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July 20, 2017

BY ECF AND BY HAND

Honorable Richard M. Berman
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Courtroom 17B
New York, NY 10007-1312

Re: United States v. Mehmet Hakan Atilla, S3 15 Cr. 867 (RMB)

Dear Judge Berman:

Mehmet Hakan Atilla submits this letter in support of his application for bail and requests a hearing pursuant to 18 U.S.C. § 3142(f) at the Court's earliest convenience to set conditions of release necessary to secure his appearance throughout this action. Recognizing that his lack of ties to the United States would be an obstacle to his release pending trial, Mr. Atilla has not made a prior bail application. We now have carefully reviewed the charges against Mr. Atilla, as well as a good deal of the available discovery, and after considering as well Mr. Atilla's personal circumstances, his assets, good character and outstanding reputation (as well as the length and conditions of his detention),¹ we are proposing a bail package which risks literally all of his and his family's worldly goods and commits his good name to ensuring that he will appear at all future proceedings in this case. Releasing him on bail will also permit Mr. Atilla and counsel to prepare adequately for trial, which has been a challenge to date because of his detention. We have informed the government of the terms of our bail package; it opposes release on the proposed terms.

The right to bail is a core tenet of American justice. *See Stack v. Boyle*, 342 U.S. 1, 4 (1951) ("Unless th[e] right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.")

The Bail Reform Act, 18 USC § 3142, *et seq.*, identifies two sets of circumstances justifying pretrial detention: (1) when no set of conditions will assure the defendant's appearance at proceedings; and (2) when no set of conditions will protect the public from future harm.²

¹ As a result of being moved twice between the MCC and the MDC, Mr. Atilla has endured weeks without access to his legal materials, religious items and other personal property. His access to the staggering amount of electronic discovery in this case has been limited by the fact of his detention and, absent Bureau of Prisons ("BOP") cooperation or intervention by the Court, will remain sporadic at best through trial.

² As this Court well knows, Section 3142(g) instructs that in making the bail decision, the Court must consider: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence; (3) the defendant's "history and characteristics," including whether he was on conditional release, pretrial release or release pending sentence or



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The Bail Reform Act also requires that the Court set the least restrictive condition or combination of conditions that will assure a defendant's appearance. (*See, e.g.*, non-exhaustive list in Section 3142(e)(1)(B)).

The government will not dispute that Mr. Atilla poses no risk to the community. He has no criminal history and he is not charged with any crime of violence.³ Its opposition to his release is premised solely on its tenuous claim that Mr. Atilla will flee because of his Turkish citizenship and lack of roots in our community.⁴ But that contention does not withstand close scrutiny. Measured by any rational standard, Mr. Atilla's interests are best served by remaining here in the United States and defending himself against charges to which he has pleaded not guilty.

Factual Background

Hakan Atilla, a 47 year old citizen of Turkey, was arrested on a warrant on March 27, 2017 at JFK Airport, as he was preparing to board a flight home to Istanbul, Turkey (through London) following a three-day business trip to America, the second such trip Mr. Atilla had made to the U.S. since March 2016, *after* the arrest of his alleged co-conspirator and co-defendant, Reza Zarrab, which was highly publicized both in Turkey and the United States. Approximately ten days after his arrest, on April 6, 2017, Mr. Atilla was added as a defendant to two of the four substantive counts in the Indictment in this case (S3) when he was charged with bank fraud conspiracy and conspiracy to violate the International Emergency Economic Powers Act ("IEEPA").⁵

Bail Package Proposal

In the over 100 days since his arrest, Mr. Atilla and his family have done everything within their power to put together a bail package to secure his release pending trial, now set for October 30, 2017. The resulting bail package, which is described below, although to some

appeal; and (4) the "nature and seriousness of the danger to any person or community that would be posed by the person's release."

³ When interviewed by Pretrial Services, Mr. Atilla disclosed his ownership of a licensed firearm in Turkey. Pretrial Services illogically identified the ownership of this lawful firearm, located thousands of miles away and inaccessible to Mr. Atilla, as a relevant factor with regard to assessing the risk that Mr. Atilla posed to the community if released on bail.

⁴ The government must prove flight risk by a preponderance of the evidence. *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011).

⁵ Mr. Atilla is not named in the most serious count of the Indictment, Count Four, which charges each of the remaining defendants with money laundering conspiracy, or in Count One, which charges all the other defendants with conspiracy to defraud the United States.



