UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re Grand Jury Subpoena	Case No. 18-MC-176 (BAH) **ORAL ARGUMENT: FEBRUARY 26, 2019** **UNDER SEAL**

NONPARTY [redacted] SUR-REPLY IN OPPOSITION TO THE GOVERNMENT'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS REQUESTED VIA *BANK OF NOVA SCOTIA* SUBPOENA

In its reply, the Government ignores the commitment made to this Court by the Chinese Ministry of Justice ("MOJ"), the Central Authority for China under the MLAA, that it "will provide" assistance in response to an MLAA request.

Rather, the Government persists in its quest to have this Court order a Chinese bank to violate Chinese law by producing documents on Chinese soil without at least first trying to obtain the documents—quickly and completely—through the MLAA. In doing so, the Government asserts that an MLAA request "is 'likely to result in significant delay and an insufficient response,'" Reply Br. at 3 (quoting Olson Dec. ¶4), and that requiring the Government to make such a request would deprive the grand jury of critical information, *see* Reply Br. at 3, 27-28. Each assertion is incorrect:

- The Government's statements that "the MOJ declares [in its letter] only that it 'would timely review and handle'" an MLAA request, Reply Br. at 25 (quoting MOJ letter at 4), and that "notably absent from the MOJ's discussion of *this* case is a representation that it would have provided the Mingzheng records if the United States had sought them pursuant to the MLAA," *id.*, are simply incorrect. The Government omits the very next sentence of the MOJ letter:

> [T]he DOJ should submit relevant requests for mutual legal assistance to the Chinese authority through the [MLAA]. . . . The MOJ would timely review and handle the requests for assistance sought by the DOJ in accordance with the [MLAA] and applicable domestic laws. *For the request in line with the [MLAA], China will provide the assistance to the United States accordingly.* January 6, 2019 MOJ Letter at 4 (emphasis added).[1]

The Government provides no basis to assume that the MOJ will not honor its commitment to this Court. (Indeed, nowhere in its nearly 150 pages of reply materials does the Government even acknowledge, let alone address, this commitment.)

- The Government's assertion that an MLAA request is likely to result in significant delay and an insufficient response is similarly incorrect. First, as just noted, the MOJ has said it "will provide" assistance requested in conformity with the MLAA. Second, [redacted] has long since advised the Government that it has the responsive documents collected and ready to be produced. Third, this Court is capable of drafting an order making it clear that the

[1] This commitment is amplified in the second MOJ Letter: "As we stated in the MOJ Letter, if DOJ makes a MLA request in the present case, the MOJ will promptly review and process it. To be more specific, if such a US request complies with the applicable provisions of the [Chinese law on international legal assistance] and the MLAA, the MOJ will promptly transfer the request to Competent Authorities of China for further review and execution. February 26, 2019 MOJ Letter ("Second MOJ Letter") at 3.

response should be timely.[2] No one is suggesting years or even months of delay: [redacted] has committed to producing the documents within days of receipt of the MOJ's request pursuant to the MLAA.

- The Government's assertion that the grand jury would be deprived of crucial evidence is thus also incorrect. Either the Chinese government will comply promptly with an MLAA request—as it has committed to do—and the grand jury will receive the requested information in full, or the Government will be promptly back before this Court and the only delay will have been a short one that pales by comparison to the 13-month plus delay the Government has voluntarily endured by refusing to make an MLAA request (even an MLAA request in parallel with this motion).

I.

THE CHINESE GOVERNMENT HAS COMMITTED TO COMPLYING WITH AN MLAA REQUEST, AND UNDER APPLICABLE PRINCIPLES OF COMITY, THIS COURT SHOULD NOT DIRECT [redacted] TO VIOLATE CHINESE LAW UNTIL THE U.S. GOVERNMENT HAS TRIED SUCH A REQUEST

A. The Comity Analysis Does Not Support Enforcing the Subpoena at This Time

1. *Compliance with the Subpoena would force [redacted] to violate Chinese law*

The Government does not dispute that Chinese law would be violated if [redacted] were to comply with the Subpoena. *See* Reply Br. at 14; Clarke Dec. at ¶ 10a. It simply quarrels with how severe a violation of Chinese law compliance with the Subpoena would entail, or how severe the sanctions on [redacted] might be. *See generally* Reply Br. at 18-22; Clarke Dec. at ¶¶ 22-92. [redacted] believes the materials it submitted establish that the violation of Chinese law is a serious one.

