B. There is No Specific Jurisdiction Over [REDACTED]

Nor can the Government establish a sufficient basis for the court to exercise specific jurisdiction over [REDACTED]. To establish specific personal jurisdiction, the plaintiff must demonstrate that the party over whom such jurisdiction is sought has engaged in conduct within the forum that "gave rise to the episode-in-suit." *Goodyear Dunlop Tires Operations, S.A. v. Brown,* 564 U.S. 915, 923 (2011) (citation omitted); *see also Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (to establish specific jurisdiction, "the defendant's *suit-related conduct* must create a substantial connection with the forum State.") (emphasis added). Moreover, "the relationship" between the defendant and the forum "must arise out of contacts that the defendant *himself* creates with the forum State." *Walden*, 134 S. Ct. at 1122 (internal citation omitted). Even where such "minimum contacts" exist, the court cannot exercise specific jurisdiction unless it would comport with "traditional notions of fair play and substantial justice." *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (quotation omitted); *see also Patel v. Patel*, 2017 U.S. Dist. LEXIS 152443, at *4 (D.D.C. Sept. 19, 2017) ("Thus, the Court may exercise specific jurisdiction if there is a sufficient relationship between the gravamen of the complaint . . . and the District of Columbia, 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'") (quoting *Int'l Shoe Co.*, 326 U.S. at 316 (1945)) (internal quotation omitted). "[A] little-noted effect of *Daimler* is that, if challenged, federal prosecutors will now have to establish the existence of specific jurisdiction in order to enforce *Bank of Nova Scotia* subpoenas against foreign banks." Marc Gottridge & Anjum Unwala, *Daimler's Effect on Bank of Nova Scotia Subpoenas*, CORPORATE COUNSEL (Oct. 13, 2016), https://www.law.com/corpcounsel/almID/1202769838649.

The Supreme Court has not addressed specific jurisdiction over nonparties. *Gucci*, 768 F.3d at 136. Generally, a more restrictive approach to the minimum contacts analysis for nonparties is warranted, however, "because unlike defendants they are not accused of violating the plaintiff's

rights and essentially have 'no dog in the fight.'" *Leibovitch v. Islamic Republic of Iran*, 188 F. Supp. 3d 734, 748 (N.D. Ill. 2016), *aff'd* 852 F.3d 687 (7th Cir. 2017) (citation omitted).

Here, the minimum contacts requirement has not been satisfied because none of [redacted] U.S. operations has any connection to the underlying criminal investigation giving rise to the subpoena. Indeed, [redacted] has already confirmed that it has no information regarding the account and the transactions at issue in the subpoena and has only a single document relating to a CHIPS transfer which it has produced. The Government simply asserts that "[t]his Court should compel production of the requested documents because both banks have purposefully availed themselves of the United States financial system by transacting in U.S. dollars that passed through correspondent banks in the United States, and have specific contacts with regulators in Washington, D.C." GovMem at 8. The Government does not tie the documents requested to those purported contacts or cite legal authority enforcing subpoenas for documents like those requested based on such limited contacts.[23] There is simply no basis to establish minimum contacts here, and accordingly, an assertion of specific jurisdiction would be unwarranted.

Moreover, even if the Court were to find that the minimum contacts requirements were satisfied, the exercise of jurisdiction over a foreign nonparty in this context would not be reasonable and would not comport with "traditional notions of fair play and substantial justice." *Patel*, 2017 U.S. Dist. LEXIS 152443 at *4. Although the Court must consider a number of factors to determine whether an assertion of jurisdiction would be reasonable under due process

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[23] The entirety of the Government's efforts to link the documents requested to the contacts in the United States appears to be the following statement: "Both banks' contacts with the District of Columbia (via OFAC) . . . directly relate to the grand jury's investigation into sanctions and money laundering violations, the lynchpin of which is OFAC's role in the transactions." GovMem at 13. It is unclear what this means, but it cannot be that dealings with OFAC on unrelated matters gives jurisdiction as to anything that may involve Mingzheng simply because Mingzheng is sanctioned by OFAC.

standards,[24] the primary concern in this analysis should be the burden on the foreign party resulting from the exercise of such jurisdiction. *See World-wide Volkswagen Corp. v. Woodsen*, 444 U.S. 286, 291-92 (1980) ("The concept of minimum contacts . . . protect[s] the defendant against the burdens of litigating in a distant or inconvenient forum.").