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modest in its financial terms, represents the most serious financial commitment that Mr. Atilla can make to the Court to secure his presence through these proceedings, and he is prepared to secure it by pledging everything he and his family own in the world. It carries with it the solemn promise of a proud and unassuming man (and of his loved ones, if requested) who has lived a quiet, stable and blameless life devoted to his wife, his now twenty-year old college student son and his family. The bail package Mr. Atilla proposes also includes electronic monitoring, reporting as ordered, surrender of travel documents and compliance with any other terms imposed by the Court. Such a package will adequately ensure Mr. Atilla's appearance at all future proceedings.

Mr. Atilla is Not a Flight Risk

Mr. Atilla is one of 14 deputy general managers at Türkiye Halk Bankasi, A.Ş. ("Halkbank" or "the Bank"), and, as such, is a modestly compensated civil servant: a wage-earning bank manager who has lived his entire life with his family in Turkey. He has no relatives, friends or business connections in the United States; he has travelled here seven or eight times since 2007 -- all short business trips for his employer. In 2016, his monthly net, after-tax income averaged the equivalent of approximately \$10,000. For the past 20 years, his wife has also worked full time at Halkbank.⁶

Mr. Atilla is not independently wealthy. He owns no businesses, networks of banks or money exchanges, and he never has. He has no access to huge amounts of cash or to an army of employees who attend to his every whim or protect him from his adversaries. He is not a career criminal, some *mafioso* or narcotics trafficker, with an underground network for protection and support. He is an ordinary working manager who, with the help of his wife's earnings, enjoys a modest, middle class life. We believe that the government must concede each of these points.

Conventional flight prevention measures, such as a secured personal recognizance bond, surrender of travel documents, electronically monitored home confinement in Manhattan (Mr. Atilla has agreed to rent a nearby apartment in Manhattan for the duration of these proceedings) accompanied by frequent reporting by phone or in person to Pretrial Services, especially taken together, are more than adequate to prevent his flight.

Even if he were to try to flee -- and assuredly he will not -- Mr. Atilla's flight from American justice would be doomed from the outset. He does not have the capacity to flee and he lacks both the temperament and the resources to hide permanently. He has no money, travel documents or connections to anyone or any organization in the United States who could provide

⁶ Mr. and Mrs. Atilla's combined net worth, including their apartment in Istanbul, a small vacation home, a parcel of farmland, and a savings account, is the equivalent of approximately \$800,000.



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him with the resources to flee.⁷ He is not a jet-setter or flamboyant international financier; he is a banker by trade who is compensated modestly as a wage-earning civil servant. He has always worked in order to live and to support himself and his family. Banking is the only work that Mr. Atilla has ever done or ever known. As a fugitive, especially in such a high visibility case, he could not find work as a banker in Turkey or anyplace else in the world. Certainly, he could no longer work at Halkbank, which is a publicly-held corporation, owned in part by American shareholders, including a number of U.S. financial institutions.

Indeed, any action taken by Halkbank that could be construed as an effort to condone or abet Mr. Atilla's flight (and we do not suggest that the Bank would do such a thing) certainly would bring down upon it the censure of the international banking community. No responsible financial institution, much less a publicly held one, no matter where it is located, would take that risk for the benefit of a single employee, regardless of his position. Indeed, it is equally in the interests of Halkbank to ensure that Mr. Atilla appear for trial.

For Mr. Atilla, a return to Turkey as a fugitive thus would not mean a return to work or to his career. To the contrary, his career at Halkbank would be over, causing him to forfeit twenty-two years of continuous advancement and considerable success at the Bank. Nor, as a fugitive from American justice, could Mr. Atilla find a job at a new bank. Wherever he could go he would be regarded as a pariah, especially in the international banking community where he has toiled for years. His chances for employment would be dim at best. Certainly, no respectable bank would hire him, especially as a member of senior management, or invest him with the responsibilities that he has enjoyed for many years at Halkbank.

Thus, although he is facing serious charges here, Mr. Atilla is more motivated to face his accusers than he is to flee from them.⁸ Flight would damn him and his family to a life virtually on the run, with an uncertain future and only modest means, at best, to support themselves. A

⁷ Mr. Atilla's wife and son have applied for visas to permit them to travel to the United States to be with him here for at least part of the summer. They are expected to arrive in early August. While they are here, they will be allowed to visit with him only once a week for an hour, or, with the further permission of the BOP, a weekly visit of up to three hours.

