

Learn more about **REFINITIV**

Commentary **Attorney Analysis from Westlaw Today, a part of Thomson Reuters.**

My View Following Saved

By Kevin J. O'Brien



Former FTX Chief Executive Sam Bankman-Fried, who faces fraud charges over the collapse of the bankrupt cryptocurrency exchange, exits the Manhattan federal court in New York City, U.S. February 16, 2023. REUTERS/Eduardo Munoz

Feedback




April 10, 2023 - The government's first superseding indictment of alleged fraudster Samuel Bankman-Fried, filed at the end of February, attracted only passing attention. But while it broke no new legal ground, the new indictment was a major achievement for the prosecution, providing a blueprint for a highly aggressive strategy for trial. It was followed by a second superseding indictment, adding a bribery-related count, filed at the end of March.

Advertisement · Scroll to continue

Of course, ambitious trial plans, even government plans, often go awry in the execution. The real point of the daunting new indictments may be to deter Bankman-Fried and his counsel from even testing the government's case at trial. Bankman-Fried has pleaded not guilty and denied all charges.

The second indictment added four new counts to the eight counts in the original December 2022 indictment and fine-tuned some legal theories, but the main claims of criminal liability against Bankman-Fried remain the same. He is alleged to have committed fraud upon customers of his global cryptocurrency exchange FTX by misappropriating customer deposits to pay debts of his crypto hedge fund Alameda Research ("Alameda") and fund his own investments; fraud upon Alameda lenders by disseminating false and misleading information as to the financial condition of Alameda; fraud upon FTX investors by disseminating false and misleading information as to the financial condition of FTX and its relationship to Alameda; and fraud upon the Federal Election Commission by making unlawful political contributions to candidates of both political parties.



**Register for free to Reuters  
and know the full story**

[Register now](#)

Advertisement · Scroll to continue

The government's latest indictment alleges, in a 13th count, that Bankman-Fried conspired to bribe Chinese government officials with a \$40 million payment in order to unfreeze certain cryptocurrency accounts that had been frozen.

On top of this legal scaffolding, the prosecutors have overlaid a detailed 25-page narrative of alleged facts. They have produced a "speaking" indictment, laying out how Bankman-Fried, belying his self-styled image as the genial "savior of the cryptocurrency industry," not only violated federal anti-fraud statutes but built multiple deceptions into his business operations to conceal his schemes and, as FTX began to sink in late 2022, repeatedly misled customers and investors with false reassurances as to FTX and Alameda. In the government's telling, the defendant's unlawful conduct was the outgrowth of a pattern of personal hypocrisy and dishonesty.

---

Advertisement · Scroll to continue

---

For example, since no bank would do business with a cryptocurrency firm without extensive due diligence, Bankman-Fried allegedly overcame the fact that FTX had no dedicated bank accounts for holding customer deposits first by surreptitiously using Alameda's proprietary trading accounts, and then by inventing a purely fictitious Alameda trading customer, North Dimension. After an unsuspecting bank agreed to open an account for North Dimension, which was controlled by Alameda, Bankman-Fried used it for the improper transfer and deposit of FTX customer funds.

According to the second indictment, Bankman-Fried concealed his massive misappropriation of customer funds through the creation of "secret loopholes" in the computer code that powered FTX's trading platform. These loopholes allowed Alameda to run up a multibillion-dollar negative balance on FTX loans that the defendant knew Alameda could not repay. He also required co-conspirators at times to communicate using encrypted messaging platforms that self-deleted, hampering later efforts to uncover his suspected crimes. Small wonder Bankman-Fried reassured his associates that the auditors who worked on FTX's audited financial statements for investors would never be able to untangle his schemes.

---


Advertisement · Scroll to continue

As if to further advertise the strength of its claims at trial, the government has also gone out of its way to highlight that the sources for many of its allegations are Bankman-Fried's own associates and co-conspirators, known or believed to be prosecution witnesses. Prominent among them is Caroline Ellison, whom Bankman-Fried installed as a co-CEO of Alameda, and who helped to misappropriate deposits and give false and misleading information to Alameda creditors.

