

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA
:
- v. -
:
MEHMET HAKAN ATILLA,
:
Defendant.
:
-----X

S4 15 Cr. 867 (RMB)

**GOVERNMENT’S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT MEHMET HAKAN ATILLA’S
MOTIONS TO DISMISS THE SUPERSEDING INDICTMENT
AND FOR SEVERANCE**

JOON H. KIM
Acting United States Attorney for the
Southern District of New York
Attorney for the United States of America

Michael D. Lockard
Sidhardha Kamaraju
David W. Denton, Jr.
Assistant United States Attorneys
Dean C. Sovolos
Special Assistant United States Attorney
Of Counsel

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PRELIMINARY STATEMENT

The Government respectfully submits this memorandum of law in opposition to defendant Mehmet Hakan Atilla's motions (1) to dismiss the superseding indictment, S4 15 Cr. 867 (RMB) (the "Indictment" or "Ind.") ("Mot. Dismiss"), and, in the alternative (2) to sever his case from his co-defendant's case, Reza Zarrab ("Mot. Sever," and together with Mot. Dismiss, "Mot."). For the reasons set forth below, the Government respectfully submits that both motions should be denied.

At its core, Atilla's motion to dismiss is a rehash of the argument previously asserted by Zarrab and already rejected by the Court: that the United States is powerless to prosecute foreign actors who knowingly and deliberately violate economic sanctions imposed by the United States on the Islamic Republic of Iran. Atilla's variation on this theme is to insert a false distinction into the applicable sanctions laws between conduct by foreign actors – which, according to Atilla, is conveniently only sanctionable but not prosecutable – and activities that are prohibited, for which U.S. persons, but not foreign actors, can be prosecuted. Atilla is wrong. He is charged with participating in a scheme that breached regulations that required foreign banks to make a choice – deal with the United States or deal with Iran. Through fraudulent transactions papered over with false documents, front companies, and lies to U.S. regulators, Atilla and his co-conspirators helped his employer, Türkiye Halk Bankasi A.Ş. ("Halk Bank"), a Turkish state-owned bank, double-deal by facilitating transactions involving billions of dollars-worth of Iranian oil proceeds on behalf of the Government of Iran and related entities, while still maintaining Halk Bank's relationship with the U.S. banks. It was a scheme designed with the sole purpose of evading and avoiding U.S. sanctions laws, and facilitated through the bribery of senior Turkish government ministers. Based on a straightforward application of the pertinent

statutes, executive orders, regulations, and canons of statutory interpretation, that conduct was a crime for which Atilla can be prosecuted by the United States.

Atilla's challenge to Count One of the Indictment charging him with a violation of Title 18, United States Code, Section 371 is similarly meritless. Contrary to Atilla's claim, and as the Second Circuit has explicitly held, the fact that the separate criminal statute provides a specific criminal penalty for his alleged conduct is no bar to a prosecution under the more general conspiracy statute. And, despite Atilla's attempts to misconstrue the sanctions laws and mischaracterize the Government's allegations, there cannot be a serious dispute that the Indictment alleges a conspiracy to defraud the U.S. Department of Treasury, the agency responsible for administering the U.S. embargo on Iran, when the Indictment contains allegations that Atilla personally was warned about the United States' concerns about what appeared to be happening at Halk Bank and nonetheless misled U.S. regulators about the sanctions evasion activity occurring at his bank.

Finally, Atilla's severance motion is no more than a claim that he purportedly did not participate in Zarrab's alleged misconduct, and thus, should not be tried with him. Atilla's claim of innocence is a matter for the jury, not a pretrial motion. Moreover, because the counts charge that Atilla conspired with Zarrab, there is presumption that they should be tried together, which is only strengthened by the strong preference for joint trials. Atilla's motions should be denied.

BACKGROUND

A. The Indictment

The Indictment charges Atilla with six counts: (1) conspiracy to defraud the United States, and in particular the U.S. Department of Treasury, in violation of Title 18, United States Code, Section 371 (Count One); (2) conspiracy to violate the International Emergency Economic

Powers Act (“IEEPA”), 50 U.S.C. § 1701 *et seq.*, Executive Orders 12959, 13059, 13224, 13599, 13622, and 13645, the Iranian Transactions and Sanctions Regulations (“ITSR”), 31 C.F.R. Part 560, and the Iranian Financial Sanctions Regulations (“IFSR”), 31 C.F.R. Part 561 (Count Two); (3) bank fraud, in violation of Title 18, United States Code, Sections 1344 and 2 (Count Three); (4) conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 1349 (Count Four); (5) money laundering, in violation of Title 18, United States Code, Sections 1956 and 2 (Count Five); and (6) conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956 (Count Six). The Indictment alleges that the charged conduct occurred between in or about 2010 and in or about 2015, and in, among other places, the Southern District of New York, Turkey, and the United Arab Emirates (“U.A.E.”). Finally, the Indictment also charges Zarrab, Mehmet Zafer Caglayan, a/k/a “Abi,” Suleyman Aslan, Levent Balkan, Abdullah Hapmani, Mohammad Zarrab, a/k/a “Can Sarraf,” a/k/a “Kartalmsd,” Camelia Jamshidy, a/k/a “Kamelia Jamshidy,” and Hossein Najafzadeh.

B. Offense Conduct

The Indictment describes a five-year-long scheme in which the defendants conspired to violate economic sanctions imposed by the United States on Iran. In particular, the participants in the scheme used money-service businesses and front companies in, among other places, Iran, Turkey, the U.A.E., and elsewhere to circumvent prohibitions against Iran’s access to the U.S. financial system and restrictions on the use of proceeds of Iranian oil and gas sales and on the supply of gold to the Government of Iran and Iranian entities and persons. (*See* Ind. ¶ 1).

