

Gold Medal Idea? Or Extraterritorial Excess?: Hurdles to the Effective Administration of the Rodchenkov Anti-Doping Act

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I. Introduction to The Rodchenkov Anti-Doping Act of 2019

In 2019, the United States passed anti-doping legislation with a far-reaching international sweep. When it entered into force in December of 2020, the Rodchenkov Anti-Doping Act (“RADA”) gave the United States total jurisdiction to criminally prosecute doping conspiracies related to international athletic competition when two easily-attainable conditions are met: 1) United States athletes participate in the competition; and 2) the United States financially supports the competition in one of several ways.¹ If even a single United States athlete participates—even briefly—in the competition, condition one is met.² Then, when the United States provides the competition organizer or sanctioning body with a form of financial support such as a sponsorship or compensation for broadcasting rights, condition two is met.³ There are more nuances to the criteria for a conspiracy qualifying for prosecution under the RADA; however, the crux of a conspiracy’s eligibility for prosecution under the RADA boils down to the United States’ athletic participation and financial support.

The RADA’s passage was met with substantial domestic support and near-immediate international backlash from anti-doping organizations. Domestically, both chambers of Congress passed the RADA with an overwhelming bipartisan majority.⁴ Some viewed it as much-needed

¹ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(2)(5) (2020).

² United States “involvement” under the RADA is not a high bar; even a single United States athlete’s presence in a competition may be sufficient for the RADA to prosecute any doping conspirators connected to the competition. The RADA’s exact language just requires “one or more United States athletes and three or more athletes from other countries” to participate. *See* Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(2)(5)(A)(i) (2020).

³ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(2)(5)(A)(iii)(I)-(II) (2020).

⁴ In 2020, congressional support for the Rodchenkov Anti-Doping Act was so strong that it passed the Senate unanimously. *Rodchenkov Act Passes Senate, Goes to President for Signature*, CSCE (Nov. 17, 2020),

check on international doping conspiracies such as Russia’s systematic, state-sponsored doping program at the 2014 Winter Olympics in Sochi.⁵ International organizations such as the World Anti-Doping Agency (“WADA”), though, criticized the RADA’s decentralization of anti-doping authority and its empowerment of a single country to criminalize doping violations.⁶

This paper’s purpose is to analyze the circumstances that led to the passage of the RADA and additionally to explore the present and future implications of the RADA on international efforts to combat sports doping. This paper considers the first case to have been charged under the RADA involving Texas naturopathic “doctor” Eric Lira and Olympic sprinter Blessing Okagbare, as well as the recent high-profile Kamila Valieva scandal, which the United States could also prosecute under the RADA. Since some recent scholarship also details the origins of the RADA and its current international implications,⁷ to avoid preemption, this paper also considers whether WADA’s argument that the RADA’s penalties may deter whistleblowers is substantiated, and theorizes about possible long-term outcomes for the RADA.

II. Background

The RADA’s namesake, Grigory Rodchenkov, is perhaps the world’s most famous whistleblower. Rodchenkov’s story is worthy of a Hollywood thriller, and in fact became the basis for *Icarus*, an Oscar-winning documentary about the Russian doping scandal.⁸ For years,

<https://www.csce.gov/international-impact/press-and-media/press-releases/rodchenkov-act-passes-senate-goes-president>.

⁵ In Support of H.R. 6067 Rodchenkov Anti-Doping Act (RADA Act), 115th Cong. (2018), available at <https://www.csce.gov/international-impact/press-and-media/statements/support-hr-6067-rodchenkov-anti-doping-act-rada-act>.

⁶ See generally *WADA Statement on U.S. Senate’s Passing of the Rodchenkov Anti-Doping Act*, WORLD ANTI-DOPING AGENCY (Nov. 17, 2020), <https://www.wada-ama.org/en/media/news/2020-11/wada-statement-on-us-senates-passing-of-the-rodchenkov-anti-doping-act>.

⁷ See, e.g., Genevieve F.E. Birren, *The Rodchenkov Anti-Doping Act: The United States’ Response to the Russian Doping Scandal*, 32 MARQUETTE SPORTS L. REV. 241 (2022).

⁸ ICARUS (Brian Fogel 2017).

Rodchenkov served as the head scientist in Moscow’s Anti-Doping Center, a laboratory responsible for analyzing athletes’ samples for the 2014 Sochi Olympics.⁹ Rodchenkov and his associates developed a system where Russian Federal Security Service (“FSB”) agents, disguised as maintenance workers and plumbers, entered into the laboratory at night, extracted samples via a “mousehole” in a storage room wall, and then replaced Russian athletes’ tainted urine samples with clean urine.¹⁰ The samples’ “tamper-proof” glass lids designed to shatter on removal were no match for an FSB device engineered to remove them in one piece.¹¹ Accordingly, Russia’s success in Sochi—which entailed more than doubling its medal count from the 2010 Winter Olympics in Vancouver¹²—was attributable not only to the efforts of Russian athletes, but also to the secret efforts of Russian scientists, officials, and government agents.

The glory of Sochi was fleeting, though. A German documentary aired in 2015, claiming that as many as 99% of Russian athletes at Sochi had doped.¹³ As more murmurs of foul play circulated in the media, international anti-doping organizations became suspicious. WADA formed an independent commission to investigate Sochi, and by the end of 2015, the commission issued an extensive report implicating numerous participants in the Sochi conspiracy.¹⁴ These revelations of doping led to a Russian crackdown where former laboratory heads were disgraced

⁹ Rebecca R. Ruiz & Michael Schwartz, *Russian Insider Says State-Run Doping Fueled Olympic Gold*, THE NEW YORK TIMES (May 15, 2016), <https://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics-2014.html>.

¹⁰ *Id.*

¹¹ Rebecca Ruiz, *Mystery in Sochi Doping Case Lies With Tamper-Proof Bottle*, THE NEW YORK TIMES (May 13, 2016), <https://www.nytimes.com/2016/05/14/sports/russia-doping-bottles-olympics-2014.html>.

¹² World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA), CAS 2020/O/6689 ¶ 789 (Dec. 17, 2020).; *Medal Tracker Overall*, ESPN, *Medal Tracker—Overall*, ESPN, <https://www.espn.com/olympics/winter/2014/medals> (last visited July 16, 2022).

¹³ *Secret Doping Dossier: How Russia Produces Its Winners* (ADR television broadcast Dec. 3, 2014), available at <https://www.youtube.com/watch?v=iu9B-ty9JCY>.