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[2] [redacted] also argues that there is no jurisdiction to enforce the Subpoena. [redacted] believes that this Court need not now—or ever—to reach this issue, but even if [redacted] is wrong about jurisdiction, the Government is no worse off—and if [redacted] is right about jurisdiction, the Government is better off—pursuing an MLAA request.

As Mr. Jun Gao, a licensed Chinese lawyer and former Chinese criminal law judge, explains in his accompanying declaration, Professor Clarke, who is not a licensed Chinese lawyer, is too quick to dismiss the possibility of criminal liability. *See generally* Gao Dec. at ¶¶ 11-47.

The information sought by the U.S. Government is the subject of a criminal investigation in China relating to the Chinese company, Dandong Hongxiang Industrial Development Company Ltd. ("DHID") and its connections with North Korean banks, and constitutes a "State secret" under Chinese law.[3] As Mr. Gao explains, the definition of "State secrets" is a broad concept in China, far broader than the notion of "classified information" that would normally be considered as a state secret in the United States. Gao Dec. at ¶¶ 11a, 12-20. "State secrets" may include information related to domestic Chinese criminal investigations, such as the bank account information requested here. Such information is explicitly defined as a "State secret" under Chinese law. Gao Dec. at ¶¶ 11b, 13-14. More generally, criminal investigations are highly confidential in China and the fact that the information requested is related to Chinese domestic criminal investigations itself imposes an obligation on [redacted] not to disclose such information. Gao Dec. at ¶¶ 11b-c, 21-29, 33-38.

Thus, disclosure of bank account information would expose [redacted] to risks of specified criminal sanctions. Gao Dec. at ¶¶ 11d, 30-32, 39-40. Professor Clarke may consider the risk of criminal liability under the state secrets law "highly implausible," Clarke Dec. ¶67, but again he is not a Chinese lawyer and, of course, he is not the one at risk if he is wrong.[4]

[3] FBI agent Benjamin Whitley discloses in his declaration accompanying the Government's Reply that certain front companies for DHID wired funds to Mingzheng and engaged in transactions with counterparties who also transacted with Mingzheng. Whitley Dec. ¶ 16.

[4] Mr. Gao addresses other aspects of Professor Clarke's analysis in his declaration.

Moreover, regardless of whether the requested disclosure would put [redacted] at risk of a civil or criminal violation or both, there is no reason to require a witness, who stands accused of no wrongdoing,[5] to violate any law when the Government's need for information can be fully vindicated without requiring such a violation. (Permeating the Government's reply and declarations is the notion that there is no problem with requiring a Chinese company to violate Chinese law if there is only a relatively small sanction, which is a rather astonishing position for the U.S. Department of Justice to be taking. The Department of Justice assuredly would not apply this position to conduct by U.S. individuals or companies violating U.S. laws.)

2. *The MLAA is a reliable alternative means to obtain the information* ***in this case***

Much of the Government's reply is directed at the historical practice under the MLAA.[6] Reply Br. at 23-27; Whitley Dec. at ¶¶ 71-75; Olson Dec. at ¶¶ 8-17; Clarke Dec. at ¶¶ 106-14. According to the Government, this history establishes the futility of making an MLAA request in this case.

However, the Government simply ignores the commitment made by the Chinese MOJ *in this case*. That commitment fundamentally distinguishes this case from the other cases the Government cites. Most dramatically, it distinguishes it from the case the Government describes as "analogous," Reply Br. at 25, where the Chinese authorities specifically told their U.S.

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[5] The Government's vague suggestions of possible wrongdoing by the Banks, Reply Br. at 10-11 n.11, p. 18 n.16, even relegated to footnotes, are unfair and inappropriate. The Government is apparently at least two years into this investigation. If it has evidence of wrongdoing, it should say so; if not, it should not be casting aspersions.