As alleged in the Indictment, the scheme was centered on Halk Bank (referred to in the Indictment as “Turkish Bank-1”). Pursuant to the scheme, proceeds of Iran’s sale of oil and gas to Turkey’s state-owned energy companies were deposited into accounts held at Halk Bank in

the name of the Central Bank of Iran, the National Iranian Oil Company (“NIOC”), and the National Iranian Gas Company (“NIGC”) (all of which were sanctioned by the United States at the time). (*See id.* ¶ 4). But, because of U.S. sanctions against Iran and the anti-money laundering policies of U.S. banks, it was difficult for Iran to access these funds in order to transfer them back to Iran or to use them for international financial transfers for the benefit of Iranian government agencies, banks, and businesses. (*See id.*).

As a result, leaders of Halk Bank, including Atilla, Aslan, and Balkan, worked with Zarrab, corrupt Turkish officials like Caglayan, and Iranian officials to devise a scheme through which Iran could surreptitiously access its oil proceeds freely, without scrutiny from the international community. (*See, e.g., id.* ¶ 36). The scheme involved, among other things, fraudulent gold and humanitarian trade transactions run through Halk Bank and Zarrab’s companies. (*See id.* ¶ 5). The purpose of the defendants’ scheme was to demolish the sanctions’ restrictions on Iranian access to oil and gas proceeds at Halk Bank and create an enormous, anonymous slush fund for Iran. Because the funds would not nominally be attributable to Iran, the Government of Iran could direct the funds anywhere across the globe free of the effect of sanctions, including through the U.S. financial system. (*See, e.g., id.* ¶¶ 34-35). The Indictment provides several examples of such U.S. transactions. At the same time, by disguising these transactions as being subject to exemptions in U.S. sanctions laws, Halk Bank was able to ensure the continuity of this profitable business, while also avoiding being sanctioned itself by the United States and losing its ability to transact with U.S. banks. (*See id.* ¶ 5).

Atilla played a central role in the scheme, as described in the Indictment. For example, Atilla participated in meetings at which the scheme was designed. (*See id.* ¶ 37). Moreover, Atilla met with representatives from the U.S. Department of Treasury and deceived them about

the Iranian business occurring at Halk Bank. (*See id.* ¶ 55). In addition, Atilla coached Zarrab as to how to prepare fraudulent transactional documents. (*See id.* ¶¶ 50-51).

DISCUSSION

I. The Motion to Dismiss Should Be Denied

Atilla's motion is without merit. First, he contends that he cannot be prosecuted for conspiracy to violate the IEEPA because the regulations that he breached allow only for the sanctioning of foreign actors, not prosecuting them. He also reiterates Zarrab's argument that the IEEPA does not have extraterritorial application. Both arguments are contrary to the plain language of the IEEPA and the applicable executive orders and regulations, as well as straightforward canons of construction. Second, Atilla seeks dismissal of Count One, which charges him with defrauding the U.S. Department of Treasury, in violation of Title 18, United States Code, Section 371, because, he claims, the IEEPA is the sole vehicle for prosecuting alleged sanctions evasion. Again, clear Second Circuit precedent defeats Atilla's contention. Third, in a single line in his conclusion, Atilla argues that the bank fraud and money laundering charges cannot go forward if the IEEPA charge is dismissed. Even if the Court were to accept that contention, given that the IEEPA count is properly alleged, this argument also fails.

A. The Indictment Properly Alleges an IEEPA Conspiracy

1. Applicable Law

The IEEPA authorizes the President to deal with "unusual and extraordinary threat[s] . . . to the national security, foreign policy, or economy of the United States" by declaring a national emergency with respect to such threats, 50 U.S.C. § 1701(a). Since 1979, and through the present day, U.S. presidents have repeatedly declared that Iran poses a threat to the United States' national security for, among other reasons, its pursuit of nuclear weapons and its sponsorship of terrorism. That continues to be the case even after the implementation of the

Joint Comprehensive Plan of Action (the “JCPOA”) between the United States and other countries and Iran concerning Iran’s nuclear program, on January 16, 2016.

Section 1705 of the IEEPA defines the scope of unlawful activity under the statute: “[i]t shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this title.” 50 U.S.C. § 1705(a). It also provides a criminal penalty for anyone who, among other things, willfully conspires to commit any of the unlawful acts described in Section 1705(a). *See id.* § 1705(c). Since 1979, the United States has adopted a series of statutes, executive orders, and regulations designed to check the national security threat posed by Iran, including the ITSR and the IFSR.

The ITSR target, among other things, exports from the United States or by U.S. persons for the benefit of Iran. Section 560.204 of the ITSR prohibits, among other things “the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran.” Section 560.203 of the ITSR states that “any transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited,” and that “[a]ny conspiracy formed to violate any of the prohibitions set forth in this part is prohibited.”

The IFSR, among other things, implement a series of legislative and executive steps taken to attempt to restrict Iran and its Islamic Revolutionary Guard Corps’s access to the proceeds of the sale of its oil and access to gold and U.S. currency, including (i) the National Defense Authorization Act for Fiscal Year 2012 (the “NDAA”), which allowed for sanctions to be imposed on foreign financial institutions that were determined by the President to have facilitated financial transactions for the Central Bank of Iran or other sanctioned Iranian banks,

and (ii) the subsequently enacted Iranian Threat Reduction and Syria Human Rights Act of 2012 (“ITRA”), which further restricted Iran’s access to its oil proceeds by directing that sanctions should be imposed on foreign financial institutions that did not restrict the use of Iranian oil proceeds to fund bi-lateral trade (*i.e.*, trade between the institution’s host country and Iran).