¹⁴ Richard Pound et al., *The Independent Commission Report #1 Final Report*, WORLD ANTI-DOPING AGENCY (Nov. 9, 2015), https://www.wada-ama.org/sites/default/files/resources/files/wada_independent_commission_report_1_en.pdf.

and silenced—and sometimes died under mysterious circumstances.¹⁵ Rodchenkov, as the Moscow Anti-Doping Centre Director and the ultimate scapegoat, feared that he was next and defected.¹⁶

Rodchenkov fled to the United States and subsequently revealed the extent of Russia’s doping conspiracy in an exposé published in May of 2016.¹⁷ In an interview, Rodchenkov revealed that he helped administer “cocktails” of drugs to athletes for short-term performance enhancement as well as orchestrate and cover up their monthslong doping regimens.¹⁸ He noted that, with the FSB’s help, he and his associates switched out over a thousand samples.¹⁹ In the years leading up to Sochi, said Rodchenkov, he kept a calendar tracking when Russian athletes competed in international sporting competitions.²⁰ Then, laboratory officials and FSB agents would immediately switch out the samples of any Russian athletes on the list who received medals in these competitions.²¹ To chronicle the operation for reporters, Rodchenkov provided the New York Times with laboratory emails and a spreadsheet of all the athletes whose samples were allegedly switched.²² In response to these allegations, WADA commissioned Professor

¹⁵ Two of Rodchenkov’s closest associates, Drs. Vyacheslav Sinev and Nikita Kamaev, died within eleven days of one another, ostensibly from heart attacks. Both doctors had served as heads of Russia’s Anti-Doping laboratory in the leadup to Sochi, and each appeared to be in good health. *Russian Official Planned Book Before Sudden Death*, CBS, (Feb. 21, 2016), <https://www.cbsnews.com/news/russia-doping-nikita-kamaev-planned-book-before-sudden-death/>. Rodchenkov, by contrast, was heading Russia’s laboratory at the time of the scandal, then fled to the United States and blew the whistle on the entire operation, making him even more reviled in Russia. Rodchenkov’s fear for his life is not unsubstantiated. Even seven years after his revelation, he is still listed among Russia’s most-wanted. *Russian Court Issues Warrant for Doping Whistleblower*, RADIO FREE EUROPE (Sept. 28, 2017), <https://www.rferl.org/a/russia-doping-whistle-blower-rodchenkov-arrest-warrant/28762288.html#:~:text=A%20Moscow%20court%20on%20September%2028%20announced%20that,investigators%20put%20Rodchenkov%20on%20an%20international%20wanted%20list>.

¹⁶ *The ‘Real’ Threat to Russia’s Former Doping Mastermind*, BBC (July 31, 2020), <https://www.bbc.com/news/stories-53596997>.

¹⁷ Rebecca R. Ruiz & Michael Schwartz, *Russian Insider Says State-Run Doping Fueled Olympic Gold*, THE NEW YORK TIMES (May 15, 2016), <https://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics-2014.html>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Richard McLaren to assemble an investigative report about Rodchenkov's allegations and the doping that took place at Sochi.²³

The McLaren Report's findings were damning for the Russian government. Moreover, the Report corroborated many of the allegations Rodchenkov made about Sochi. The report revealed, *inter alia*, that under Rodchenkov's tutelage, Moscow Anti-Doping Centre staff destroyed over 8,000 Russian athletes' samples following Sochi; that numerous Russian athletes' Sochi samples once contained substances from Rodchenkov's short-term performance enhancement "cocktail" of banned drugs with whiskey as masking agent; and that retests of Russian athletes' samples from the London Olympics likewise contained components of the cocktail.²⁴ Specifically, these findings aligned with Rodchenkov's statements in his interview with the New York Times.²⁵ Beyond these similarities, the McLaren Report triggered an avalanche of evidence of doping. For example, DNA testing of several athletes' samples determined that the samples had come from someone other than the athlete.²⁶ And, of all the sample bottles McLaren's investigators analyzed, every single bottle had scratch marks caused by tampering.²⁷ McLaren also noted his personal belief that Rodchenkov was forthright while testifying during the creation of the report. McLaren writes, "Dr. Rodchenkov is credible and truthful in relaying to me the testimony he gave... I reach that conclusion because the forensic and laboratory scientific evidence that I have gathered corroborates that he has been completely truthful in his interviews with me."²⁸

²³ Richard McLaren, *The Independent Person Report*, WORLD ANTI-DOPING AGENCY (July 18, 2016), https://www.wada-ama.org/sites/default/files/resources/files/20160718_ip_report_newfinal.pdf.

²⁴ *Id.* at 25, 50-51, 62.

²⁵ *See generally id.*; *See also Russian Doping: McLaren Report Says That Over 1000 Athletes Implicated*, (Dec. 9, 2016), <https://www.bbc.com/sport/38261608>.

²⁶ McLaren, *supra* note 23, at 49.

²⁷ *Id.* at 72.

²⁸ *Id.* at 21.

III. Failure to Counter Russian Doping Spurs the Creation of the RADA

Despite widespread condemnation of the Russian conspiracy at Sochi, justice was neither swift nor severe. The Court of Arbitration for Sport (“CAS”) initially imposed a four-year ban on Russia’s Olympic program then, with no clear justification, halved the ban to two years.²⁹ While WADA and the International Olympic Committee (“IOC”) eventually sanctioned Russian athletes, these athletes were still permitted to compete as “Olympic Athletes from Russia” at the 2018 Pyeongchang Winter Olympic Games.³⁰ Though several prominent scientists and officials like Rodchenkov took the fall publicly, the members of the underground network that kept the Russian doping machine afloat, for the most part, never faced consequences.³¹

The Rodchenkov Anti-Doping Act originated out of this frustration with international anti-doping organizations’ failures to sufficiently sanction Russian doping at its initial source: the conspirators who made it possible for athletes to dope in the first place. The House of Representatives Report on the RADA details some of these frustrations. For example, the House Report discusses how, in addition to halving the length of the Olympic ban on Russia, in 2018 the CAS walked back IOC bans on 28 Russian athletes right before the 2018 Winter Games in Pyeongchang began.³² Eleven other Russian athletes saw their lifetime bans imposed by the IOC reduced to four-year suspensions.³³ Then, merely days after the Games concluded, the CAS reinstated the Russian Olympic Committee.³⁴

²⁹ Rachel Bachman, *Sports Court Cuts Russia Doping Ban in Half*, THE WALL STREET JOURNAL (Dec. 17, 2020), <https://www.wsj.com/articles/sports-court-ruling-on-russian-doping-scheme-11608217781>.

