IN THE SUPREME COURT OF THE UNITED STATES

_____

No. A-_____

_____

TURKIYE HALK BANKASI A.S., APPLICANT

v.

UNITED STATES OF AMERICA

_____

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

_____

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for Türkiye Halk Bankasi A.Ş. (Halkbank) respectfully requests a 59-day extension of time, to and including May 13, 2022, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The court of appeals entered its judgment on October 22, 2021. App., infra, 1a-27a. Rehearing and en banc review were denied on December 15, 2021. Id. at 28a. Unless extended, the time for filing a petition for a writ of certiorari will expire on March 15, 2022. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case arises from a criminal prosecution of Halkbank, a Turkish state bank that is owned by the Republic of Turkey. App., infra, 3a. At all times, the government has conceded that Halkbank is an instrumentality of the Republic of Turkey for purposes of the Foreign Sovereign Immunities Act (FSIA). Id. at 7a

n.8; see 28 U.S.C. § 1603(a). This case therefore raises questions regarding a federal court's jurisdiction to hear a criminal case against a foreign sovereign, as well as a sovereign's immunity from criminal prosecution under the FSIA and common law. Indeed, the case is the first prosecution of an entity that the government acknowledges is entitled to the same treatment as a sovereign for purposes of foreign sovereign immunity.

2. The facts of this case concern the U.S. sanctions regime targeting Iran between 2012 and 2016. That regime sought to curb purchases of Iranian petroleum by other countries. But U.S. laws exempted from possible sanctions close allies, like Turkey, Japan, and South Korea, which were permitted to continue purchasing Iranian petroleum so long as they significantly reduced their consumption going forward. This exemption was of particular importance to Turkey, which shares a border with Iran. In accordance with U.S. sanctions targeting Iran between 2012 and 2016, the Republic of Turkey designated Halkbank to serve as Turkey's sole repository of Iranian oil and gas proceeds from lawful sales to Turkey. App., infra, 23a.

The government alleges that between 2012 and 2016, Halkbank participated in a scheme to help Iran skirt U.S. sanctions intended to restrict Iran's access to the escrowed funds held at Halkbank. Id. at 4a-7a. According to the indictment, Halkbank allegedly participated in transactions within Turkey that had the effect of disguising the funds' nexus to Iran such that they could be used to make international payments on behalf of Iran. See id. at 6a. After leaving Halkbank, and after several other intermediate

transactions, a small percentage of those funds, which the government approximates to be $1 billion, are alleged to have later passed through correspondent accounts in the United States. See ibid. Former Halkbank executives also allegedly made misrepresentations regarding the transactions to officials from the U.S. Department of the Treasury. Ibid.

In October 2019, a grand jury returned a six-count indictment charging Halkbank with (1) conspiring to defraud the United States; (2) conspiring to violate the International Emergency Economic Powers Act; (3) bank fraud; (4) conspiracy to commit bank fraud; (5) money laundering; and (6) conspiracy to commit money laundering. Id. at 7a. Halkbank pleaded not guilty to all counts in March 2020.

3. On August 10, 2020, Halkbank moved to dismiss the indictment on several grounds, including that it was immune from criminal prosecution on the ground of foreign sovereign immunity. App., infra, 7a. Halkbank argued the district court lacked subject-matter jurisdiction over a criminal prosecution targeting a foreign sovereign and, alternatively, that Halkbank was entitled to sovereign immunity under either the FSIA or the common law of foreign sovereign immunity. See id. at 7a-8a.

The district court denied Halkbank's motion to dismiss on October 1, 2020. See id. at 8a. As relevant here, it held that the FSIA only applied in civil proceedings. Ibid. Alternatively, it held that, if the FSIA did apply, Halkbank's alleged conduct would fall within the commercial-activities exception to sovereign immunity. Ibid.

4. Halkbank appealed the district court's order insofar as the court had denied Halkbank's motion to dismiss on sovereign immunity grounds. The government moved to dismiss the appeal. On October 22, 2021, the court of appeals denied the government's motion to dismiss, App., infra, 9a-12a, but affirmed the district court's judgment in a published opinion, id. at 12a-27a. See also 16 F.4th 336 (2d Cir. 2021).