In addition, the President issued two executive orders that targeted Iran’s petroleum sales and gold supply. First, Executive Order 13622 authorized the imposition of sanctions on foreign financial institutions that facilitated transactions for, among others, the Central Bank of Iran and NIOC that related to the purchase of oil from Iran. *See* Exec. Order No. 13622, 77 Fed. Reg. 45897 (Jul. 30, 2012). The Executive Order also authorized sanctions on foreign financial institutions that helped the Government of Iran acquire precious metals. Second, Executive Order 13645, which was issued after 13622, tightened the restrictions on precious metals by authorizing sanctions for foreign financial institutions that facilitated the sale or transfer of precious metals to or from Iran, directly or indirectly, rather than simply for the benefit of the Government of Iran. Exec. Order 13645, 78 Fed. Reg. 33945 (June 3, 2013). Both Executive Orders prohibited any transaction that evaded or avoided, had the purpose of evading or avoiding, caused a violation of, or attempted to violate any of the prohibitions set forth in that order.¹

The Secretary of the Treasury promulgated the IFSR implementing the sanctions imposed by the Executive Orders 13622 and 13645, the 2012 NDAA, and the ITRA, among others. *See* 31 C.F.R. §§ 561.203, 204, 205. The IFSR prohibited, among other things, “[a]ny transaction on or after the effective date that evades or avoids, has the purpose of evading or avoiding, causes a

¹ After Executive Order 13645, “foreign financial institutions” was defined to include, among others, money services businesses and precious metal dealers, like the companies operated by Zarrab.

violation of, or attempts to violate any of the prohibitions set forth in this part,” as well as any conspiracies to violate the IFSR. *See* 31 C.F.R. § 561.205.

As the Court has already recognized in its order denying Zarrab’s previously filed motion to dismiss (the “Zarrab Order“), “[t]he enactment and promulgation of the IEEPA and the ITSR reflect the United States’ interest in protecting and defending itself against, among other things, Iran’s sponsorship of international terrorism, Iran’s frustration of the Middle East peace process, and Iran’s pursuit of weapons of mass destruction, which implicate the national security, foreign policy, and the economy of the United States.” (Zarrab Order at 19). To effectuate these goals, “[t]he Second Circuit also recognized that ‘the Iranian embargo is intended to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the Government of Iran . . . [and] by design[,] the embargo is deliberately overinclusive.’” (*Id.* at 16 (quoting *United States v. Banki*, 685 F.3d 99, 108 (2d Cir. 2012), as amended (Feb. 22, 2012))).

2. Discussion

a. The Motion to Dismiss the IEEPA Conspiracy Charge Should Be Denied

Count Two clearly and plainly alleges that Atilla conspired to violate the IEEPA. Count Two alleges in particular that between in or about 2010 and 2015, Atilla conspired with others to violate the IEEPA and the regulations promulgated pursuant to it, in, among other places, Turkey, the U.A.E., and the Southern District of New York, and that it was a part and an object of the conspiracy to provide and cause others to provide financial services to Iran and its government and to evade and avoid the requirements of U.S. law with respect to the provision of financial services to Iran and its government. (*See* Ind. ¶¶ 1, 5, 33-84, 88-90). Given that the Indictment essentially tracks the statutory language and alleges the time period and location of

the offense charged, it properly alleges an IEEPA conspiracy. *See* Zarrab Order at 5 (“It is said that ‘an indictment need do little more than to track the language of the statute and state the time and place (in approximate terms) of the alleged crime.’” (quoting *United States v. Stavroulakis*, 952 F.2d 686, 693 (2d Cir. 1992))).

Moreover, the conduct described in the Indictment clearly constitutes a conspiracy to violate IEEPA. Section 1705 of IEEPA makes it unlawful to “willfully conspire” “to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this title.” 50 U.S.C. § 1705(a) & (c). Thus, those who conspire to violate any of the executive orders or regulations promulgated under Title 50, like Executive Orders 13622 and 13645, the ITSR or the IFSR, have violated the IEEPA and can be prosecuted.

Furthermore, each of the ITSR, the IFSR, and Executive Orders 13622 and 13645 prohibit transactions that “evade or avoid, or have the purpose of evading or avoiding, [or] cause a violation” of the prohibitions set forth in those regulations and orders. *See* 31 C.F.R. § 560.203; 31 C.F.R. § 561.205; Executive Order 13622 §9(a); Executive Order 13645 §13(a). In the case of the ITSR, if someone conspires to violate, evade, avoid, or cause a violation of Section 560.204’s prohibitions on exports for the benefit of Iran, then they would have violated that regulation, and thus Section 1705 of IEEPA. And similarly, with respect to the IFSR, if someone conspired to execute transactions that violate, evade, avoid, or cause a violation of Sections 561.203 or 561.204’s prohibitions on U.S. financial institutions’ correspondent banking transactions with foreign banks that facilitate transactions for, among others, the Central Bank of Iran, a sanctioned Iranian bank, or NIOC (but for certain exemptions that do not apply here), then that individual would have violated the IFSR, and, as a result, committed a crime under Section 1705 of the IEEPA. Finally, if someone conspired to violate, evade, avoid, or cause a

violation of Executive Orders 13622's and 13645's prohibitions on U.S. correspondent banking relationships on foreign banks that facilitate purchases of gold for the Government of Iran, or after July 1, 2013, any Iranian, then they would have violated these Executive Orders, also a criminal act pursuant to the IEEPA.

