UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

REZA ZARRAB,
a/k/a "Riza Sarraf,"

Defendant.

ECF CASE

S1 15 Cr. 867 (RMB)

GOVERNMENT'S SURREPLY MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT REZA ZARRAB'S MOTION FOR BAIL

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The Government writes in response to Reza Zarrab's reply memorandum ("Def. Reply") in further support of his application for bail. The defendant's reply is premised upon factual and legal inaccuracies and fails to rebut the Government's showing that he is a risk of flight for whom no condition or combination of conditions will reasonably assure his presence. While the defendant advances a number of arguments in its reply, the Government will address only three herein. First, as the attached video of his post-arrest statement to the FBI makes clear, Zarrab has no difficulty speaking and understanding English. His repeated arguments to the contrary are part of a continuing effort to mislead the Court and to conceal the full scope of his assets and foreign travel. Second, the charges against Zarrab are neither unprecedented nor unwarranted. Third, it is entirely appropriate in this context for the Government to inform the Court of Zarrab's prior arrest and subsequent release in Turkey. Accordingly, the defendant's motion for bail should be denied.

I. Zarrab Lied to Pretrial Services, Concealing Assets and Foreign Travel, and Has Never Provided The Court With A Complete Accounting Of His Wealth

The defendant first claims that the Court should not hold the misstatements he made about his wealth and travel to Pre-Trial Services in Florida against him because the interview was conducted in English without the assistance of a Turkish interpreter. (Def. Reply at 5-9). Zarrab claims that he was unable to understand the questions posed to him, and that this led to his misunderstanding questions concerning his income, assets, and foreign travel. The Pre-Trial Services Report's reference to Zarrab's need for a Turkish translator is based, of course, on Zarrab's representation to that effect. Zarrab's claimed inability to comprehend and speak English is belied, however, by his conduct and statements at the time of his arrest, as well as numerous other examples of Zarrab communicating in English.

After the defendant was arrested on or about March 19, 2016, he was advised of his *Miranda* rights and made voluntary statements to the FBI. The interview was recorded on video and a Turkish translator was present for the interview.[1] Before the video recording even began, Zarrab demonstrated his facility with English, telling one of the agents, in substance and in part, that his (Zarrab's) English was better than the translator's. Zarrab then went on to conduct an interview with the FBI, during which, among other things, he spoke principally in English to the agents and frequently answered or interjected without waiting for a Turkish translation of the agents' statements or questions. As reflected in the recording, among other things: (i) Zarrab interrupted the Turkish translator to respond in English (*see, e.g.*, Ex. A at 1:55-2:00); (ii) responded to the agents in English without waiting for a Turkish translation (*see, e.g.*, *id*. at 7:32-7:36); (iii) discussed the charges at length in English (*see, e.g.*, *id*. at 7:57-9:12); and (iv) asked questions of the agents in English (*see, e.g.*, *id*. at 9:44-9:59; 10:29; 13:31).

In addition, records obtained from Zarrab's cellphone (the "Zarrab Phone") show that he is fully capable of understanding and speaking in English. For example, the Zarrab Phone contains lengthy chats in English between Zarrab and one of his business associates in which they discuss, among other things, the purchase of a boat, vacation plans, and payment of expenses. The Zarrab Phone also contains photographs of business correspondence in English and a newspaper article, in English, with the headline "Golden Loophole: How a crime ring helped Iran beat sanctions" and which displays a picture of Zarrab, among others.

Accordingly, Zarrab's answers during the Pre-Trial Services interview were not the result of a language barrier – they were a deliberate attempt on his part to minimize his immense wealth and his extensive foreign travel. Following his arrest, Zarrab chose to understate his

[1] The video is being submitted to the Court as Exhibit A with a request for filing under seal.

fortune, which is held in numerous foreign countries, and to obscure his foreign travel, which demonstrates his access to nations that would never extradite him to face the charges here. Indeed, even Zarrab's representations concerning his facility with English is tactical – when he felt that he could talk his way out of his arrest, he spoke with the FBI agents in English, but when he realized that he was going to be detained, he claimed to the Pre-Trial Services that he could not comprehend their questions about his wealth and travel without a Turkish interpreter.