The second indictment even summarizes a discussion Bankman-Fried supposedly had with an FTX "in-house attorney" regarding a bogus explanation concocted for Alameda's astronomical borrowings. Even though the attorney allegedly dismissed the explanation as incorrect, Bankman-Fried went on to embrace it publicly. Reading this conversation in the pages of the indictment may have been calculated to send a chill up the defense's spine.

At trial, Bankman-Fried and his attorneys will have an opportunity to challenge the government's apparently extensive proof. The new indictments are meant in part to dissuade them from doing so, and they could well succeed.

*Kevin J. O'Brien is a regular contributing columnist on trial practice for Reuters Legal News and Westlaw Today.*



**Register for free to Reuters  
and know the full story**

[Register now](#)



Opinions expressed are those of the author. They do not reflect the views of Reuters News, which, under the Trust Principles, is committed to integrity, independence, and freedom from bias. Westlaw Today is owned by Thomson Reuters and operates independently of Reuters News.

**Kevin J. O'Brien**

Kevin J. O'Brien is a founding partner of Ford O'Brien Landy LLP in New York and a former Assistant U. S. Attorney who specializes in white-collar criminal defense, commercial and securities litigation on behalf of plaintiffs and defendants, regulatory enforcement cases, and arbitrations. He has tried more than 25 court cases and numerous arbitrations to verdict. He can be reached at [kobrien@fordobrien.com](mailto:kobrien@fordobrien.com).



Feedback

**Read Next / Editor's Picks**

United States

**Battle over Biden labor nominee Julie Su heats up**

9:50 AM EDT

Business

**J&J talc unit 2nd bankruptcy must be dismissed, cancer victims' lawyers say**

42 min ago

Business

**Pioneer Natural jumps on report of buyout talks with Exxon**

12:45 PM EDT

Markets

**Teck Resources pushes for restructuring, repeats rejection of unsolicited Glencore bid**

11:51 AM EDT

Newsletter | Sent every weekday.

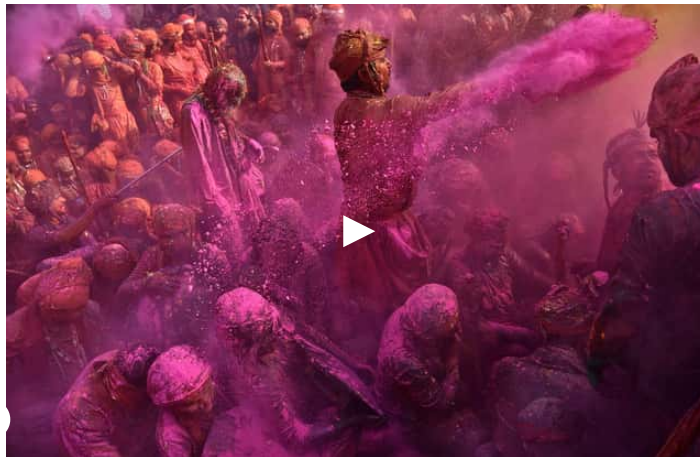
**Daily Docket**

An in-depth look at the day's most important headlines concerning the courts, law firms and the practice of law.

Sign up

**More from Reuters**

Images of March  
(2:00) - March 31, 2023  
[Watch more videos](#)



**Images of March**

02:00

**ICC issues war crime arrest warrant for Putin**

03:27

**Zelenskiy: more than 1,000 Russian dead in Bakhmut**

02:58

**Images of February**

02:21

**One year of war in Ukraine**



Feedback

## Sponsored Content

oianor

### New York: The List Of The Top Financial Advisor Firms Is Out

Sponsored by smartasset



### The 4 Dumbest Things We Keep Spending Too Much Money On

Sponsored by The Penny Hoarder



### College Planning Essentials: The complete guide to saving for college

Sponsored by J.P. Morgan Asset Management



### 4 Common Tax-Filing Mistakes and How to Avoid Them

Sponsored by Charles Schwab



### APYs Are Rising. Is Your Savings Account Keeping Up?

Sponsored by NerdWallet



### Where should you invest \$1,000 right now?

Sponsored by The Motley Fool



## Industry Insight

Industry Insight

### Insights in Action: Corporate law departments find their outside firms' innovation lagging, but there may be little incentive to change