³⁰ Birren, *supra* note 7, at 244.

³¹ *Russia Doping: Impossible to Know the Number of Cheating Athletes, Court Panel Says*, NBC SPORTS (Jan. 24, 2021), <https://olympics.nbcsports.com/2021/01/14/russia-doping-ban-cheating/>.

³² H.R. REP. NO. 116-251, at 7 (2019), <https://www.congress.gov/116/crpt/hrpt251/CRPT-116hrpt251.pdf>.

³³ *Twenty-Eight Russian Athletes Have Doping Bans Overturned by the CAS*, MARKING THE SPOT (Feb. 1, 2018), <https://www.markingthespot.com/28-russian-athletes-have-doping-bans-overturned-by-cas/>.

³⁴ H.R. REP. NO. 116-251, at 7 (2019), <https://www.congress.gov/116/crpt/hrpt251/CRPT-116hrpt251.pdf>.

The CAS offered several justifications for revoking its ban, most significantly that in spite of both the McLaren Report and McLaren and Rodchenkov’s testimony as a fact witnesses, the evidence against the 28 athletes was “insufficient to establish that an anti-doping rule violation (ADRV) was committed by the athletes concerned.”³⁵ The CAS partially based its decision on the rationale that evidence of a larger systematic scheme and alteration of samples within the Sochi laboratory was irrelevant to the cases of the 39 athletes appealing their bans.³⁶ Instead, the CAS “strictly limited” its focus in each case to “assess the evidence applicable to each athlete on an individual basis.”³⁷

The CAS’s unique standard of proof was likely another influential factor in its decision. Although it is a civil court, the CAS’s standard of proof is not a “more likely than not” a preponderance of the evidence standard, but rather a “comfortable satisfaction” standard.³⁸ Ranging from just above a preponderance standard to just below the high beyond a reasonable doubt standard, comfortable satisfaction entails a shifting of the amount of evidence necessary for liability based on the particular circumstances of each case.³⁹ Largely, the standard becomes more difficult to meet based on the gravity of a case or “bearing in mind the seriousness of the allegation which is made.”⁴⁰ In consequential proceedings such as considering lifetime bans of athletes, the comfortable satisfaction standard of proof is likely at or near its highest.⁴¹

³⁵ Press Release, The Court of Arbitration for Sport, Anti-Doping—Sochi 2014 (Feb. 1, 2018) [hereinafter “CAS Press Release”].

³⁶ *Id.*

³⁷ *Id.*

³⁸ The case of *Potylitsyna v. IOC* helps elucidate the comfortable satisfaction standard. *Potylitsyna v. IOC*, CAS 2017/A/5432, ¶¶ 672-676 (Feb. 1, 2018).

³⁹ *Id.*

⁴⁰ *IAAF v. RFEA and Josephine Onyia*, CAS 2009/A/1805 & 1847, ¶ 37 (Sept. 22, 2009).

⁴¹ *See id.*

The CAS's standard of proof and its emphasis on evaluating each Russian athlete only in an individual capacity shed light on why the CAS's outcome for 28 athletes differs so greatly from the IOC's. Most perplexing, however, is that even when its comfortable satisfaction standard is met and the CAS found the same eleven Russian athletes liable that the IOC did, the CAS drastically altered the outcome anyway. The CAS chose to reduce these eleven athletes' bans from lifetime bans to bans at the next Winter Olympics.⁴² In a press release regarding its decision, the CAS outlines its reasoning (discussed above) as to why it chose to undo the IOC's bans of 28 Russian athletes.⁴³ It devotes two sentences to the other eleven athletes, merely stating that:

In 11 cases, the evidence collected was found to be sufficient to establish an individual ADRV. The IOC decisions in these matters are confirmed, with one exception: the athletes are declared ineligible for the next edition of the Olympic Winter Games (i.e. Pyeongchang 2018) instead of a life ban from all Olympic Games.⁴⁴

Perhaps the CAS's underlying rationale for the reduction is once again that it did not weigh the overall systematic doping structure at Sochi in assessing liability and therefore felt a lesser penalty was warranted, but the CAS simply does not say.

In September of the same year the CAS walked back its bans, WADA continued the trend of reducing repercussions. WADA reinstated the Russian Anti-Doping Agency ("RUSADA"), formerly headed by Rodchenkov.⁴⁵ Remarkably, WADA did so despite RUSADA having yet to

⁴² CAS Press Release, *supra* note 35

⁴³ *See generally id.*

⁴⁴ *Id.*

⁴⁵ Mitch Phillips, *WADA Votes to Reinstate RUSADA Amid Widespread Protests*, REUTERS (Sept. 20, 2018), <https://www.reuters.com/article/us-sport-doping-russia-reinstatement-idUSKCN1M01RD>.

fulfill all of its obligations for reinstatement—including timely submitting data on thousands of doping samples.⁴⁶

The House Report on the RADA states that while “[t]here is no federal statute that provides explicit, comprehensive protection against doping in international sports competitions,” precedents exist—*i.e.*, criminalizing gambling, money laundering, bribery, and other acts.⁴⁷ For example, the Department of Justice has previously prosecuted FIFA officials in U.S. court for racketeering, wire fraud, and money laundering conspiracies.⁴⁸ Conceivably, the RADA could fill in a gap in international criminal law without imposing drastic changes but rather by paralleling these existing precedents. The House Report asserts that the RADA will serve to “protect whistleblowers from retaliation.”⁴⁹ It is still undetermined how the RADA will shield whistleblowers from vindictive former coconspirators, as this paper discusses in Section XIII. Section XIII also delves further into the legislative history of the RADA to see if at any point earlier drafts of the RADA contained provisions protecting whistleblowers.

IV. The Makeup of the RADA

The RADA contains several components. Its purpose statement declares that its objectives are 1) criminally sanctioning those involved in doping conspiracies; 2) providing restitution to victims defrauded by doping conspiracies; and 3) compelling “the sharing of

⁴⁶ *Id.*; See also *WADA Executive Committee Decides to Reinstate RUSADA Subject to Strict Conditions*, WORLD ANTI-DOPING AGENCY (Sept. 20, 2018), <https://www.wada-ama.org/en/news/wada-executive-committee-decides-reinstate-rusada-subject-strict-conditions>; Kevin Draper, *No Punishment for Russia Over Delay on Doping Data*, THE NEW YORK TIMES (Jan. 22, 2019), <https://www.nytimes.com/2019/01/22/sports/olympics/wada-russia.html>.