The defendant's strategy of concealing his immense fortune continues even now, with his filings before the Court. Zarrab claims that – contrary to what he reported to Pre-Trial Services – he has provided "detailed financial information to the Court as part of his bail application before any claim of falsity by the Government." (*See* Def. Reply at 9). To be sure, in his bail application, Zarrab disclosed some summary facts relating to his assets, such as his multi-million dollar donations to charity, his status as the 56th largest taxpayer in Turkey, and some of his business ventures' projects, while providing supporting banking documentation. (*See, e.g.*, Def. Bail Mem. at 14, 15-18). But all this shows is that the defendant, as all parties agree, is a wealthy man – it is wholly incomplete as to the magnitude and types of assets in the defendant's possession. It does not, for example, give the Court a complete picture of Zarrab's business revenue streams (such as the billions in gold exports and financial transactions). Nor does it show that Zarrab has access to means of flight – indeed, while noting that Zarrab, unlike the defendant in *United States* v. *Ng Lap Seng*, 15 Cr. 706 (S.D.N.Y.), did not have private airplanes in the United States, Zarrab omitted that he does, in fact, own a private jet that was purchased in the United States and flown to Turkey, as well as multiple sea vessels. (*See id*. at 10). Far from being "forthright with this Court throughout these proceedings" (*see id*. at 9), Zarrab, rather, has worked diligently to hide from the Court his true financial means and international ties.

II. The Defense Challenge To The Indictment Is Legally Flawed and Factually Wrong

For the first time in reply, the defense challenges the Indictment, contending that the charges are novel and beyond the jurisdiction of the United States authorities. (*See generally* Def. Reply at 10-23). These arguments, however, rely on a flawed understanding of the relevant statutes and regulations, a mischaracterization of the charges in the Indictment, and unsupportable factual contentions. The defense argues principally that the relevant criminal statutes do not apply to foreign nationals operating in foreign countries and dealing with foreign companies and banks. (*Id.* at 10-11). This argument misconstrues the scope of the relevant statutes and the nature of the conspiracies with which the defendant is charged. Indeed, adopting the crabbed interpretation of these statutes offered by the defense would be novel and unprecedented.

As set forth in our memorandum opposing the defendant's proposed bail conditions, the defendant is charged with (1) conspiring to defraud the United States by impeding the lawful functions of OFAC; (2) conspiring to violate the IEEPA and the ITSR; (3) conspiracy to commit bank fraud; and (4) conspiracy to commit money laundering. As further set forth in the Government's opposition memorandum, the conspiracies to impede OFAC and violate the IEEPA and ITSR are charges relating to the violation of national security controls adopted by the President of the United States and the U.S. Department of the Treasury in response to Presidentially declared national emergencies with respect to the Government of Iran and its foreign policies and support for terrorism. These statutes apply to foreign nationals operating in foreign countries when they conspire to evade or avoid the IEEPA and the ITSR or to cause a violation of those provisions.

It is well established that, "as a general proposition, Congress has the authority to 'enforce its laws beyond the territorial boundaries of the United States.'" *United States* v. *Yousef*, 327 F.3d 56, 86 (2d Cir. 2003) (quoting *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)). Although there is a "legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial, application," *Small* v. *United States*, 544 U.S. 385, 388-89 (2005), that presumption "does not apply to criminal statutes," *United States* v. *al Kassar*, 660 F.3d 108, 118 (2d Cir. 2011) (citing *United States* v. *Bowman*, 260 U.S. 94, 98 (1922), and *Yousef*, 327 F.3d at 86); at least not "to those 'criminal statutes which are, as a class, not logically dependent on their locality for the Government's jurisdiction.'" *Yousef*, 327 F.3d at 86 (quoting Bowman, 260 U.S. at 98). Moreover, even where the presumption against extraterritoriality applies, "that presumption can be overcome when Congress clearly expresses its intent to do so." *Yousef*, 327 F.3d at 86.

The IEEPA and ITSR, as relevant here, do three things. *First*, they prohibit the export, reexport, sale or supply, directly or indirectly, from the United States or by a United States person (essentially, a U.S. national or a person or entity physically located in the United States) of any goods, technology, or services to Iran or the Government of Iran without a license from OFAC. 31 C.F.R. § 560.204. *Second*, the IEEPA and ITSR prohibit "*any transaction* . . .that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions" in the ITSR and "*any conspiracy* formed to violate any of the prohibitions" in the ITSR—without regard to the nationality or location of the individuals involved in the prohibited transaction or conspiracy. *Third*, the IEEPA provides that a violation caused with a willful state of mine it is a criminal offense. 50 U.S.C. § 1705(c) (providing criminal penalties for anyone who "willfully commits, willfully attempts to commit, or willfully

conspires to commit, or aids or abets in the commission of" any regulation or prohibition issued pursuant to the IEEPA).[2] This criminal penalty similarly has no geographical limitation – it applies to any person whose conduct and state of mind meet the elements of an offense.