Thus, based on their plain language, the ITSR, the IFSR, and Executive Orders 13622 and 13645 are violated through conspiracies involving four means: (1) direct violations; (2) evasion; (3) avoidance; and (4) causing of violations. In interpreting these phrases, the Court "must give effect to every word of a statute wherever possible." *United States v. Halloran*, 821 F.3d 321, 333 (2d Cir. 2016) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004)); *Jay v. Boyd*, 351 U.S. 345, 360 (1956) (court "must read the body of regulations . . . so as to give effect, if possible, to all of its provisions"). Moreover the Supreme Court has long "cautioned against reading a text in a way that makes part of it redundant," *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 669 (2007), and the Court must accordingly "presume Congress intends different terms in the same statute to have different meanings." *WNET, Thirteen v. Aereo, Inc.*, 722 F.3d 500, 507 (2d Cir. 2013). "When terms used in a statute are undefined, [courts] give them their ordinary meaning." *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995).

To "violate" a prohibition is to "[t]o disregard or act in a manner that does not conform" to a duty. Am. Heritage Dictionary (5th ed. 2017) (available at <https://ahdictionary.com>). To "evade" a prohibition means "[t]o avoid complying with or fulfilling a requirement." *Id.* And "the common and ordinary meaning of 'avoid' is 'to prevent the occurrence of' something." *W. Virginia Min. & Reclamation Ass'n v. Babbitt*, 970 F. Supp. 506, 515 (S.D.W. Va. 1997) (quoting Webster's Third New International Dictionary 151 (3rd ed. 1981)); *see also SUPERVALU, Inc. v. Bd. of Trustees of Sw. Pennsylvania & W. Maryland Area Teamsters &*

Employers Pension Fund, 500 F.3d 334, 341 (3d Cir. 2007) (defining “avoid” as “[t]o keep from happening” (quoting Am. Heritage Dictionary 128 (3d ed.1992)); *Lopresti v. Pace Press, Inc.*, 868 F. Supp. 2d 188, 201 (S.D.N.Y. 2012) (same (quoting *Supervalu*)).

Applying these principles to the scheme described in the Indictment makes clear that the conduct alleged violates the IEEPA. A key part of the scheme was to facilitate transactions for the benefit of Iran through U.S. financial institutions through the use of deceptive tactics designed to conceal the transactions’ Iranian nexus, which constitutes both violating the ITSR and evading the ITSR, and is thus, a violation of the IEEPA. The scheme also involved facilitating transactions for the Central Bank of Iran or NIOC, for example, while at the same time falsifying the nature of those transactions to prevent the occurrence of the prohibitions in the IFSR that would cut off Halk Bank’s access to the U.S. financial system, which constitutes avoiding the IFSR, and also a crime under the IEEPA. Finally, facilitating the purchase of gold on behalf of the Government of Iran or Iranians while at the same time trying to keep Halk Bank from being sanctioned for those purchases by U.S. regulators was also part of the scheme and constitutes a violation of Executive Orders 13622 and 13645, and a criminal act under the IEEPA.

This conclusion flows not only from the language of the statute, but also its purpose. Iran’s activities present a threat to the national security of the United States, and the IEEPA, the ITSR, the IFSR, and Executive Orders 13622 and 13645 are some of the measures adopted to quell that threat. “The Second Circuit also recognized that ‘the Iranian embargo is intended to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions and policies of the Government of Iran . . . [and] by design[,] the embargo is deliberately overinclusive.’” (Zarrab Order at 16 (quoting

Banki, 685 F.3d at 108)). Thus, prohibiting transactions that violate, evade, or avoid the proper imposition of appropriate sanctions serves the statutory and regulatory purpose of the U.S. embargo on Iran. By contrast, the suggestion that foreign actors are immune from prosecution under a statute designed to address foreign threats would vitiate these means to enforce the national security controls embodied in the Iranian embargo and dramatically undercut the purpose of the sanctions regime – to control the threat posed by Iran’s hostile actions towards the United States. See *United States v. Al Kassar*, 660 F.3d 108, 125 (2d Cir. 2011) (stating that courts must generally “interpret statutes to give effect to congressional purpose,” and rejecting narrow interpretation of criminal liability as one that would “undermine” statutory purpose to prevent “harm [to] the national security or foreign relations of the United States”).

In arguing that the IEEPA count should be dismissed, Atilla relies on a flawed and baseless reading of the statutory and regulatory language. Indeed, over the approximately nine pages of his brief in which he advances his reading of the statute and the relevant regulations, Atilla offers no case law supporting his construction of the IEEPA, the ITSR, the IFSR, or the relevant Executive Orders. And, equally telling, Atilla barely discusses the actual text of the provisions of the ITSR, the IFSR, and Executive Orders 13622 and 13645 that set forth the various ways in which these measures can be violated.

Rather than deal with the language and purpose of the applicable statutory and regulatory framework, Atilla tries to insert a false and self-serving dichotomy into the sanctions regime. He argues that these provisions define two types of conduct: (i) conduct by foreign actors that the United States “disapproves of” and is thus only sanctionable (but not prosecutable); and (ii) conduct that is prohibited and for which United States persons (but not foreign actors) can be prosecuted. Atilla further argues that prosecution under the IFSR and Executive Orders 13622

and 13645 is not possible until a foreign financial institution has been sanctioned by the United States first. Neither argument has merit.

First, Atilla's contention that foreign actors like Atilla are immune from prosecution and are, at most, only potentially sanctionable flies in the face of the Court's prior ruling and the language of the IEEPA. The Court has already found, "50 U.S.C. § 1705(c) establishes criminal penalties for '[a] person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of, an unlawful act' described in the statute. 50 U.S.C. § 1705(c) is **not** limited to individuals (such as U.S. citizens) who are subject to the jurisdiction of the United States, indicating that Congress intended the statute to be applied extraterritorially." (*See* Zarrab Order at 19-20). And the Court's conclusion is thoroughly supported by the language of Section 1705, which applies to a "person," not only, as Atilla contends, a "U.S. person." Nothing in the IEEPA – the governing criminal statute – confers some sort of immunity on foreign defendants. Nor do the ITSR, IFSR, or the Executive Orders contain any sort of carve-out for foreign actors who engage in the conduct targeted by those measures.