⁴⁷ H.R. REP. NO. 116-251, at 9 (2019), <https://www.congress.gov/116/crpt/hrpt251/CRPT-116hrpt251.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.* at 10.

information with the United States Anti-Doping Agency” to aid in its efforts to combat doping and its “other purposes.”⁵⁰

As its purpose statement indicates, the RADA’s scope is broad. It is also indefinite. “Those involved in doping conspiracies” is a wide term, but it is not intended to include athletes, as Section 3 of the RADA designates.⁵¹ Likewise, the meaning of “victims of such conspiracies” encompasses a broad range of people including competitors, sponsors, and potentially even viewers of sporting events. Finally, the RADA’s purpose statement asserts that the RADA requires “sharing of information” with the United States Anti-Doping Agency (“USADA”) which USADA may use both to counter doping and “for other purposes.”⁵² The RADA’s “other purposes” catch-all is likely particularly troubling to international anti-doping organizations such as WADA, as it seemingly gives the USADA a truly undefined grant of power.⁵³

The definitions section of the RADA helps clarify its meaning, to a degree. For example, it defines “person” as encompassing more than just individual conspirators, but also including corporations and other entities.⁵⁴ The RADA’s definitions section also defines two sources the RADA relies on to delineate its scope. First, the RADA defines “Code” to refer to the World Anti-Doping Code, WADA’s “core document” that unifies doping regulations and violations for hundreds of subscribing countries.⁵⁵ Second, the RADA also uses the term “Convention” to refer to the United Nations Educational, Scientific, and Cultural Organization International

⁵⁰ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401 (2020).

⁵¹ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(3)(a) (2020).

⁵² Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401 (2020).

⁵³ *Id.*

⁵⁴ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(2)(6) (2020).

⁵⁵ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(2)(3) (2020).

Convention Against Doping in Sport (UNESCO Convention), signed in Paris in 2005.⁵⁶ The Convention served to stabilize and give real “teeth” to WADA’s Code.⁵⁷

Section Four of the RADA, its criminal penalties section, is likely its most significant and controversial provision. Section Four permits the United States to criminally prosecute international conspirators through extraterritorial jurisdiction.⁵⁸ This paper analyzes extraterritorial jurisdiction more thoroughly in the next section. The criminal penalties for conspiracies are substantial; sanctions under the RADA include fines up to \$250,000 for individuals and \$1,000,000 for entities, and require conspirators to provide restitution to victims of the conspiracy.⁵⁹ The RADA’s statute of limitations is 10 years.⁶⁰ Section Four and Section Six of the RADA, respectively, discuss compelling United States agencies to share information with USADA and the budgetary effects of the RADA.⁶¹

V. Extraterritorial Jurisdiction and Domestic Precedent

The RADA explicitly invokes extraterritorial jurisdiction to prosecute doping.⁶² Fundamentally, extraterritorial jurisdiction refers to a country’s ability to exercise governing authority outside of its geographical boundaries.⁶³ In some specific cases, extraterritorial jurisdiction can include a country’s power to impose its prosecutorial authority over crimes

⁵⁶ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(2)(4) (2020).

⁵⁷ International Convention Against Doping in Sport, Oct. 19, 2005; *See also Evaluation of UNESCO’s International Convention Against Doping in Sport*, INTERNATIONAL ORGANIZATION FOR COOPERATION IN EVALUATION, <https://ioce.net/evaluation-of-unescos-international-convention-against-doping-in-sport/> (last visited Sept. 19, 2022).

⁵⁸ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(4) (2020).

⁵⁹ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(4)(a)(1) (2020).

⁶⁰ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(4)(b)(1) (2020).

⁶¹ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(6)-(7) (2020).

⁶² Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(3)(b) (2020) (“There is extraterritorial federal jurisdiction over an offense under this statute.”)

⁶³ Anthony J. Colangelo, *What is Extraterritorial Jurisdiction?*, 99 CORNELL L. REV. 1303, 1304 (2014).

occurring outside of that country's boundaries.⁶⁴ In the context of the RADA, the most relevant form of extraterritorial jurisdiction is what Professor Anthony Colangelo of Southern Methodist University School of Law refers to as "the extraterritorial exercise of U.S. prescriptive jurisdiction"—*i.e.*, extraterritorial jurisdiction "to prescribe rules regulating foreign conduct."⁶⁵

A country's use of extraterritorial prescriptive jurisdiction to regulate crime outside of the country's borders is not unprecedented, especially in the United States. For example, the United States has previously prosecuted non-citizens for financial crimes tangentially related to the United States such as fraud, bribery, and illegal gambling.⁶⁶ It has also prosecuted non-citizens extraterritorially through the Export Administration Act and the Arms Export Control Act.⁶⁷ By passing each of these Acts with the purpose of controlling business activities occurring outside of the United States, Congress clearly gives federal prosecutors the latitude to exercise extraterritorial jurisdiction.⁶⁸

Some scholars argue that the use of extraterritorial jurisdiction to regulate crime within another country's borders should contain inherent limitations, or even be considered presumptively invalid.⁶⁹ Thus, countries often view extraterritorial jurisdiction lacking consent from the territory it is imposed on as a violation of international law.⁷⁰ Traditionally, extraterritorial jurisdiction at least mirrors the laws of the country where a violation occurs.⁷¹

⁶⁴ Michael Farbiarz, *Extraterritorial Criminal Jurisdiction*, 114 MICH. L. REV. 507, 512 (2016).

⁶⁵ Colangelo, *supra* note 63.

⁶⁶ Ellen S. Podgor, "Defensive Territoriality": *A New Paradigm for the Prosecution of Extraterritorial Business Crimes*, 31 GEORGIA J. INT'L & COMP. L. 1, 4, 7-8 (2002).

⁶⁷ The Export Administration Act permits prosecution for improper licensure of shipping goods. The Arms Export Control Act similarly allows prosecution for improper transport of military goods. *Id.* at 8.