⁸ Although the charges against Mr. Atilla could result in a jail sentence, they are not the most serious charges in the case and he is not facing decades in prison. Mr. Zarrab, and the remaining codefendants, on the other hand, all have been charged with the more serious charge of money laundering. As a general matter, sentences in sanctions-related prosecutions vary greatly from prosecution to prosecution and from defendant to defendant; they are not uniformly draconian. In fact, according to the United States Sentencing Commission, over the five fiscal years from 2008 to 2012, the average sentence imposed for crimes involving the evasion of export controls was 22 months. *See* U.S. Sentencing Comm'n, "Quick Facts - Offenses Involving National Defense," at 2 (Dec. 2013), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-acts/Quick_Facts_National_Defense.pdf (attached hereto as Exhibit A).



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perpetual cloud would hang over Mr. Atilla and his family as he forfeits forever the opportunity to clear his name. Although he is only 47 years old, he could never resume his banking career. By taking flight, Mr. Atilla would be ensuring that his prospects and those of his family would remain permanently blighted. Mr. Atilla has persisted in his protests of innocence and has repeatedly requested a speedy trial. He is most anxious to have the facts aired and his good name cleared. (The Court has had the opportunity to observe Mr. Atilla during his appearances before it, and is in a position to assay for itself Mr. Atilla's obvious interest in both the proceedings against him and his defense. Attached as Exhibit B are letters from a few of Mr. Atilla's friends and colleagues attesting to his good character and reputation.)

It is worth noting that there was a Turkish investigation of some notoriety that presaged the U.S. investigation that has led to the charges in this case. The Turkish investigation, which amid some controversy was later repudiated by the Turkish government as politically motivated, resulted in the arrest in late December 2013 on corruption charges of Mr. Zarrab and the former General Manager of Halkbank. Hakan Atilla, on the other hand, was never charged or arrested. He cooperated with the Turkish police by voluntarily submitting to questioning. Through it all, he has remained at the Bank in his current position.

Flight from American justice for a middle-aged banker, even to his homeland, in these days especially, is no easy feat. In a shrinking, technologically advanced world flight is not as simple as it was even just a quarter of a century ago; indeed, it was never easy for an ordinary business person, who lacks his own means or the support of some vast criminal enterprise, to flee American justice. It certainly has not gotten easier through the years. Were he to flee, Mr. Atilla and his family would know no peace. American law enforcement would give him no quarter. He would never be safely beyond the reach of the law. Even if he found temporary respite in Turkey (or some other venue), what respite would it be and how long would it last? How could Mr. Atilla believe, especially in such a highly visible prosecution, that he permanently could avoid arrest and extradition to the United States under its existing extradition treaty with Turkey? His life would be full of uncertainty and crushing anxiety. Most importantly, why would Mr. Atilla compromise a serious and meaningful defense to the charges against him by arming the government with the opportunity to request from the Court the devastating jury charge on consciousness of guilt induced flight to which it would be entitled at any future trial? Under the circumstances, flight plainly is not an option for Mr. Atilla. And any suggestion that it is an option is either naïve or flatly disingenuous; it certainly is not steeped in reality.



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The Government's Case against Mr. Atilla is Tenuous

One of the factors that should be considered by the Court is the strength – or weakness – of the government's case.

The criminal charges against Mr. Atilla are eminently defensible; indeed, the information which has been provided in discovery suggests that the case against him is tenuous and perhaps completely without basis. The charges apparently are predicated on a series of transactions involving a number of Reza Zarrab's companies and Halkbank in 2013, which are described in the Complaint leading to Mr. Atilla's arrest.⁹ The transactions took place between Dubai, Iran and Turkey and involved sales of gold and food between Turkish and Iranian entities for which Halkbank served as a settling bank. Mr. Atilla, a senior manager at the Bank, is allegedly connected to these transactions through a small number of brief, recorded Turkish telephone conversations in which various transaction documents, relating to the sale of food, are discussed by people identified on transcripts as Mr. Atilla and Mr. Zarrab, among others. It seems to be the government's theory that those documents were forged or somehow falsified and the sales of foodstuff were bogus.

At best, the discussions as captured by the recordings (and as reported on the transcripts of English translations) are ambiguous and confusing: they are awkward English translations from the original Turkish which seem to show a senior bank officer discussing with a significant customer of the Bank document anomalies involved in an otherwise facially legitimate business transaction between an Iranian company and its Iranian bank, on the one hand, and, on the other, a Turkish company and its Turkish bank, where the transaction is to be settled, apparently in Euros or Turkish Lira, not dollars. These telephone discussions, which the government apparently believes either involve Mr. Atilla or refer to him, are so amorphous and uncertain that they raise serious questions regarding the strength of the government's case against him: they can hardly be described as formidable proof that he understood that these transactions were sham