Atilla argues that the IFSR allows the Secretary of Treasury to prohibit U.S. financial institutions from engaging in certain transactions with a foreign financial institution, and that IEEPA and the regulations address violations of "prohibitions." That argument is contrary to the language and purpose of the IEEPA and the regulations. The IEEPA does not confine itself to violations of "prohibitions" – instead, Section 1705 targets conduct that implicates "any license, order, regulation, or prohibition issued under [Title 50]." Thus, it reaches any violation of any part of Executive Orders 13622 and 13645, the ITSR, or the IFSR. This comports with the purposes of the statute, orders, and regulations, which is to deter foreign financial institutions

from enabling Iran by threatening severing their ties to the U.S. financial market. While the Secretary of Treasury can certainly do that through a directive to U.S. banks, nothing about that authority purports to limit the IEEPA or the IFSR's reach.

Second, Atilla's claim that the IFSR cannot be enforced until after a foreign financial institution is sanctioned is equally meritless because it ignores the IFSR's inclusion of the avoidance as a basis for liability. There is no requirement that a prohibition have actually been imposed before liability can attach, since, after all, the entire point of the prohibited transaction is to conceal its true nature in order to *avoid* such sanctions.

This common-sense conclusion is reinforced by analogy to another criminal statute that prohibits "avoidance" that frustrates the enforcement of U.S. law – the prohibition on interstate travel "to avoid prosecution" codified in Section 1073 of Title 18. There, courts have long recognized that it is not necessary for a defendant to have been charged in order to "avoid prosecution." In the leading case interpreting the statute, the Second Circuit specifically rejected a "narrow and strained construction" of the statute that interpreted the word "prosecution" to require "the filing of a formal charge," holding instead that "[i]t is sufficient if the fleeing felon is subject to prosecution." *United States v. Bando*, 244 F.2d 833, 843 (2d Cir. 1957).

Accordingly, it is well-established that in order to prove that a defendant intended to "avoid prosecution," "the government need not prove that the defendant had already been indicted or charged . . . It is sufficient to satisfy this element if the defendant believed he would be charged . . . and acted in that belief" by traveling "from one state to another for the purpose of avoiding prosecution." Modern Federal Jury Instructions, Instr. 38-15 (2012).

The same principles apply here. The IEEPA and the IFSR create a coherent scheme of prohibitions, making it illegal (and, pursuant to 50 U.S.C. § 1705(c), a crime) to (a) breach a

prohibition by violating it, (b) sidestep a prohibition by evading it, and (c) prevent the imposition of a prohibition by avoiding it, and the Court must give effect to all three aspects of the regulatory scheme. Accordingly, it is sufficient to prove such a violation if the defendant believed that a prohibition under the IFSR would be imposed and acted in that belief in agreeing to engage in a transaction or transactions designed to avoid the imposition of those sanctions.

Finally, applying the statute and regulations this way does not, as Atilla suggests, implicate any due process concerns. First, as a straightforward matter of statutory interpretation, willfulness is an element of the offense, precluding any “fair warning” problem. “The requirement that the act must be willful or purposeful . . . relieve[s] the statute of the objection that it punishes without warning an offense of which the accused was unaware.” *Screws v. United States*, 325 U.S. 91, 102 (1945); *see also United States v. Curcio*, 712 F.2d 1532, 1543 (2d Cir. 1983) (noting established doctrine that “scienter argument may save a statute which might otherwise have to be condemned for vagueness”). Moreover, contrary to his claim, Atilla’s conduct did have a nexus to the United States in that, as alleged, it involved deceptively preserving Halk Bank’s banking relationship with U.S. banks, misrepresentations to U.S. regulators, and banking transactions that passed through U.S. banks. And all of this conduct was aimed at circumventing sanctions designed to protect the United States’ national security, and thus, there is no doubt that the specific “aim of that activity [was] to cause harm . . . to U.S. . . . interests,” *Al Kassar*, 660 F.3d at 118, and that thus, due process is satisfied.

b. IEEPA Applies Extraterritorially

Atilla also argues, contrary to this Court’s Zarrab Order, that the IEEPA and the ITSR do not apply to foreign nationals who cause actions within the United States and transactions involving property in the United States. (Mot. at 13-16). As Atilla recognizes, the Court has

already rejected this argument, and that holding is both correct and the law of the case. (Zarrab Order at 17-23; *see United States v. Quintieri*, 306 F.3d 1217, 1225 (2d Cir. 2003) (law-of-the-case doctrine “holds ‘that when a court has ruled on an issue, that decision should generally be adhered to by that court in subsequent stages in the same case’ . . . ‘unless ‘cogent’ and ‘compelling’ reasons militate otherwise”)) (quoting *United States v. Uccio*, 940 F.2d 753, 758 (2d Cir. 1991) and *United States v. Tenzer*, 213 F.3d 34, 39 (2d Cir. 2000)).