⁶⁸ *Id.*

⁶⁹ Harold G. Maier, *Extraterritorial Jurisdiction at a Crossroads: An Intersection Between Public and Private International Law* 76 AM. J. INT'L L. 280, 282 (1982) ("[C]ourts of all nations should indulge in a presumption against the extraterritorial impact of law.").

⁷⁰ *Id.*

⁷¹ Colangelo, *supra* note 63, at 1334.

Though the RADA is a self-proclaimed source of extraterritorial jurisdiction,⁷² it nonetheless enforces United States law and United States law alone instead of the laws of the country in which doping violations take place. And, though the implementation of extraterritorial jurisdiction in the United States is not unprecedented,⁷³ there are still notable limitations to its use.

Two principles outlined by the U.S. Supreme Court constrain the United States' use of extraterritorial jurisdiction and inform an analysis of the RADA. First, the Court has applied and developed⁷⁴ the presumption against extraterritoriality, where “[a]bsent clearly-expressed congressional intent to the contrary, federal laws will be construed to have only domestic application.”⁷⁵ A statute may first establish this intent if its text contains an express rebuttal of the presumption against extraterritoriality.⁷⁶ Only if there is no such rebuttal, a court may evaluate the statute’s “focus” to “determine whether the case involves a domestic application of the statute.”⁷⁷ If the statute’s main “focus” involves domestic U.S. conduct while still implicating foreign conduct, extraterritorial application is allowed.⁷⁸ If the statute mainly focuses on conduct occurring in a country other than the U.S. while still implicating conduct in the U.S., this is “an impermissible extraterritorial application.”⁷⁹ Applying this inquiry to the RADA, only step one

⁷² Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(3)(b) (2020).

⁷³ See, e.g., Laura Richardson Brownlee, *Extraterritorial Jurisdiction in the United States: American Attitudes and Practices in the Prosecution of Charles “Chuckie” Taylor Jr.*, 9 WASH. UNI. GLOB. STUD. L. REV. 331, 332 (2010) (“[A] number of states have chosen to try individual offenders for crimes defined by international law when neither the crimes nor the offenders have a relational nexus to the forum state. The U.S. joined this group in 1994[.]”).

⁷⁴ The court has shaped and reshaped the “presumption against extraterritoriality” canon of construction; this paper’s analysis uses the modern interpretation of the canon first introduced in *Morrison v. National Australia Bank Ltd* and reaffirmed in *RJR Nabisco, Inc. v. Eur. Cmty.* See William S. Dodge, *The New Presumption Against Extraterritoriality*, 133 HARV. L. REV. 1582 (2020).

⁷⁵ *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 326 (2016).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

(express rebuttal) is necessary because Congress approved the RADA’s express language that “[t]here is extraterritorial federal jurisdiction over an offense under this statute.”⁸⁰ Thus, the presumption against extraterritoriality is not a significant obstacle to the successful application of the RADA, though the outcome could be different if step two were applicable.

A likely more significant obstacle to the RADA’s potency is the Court’s construction of ambiguous statutes to avoid extraterritorial interference with other nations’ sovereignty. In *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, the Court noted that such an approach “reflects customary international law principles” and reasoned that courts should assume that Congress considers “other nations’ legitimate sovereign interests” when creating law.⁸¹ The *Empagran* Court held that when conduct occurs causing adverse foreign effect independent of adverse domestic effect, domestic U.S. law—specifically the Sherman Anti-Trust Act—was inapplicable.⁸² Though *Empagran* is an antitrust case, it stands for a broader principle later extended to U.S. domestic criminal law (specifically RICO violations) by *Nabisco*: that U.S. law must respect the sovereignty of foreign nations.⁸³

Empagran further grounds this principle in Sections 402 and 403(1) and (2) of the Restatement (Third) of Foreign Relations Law of the United States (“Restatement”). Section 402 of the Restatement provides that “a state may prescribe law with respect to” conduct occurring within its territory, its own nationals outside who are outside of its own territory, or other external conduct by non-nationals that is “directed against the security of the state or against a limited class of other state interests.”⁸⁴ Section 403 provides that, even when one of Section

⁸⁰ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(3)(b) (2020).

⁸¹ *F. Hoffman-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 156 (2004).

⁸² *Id.* at 164.

⁸³ *See Nabisco* 579 U.S. at 347.

⁸⁴ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402 (1987).

402's requirements for jurisdiction is met, the a state may not exercise jurisdiction to prescribe law when exercising jurisdiction would be unreasonable.⁸⁵ An inquiry for reasonableness of the extraterritorial jurisdiction considers "all relevant factors," several of which include "the link of the activity" to the regulating state's territory; the "connections between the regulating state and the person principally responsible for the activity to be regulated such as nationality, residence, or economic activity"; the regulation's "consistent[cy] with the traditions of the international system"; and "the likelihood of conflict with regulation by another state."⁸⁶

In many regards, the RADA is not ambiguous—it is straightforward about its imposition of extraterritorial jurisdiction in international sporting competitions with sufficient involvement of U.S. athletes and sponsors.⁸⁷ This suggests that courts applying the RADA must accept that Congress intended to permit at least some level of extraterritorial interference with other nations' sovereignty. Nevertheless, the RADA runs contrary to Restatement sections 402 and 403 which, if not binding precedent, still carry significant weight.

First, the RADA governs conduct by non-nationals and does not regulate threats "directed against the security of" the United States, so it would necessarily have to qualify as within the "limited class of other state interests" to comply with Section 402. Comment (f) to Section 402, however, explains that such "limited class" offenses are offenses "threatening the integrity of governmental functions that are generally recognized as crimes by developed legal systems" such as espionage or falsifying official documents.⁸⁸ One likely does not immediately consider doping conspiracies a direct threat to the integrity of governmental functions in the

⁸⁵ *Id* at § 403(1).

⁸⁶ *Id* at § 403(2)(a), (b), (f), and (h).

⁸⁷ *See infra* note 2.

⁸⁸ RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402 cmt. f (1987).

same category as espionage. Further, developed legal systems currently have largely not criminalized doping and doping conspiracies and have instead prosecuted them civilly; this is the void the RADA is intended to fill. Therefore, any argument that the RADA satisfies the elements required for jurisdiction under Section 402 is tenuous at best.

