No. 24-1144

IN THE

Supreme Court of the United States

TÜRKİYE HALK BANKASI A.Ş., AKA HALKBANK,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR REPUBLIC OF TÜRKİYE AS *AMICUS CURIAE* SUPPORTING PETITIONER

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INTEREST OF THE AMICUS CURIAE[1]

Amicus curiae Republic of Türkiye ("Türkiye") is a sovereign state and a United States ally. Petitioner Türkiye Halk Bankası Anonim Şirketi ("Halkbank" or the "Bank") is an arm of the Turkish state. Halkbank's prosecution in the United States is, therefore, of direct interest to Türkiye.

Halkbank is part of the Turkish state.[2] Over 91 percent of Halkbank's shares are directly owned by Türkiye in the name of the Türkiye Wealth Fund (Türkiye Varlık Fonu). Pursuant to Turkish Law No. 4603, the Ministry of Treasury and Finance holds the representative, administrative, management, and control powers of the shares. *See* Türkiye C.A.2 Amicus Br. at 7-14 (ECF No. 144-2); Türkiye's S.Ct. Amicus Br. at 3-5 (describing Halkbank as part of the Turkish state).

Türkiye is the 18th most populous country in the world, with a population exceeding 85 million. Its economy ranks as the 17th-largest in the world, and by purchasing power

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1. Pursuant to Rule 37.6, counsel for amicus affirm that no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than amici or their counsel, make a monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2, all parties have received notice of this filing.

2. It remains uncontested that Halkbank is an instrumentality of Türkiye, as defined by the Foreign Sovereign Immunities Act, 28 U.S.C. 1603(b). The Amended Indictment alleges that Halkbank is majority owned by the Turkish state. Court of Appeals Appendix (C.A.2 App.) at 22.

parity, it ranks as the 12th-largest. Türkiye and the United States are significant trading partners. In 2024, the total goods traded between the United States and Türkiye was an estimated $32.0 billion, with the United States running a surplus. Over 2,000 American companies operate within Türkiye.

Türkiye has been a member of the North Atlantic Treaty Organization (NATO) for over 73 years and today possesses the second-largest armed forces in the alliance, following the United States. The current regional and global context underscores the significance of the relationship between Türkiye and the United States. Both countries share common interests and collaborate on numerous regional and global issues, including Ukraine, Syria, the Middle East, the South Caucasus, Africa, counter-terrorism, and energy.

The United States' ongoing attempt to prosecute Halkbank, a Turkish state instrumentality, thus directly concerns the Republic of Türkiye and its relations with the United States.

SUMMARY OF ARGUMENT

This Court should grant certiorari to reverse the Second Circuit's holding that international common law permits one sovereign to criminally prosecute foreign sovereign entities. The Second Circuit's ruling that a sovereign instrumentality lacks immunity from prosecution for commercial acts carried out in the exercise of governmental functions runs contrary to customary international law. One state may not subject another

state or its instrumentalities to criminal prosecution in its courts for actions allegedly done in the exercise of sovereign authority. The United States' attempt to subject an arm of the Turkish state to criminal prosecution for alleged offenses against the United States, in a United States court, is thus contrary to customary international law. Where a state enjoys immunity from prosecution for its acts, so too must its instrumentalities for those same acts.

The principle of sovereign equality mandates that disputes among sovereigns be handled through diplomatic channels, not the domestic courts of one sovereign. *See* U.N. Charter art. 2.

ARGUMENT

I. Halkbank's Handling of Iran's Petroleum and Gas Proceeds was a Sovereign Activity.

The United States seeks to prosecute Halkbank for alleged acts taken within Türkiye in the exercise of its sovereign authority to manage Iranian oil proceeds pursuant to a bilateral agreement between the United States and Türkiye. The facts of this case stem from that agreement, by which Türkiye would hold the petroleum and gas proceeds earned by Iran from sales to Türkiye in Türkiye, and to manage the use of those proceeds for limited trade within Türkiye. *See* 22 U.S.C. § 8513a(d)(4)(D); *see also* Türkiye's C.A.2 Amicus Br. at 14-15 (ECF No. 144-2) (discussing the bilateral agreement between the United States and Türkiye on the handling of Iranian petroleum and gas proceeds). Pursuant to that agreement,