Atila’s co-defendant, Zarrab, previously moved to dismiss the second Superseding Indictment, which also alleged a conspiracy to violate the IEEPA and the ITSR, arguing that the IEEPA did not apply to a foreign national who did not interact directly with a U.S. person or U.S. property. (Docket Entry No. 63 (“Zarrab Mot.”) at 20-25).² Initially, the Court rejected the contention that this was an “extraterritorial” application of the IEEPA, because the indictment alleged that the defendants caused the export of services from the United States. (Zarrab Order at 17-18). The Court also concluded that, even if the application of the IEEPA was considered extraterritorial, the challenge to such an “extraterritorial” application was “unpersuasive.” (*Id.* at 18). The Court noted that “statutes prohibiting crimes against the United States government can be applied extraterritorially even in the absence of clear evidence that Congress so intended,” *id.* (quoting *United States v. Vilar*, 729 F.3d 62, 73 (2d Cir. 2013)); *see also United States v. Siddiqui*, 699 F.3d 690, 700 (2d Cir. 2012) (holding that 18 U.S.C. § 1114, aimed at protecting U.S. personnel when acting in their official capacity, implies an intent to apply outside the United States). The Court also recognized that the IEEPA and the ITSR were replete with

² Zarrab also argued that financial transactions by U.S. banks involving property located in this U.S. for the benefit of the Government of Iran and persons companies located in Iran is not an export of property or services under the ITSR, 31 C.F.R. § 560.204. (Zarrab Mot. at 10-19). This Court also rejected this argument. (Zarrab Order at 15-17).

evidence of Congressional concern about threats to national security originating abroad and evidence that the IEEPA was intended to apply extraterritorially. (Zarrab Order at 19-20).

Atilla argues that this Court's decision was incorrect, but offers no new legal authority in support of that contention. Instead, Atilla advances bizarre interpretations of the ITSR in an attempt to create an ambiguity as to its application to foreign nationals, but this effort fails. (Mot. 14-15). As an initial matter, Atilla ignores the plain language of the IEEPA itself, which makes it a crime for *any* "person" to "willfully commit[], willfully attempt[] to commit, or willfully *conspire[] to commit, or aid[] or abet[] in the commission of*" a violation of the ITSR. 50 U.S.C. § 1705(c) (emphasis supplied). Atilla does not deny that the export of financial services from the United States by U.S. banks for the benefit of the Government of Iran and Iranian entities violates the ITSR, or that the IEEPA makes it a crime to conspire to cause that violation or to aid and abet that violation. That Atilla was overseas when he is alleged to have so conspired is no defense, within the plain meaning of the statute. Moreover, Atilla's proposed construction of the ITSR – that Section 560.204's prohibition against the export of services from the United States does not apply to transactions involving foreign nationals – is illogical. Under the ITSR's plain language, such exports are flatly prohibited, regardless of who causes them, and it would be truly irrational to prohibit such transactions only when caused solely by U.S. persons.

Atilla attempts to introduce ambiguity to advance his contention that Section 560.204 carves out transactions caused by foreign nationals, but these efforts fail. First, contrary to Atilla's argument that Section 560.204 might not apply to the *re*-export of goods or services from the United States (Mot. at 15), it has long been clear that it does, particularly in the re-export by correspondent banks in the United States of money and financial services sent into the U.S. from foreign banks. OFAC promulgated a "U-turn" license for such otherwise prohibited

transactions in 1995, *see* 60 Fed. Reg. 47069 (Sept. 11, 1995) (previously codified at 31 C.F.R. § 560.516), and revoked that license in 2008 because of “the need to further protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks.” 73 Fed. Reg. 66541 (Nov. 10, 2008). Second, Atilla urges the Court to conclude that, because Section 560.205 of the ITSR is specifically directed to foreign actors, other provisions of the ITSR impliedly are not. (Mot. at 15). But Section 560.205 simply prohibits a particular type of foreign transaction not involving U.S. persons – namely, the re-exportation from a third country to Iran of goods or services previously exported from the U.S. under certain circumstances – that is already prohibited when U.S. persons are involved by Section 560.204. Section 560.205 does nothing to limit the application of Section 560.24 to the export of goods and services from the United States when caused by non-U.S. persons. In sum, Atilla’s contentions are meritless.

c. The Indictment Properly Alleges Atilla’s Knowing Participation

Atilla next argues that there is no allegation in the Indictment sufficient to prove that he was knowingly involved in causing U.S. banks to participate in prohibited conduct. (Mot. at 16-19). Atilla’s claim is based on his mischaracterization of the Indictment as alleging three different schemes, rather than one overarching one, and his contention that the schemes in which he is alleged to have participated do not have a tie to the United States. To the contrary, the Indictment clearly describes how the alleged conduct fits together as one coherent conspiracy to remove Iranian oil proceeds held at Halk Bank and launder them so that the connection between the funds and Iran was obscured, which allowed the money to be used for, among other things, transactions passing through U.S. banks that would otherwise have been blocked. (*See* Ind. ¶¶ 1-5). Thus, the scheme did not simply end when the money was withdrawn from Halk Bank – the whole point of those transactions was to create a pool of laundered funds for Iran’s use. That is

the conspiracy that Atilla is alleged to have willfully joined, helped design, and lied to U.S. regulators about – allegations that must be presumed as true on a motion to dismiss. *See United States v. Skelos*, No. 15 Cr. 317 (KMW), 2015 WL 6159326, at *2 (S.D.N.Y. Oct. 20, 2015) (court must accept allegations of indictment as true in reviewing motion to dismiss). And, as a member of the conspiracy, Atilla is responsible for all of the acts encompassed by the conspiracy – including the transactions executed through U.S. banks – even if he did not personally participate in them. *See United States v. Amrep Corp.*, 560 F.2d 539, 545 (2d Cir. 1977) (“So long as a transaction is within the general scope of a scheme on which all defendants had embarked, a defendant not directly connected with a particular fraudulent act is nonetheless responsible therefor if it was of the kind as to which all parties had agreed.”); *United States v. Finkelstein*, 526 F.2d 517, 526-27 (2d Cir. 1975) (same).