Even assuming the RADA passes muster under Section 402, though, Section 403 poses another obstacle. A cursory application of several of Section 403(2)'s enumerated unreasonableness factors weighs against the validity of the RADA. The following analysis refers to subsections of Section 402(2) as “met” or “satisfied” when they weigh in favor of finding the RADA “reasonable” and as “unmet” when they weigh in favor of finding the RADA unreasonable. For example, the RADA’s “link” of a doping conspiracy to the territory of the United States merely entails the participation of at least one U.S. athlete in athletic competition where the U.S. has sponsorship or broadcasting rights⁸⁹—likely insufficient to meet Section 402(2)(a).⁹⁰ The connections between the United States and the entity regulated are merely economic, arguably meeting Section 402(2)(b).⁹¹ The RADA certainly upends “the traditions of the international system”; Section 402(2)(f) is accordingly unmet.⁹² Section 402(2)(h) is likely also unmet since “the likelihood of conflict with regulation by another state” is probable.⁹³ The other enumerated factors in Section 402, too, tend to weigh against finding the RADA’s extraterritorial jurisdiction reasonable. Thus, one must recognize that, despite domestic support,

⁸⁹ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401(2)(5)(A)(2020).

⁹⁰ See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 403(2)(a).

⁹¹ See *id* at (2)(b).

⁹² See *id* at (2)(f).

⁹³ See *id* at (2)(h).

past U.S. precedents regarding extraterritoriality may still undermine the legitimacy of the RADA.

VI. How Will the RADA Function in Practice?

Though the RADA exists in tension with WADA as to the means of disciplining dopers, WADA's Code is the universal standard for governing doping in international competition.⁹⁴ The RADA does not designate any distinct doping violations.⁹⁵ Thus, the RADA still depends on WADA to define the predicate violations for which doping conspirators can be prosecuted. The definitive difference between the RADA and WADA's enforcement structure is that enforcement of WADA's Code by individual signatories' anti-doping authorities or organizations such as the CAS consist nearly exclusively of civil sanctions on individual dopers.⁹⁶ By contrast, the RADA circumvents WADA's process by focusing on coconspirators instead of individual violators, imposing criminal penalties instead of civil ones, and doing so in a United States District Court instead of a signatory state's court or the CAS.

As enforcement of the RADA is still in a fledging stage, there are still no examples of its implementation regarding restitution for the victims of doping conspiracies. As such, there are no early indicators of how the money from fines the RADA creates will (or will not) be apportioned to fulfil this purpose of the RADA. So far, nothing indicates that whistleblowers will receive any financial gain from fines administered on doping conspirators under the RADA. If Rodchenkov's experience is any indication, however, revealing a statewide doping conspiracy is surely less

⁹⁴ *International Standards*, WORLD ANTI-DOPING AGENCY, <https://www.wada-ama.org/en/what-we-do/international-standards> (last visited Sept. 18, 2022).

⁹⁵ See generally Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401 (2020).

⁹⁶ *Compliance Enforcement Procedures*, WORLD ANTI-DOPING AGENCY, <https://www.wada-ama.org/en/what-we-do/compliance-monitoring/compliance-enforcement-procedures/> (last visited, Sept. 19, 2022).

than lucrative.⁹⁷ This may change if the United States enacts further legislation to grant whistleblowers a percentage of the fines on conspirators. This approach would not be unprecedented. The Foreign Corrupt Services Act, for example, was bolstered in 2010 by the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd Frank Act”).⁹⁸ The Dodd Frank Act granted whistleblowers who reported violators of the Foreign Corrupt Services Act to the SEC as much as thirty percent of the proceeds from fines levied on those violators.⁹⁹ This incentive is available to both United States citizens and noncitizens alike.¹⁰⁰

VII. Staunch Opposition from WADA

Weak international support or, rather, strong international opposition to the Rodchenkov Anti-Doping Act by international anti-doping federations poses the greatest hurdle to the RADA’s effectiveness. In a statement, the IOC, for example, acknowledged the relevance of the RADA’s objectives and lauded the United States’ intentions, but still cautioned the United States against exercising unchecked extraterritorial power.¹⁰¹ The IOC further recommended that if the United States intends to implement the RADA internationally, it should also look to regulate internal doping conspiracies—doping in the NCAA, for example—with criminal penalties.¹⁰²

⁹⁷ Despite winning significant critical acclaim as the William Hill Sports Book of the Year recipient, because he is currently in a witness protection program, Rodchenkov was unable to pocket the prize money. Sean Ingle, *Russian Doping Whistleblower Wins William Hill Sports Book of the Year*, THE GUARDIAN (Dec. 3, 2020), <https://www.theguardian.com/sport/2020/dec/03/russian-doping-whistleblower-grigory-rodchenkov-wins-william-hill-sportsbook-of-year-russian-doping-scandal>.

⁹⁸ *Foreign Corrupt Practices Act*, NATIONAL WHISTLEBLOWER CENTER, <https://www.whistleblowers.org/foreign-corrupt-practices-act/> (last visited Sept. 18, 2022).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ International Olympic Committee, *IOC Statement on the Rodchenkov Act*, IOC, (Mar. 12, 2020), <https://olympics.com/ioc/news/ioc-statement-on-the-rodchenkov-act/>.

¹⁰² International Olympic Committee, *IOC Statement on the Rodchenkov Act*, IOC, (Mar. 12, 2020), <https://olympics.com/ioc/news/ioc-statement-on-the-rodchenkov-act/>.

WADA's public statements on the RADA are less equivocal than the IOC's. WADA's chief concern is that the RADA will undermine WADA's authority, thereby fragmenting the uniformity of international anti-doping efforts by the 190 countries that subscribe to WADA's code.¹⁰³ In one statement issued immediately after the RADA's passage, WADA wrote the following:

No nation has ever before asserted criminal jurisdiction over doping offences that occurred outside its national borders – and for good reason. It is likely to lead to overlapping laws in different jurisdictions that will compromise having a single set of anti-doping rules for all sports and all Anti-Doping Organizations under the World Anti-Doping Code[]. This will have negative consequences as harmonization of the rules is at the very core of the global anti-doping system.¹⁰⁴

WADA additionally posits that other nations, in response to the RADA, could create extraterritorial anti-doping laws, even for purely political motives.¹⁰⁵ A nation frequently prosecuted by the RADA such as Russia could, theoretically, create its own extraterritorial anti-doping legislation to sanction sporting federations in the United States as retaliation.¹⁰⁶ Overall, WADA argues, international anti-doping efforts will suffer because of the RADA's passage.