Zach Warren  
March 24, 2023

Industry Insight

### Messaging platform & personal device use is a firm-wide compliance problem

Rachel Wolcott  
March 10, 2023

Industry Insight

### What a law firm Client Development Manager says about client listening programs

Sarah Thompson  
March 9, 2023

Industry Insight

### Law firm leaders express the benefit of strategy, culture & adaptability to weather these uncertain times

Tom Shavely  
March 1, 2023

Feedback

## Sponsored Content

rianor

### Little-Known Oil and Gas Investment, Big Returns

Sponsored by The Oxford Income Letter



### These Nerd-Approved Checking Accounts Come With Perks

Sponsored by NerdWallet



### Wall Street Veteran Issues 90-Day Stock Alert for U.S. Stocks

Sponsored by Chaikin Analytics



### College Planning Essentials: The complete guide to saving for college

Sponsored by J.P. Morgan Asset Management



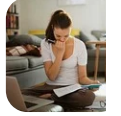
### The 4 Dumbest Things We Keep Spending Too Much Money On

Sponsored by The Penny Hoarder



### 4 Common Tax-Filing Mistakes and How to Avoid Them

Sponsored by Charles Schwab



## Sponsored Content

rianor

### Top Deposit Accounts With Today's Best Rates

Sponsored by SavingsAccounts.com

### 6 Weird (But Effective) Ways Lazy People Are Making Extra Cash

Sponsored by FinanceBuzz

### Commission-Free Trades on Stocks, ETFs & Options Trades. Learn more.

Sponsored by TradeStation

### 5 Companies That Send People Money When They're Asked Nicely

Sponsored by The Penny Hoarder

### Former Goldman VP: "50 Years of Data Is Saying Move Your Money Now"

Sponsored by Stansberry Research

### New York: The List Of The Top Financial Advisor Firms Is Out

Sponsored by smartasset

Latest

Home

Media

Videos [↗](#)

Pictures [↗](#)

Graphics [↗](#)

Browse

World

Business

Legal

Markets

Breakingviews

Technology

Investigations [↗](#)

Lifestyle

About Reuters

About Reuters [↗](#)

Careers [↗](#)

Reuters News Agency [↗](#)

Brand Attribution Guidelines [↗](#)

Reuters Leadership [↗](#)

Reuters Fact Check [↗](#)

Reuters Diversity Report [↗](#)

Stay Informed

Download the App [↗](#)

Feedback

[Newsletters](#)

### Information you can trust

Reuters, the news and media division of Thomson Reuters, is the world's largest multimedia news provider, reaching billions of people worldwide every day. Reuters provides business, financial, national and international news to professionals via desktop terminals, the world's media organizations, industry events and directly to consumers.

### Follow Us



### Thomson Reuters Products

#### [Westlaw](#)

Build the strongest argument relying on authoritative content, attorney-editor expertise, and industry defining technology.

#### [Onesource](#)

The most comprehensive solution to manage all your complex and ever-expanding tax and compliance needs.

#### [Checkpoint](#)

The industry leader for online information for tax, accounting and finance professionals.

### Refinitiv Products

#### [Refinitiv Workspace](#)

Access unmatched financial data, news and content in a highly-customised workflow experience on desktop, web and mobile.

#### [Refinitiv Data Catalogue](#)

Browse an unrivalled portfolio of real-time and historical market data and insights from worldwide sources and experts.

#### [Refinitiv World-Check](#)

Screen for heightened risk individual and entities globally to help uncover hidden risks in business relationships and human networks.

[Advertise With Us](#) [Advertising Guidelines](#)

All quotes delayed a minimum of 15 minutes. See here for a complete list of exchanges and delays.

[Cookies](#) [Terms of Use](#) [Privacy](#) [Digital Accessibility](#) [Corrections](#) [Site Feedback](#)

© 2023 Reuters. All rights reserved