Thus, by the plain language of the IEEPA and the ITSR, if a foreign person operating in a foreign country, among other things, (a) joins a conspiracy to cause a violation of the ITSR's prohibition against the unlicensed export, sale, or supply of services from the United States to Iran or the Government of Iran; or (b) participates in any transaction that evades or avoids, or has the purpose of evading or avoiding, causes a violation of, or attempts to violate the ITSR's prohibitions; that foreign person faces criminal liability for their role in willfully violating the United States' national security controls. Indeed, Zarrab's conspiracy to use Turkish and Emirati companies as fronts to obtain financial services from U.S. banks for the benefit of and on behalf of Iran is no different, under the sanctions laws, from a foreign national using a non-Iranian front company to obtain goods or technology from the United States for transshipment to Iran, which is the type of case that is often prosecuted by the Government.

In the face of the plain language and intent of the statute and regulations, the defense reply memorandum seizes on strategically excerpted testimony from the Acting Under Secretary for Terrorism and Financial Intelligence at the U.S. Department of the Treasury, claiming that this testimony supports their cramped interpretation of the IEEPA and ITSR. (Def. Reply at 11-12). But the defense badly mischaracterizes and misapplies this testimony. The excerpted remarks described foreign transactions by foreign nationals <u>that did not involve transactions processed by U.S. financial institutions</u>: with respect to transactions involving U.S. banks, the Acting Under Secretary unambiguously explained that "we have not promised, nor do we have

[2] A violation caused without a willful state of mind would be a regulatory, but not a criminal, offense.

any plans, to give Iran access to the U.S. financial system, or to reinstate what's called the 'U-turn' authorization"—authorization for foreign banks to use U.S. financial institutions to process transactions for foreign originators and beneficiaries. U.S. DEPT. OF THE TREASURY, *Testimony of Acting Under Secretary for Terrorism and Financial Intelligence Adam J. Szubin before the House Committee on Foreign Affairs* (May 25, 2016) (*available at* https://www.treasury.gov/press-center/press-releases/Pages/jl0466.aspx).[3] OFAC's website provides similarly clear guidance: "U.S. persons continue to be broadly prohibited from engaging in transactions or dealings with the Government of Iran and Iranian financial institutions . . . . Unless an exemption or express OFAC authorization applies, U.S. persons continue to have an obligation to block the property and interests in property of all individuals and entities that meet the definition of the Government of Iran or an Iranian financial institution, regardless of whether or not the individual or entity has been identified by OFAC . . . . In addition, non-U.S. persons continue to be prohibited from knowingly engaging in conduct that seeks to evade U.S. restrictions on transactions or dealings with Iran or that causes the export of goods or services from the United States to Iran." U.S. DEPT. OF THE TREASURY, *Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day*, at 4 (Mar. 24, 2016) (*available at* https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)

[3] Similarly, the defense cites to an OFAC brochure addressed to financial institutions, which essentially restates the definition of U.S. persons in describing the persons "subject to the jurisdiction of the United States" as "including" (not limited to) U.S. nationals and U.S. companies, among others. (Def. Reply at 13). This brochure is addressed to a particular industry audience, does not exclude non-U.S. persons from criminal liability from knowingly conspiring to evade sanctions, and further notes that it is not binding law and that the terms of controlling statutes and regulations are controlling. U.S. DEPT. TREASURY, *OFAC Regulations for the Financial Community* at 1 (Jan. 24, 2012) (available at https://www.treasury.gov/resource-center/sanctions/Documents/facbk.pdf).

(emphasis added). And as defense counsel concedes, foreign banks have faced both regulatory and criminal penalties for conspiring to cause U.S. financial institutions to supply financial services directly or indirectly to Iran or to the Government of Iran. (Def. Reply at 10 n.4).

The Indictment alleges that Zarrab and his co-conspirators did exactly this, by conspiring to cause United States financial institutions to export, reexport, or supply, directly or indirectly, financial services to Iran and the Government of Iran. The Indictment alleges that Zarrab and his co-conspirators did so knowingly and willfully, and that in order to cause U.S. financial institutions to supply these financial services to Iran and the Government of Iran, Zarrab and his co-conspirators utilized a network of foreign companies specifically to conceal from United States banks the unlawful nature of the transactions. (Ind. ¶¶ 12, 13, 15-17).

Indeed, the evidence is overwhelming that Zarrab and his co-conspirators knew about the existence of U.S. and international sanctions against Iran; that Zarrab and his co-conspirators knew that these U.S.-dollar transactions on behalf of and for the benefit of Iranian entities and the Government of Iran would be processed by U.S. financial institutions; and that Zarrab and his co-conspirators knew that the transactions would be blocked whenever the connection to Iran was apparent. For example:

- As early as January 2011, Zarrab's Dubai-based exchange company, Al Nafees Exchange, was removing Iran-identifying information from wire transfer requests that were processed by U.S. financial institutions for the benefit of the Mellat Exchange, an Iranian exchange house owned by the state-owned Bank Mellat. (*See, e.g.*, Ind. ¶ 14(a)-(b)).