Echoing the IOC's response to the RADA, WADA's statement quotes its President, Witold Bańka, who questions the RADA's failure to account for why the NCAA and the United States' domestic sports leagues are outside of the RADA's scope.¹⁰⁷ According to Bańka, initial

¹⁰³ *WADA's Statement on U.S. Senate's Passing of the Rodchenkov Anti-Doping Act*, WORLD ANTI-DOPING AGENCY (Nov. 17, 2020), <https://www.wada-ama.org/en/news/wada-statement-us-senates-passing-rodchenkov-anti-doping-act>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

drafts of the RADA contained provisions applicable to athletic competitions in the United States governed by WADA’s Code. Yet, these provisions were omitted entirely from the final draft.¹⁰⁸

WADA concludes its statement with a vow to work with U.S. authorities to prevent the “upending” of the international anti-doping system, ensure that its (WADA’s) “mandated investigative capacity is not diminished,” and make certain that “the negative impact of this Act is minimized.”¹⁰⁹ In short, WADA’s approach may effectively confine the RADA to minimal effect while subjecting it to maximum scrutiny.

VIII. The RADA’s Anticipated Impact on Whistleblowers

Whistleblowers are already afforded some notable protections under international law. Since the United Nations’ 2003 adoption of the Convention Against Corruption, more than 140 countries have signed on to the Convention’s whistleblower protection provisions.¹¹⁰ The United States has robust whistleblower protections, for citizens and non-citizens alike.¹¹¹ As discussed earlier, the United States also has a history of incentivizing citizens and non-citizens alike to alert the government to fraudulent practices through federal laws such as the Foreign Corrupt Practices Act.¹¹²

But, though one of the RADA’s stated purposes is to “protect whistleblowers,” its language does not elaborate on how it will do so.¹¹³ One might think that the criminalization of

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *United Nations Convention Against Corruption*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/corruption/uncac.html> (last visited Sept. 21, 2022).

¹¹¹ *Whistleblower Rights and Protections*, U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL, <https://oig.justice.gov/hotline/whistleblower-protection> (last visited Sept. 20, 2022).

¹¹² The Dodd Frank Wall Street Reform and Consumer Protection Act in 2010 heightened protections for whistleblowers who draw attention to violations of the Foreign Corrupt Practices Act, regardless of citizenship. *Foreign Corrupt Practices Act*, NATIONAL WHISTLEBLOWER CENTER, <https://www.whistleblowers.org/foreign-corrupt-practices-act/> (last visited Sept. 18, 2022).

¹¹³ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401 (2020).

doping conspiracies would entail greater protections offered whistleblowers, or impose further penalties for retaliation against whistleblowers. Though it serves as a catalyst for criminal sanctions on doping conspirators and names one of its purposes as protecting whistleblowers, the RADA is silent on how whistleblowers—often themselves conspirators—can avoid these sanctions. In a statement shortly after the RADA’s passage, WADA voiced precisely this criticism.¹¹⁴ WADA’s chief concern is that the RADA will perversely promote doping conspiracies because the RADA’s significant criminal penalties—fines up to \$250,000 for individuals and prison sentences up to ten years—will deter whistleblowers from speaking out.¹¹⁵

Given the dissonance between the RADA’s express stated purpose to protect whistleblowers and the absence of provisions about how whistleblowers will be protected, it would be reasonable to expect earlier drafts of the RADA once contained extensive whistleblower protections. Though a pair of such provisions are present in earlier versions of the RADA, such protections are surprisingly sparse. Section 2 of the RADA as it was first introduced in the House of Representatives provides the Act’s only concrete provisions about the RADA’s intended impact on whistleblowers.¹¹⁶

This earlier version of the bill states that whistleblowers such as Grigory Rodchenkov “can play a critical role in exposing doping fraud conspiracies and other fraudulent acts in

¹¹⁴ *WADA Statement on U.S. Senate’s Passing of the Rodchenkov Anti-Doping Act*, WORLD ANTI-DOPING AGENCY (Nov. 17, 2020), <https://www.wada-ama.org/en/media/news/2020-11/wada-statement-on-us-senates-passing-of-the-rodchenkov-anti-doping-act>.

(“Further, the Act could impede the capacity to benefit from whistleblowers by exposing them to possible prosecution and preventing ‘substantial assistance’ deals in line with the provisions of the Code.”)

¹¹⁵ *Substantial Assistance: WADA’s Carrot or Its Stick?* SPORTS INTEGRITY INITIATIVE (Mar. 18, 2016), <https://www.sportsintegrityinitiative.com/substantial-assistance-a-carrot-to-wadas-stick/>.

¹¹⁶ See H.R. 835, 116th Cong. § 2 (15) & (16) (2019) (as referred by the H.R. Comm. on the Judiciary, Jan. 29, 2019).

international sport.”¹¹⁷ Additionally, the draft bill also recognized that because whistleblowers to doping conspiracies expose these conspiracies “at considerable personal risk,” then “[b]y criminalizing these conspiracies, such whistleblowers will be included under existing witness and informant protection laws.”¹¹⁸ The next version of the bill, as reported in the House of Representatives, omitted these provisions.¹¹⁹ Perhaps the inclusion of whistleblower protections for those who cooperate to help prosecute their former coconspirators may be inferred from the final form of the RADA’s stated purpose “to protect whistleblowers.”¹²⁰ Despite its silence on whistleblowers, because the RADA is a criminal statute targeting corruption, some argue that this will likely permit whistleblowers to be included under existing whistleblower protection and informant laws.¹²¹ But, such an interpretation could also clash with WADA’s current incentives for athletes and individuals associated with doping conspiracies to cooperate.¹²²

Drafted more thoroughly, the RADA could have more explicitly protected whistleblowers, but there are still other means to protect whistleblowers who cooperate. WADA’s current “Substantial Assistance” component of its Code incentivizes athletes to cooperate with doping investigations.¹²³ Through this component, athletes facing sanctions for doping violations who provide “substantial assistance” to anti-doping authorities in investigating coconspirators involved in the violation may qualify for reductions in sanctions, up to a three-

¹¹⁷ *Id* at § 2 (15).

¹¹⁸ *Id* at § 2 (16).

¹¹⁹ See H.R. 835, 116th Cong. (as referred from the H.R. Comm. on the Judiciary, Oct. 22, 2019).

¹²⁰ Rodchenkov Anti-Doping Act of 2019, 21 U.S.C. § 2401 (2020).