As to the government's motion to dismiss, the court of appeals concluded that it had jurisdiction to hear the appeal. App., infra, 9a-12a. The court held that it had jurisdiction under the collateral order doctrine, because the sovereign-immunity determination in this case "plainly satisfies the criteria" identified by this Court in Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978). App., infra, 11a.

As to the merits, the court of appeals affirmed. It first concluded that the trial court had subject-matter jurisdiction pursuant to 18 U.S.C. § 3231. Id. at 17a-19a. It did so over Halkbank's argument that this Court's precedents, including The Schooner Exchange v. McFaddon, 11 U.S. (7 Cranch) 116, 146 (1812) and Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434, 437-38 & n.5 (1989), preclude federal courts from exercising jurisdiction against foreign sovereigns pursuant to general jurisdictional grants like 18 U.S.C. § 3231.

The court next concluded that it did not need to determine whether the FSIA applied in criminal cases because it concluded that Halkbank would not be entitled to immunity under the FSIA. App., infra, 19a-25a. It rejected Halkbank's arguments that the

gravamen of the allegations against it did not satisfy any of the three clauses of the commercial-activities exception to the FSIA because the gravamen was overseas transactions that were many steps removed from the United States. Ibid.; see 28 U.S.C. § 1605(a)(2) (commercial-activities exception). The court also dismissed Halkbank's argument that 28 U.S.C. § 1330(a), which is the only jurisdictional provision in the FSIA and applies only to "nonjury civil action[s]," ibid., limited the application of the exceptions to civil actions, App., infra, 19a n.48.

Lastly, the court concluded that Halkbank was not entitled to immunity under the common law. Id. at 25a-26a. It reasoned in part that "at common law, sovereign immunity determinations were the prerogative of the Executive Branch," and thus were binding on the courts. Id. at 26a. This conclusion was inconsistent with instances in which this Court and others disagreed with the Executive Branch's immunity determinations. See, e.g., Republic of Mex. v. Hoffman, 324 U.S. 30, 35 n.1 (1945) (discussing Berizzi Bros. Co. v. The Pesaro, 271 U.S. 562 (1926)); In re Investigation of World Arrangements, 13 F.R.D. 280, 291 (D.D.C. 1952).

5. Halkbank petitioned for panel and en banc rehearing on November 5, 2021, which the Second Circuit denied on December 15, 2022. App., infra, 28a. Halkbank thereafter moved to stay the mandate pending the filing and disposition of a petition for a writ of certiorari, which the government opposed. On January 14, 2022, the Second Circuit stayed the mandate.

6. Counsel for applicant respectfully requests a 59-day extension of time, to and including May 13, 2022, within which to

file a petition for a writ of certiorari. As noted earlier, this prosecution is unprecedented. The case also presents complex issues concerning the proper interpretation of general statutory grants of jurisdiction when applied to foreign sovereigns, the FSIA itself and its exceptions, and the common law of sovereign immunity. Among other issues, the reasoning of the Second Circuit is in conflict with that of the U.S. Court of Appeals for the Sixth Circuit in Keller v. Central Bank of Nigeria, 277 F.3d 811, 818-20 (6th Cir. 2002), abrogated on other grounds by Samantar v. Yousuf, 560 U.S. 305 (2010).

Moreover, the undersigned counsel of record has a jury trial in another matter scheduled to begin on March 7, eight days before the petition is currently due. There are numerous pretrial deadlines and hearings prior to the start of trial on March 7. And trial itself is scheduled to last for six weeks.

Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted.

ROBERT M. CARY
Counsel of Record
JOHN S. WILLIAMS
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000

January 24, 2022

IN THE SUPREME COURT OF THE UNITED STATES

_____

No. A-_____

_____

TURKIYE HALK BANKASI A.S., APPLICANT

v.

UNITED STATES OF AMERICA

_____

CORPORATE DISCLOSURE STATEMENT

_____

Applicant Türkiye Halk Bankasi A.Ş. is 75% owned by the non-party Turkish Wealth Fund, which is part of and owned by the Turkish State. No publicly held corporation owns 10% or more of the stock of non-party Turkish Wealth Fund.

John S. Williams