Türkiye designated state-owned Halkbank to carry out that function. Only Halkbank was authorized to act as the custodian over Iran's money. Halkbank was the "sole depository" of Iranian oil and gas proceeds and uniquely authorized to intermediate trade with those proceeds. C.A.2 Appx. 23. Halkbank's management of Iranian petroleum proceeds within Türkiye carried out a public duty assigned to it by the Turkish state. This duty was neither private nor commercial. Under current international law, the relevant criterion for distinguishing between a state bank's commercial and sovereign acts is not whether an act can be characterized as commercial and undertaken by a private person, but whether the act was "inseparable from its sovereign functions." *Certain Iranian Assets (Iran v. U.S.)*, Judgment, 2023 I.C.J. Rep. 164, ¶ 52 (Mar. 30). Therefore, because Halkbank's custodianship over Iran's money was "carried out within the framework and for the purposes of" Türkiye fulfilling its agreement with the United States, its handling of those funds, through commercial acts, was in the exercise of its sovereign authority. *Id.* ¶ 50. Thus, the United States' prosecution of a Turkish state entity over claims that its safekeeping of Iranian funds violated United States criminal law, starkly stands against these bedrock elements of customary international law.

II. Customary International Law Prohibits Criminal Prosecutions Against States.

Disputes among sovereigns are most commonly resolved through diplomacy and sometimes through neutral third-party tribunals, but not through criminal prosecutions in the courts of one sovereign.

A. No Other State Allows for the Criminal Prosecution of Another State in its Courts.

Present customary international law prohibits criminal prosecutions brought in one state's jurisdiction against another state. Hazel Fox, *The Law of State Immunity* 311 (3d ed. 2013). A "state can be liable under civil law, but it cannot be prosecuted." Elizabeth Helen Franey, "Immunity from the Criminal Jurisdiction of National Courts," in Research Handbook on Jurisdiction and Immunities in International Law 205, 207 (Alexander Orakhelashvili ed., 2015).

"The exercise of criminal jurisdiction directly over another State...contravenes international law" because it not only makes "another State subject to penal codes based on moral guilt," but it improperly tries to "regulate the public governmental activity of the foreign State." Fox, *supra*, at 89 (3d ed. 2013); *Am. Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356 (1909)(reasoning that treating a foreign party "according to [U.S.] notions rather than those of the place where [it] did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent.").

Current Turkish law does not permit the criminal prosecution of another foreign state or its agencies and instrumentalities in its courts, and it is unaware of any other nation in the world that does. States that have enacted sovereign immunity statutes permitting limited jurisdiction in suits for non-governmental acts do not permit suits against foreign states and their instrumentalities when carrying out a public duty under the authority of the state. Indeed, *none* permit jurisdiction in criminal cases. *See e.g.*, The State Immunity Ordinance, No. 6 of 1981, § 17(a)(2)(b) (Pakistan) ("This Ordinance does not apply to... criminal proceedings"); Foreign States Immunities Act 87 of 1981, § 2(3) (South Africa.) ("The provisions of this Act shall not be construed as subjecting any foreign state to the criminal jurisdiction of the courts of the Republic."); State Immunity Act, ch. 313, § 19(2)(b) (1979) (Singapore) (excluding criminal proceedings from the limited immunity exceptions listed under the Act); State Immunity Act, R.S.C. 1985, c S-18 (Canada); State Immunity Act 1978, c. 33, § 16(4) (U.K.) (specifying that the immunity exceptions do "not apply to criminal proceedings.").

The United States' intent to hold a Turkish state bank criminally responsible for carrying out a Turkish state function within Turkish jurisdiction is thus contrary to customary international law. Türkiye expects that its co-equal sovereign governments, including their judicial systems, likewise follow international law in their dealings with Türkiye. United States law "governs domestically but does not rule the world." *Fed. Rep. of Germany v. Philipp*, 592 U.S. 169, 184 (2021) (quoting *Kiobel v. Royal Dutch Petroleum Co.*, 569 U. S. 108, 115 (2013)).

B. The Prosecution of Another Foreign Sovereign Violates the Very Concept of Sovereignty.

The concept of sovereignty forms the fundamental framework of international law. "It is inherent in the nature of sovereignty not to be amenable to suit without consent." *The Federalist No. 81*, p. 511 (Alexander Hamilton) (B. Wright ed. 1961). A state is only "responsible to other states...for breach of its duties under international law or agreement," not another state's domestic laws. Restatement 3d of the Foreign Relations Law of the U.S. (the "Restatement"), § 206 cmt. e (3rd 1987). For sovereigns that believe they have been harmed, "remedies include the right to make diplomatic claims and to resort to arbitral or judicial tribunals." Restatement § 206 cmt. c.