Here, the burden on [redacted] is significant because it is prohibited under Chinese banking laws from disclosing personal customer account information, absent the customer's consent, unless authorized to do so by a Chinese court or an expressly approved Chinese authority. *See supra* at 16; Guo Decl. at ¶ 24, 27. It would not be reasonable for the Court to exercise jurisdiction to enforce the subpoena here where (1) compliance would subject [redacted] to significant civil and administrative penalties for violating Chinese law and (2) the MLAA is a viable means through which the U.S. can obtain—and could already have received—the information that it seeks without requiring [redacted] to violate the banking laws of its home jurisdiction.

C. [redacted] Relationships With Federal Regulators Does Not Give Rise to Personal Jurisdiction in Washington, D.C.

To the extent [redacted] has any contacts with the United States it is with New York, not Washington, D.C. In the listing of contacts with the United States, GovMem at 6-8, the only apparent contacts with Washington, D.C. are based on [redacted] relationships with the Office of Comptroller of the Currency and the Board of Governors of the Federal Reserve System, all of

[24] The court is typically required to consider factors such as "the burden on the defendant, the interests of the forum State, . . . the plaintiff's interest in obtaining relief . . . the interstate judicial system's interest in obtaining efficient resolution of controversies[,] and the shared interest of the several States in furthering fundamental substantive social policies." *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F. Supp. 2d 240, 284-85 (D.D.C. 2011) (quoting *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 113 (1987)).

which exercise some degree of oversight over [redacted].[25] Furthermore the Government relies on the fact that [redacted] has had contacts with OFAC, which is also in D.C.

These purported contacts are irrelevant for two reasons. First, personal jurisdiction turns on the in-forum contacts *of the defendant* (or here, the subpoenaed third party), not on the in-forum contacts of others with whom the defendant interacts. *Walden*, 134 S. Ct. at 1122 (stating that the relationship between the defendant and the forum "must arise out of contacts that the defendant himself creates with the forum") (citation omitted); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984) (for purposes of personal jurisdiction courts must focus "on 'the relationship among the defendant, the forum, and the litigation'") (citation omitted). Thus, the in-forum contacts of federal regulators should not be imputed to [redacted]. Indeed, under the Government's expansive approach to personal jurisdiction, the Court would be required to confer personal jurisdiction over an astonishingly large number of persons and entities simply because they are subject to regulation by federal institutions that happen to be located here. This is not correct. Second, as noted above, the Government has failed to demonstrate any kind of substantive connection between the underlying criminal investigation and [redacted] purported contacts with these D.C.-based institutions. Under such circumstances, there can be no basis for specific jurisdiction. *See Walden*, 134 S. Ct. at 1121 (to comply with due process requirements for specific jurisdiction, "the defendant's suit-related conduct must create a substantial connection with the forum State").[26]

[25] [redacted] therefore not regulated by the FDIC as the Government asserts. GovMem at 6.

[26] Moreover, the Government cites no cases establishing that the mere location in Washington, D.C. of a federal government agency that a person or entity has contacts with is sufficient to confer jurisdiction in Washington, D.C. over that person or entity. The sole case to which the Government cites, *Godo Kaisha IP Bridge 1 v. Broadcom Ltd.*, No. 16-cv-0134, 2017 WL 970383, at *5 (E.D. Tex. Mar. 1 2017), does not support its position. In that case, the court found that the defendant's

CONCLUSION

For the foregoing reasons, the Court should deny the Government's motion to compel compliance with the subpoena.

Dated: January 7, 2019

Respectfully Submitted,

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regulatory filings to the SEC established a basis for establishing personal jurisdiction over the defendant in Texas because of *the content* the filings demonstrated a connection with a forum, not because the filings themselves constituted a connection with the forum. *Id.*

CERTIFICATE OF SERVICE

I certify that on January 7, 2019, service was made of a copy of the foregoing Nonparty [redacted] Memorandum of Law in Opposition to Motion to Compel Production of Documents Via *Bank of Nova Scotia* Subpoena, via electronic mail and first class mail to Jessie K. Liu and Zia M. Faruqui, c/o Department of Justice, 555 4th Street, N.W., Washington, D.C. 20530, zia.faruqui@usdoj.gov.

/s/ Daniel Levin
Daniel Levin