[6] Another large section of the Government's reply (and most of the accompanying declaration of FBI Special Agent Whitley) is dedicated to establishing that North Korea is a potential threat, that investigations of it are important, that grand juries are important, and that the requested documents are important. *See e.g.*, Reply Br. at 17-18, 27-28; Whitley Dec. at ¶¶ 6-7, 29-70. [redacted] has not disputed any of these points.

counterparts that they "had no intention of providing additional bank records." Whitley Dec. at ¶ 73. Here the MOJ has told this Court just the opposite.

Even without such a commitment, the Government concedes that it received assistance in another case where it both served a subpoena and made an MLAA request. Reply Br. at 24 n.20. While in that case the MLAA request came first, the Government provides no reason to believe—especially in light of the MOJ's commitment—that the same result would not be obtained here, where the order would be reversed. The Government also acknowledges that "[i]n other cases, China has produced bank records to the general satisfaction of the U.S. prosecutors and agents." Olson Dec. at ¶ 14e.[7]

Finally, the Government argues that where China has complied with MLAA requests, it has only done so when it was in China's interests and not as "a favor to the United States." Clarke Dec. at ¶ 106. Even assuming that this were true, given that "the Chinese government itself would seem to have an interest in Chinese banks maintaining access to the U.S. financial system, which ... the Banks could lose if they do not comply with the Subpoenas," Clarke Dec. at ¶ 105, complying with the MLAA here would not simply be a favor to the United States, but also is in the Chinese government's interest. Moreover, the MOJ will certainly realize that, if the Court

[7] In many of the other cases, it appears that the Government made no effort to follow up with the Chinese authorities. Olson Dec. at ¶ 12. While it would of course be preferable if MLAA requests were immediately responded to without such follow-ups, [redacted] believes that the Government would need to concede that U.S. prosecutors often do not race to fulfill incoming MLAT requests where there is no follow-up from the requesting government. (Indeed that appears to be the case with a number of incoming requests from China. *See* Second MOJ letter at 7.) That obviously would not be the case here, where the Court's order itself can impose a reasonable deadline, [redacted] has already assembled the relevant documents, the Government has already made clear the importance of the request, and the Chinese MOJ has already agreed to act on it.

More generally, in its second letter, the MOJ discusses a number of the cases referred to by the Government and the record appears better than the Government describes it. *See* Second MOJ Letter at 6-7.

were to defer ruling on the motion to compel until the Government pursued an MLAA request, the MOJ's credibility with this Court and every other federal court would be at issue if it did not fulfill its commitment. It would very much be in China's self-interest to comply.

With this backdrop, and especially in light of the MOJ's commitment, reinforced by its promise to "continue to strengthen the cooperation with the US counterpart, the OIA, DOJ, within the framework of the MLAA and resolve relevant problems through communications and consultation," Second MOJ Letter at 2, there is no basis for this Court to conclude that an MLAA request would be futile.

* * * * * *

The Government could have made an MLAA request before it served the Subpoena, or when it served the Subpoena, or at any time in the 10 months after it served the Subpoena and before it filed this motion, or in parallel with this motion, or when the Banks filed oppositions, or when the Government filed its reply. If so, by the time of the hearing on this motion, the Court would know whether China is honoring the request as it has said it would. The Government's refusal to make an MLAA request, even in parallel with this motion, is inexplicable to [redacted]. In its reply, the Government may explain the real reason for what is going on here: according to Special Agent Whitley, pursuing an MLAA request here, *apparently even if successful*, would in his view "create a bad precedent." Whitley Dec. ¶ 83. If that is the reason, however, Special Agent Whitley's reasoning is unpersuasive:

- First, he argues that one should not allow a business to decide whether the Government would obtain a search warrant or seek consent for a search. Whitley Dec. ¶84. But we are not talking about a search here, in which situation there is no issue of forcing the business to violate the law, as is the case here with [redacted].

