter of recommendation for employment on official letterhead to an entity that received state government funding was not official action. *Id.* at 121. Finally, writing a letter in which the state legislator took a position on a matter that would be before a state agency did not constitute an "official act," because "[t]aking a public position on an issue, by itself, is not a formal exercise of governmental power." *Id.* at 122.

In *Waste Mgmt. of La., LLC v. River Birch, Inc*., No. 11-2405, 2017 U.S. Dist. LEXIS 121484, at *13-15 (E.D. La. Aug. 2, 2017), the defendant was a Commissioner of the Louisiana Department of Wildlife and Fisheries ("LDWF"), an agency of the State of Louisiana that received more than $10,000 in federal benefits from a federal program. As a matter of law, the position as a Commissioner of the LDWF did not encompass any duties relative to landfill permitting. Accordingly, although the Commissioner of the LDWG was given a thing of value to lobby against landfills, the court held that § 666 was not implicated, because there was no effort to influence or reward the defendant in connection with the business of the LDWF. In so holding, the court stated, "[w]hile Mouton may have included his title while writing these letters, the Court fails to see how these lobbying efforts move from the political to criminal, especially under the criminal statute at issue." *Id.*

Here, where, as a matter of law, the position of Secretary of PR DOE did not encompass making decisions on the disposition of Padre Rufo School property, an allegation that Ms. Keleher agreed to sign, and signed, a letter on PR DOE letterhead supporting Company C's efforts to acquire that property is not an allegation she agreed to take, or took, official action or took action in connection to a transaction of PR DOE. There is no allegation that Ms. Keleher had a matter before her in her official capacity as Secretary of PR DOE and that the letter was official action resolving that matter. Indeed, there was no matter before her in her official capacity and therefore agreeing to sign, and signing, the letter, as a matter of law, was not official action.

CONCLUSION

An element of each count alleged against Ms. Keleher is that she agreed to take official action in return for a thing of value. The indictment alleges that the official action at issue was signing a letter on PR DOE letterhead to the CEO of Company C authorizing Company C to

acquire 1,034 square feet of Padre Rufo School. As a matter of law, the PR DOE did not own Padre Rufo School and the Secretary of PR DOE had no role in the disposition of this property. Accordingly, the disposition of that property was not a matter within Ms. Keleher's authority as Secretary of PR DOE, and she did not have any matter pending before her, or by law that could have been brought before her, with respect to Company C's acquisition of Padre Rufo School property. Accordingly, merely signing the letter cannot constitute official action. The acquisition of Padre Rufo School property by Company C was not a transaction of PR DOE.

There is no allegation in the indictment which identifies the public official before whom the matter was pending or eventually might be pending. The indictment lacks any allegation that Ms. Keleher agreed to communicate with that official, much less that she agreed to exert the pressure of her office on that unnamed official to facilitate Company C's acquisition of the land. The indictment, by merely alleging that she agreed to place the letter at issue on PR DOE letterhead and sign it, falls decidedly short of alleging that Ms. Keleher agreed to take, or did take, official action in connection with the land transaction or that the land transaction was a transaction of PR DOE. Accordingly, the indictment does not allege each of the elements of the charged offenses and must be dismissed.

WHEREFORE, the defendant, Julia Beatrice Keleher, respectfully requests that the Court GRANT this motion to dismiss.

Respectfully submitted on this 1st day of June 2020, in San Juan, Puerto Rico.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will provide access to all parties of record.

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GOVERNMENT OF PUERTO RICO

DEPARTMENT OF EDUCATION
Office of the Secretary

July 17, 2018

[redacted]
President
[redacted]
1511 Ave. Ponce de Leon Ste 3
San Juan PR 00909

Dear Mr. [redacted]:

This communication is in response to your letter dated May 30, 2018 (attached herein as Exhibit # 1), in which you request an endorsement for the extension of Antonsanti Street, which will impact a strip of 1,034 square feet of the Padre Rufo School, as evidenced by the schematic plans that accompany your request.

We hereby notify you that we already have the endorsement of the principal of the Padre Rufo School, as stated in her letter dated June 8, 2018, attached herein as Exhibit # 2. The Municipality of San Juan (hereinafter, Municipality) has also endorsed this request for the expansion of Antonsanti Street, stated in the endorsement letter dated May 21, 2018, attached herein as Exhibit # 3. Likewise, the Department of Transportation and Public Works (hereinafter DTOP [by its Spanish acronym]) issued an endorsement, dated August 19, 2002, when the Declaration of Environmental Impact for the Ciudadela project was approved, included in the Plan for Santurce Centro and Ponce de Leon Avenue, herein attached as Exhibit # 4.

In accordance with the foregoing and based on the endorsements issued by the Municipality and the DTOP for the expansion of Antonsanti Street, we hereby endorse your request and we authorize you to proceed with the construction to provide better road way to the Padre Rufo School and to all the residents of the sector.

I request that you contact the principal of the Padre Rufo School, Mrs. E , to coordinate the construction and ensure that, at the conclusion of the same, the school will remain operating and serving our students as it has done up to now.

Cordially,

Julio C. Rámos, Ed. D.
Secretary