The United States' prosecution of Halkbank violates principles of sovereignty and sovereign equality. The United States has secured an indictment for alleged offenses against the United States by a Turkish state instrumentality for conduct arising from that instrumentality's performance of a state function, within its own territory. Turning to a state's domestic laws and courthouses to settle disputes among nations disrupts notions of sovereignty. This practice should not be adopted, for it would risk inviting reciprocal erosion of immunity for actions taken within the United States by the United States' agencies and instrumentalities. For example, the United States is contemplating the formation of a sovereign wealth fund. Press Release, The White House (Feb. 3, 2025). As Halkbank is majority owned by Türkiye's sovereign wealth fund, subjecting it to the criminal laws of the United States lays bare what could

imperil those instrumentalities that would form the United States' comparable fund in the wider global context.

When diplomacy does not at first produce the results that one state seeks, the next step should be more diplomacy, especially among allies, not criminal prosecution. This is what customary international law demands.

C. The Principle of Sovereign Equality Among States is Modeled in U.S. Domestic Law and Practice.

As a corollary, the concept of sovereign equality is entrenched within the United States itself. The Eleventh Amendment and the common law doctrine of sovereign immunity bar suits by one U.S. state against another U.S. state. *See* U.S. Const. amend. XI ("The Judicial power of the United States shall not be construed to extend to any suit in law or equity... prosecuted against one of the United States..."). This immunity extends to state instrumentalities acting as "arms of the state." *McGinty v. New York*, 251 F.3d 84, 95-96 (2d Cir. 2001). The state of Texas cannot sue, let alone criminally prosecute, the state of Georgia for violations of Texas law in a Texas court.

The prosecution of Halkbank should be equally inconceivable as it would be tantamount to the United States respecting the sovereign equality of U.S. states, but not the sovereign equality of foreign states.

III. The Case Cannot be Viewed Independently of Contemporary International Political, Economic and Military Developments.

The nature of the offenses charged in this matter is inherently political. The United States is prosecuting a foreign sovereign instrumentality for (1) conspiring to defraud the United States, in violation of 18 U.S.C. § 371 (Count One) and (2) conspiring to violate the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1701 *et seq.*, and orders and regulations promulgated thereunder (Count Two), among other charges. It would constitute a significant shift in international practice if foreign states started criminally prosecuting state instrumentalities on allegations of conspiracies to defraud them and to violate their national security laws. Türkiye would not endorse this shift.

As there is no liberty interest at stake for the Bank, which cannot be imprisoned like a natural person, the United States' preference for prosecution above other available methods to resolve this dispute, especially since state-on-state prosecution is an international law anathema, betrays an air of condescension toward Türkiye and a disregard for the tradition of vigorous diplomacy between our allied states that has yielded such a strong relationship. Indeed, one must ask whether the United States can achieve something different by criminally prosecuting Halkbank than it can achieve through diplomacy.

Moreover, the current geopolitical situation is markedly different today than when the indictment was

first brought. The wars in Ukraine, the Middle East and Africa make strong coordination and cooperation between Türkiye and the United States necessary.

In the Middle East, Türkiye remains the only NATO ally bordering the region and has proven an effective partner in counterterrorism efforts there. With the fall of the Assad Regime, Türkiye is taking a lead role in reconstruction efforts in Syria, ensuring that Syrians are able to return to their homeland. The stability of Syria and the surrounding region depends on Türkiye and the United States working productively together as allies.

Reaching a peaceful settlement in the war in Ukraine and maintaining our vital security partnership in the Black Sea, which has continued since the beginning of the Cold War, is paramount.

The United States for decades has tried to restrain Iran's nuclear ambitions and its development of long-range offensive weapons. During years-long negotiations that have often seen pauses, Türkiye-United States dialogue on Iran's access to international markets has been an important element of this diplomacy, especially given that Türkiye is the only NATO nation on Iran's doorstep, sharing a 347-mile border and having peaceful economic relations that benefit the two peoples. Continuing diplomatic discussions and support in this process between the United States and Türkiye will bear critical weight in the pursuit of United States foreign policy objectives.

Hence, targeting a Turkish sovereign entity for conspiring to defraud the United States (Count 1) and

conspiring to cause a U.S. person to provide a service on behalf of Iran (Count 2), among other claims, has wider diplomatic consequences.

CONCLUSION

The Republic of Türkiye respectfully urges the Court to grant certiorari review and preserve the immunity of foreign state instrumentalities.

Respectfully submitted,

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