- Second, he asserts that "investigators would never agree to a search where the premises owner would have a first take review . . . of what records are responsive to the search." *Id.* But, again we are not discussing a search, and under either alternative under consideration here, the documents will be collected for production by [redacted] in China.
- Third, he argues that "issuance of the subpoenas [are] important for reasons of deterrence. If any bank, foreign or domestic, believed it was insulated from having to respond to compulsory legal process, there would be little reason for the bank to prevent customers from laundering funds or to monitor illicit activity." Whitley Dec. at ¶ 85. Special Agent Whitley has a depressingly negative view of human nature, under which apparently the only reason everyone does not always break the law is the fear of the FBI showing up (and makes a somewhat ironic argument given that he is seeking an order requiring [redacted] to violate Chinese law). But even if he were correct, the Government will get the documents at issue here under an MLAA request, and so the same deterrent effect would occur.

The Government is free to proceed as it chooses and for the reasons it chooses. However, this Court is not a rubber stamp, and need not force a foreign company to violate foreign law when the Government can obtain precisely what it needs (and could have obtained it far more quickly than through the route it has taken) without forcing such a violation.[8]

B. *In re Sealed Case I* Dictates Denial of the Government's Motion

Much of the Government's original and reply memoranda is dedicated to arguing that *In re Sealed Case*, 825 F.2d 494 (D.C. Cir. 1987) is not controlling. Gov. Br. at 25-28; Reply Br. at 32-34. The fact that the Government spends more time discussing a case it says is inapplicable than any case it says is applicable is telling. The *In re Sealed Case* is discussed at length in [redacted]

[8] Other elements of the comity analysis are addressed in [redacted] Memorandum in Opposition.

Opp. at 22-26 and we will not repeat those arguments here. It is, however, worth examining how the Government's argument has shifted in this regard.

In its initial memorandum, the Government noted two "critical" distinctions between this case and *Sealed Case I*:

- "Critically, the United States did *not dispute*" that production would violate Country Y's bank secrecy laws. Gov. Br. at 25-26 (emphasis in original). However, the Government no longer disputes that production here would violate Chinese law, only how serious a violation it would be.
- "Finally, and most critically, *In re Sealed Case* neither applied the factors from, nor cited *Societe Nationale*, which was decided only seven weeks prior to *In re Sealed Case*." Gov. Br. at 27. Perhaps recognizing the weakness of an argument that the D.C. Circuit was unaware of a Supreme Court decision seven weeks earlier, the Government no longer seems to regard this as the "most critical[]" point, relegating it to a footnote. Reply Br. at 33 n.23.[9]

Having essentially abandoned its previous "critical" distinctions, the Government now asserts that the critical fact is that in *In re Sealed Case I*, the order sought would have required a Company from Country X to violate the laws of Country Y, Reply Br. at 32-33, an argument not even raised in the Government's original memorandum. This distinction at least has a basis in the opinion, as the court did describe this as "[m]ost important to our decision." *Sealed Case I*, 825 F.2d at 498. However, that statement is a mere one sentence after the statement that "it causes us considerable discomfort to think a court of law should order a violation of law, particularly on the

[9] The other points from the Government's original memorandum are addressed in [redacted] Memorandum in Opposition.

territory of the sovereign whose law is in question." *Id.*[10] That statement, and every other factor in the opinion, support applying *Sealed Case I* here. Indeed, because here there is no doubt that the MLAA can provide access to the materials (or the Government will promptly be back in court), the argument for applying comity is far stronger—in *Sealed Case I*, it appears that the government did not have an applicable mutual legal assistance treaty through which to procure the requested information.

Instead, the Government argues that *In re Sealed Case*, 832 F.2d 1268 (D.C. Cir. 1987) (which the Government calls *Sealed Case II* and [redacted] referred to as *Walsh* to distinguish it from *Sealed Case I*) should control. *See* Reply Br. at 33-34. This case is discussed in [redacted] Opposition at 26-27. Most significantly, it favorably cites and in no way limits *Sealed Case I*; it was unclear whether production of the documents would violate Swiss law; and even if it did, the witness was not in Switzerland, and thus would not be at risk unless he voluntarily returned there. Those factors do not apply here.