B. The Sanctions Regime Does Not Preclude Count One

Atilla moves to dismiss Count One of the Indictment, which charges him with conspiring to defraud the U.S. Treasury Department in connection with its administration of the U.S. embargo against Iran, in violation of Title 18, United States Code, Section 371, because, he claims, IEEPA is the exclusive vehicle through which the Government can prosecute sanctions violations and because Count One does not allege that he knew of a connection between the United States and the Iranian transactions at Halk Bank. Atilla is wrong.

1. Applicable Law

Section 371 reads:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

The statute defines two possible objects of a Section 371 conspiracy: (i) committing an offense against the United States (the “Specific Offense Clause”) or (ii) defrauding the United States (the “Fraud Clause”). *United States v. Ballistrea*, 101 F.3d 827, 831 (2d Cir. 1996). The gravamen of an offense under the Fraud Clause, also known as a “*Klein* conspiracy,” is that the defendant participated in “any conspiracy for the purpose of impairing, obstructing, or defeating the lawful function of any department of government.” *See id.* (internal citation and quotation omitted). Thus, the Government must prove that the defendant conspired to obstruct a lawful function of the government through deceitful means, and that an overt act was taken in furtherance of the conspiracy. *See id.* at 833.

2. Discussion

Count One plainly alleges an offense under the Fraud Clause. Specifically, it charges that between approximately 2010 and 2015, in, among other places, the Southern District of New York, Turkey, and the U.A.E., Atilla conspired to defraud the United States by impairing the lawful functions of the U.S. Treasury Department in connection with its administration of the U.S. embargo against Iran. (*See Ind.* ¶ 86). Moreover, the Superseding Indictment alleges 60 overt acts, including specific acts involving Atilla, such as his participation in meetings with Iranian officials about how to, among other things, transfer Iranian oil proceeds to Halk Bank, and his interactions with U.S. regulators, in which he made misrepresentations about Halk Bank’s involvement with certain Iranian transactions. (*See id.* ¶¶ 37, 47, 55, 87). In other words, the Indictment alleges all of the elements of a Section 371 conspiracy under the Fraud Clause, the time and place of the offense, and the requisite overt act. As the Court has already found, that is sufficient to defeat a motion to dismiss. *See Zarrab Order* at 5 (“It is said that ‘an indictment need do little more than to track the language of the statute and state the time and

place (in approximate terms) of the alleged crime.”) (quoting *Stavroulakis*, 952 F.2d at 693). Atilla’s arguments to the contrary do not support of dismissal of Count One.

First, Atilla contends that he cannot be prosecuted for a violation under Section 371, because the federal government has adopted expansive sanctions regulations that “occupy the entire field of sanctions . . . to the exclusion of other laws” like Section 371. (*See Mot.* at 19). According to Atilla, the sanctions regime against Iran is carefully calibrated to achieve the United States’ foreign policy goals, such that allowing a prosecution under a separate law, like Section 371, would upset the balance struck by Congress and the Executive branch, including by the JCPOA. (*See id.* at 19-20). Thus, in essence, Atilla attempts to import the concept of “preemption” into the relationship between two federal criminal statutes. (*See id.* at 20 (citing *ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1304 (S.D. Fla. 2008) (considering whether state laws were preempted by federal laws governing interactions with Cuba)).

Initially, the contention that a prosecution cannot proceed under the Fraud Clause because there is another, more specific statutory and regulatory scheme in place is flatly inconsistent with the Second Circuit’s decision in *United States v. Bilzerian*, 926 F.2d 1285 (2d Cir. 1991). In *Bilzerian*, the defendant was charged, in addition to other counts, under the Fraud Clause for defrauding the Securities and Exchange Commission (the “SEC”) by making false statements and engaging in deceptive transactions. *See id.* at 1290-91. The defendant argued that the Government should not be allowed to proceed under the Fraud Clause when it could proceed under the Specific Offense Clause, *i.e.* when other criminal statutes (Title 15, United States Code, Sections 78(m) and 78(ff)) also covered the conduct that formed the basis of the Section 371 count. *See id.* at 1301 (“*Bilzerian* would have us rule that when conduct is chargeable under the specific offense clause, the government is precluded from prosecuting

under the defraud clause.”). The Second Circuit flatly rejected this argument as “unpersuasive.” *See id.*

Moreover, the backdrop against which the Second Circuit decided *Bilzerian* was not simply the existence of specific criminal statutes, but also a significant regulatory framework. *See id.* at 1301-02 (describing federal regulations that applied to defendant’s conduct). And *Bilzerian* is hardly an outlier in this regard, as numerous cases have involved prosecutions under the Fraud Clause where there is also a separate and extensive statutory and regulatory scheme in place. *See, e.g., Ballistrea*, 101 F.3d at 832 (prosecution for defrauding the Food and Drug Administration in addition to charges asserted under the Food, Drug, and Cosmetics Act); *United States v. Gurary*, 860 F.2d 521, 525 (2d Cir.1988) (prosecution for defrauding the Internal Revenue Service (the “IRS”) by supplying false information that would be used on tax returns); *United States v. Nersesian*, 824 F.2d 1294, 1309 (2d Cir. 1987) (prosecution for defrauding the IRS where defendant agreed to engage in structured transactions designed to evade bank currency transaction reporting requirements). In each of these situations – be it the administration of food and drugs, securities, banking transactions, or tax – Congress and the Executive branch have weighed the relevant interests and adopted appropriate statutes and regulations, and, nonetheless, prosecutions under the Fraud Clause have proceeded. Furthermore, to the extent Atilla attempts to imbue his argument with additional force based on purported concerns about disrupting agreements between the United States and other countries, such as the JCPOA, those are matters commended to the U.S. government, not a private litigant like Atilla, and he cannot rely on them in arguing the dismissal of Count One. *See, e.g., United States v. al Liby*, 23 F. Supp. 2d 194, 201-02 (S.D.N.Y. 2014) (denying motion to dismiss indictment based on purported violations of United Nations Charter and Hague Convention).