- Payments that Zarrab and his co-conspirators caused on behalf of Mellat Exchange were, in fact, blocked by U.S. financial institutions pursuant to OFAC regulations when the Iranian nexus was insufficiently concealed. (*See, e.g.*, *id.* ¶ 14(f), (h)).

- In late 2011, Zarrab received drafts of letters from co-conspirators addressed to the Iranian Central Bank and prepared for his own signature expressly offering his services to evade sanctions as part of Iran's "economic jihad." (*See, e.g.*, *id*. ¶ 14(i)).[4]

- Zarrab received and sent numerous additional electronic communications about OFAC and international sanctions, including notices of entities being designated under those sanctions. For example, in July 2012, Zarrab received a link to an OFAC website listing new additions to the Specially Designated Nationals list, including HKICO, several Iranian banks (including those that Zarrab and his co-conspirators had dealt with and would continue to deal with), and several energy and shipping companies (including those that Zarrab and his co-conspirators had dealt with and would continue to deal with).

- In February 2015, Zarrab received an email attaching, among other things, a copy of a letter from several members of Congress addressed to the Secretary of State and the Secretary of the Treasury expressing concern about illicit Iranian transactions through Turkey.

Indeed, the Al Nafees Exchange was the subject of OFAC regulatory compliance proceedings in approximately 2012 and 2013, which ultimately resulted in a multi-million dollar civil penalty (which was never paid) "due to your processing of funds transfers through the United States where the benefits of such financial services were received in Iran, in apparent violation of the [ITSR]."--firmly putting the lie to any contention by Zarrab that he was ignorant to the possibility that his scheme could expose him to U.S. liability. (*See* Ex. B). This letter was signed by the Acting Under Secretary, who was then the head of OFAC.

In sum, there is nothing novel or unprecedented about Zarrab's prosecution for conspiring with others to knowingly and willfully evade sanctions by causing U.S. banks to

[4] In its reply memorandum, the defense claims that Zarrab did not understand this letter because he cannot read Farsi. (Def. Reply at 19-20). Zarrab is a dual Iranian and Turkish national with numerous family members, business associates, business interests, and friends in Iran. Emails and other communications obtained from searches of accounts controlled by Zarrab and from his smart phone show that he received hundreds, if not thousands, of communications in Farsi, including communications in Farsi characters and Farsi transliterated into the Roman alphabet. Zarrab not only received these communications, he responded to them, thus amply demonstrating his comprehension of Farsi script. Moreover, the defense argument does not explain why Zarrab received *more than one draft* of the letter to the Central Bank of Iran if he did not understand Farsi text. As with Zarrab's purported difficulty with English, his claim that he cannot read Farsi is belied by overwhelming evidence.

supply Iranian entities and the Government of Iran with financial services by concealing and misrepresenting material information, nor for his prosecution for conspiring to defraud U.S. banks and to launder the proceeds and promote these sanctions and bank fraud conspiracies. Rather, the interpretation of the IEEPA and the ITSR advocated by the defense, contrary to the plain language of the regulations and to the clear guidance from OFAC and the Treasury, would be unprecedented and would fundamentally undermine these important national security controls.

III. The Defendant's Foreign Arrest and Subsequent Release Counsel Detention

Finally, the defense reply contends that this Court should disregard Zarrab's 2013 arrest in Turkey for his orchestration of a massive bribery scheme relating to his services to Iran. (Def. Reply at 23-26). Nothing about international principles of comity (*id.* at 25) requires this Court to defer to a decision by a Turkish prosecutor—appointed after the investigating police officers and prosecutors were reassigned or discharged, several of whom were later criminally charged—not to pursue the case against Zarrab. This Court certainly can consider whether this outcome corroborates the other information and evidence demonstrating Zarrab's corrupt connections with high-level Turkish governmental officials. This evidence is detailed in a report that has all the appearances of a law enforcement investigative report, replete with excerpts and translations of numerous intercepted telephone conversations among Zarrab and his co-conspirators concerning massive bribes to government officials; results of email searches that are corroborated by searches performed in the course of the U.S. law enforcement investigation; and physical surveillance of Zarrab and his co-conspirators documenting cash deliveries to officials and their gophers. (*See generally* Govt. Opp. at 11-14, Ex. G).

For the foregoing reasons, as well as those set forth in the Government's opposition brief, we respectfully submit that no condition or combination of conditions will reasonably assure the defendant's appearance and the motion for bail should be denied.

Respectfully submitted,

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