⁹ The superseding indictment (S3) first naming Mr. Atilla as a defendant is a jumble of sweeping generalities, interspersed with some factual allegations directed at Mr. Zarrab and some of his alleged business associates. It is unusually bereft of all factual detail with respect to Mr. Atilla. Indeed, beyond alleging that he "is the Deputy General Manager of International Banking at a financial institution headquartered in Istanbul, Turkey," (¶ 11) it contains no specific factual allegation against Mr. Atilla at all. Aside from that single fact, the Indictment merely names him as a defendant in Count Two (the IEEPA conspiracy count) (¶ 20) and Count Three (the bank fraud conspiracy count) (¶ 25), and names him in the Forfeiture Allegation (¶ 32) as well. Otherwise, the Indictment is completely, indeed conspicuously, silent as to Mr. Atilla. He is named in none of the twenty-eight overt acts set forth in the Indictment and none of the overt acts even refer to either Mr. Atilla or Halkbank. On the face of it, it would seem that the government arbitrarily decided to combine two entirely separate and distinct conspiracies, the one alleged in the original Complaint against Mr. Atilla and the one alleged in the Indictment, into one.



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and that wrongdoing was afoot, as the government seems to have alleged in the Complaint it previously filed against him.¹⁰

As importantly, even assuming that the conversations (to the extent that genuine proof of them actually exists; for instance, there are no recordings of certain conversations -- only transcripts) are not equivocal, and further that they can be authenticated and a proper foundation can be laid for their admission in evidence at trial against Mr. Atilla (a questionable assumption given the cloudy provenance of the recordings),¹¹ the conversations certainly do not suggest that Mr. Atilla was involved in, or even knew of the broad “Economic Jihad,” as the government chooses to describe it, that was at the heart of Mr. Zarrab’s alleged scheme to evade U.S. sanctions against Iran by misleading U.S. banks to provide services that they were not otherwise inclined to provide. Indeed, beyond raising serious questions regarding the strength of the government’s case against Mr. Atilla, it is impossible, from this mix of paltry and equivocal facts, to discern any evidentiary basis that would support a finding that Mr. Atilla was aware either of the scope of Mr. Zarrab’s alleged schemes or of his goal to enlist unwittingly the services of American banks, a critical element for a conviction under either the IEEPA or bank fraud statutes.

The many schemes described in the Indictment may coalesce into one overarching scheme by Mr. Zarrab to defraud U.S. banks. For someone so peripheral to the alleged conspiracy involving Mr. Zarrab, such as Mr. Atilla, however, before he properly can be joined in a single, overarching conspiracy such as the one alleged in the Indictment, there should be a specific allegation that he was aware of the nature of the conspiracy and its generally broad scope. This is especially so where there are known facts that suggest otherwise. There is no

¹⁰ The Complaint previously filed against Mr. Atilla in support of his arrest is the only pleading that ascribes any particular conduct to him. Basically, it accuses him and others of participating in a number of telephone conversations in which documents are discussed which appear to relate to the sale of food to an Iranian company or companies by one of Mr. Zarrab’s companies. The Complaint suggests that the documents that are discussed are false. On the other hand, the Indictment says nothing at all specifically about Mr. Atilla’s conduct or the role he may have played in the conspiracies with which he is charged. It says nothing about his employer, Halkbank, or any transactions in which Halkbank may have been involved.

¹¹ The recordings appear to have been made in the course of the criminal investigation by former Turkish law enforcement authorities described above. It is not clear how U.S. prosecutors came into possession of the recordings and/or transcripts of the intercepted conversations. What is clear is that, based on our review of the pen registers purporting to list the more than 3,000 calls and texts intercepted by the Turkish authorities, there are perhaps twelve conversations in which Mr. Atilla appears to have been involved. The government has produced recordings and corresponding transcripts for only four of those twelve conversations. It has produced transcriptions alone of six additional conversations allegedly involving Mr. Atilla for which, we are told, there are no corresponding recordings. For two alleged conversations between Mr. Atilla and Mr. Zarrab, both on July 15, 2013, there apparently is neither a recording, nor a transcript. This highly unusual set of circumstances promises serious evidentiary issues under both the fifth and sixth amendments.



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such specific allegation in the Indictment here, only sweeping claims that Mr. Atilla conspired to violate the IEEPA and conspired to defraud U.S. banks. There is no connection alleged between the specific conduct alleged in the earlier Complaint against Mr. Atilla and the vague and conclusory allegations of the Indictment which sets forth the charges on which he will be tried. In fact, the only thing that the earlier Complaint against Mr. Atilla and the Indictment have in common is that there is nothing alleged in either which would suggest that any of the transactions in which Mr. Atilla allegedly was involved in any way contemplated anything to do with a bank or banks in the United States.