In arguing the contrary, Atilla relies almost exclusively on *United States v. Minarik*, 875 F.2d 1186 (6th Cir.1989), a case also addressed by the court in *Bilzerian*. In *Minarik*, the Sixth Circuit considered whether a defendant could be prosecuted under the Fraud Clause for concealing her assets to avoid paying taxes owed to IRS when the tax code contained a statute that criminalized such behavior, rather than the Specific Offense Clause. *See id.* at 1194-95. The court concluded that because of the intricacies of tax regulations, the Government could only prosecute the defendant with a violation of Section 371 if it proceeded under the Specific Offense Clause. *See id.* at 1195. Atilla argues that this decision means that the Government cannot proceed under the Fraud Clause when Congress has passed a more specific criminal statute. (*See Mot.* at 21). In *Bilzerian*, however, the court also said that the defendant's reading of *Minarik* as precluding a prosecution under the Fraud Clause when a more specific statute exists – the same argument advanced by Atilla – was “contrary to established law.” *Bilzerian*, 926 F.2d at 1302. Moreover, the Second Circuit confined *Minarik* to its facts, writing that in that case, “prosecution solely under the defraud clause-despite the existence of a specific statutory offense governing the conduct-led to substantial confusion and prejudiced the defendant's ability to prepare for trial.” *Bilzerian*, 926 F.2d at 1301. Here, there is no such issue because the Indictment clearly lays out the prosecution theories under both the Fraud Clause and the IEEPA.

Atilla feebly attempts to distinguish *Bilzerian* by pointing to a section of the court's decision that concludes that a prosecution under Title 18, United States Code, Section 1001 would not be precluded by a statute governing false statements to the SEC. (*See Mot.* at 21). Atilla argues that unlike in that situation, where Section 1001 was passed after the narrower securities statute, this case deals with the “exact opposite: the Executive enacted its narrower regulations knowing full well that the *Klein* conspiracy doctrine had existed for decades.” (*See*

id.). In dwelling on the chronology of Section 1001, however, Atilla ignores that portion of *Bilzerian* that actually deals with the issue presented in this case. From that section of the Second Circuit's opinion, it is apparent that the timing of the enactment of the particular statutes at issue is a red herring. Specifically, while the Fraud Clause and the roots of the *Klein* conspiracy doctrine date back to the late 1800s and early 1900s, respectively, the securities laws and regulations at issue in *Bilzerian* date back to, at the earliest, 1934. *See United States v. Coplan*, 703 F.3d 46, 59-61 (2d Cir. 2012) (discussing the history of the *Klein* conspiracy); *Bilzerian*, 926 F.2d at 1302 (describing overlapping securities laws at issue). Thus, *Bilzerian* involved the same situation as this case, and its analysis requires denial of Atilla's motion.

Second, Atilla also reiterates his tortured reading of the IFSR and his purported lack of knowledge related to the United States, and argues that because he cannot be prosecuted under IEEPA he also cannot be prosecuted under Section 371. (*See Mot.* at 22-23). But "so long as deceitful or dishonest means are employed to obstruct governmental functions, the impairment need not involve the violation of a separate statute." *Ballistrea*, 101 F.3d at 832 (internal citation and quotation omitted). Here, the Indictment alleges that Atilla, among other things, agreed to participate in a scheme to trick U.S. regulators and indeed, personally misled officials with the U.S. Department of Treasury, which is tasked with administering the U.S. embargo on Iran. This conduct violates Section 371. *See Bilzerian*, 926 F.2d at 1302 (giving false information to the SEC or IRS impairs their administration of their regulatory schemes in violation of Section 371).

II. Atilla's Motion for Severance Should Be Denied

Finally, Atilla's motion to sever or to strike allegations should be denied. Contrary to his mischaracterization of the Indictment, Atilla is charged with participating in the same conspiracies as Zarrab, all of which focus on their joint scheme to circumvent U.S. sanctions through Halk

Bank. Thus, under the “established rule,” Atilla and Zarrab should be tried together. *See, e.g., United States v. Nerlinger*, 862 F.2d 967, 973 (2d Cir. 1988) (“The established rule is that a non-frivolous conspiracy charge is sufficient to support joinder of defendants under Fed. R. Crim. P. 8(b).”); *United States v. Salameh*, 152 F.3d 88, 115 (2d Cir. 1998) (presumption in favor of joint trials “is particularly strong where, as here, the defendants are alleged to have participated in a common plan or scheme”). Finally, Atilla’s motion to strike allegations in the Indictment if Zarrab does not appear at trial is purely speculative and, in any event, meritless, because the allegations involving Zarrab are all part of the scheme with which Atilla is charged. *See United States v. Tomero*, 496 F. Supp. 2d 253, 255 (S.D.N.Y. 2007) (describing longstanding policy in this District against striking allegations from indictment if evidence of allegation is admissible and relevant).

CONCLUSION

Accordingly, the Government respectfully requests that the Court deny the defendant’s motions to dismiss the Indictment and to sever.

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Respectfully submitted,

JOON H. KIM
Acting United States Attorney

by: _____/s/
Michael D. Lockard
Sidhardha Kamaraju
David W. Denton, Jr.
Assistant United States Attorneys
Dean C. Sovolos
Special Assistant United States Attorney

cc: Defense counsel of record (by ECF)