¹²¹ Alexander Chaize & Victoria Artaza, *The Potential Impact of Controversial New U.S. Anti-Doping Legislation in the Fight Against International Doping Conspiracies*, MEDIA, SPORT, AND ENTERTAINMENT INSIGHTS (Feb. 5, 2021), <https://mse.dlapiper.com/post/102gqb6/rodchenkov-act-the-potential-impact-of-controversial-new-us-anti-doping-legislat>.

¹²² *Id.*

¹²³ Isabelle Westbury, *Substantial Assistance: WADA’s Carrot or Its Stick?* SPORTS INTEGRITY INITIATIVE (Mar. 18, 2016), <https://www.sportsintegrityinitiative.com/substantial-assistance-a-carrot-to-wadas-stick/>.

quarters reduction of their ban from competition.¹²⁴ Though there are few certainties as to the extent of the reduction of the bans (or if there even will be a reduction), in several cases the reduction has incentivized athletes to cooperate.¹²⁵ As a complement to the RADA, the United States could implement a “substantial assistance” methodology for conspirators-turned-whistleblowers who come forward about doping scandals.

Even in the event that the RADA silence on protecting whistleblowers is interpreted to provide no substantive protections, concern about the RADA’s fines and criminal charges may not be the most pressing concern for former conspirators. If Rodchenkov’s own case is any indication, conspirators who come forward will likely face greater backlash from their former organizations than from the RADA’s penalties. Rodchenkov certainly suffered the consequences of revealing the Russian doping scandal and cooperating with independent investigations of Sochi. For his safety, Rodchenkov requires a constant security detail and his whereabouts are undisclosed. He is unable to contact his relatives, who remain in Russia. Rodchenkov wrote and published a book about his role in Russia’s doping machine,¹²⁶ but neither he nor his family could receive any of the proceeds from book sales.¹²⁷ Filmmaker Bryan Fogel, the director of *Icarus*, recently collaborated with Rodchenkov once again to create a soon-to-be-released documentary called *Icarus: The Aftermath*. *Aftermath* is video diary of sorts where Rodchenkov chronicles his new life in a permanent witness protection program and his—justifiable—fear of

¹²⁴ Isabelle Westbury, *Substantial Assistance: WADA’s Carrot or Its Stick?* SPORTS INTEGRITY INITIATIVE (Mar. 18, 2016), <https://www.sportsintegrityinitiative.com/substantial-assistance-a-carrot-to-wadas-stick/>.

¹²⁵ *Id.*

¹²⁶ See generally, GRIGORY RODCHENKOV, *THE RODCHENKOV AFFAIR: HOW I BROUGHT DOWN RUSSIA’S SECRET DOPING EMPIRE* (2020).

¹²⁷ Sean Ingle, *Russian Doping Whistleblower Wins William Hill Sports Book of the Year*, THE GUARDIAN (Dec. 3, 2020), <https://www.theguardian.com/sport/2020/dec/03/russian-doping-whistleblower-grigory-rodchenkov-wins-william-hill-sportsbook-of-year-russian-doping-scandal>.

lethal retaliation by Russia.¹²⁸ One can imagine that if whistleblowers such as Rodchenkov are willing to come forward in the face of literally life-threatening opposition, fears of the RADA's fines and criminal penalties are less insurmountable obstacles in comparison.

IX. Conclusion

In considering the future of the RADA, three foreseeable outcomes emerge. These potential outcomes are: 1) an unsuccessful result—the RADA will trigger further resistance from international anti-doping bodies because of its tension with the current international anti-doping framework, and this international opposition will undercut the RADA's enforceability and make it a dead-letter law; 2) a successful result¹²⁹—the RADA could lead to regular prosecution of doping conspirators, transform international anti-doping control, and become well-established, widely-applied vehicle for criminally prosecuting conspirators in doping scandals; or 3) a moderately successful result—the United States will either benefit from the RADA as a deterrent more so than as a regularly-applied criminal law, adapt the RADA as necessary to make it more palatable to international anti-doping organizations, or engage with other countries and anti-doping organizations to make a more cooperative international alternative facilitating the criminal prosecution of doping conspirators.

The RADA's true impact can only conclusively be revealed with time. Considering that only two years have passed since the RADA entered into force in December of 2020, any prediction about the RADA's future necessarily requires substantial speculation. Within two years, however, two Olympic Games, two Track and Field World Championships, and countless

¹²⁸ *Icarus: The Aftermath* Review: A Tense and Affecting Real-Life Sequel, THE HOLLYWOOD REPORTER (Sept. 12, 2022), <https://www.hollywoodreporter.com/movies/movie-reviews/icarus-the-aftermath-bryan-fogel-grigory-rodchenkov-documentary-telluride-1235213714/>.

¹²⁹ In using the term "successful" to describe this particular outcome the author merely asserts that the RADA succeeds in achieving its stated purpose.

other Major International Sporting Competitions (“MISCs”) falling under the purview of the RADA have taken place. Within those same two years, the United States only commenced a single prosecution under the RADA, the prosecution of an American. It would seem, at least in this early stage, that of the three main foreseeable outcomes for the RADA, option three—that the RADA will be underused and gradually fade into a dead letter law—is the most probable. While no single decision about whether or not to prosecute a conspiracy under the RADA will be dispositive of the RADA’s future, the United States’ decision of whether or not to prosecute in the Kamila Valieva case will likely be a good indicator.

Nevertheless, even if the United States declines to prosecute Valieva’s entourage, the RADA’s future is not set in stone. The United States may find a pathway forward by replacing the RADA by cooperatively creating an international alternative faithful to the RADA’s purposes to hold conspirators criminally liable and grant victims restitution. Another possibility could be the creation of an international criminal tribunal with the capacity to prosecute doping conspirators criminally. Perhaps WADA could retain advisory influence in the tribunal’s creation. The Court of Arbitration for Sport could be expanded to include a branch with the capacity to try doping conspirators criminally.

Ultimately, the RADA is well-intentioned legislation that may never fully achieve its ambitious objective because of international resistance and failure to comply with domestic precedents regarding extraterritoriality. Ideally, though, the RADA’s goals may still be accomplished through collaboration by many countries rather than the extraterritorial authority of a single one. Although unlikely in the foreseeable future, there is still hope that international criminal law will one day crystallize around a uniform anti-doping system formidable enough to

meet the challenges posed by state-orchestrated schemes such as the Russian doping machine at Sochi.