The Indictment itself in this case, especially given the absence of any specific factual allegation against Mr. Atilla beyond his job title, contributes further to these concerns regarding both the nature of the charges against him and strength of the government's evidence in support of those charges.

These concerns are not idle musings: they go, not only to the quality of the government's case against Mr. Atilla -- which appears unusually weak -- but also to the very significant threshold issue of the Court's ability to exercise its jurisdiction over the charges against him, an issue the Court considered earlier in this case when Mr. Zarrab challenged the extraterritorial application of some of the statutes that underlie this prosecution and the jurisdiction of the Court to pass on conduct which occurs wholly outside the United States. (*See* Decision and Order, dated October 17, 2016 (Dkt. # 90)).

The situation involving Mr. Zarrab, however, which the Court carefully has addressed, was much different than the circumstances of Mr. Atilla. In its decision denying Mr. Zarrab's motion to dismiss an earlier, though nearly identical, version of the present Indictment, the Court methodically combed through the indictment and catalogued the various ways in which the interests of the United States allegedly were implicated because services of certain American banks were unwittingly provided to the Government of Iran or its various agents. In each instance, the Court identified specific allegations in the indictment identifying Mr. Zarrab or one of his employees or business entities as responsible for requesting or directing the U.S. bank's services; none of the incidents previously identified by the Court as implicating U.S. banking services appear to have any discernable connection to Mr. Atilla or to any of the transactions alleged in the Complaint filed against him, the only document in which the government has alleged any specific acts by Mr. Atilla.

Contrary to the many highly specific allegations against Mr. Zarrab, there is nothing alleged in the Indictment to suggest that any of the food transactions in which Mr. Atilla allegedly was involved implicated services provided by American banks or that use of U.S. banking facilities was even contemplated. Further, on the face of it, there is nothing at all to



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connect these food transactions to the so-called stripping of the identity of Iranian entities which the government repeatedly has described as the linchpin or core of Mr. Zarrab's scheme to deceive American banks and violate IEEPA. (*See* Transcript of Proceedings, dated October 5, 2016, at 42-3 (Dkt. # 88)). In these circumstances, how it is that Mr. Atilla can be joined in the sweeping conspiracy charges to violate the U.S. sanctions against Iran by defrauding American banks that were returned against Mr. Zarrab is a mystery.

The transactions described in the Complaint, at least on their face, have no apparent or even logical connection to the schemes that are described in the Indictment, especially since the incidents in the Complaint all appear to involve non-dollar transactions between and among foreign banks in Turkey, Iran and Dubai. If the transactions described in the Complaint somehow violated U.S. sanctions against Iran -- and it is not clear that they did -- they did so as part of an entirely separate conspiracy, not as part of any conspiracy to defraud U.S. banks of their services. The conspiracy alleged in the Complaint also may have involved Zarrab, but it apparently did not involve U.S. banks and thus could not violate either IEEPA or the bank fraud statute.

These factual incongruities and other pleading anomalies in the Indictment respecting Mr. Atilla raise threshold issues such that the Court should not be bound by the Indictment's conclusory allegations regarding a single overarching conspiracy, but should require some minimal factual showing that the conspiracy is as it is alleged rather than some effort to bind multiple conspiracies together for a single trial to the prejudice of Mr. Atilla, including issues regarding the Court's jurisdiction. They also suggest an improper attempt to apply IEEPA and the bank fraud statute extraterritorially. These very concerns were raised by Mr. Zarrab, but he conceded that he knowingly used U.S. banking facilities, claiming that their services, however, were only incidental to various transactions. That is not Mr. Atilla's argument. His argument, rather, is that there is nothing to suggest, either on the face of the Indictment, or from the allegations of the Complaint, that he knew or had reason to know that the services of U.S. banks were implicated in any way.

Conclusion

The proposed bail package risks all of what Mr. Atilla owns. He and his wife will pledge all of their property. He will sign a bond. He will abide by any and all conditions set by the Court. He will be subject to electronic monitoring, report as ordered by Pretrial Services and surrender all travel documents. He will rent a small apartment in Manhattan close to the courthouse. He will spend most of his waking time with his lawyers preparing for trial in this complicated case.



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We urge the Court to admit Mehmet Hakan Atilla to bail under the least restrictive conditions it finds will assure his presence at future proceedings.

Respectfully submitted,

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Exhibits (2)

cc: All counsel of record (by ECF)