II.

ALTHOUGH THE COURT NEED NOT REACH THE ISSUE, THE GOVERNMENT HAS NOT ESTABLISHED SPECIFIC JURISDICTION OVER [redacted][11]

The Government has served [redacted] New York Branch with a grand jury subpoena and seeks to enforce it against any [redacted] branch in the world with responsive documents, notwithstanding the fact that these overseas branches have no minimum contacts with this jurisdiction. The

[10] It is this statement that the Government suggests shows the court was unaware of *Societe Nationale*. But the court did not suggest it lacked the power to enter such an order. It merely expressed an appropriate reticence to do so, which is completely consistent with the comity analysis.

[11] The Government concedes that there is no general jurisdiction over [redacted]. *See* Reply Br. at 9 ("Here, the government is not relying on a theory of general jurisdiction.").

expansive view of personal jurisdiction that the Government sets forth is not supported by the law or fundamental principles of due process.

A. The Government Has Not Identified Any Statutory Authority Providing "Nationwide Contacts" Jurisdiction over [redacted]

The Government asserts that specific jurisdiction exists because this Court may take into account [redacted] nationwide contacts with the United States, as opposed to [redacted] contacts with *this jurisdiction*, as is ordinarily required in the minimum contacts analysis. *See* Gov. Br. at 10; Reply Br. at 4-12. The Government premises this argument on the theory that federal statutes that permit nationwide service of process also allow courts to assert jurisdiction based on nationwide contacts. *Id.*

But to the extent that the Government can identify applicable federal criminal statutes that permit nationwide service of process, it would still need to demonstrate that these statutes permit the exercise of jurisdiction over non-parties who are not accused of having violated the statutes. None of the authorities cited by the Government in support of a nationwide contacts approach—either in this jurisdiction or elsewhere—have applied such an approach to non-parties such as [redacted], but rather, only to defendants in a pending action or the subjects of a criminal investigation.[12] This distinction is significant, because contrary to the Government's assertion, the

[12] *See e.g.*, *Chew v. Dietrich*, 143 F.3d 24 (2nd Cir. 1998) (reversing lower court's dismissal of defendant-appellee's motion to dismiss for lack of personal jurisdiction) (emphasis added); *Bricklayers & Trowel Trades Int'l Pension Fund v. Kel-Tech Constr., Inc.*, 319 F. Supp. 3d 330 (D.D.C. 2018) (granting plaintiff's second Motion for Entry of Judgment by Default in part, finding that the court has personal jurisdiction over defendant) (emphasis added); *In re Marc Rich & Co., A.G.*, 707 F.2d 663, 665 (2d Cir. 1983) (affirming the district court's finding of contempt and personal jurisdiction over one of the two principal actors and targets of the grand jury investigation, wherein "a federal grand jury . . . was investigating an alleged tax evasion scheme, involving appellant [and International, a wholly-owned subsidiary of appellant], [whereby] . . . International diverted a minimum of $20 million of its taxable income to appellant") (emphasis added); *SEC v. Bilzerian*, 378 F.3d 1100 (D.C. Cir. 2004) (affirming district court's denial of debtor/defendant-appellant's motion to dismiss for lack of personal jurisdiction) (emphasis added);

burdens of exerting personal jurisdiction over a foreign non-party are greater than that of an ordinary defendant, particularly where the non-party faces the prospect of violating the laws of its home country in order to comply with U.S. legal process.

B. The Government Has Not Established that [redacted] Satisfies the Minimum Contacts Requirements for Specific Jurisdiction

Even if the Court were to consider [redacted] contacts with the United States, these contacts would not establish a basis for specific jurisdiction. [redacted] New York Branch has no connection to the underlying criminal investigation and has already provided the Government with the single document in its possession that is responsive to the Subpoena. The Government must therefore establish minimum contacts based on the activities of [redacted] in China—and none of the conduct that the Government points to, to the extent that it even relates to [redacted], satisfies the due process requirements for personal jurisdiction.

1. The blocked OFAC transactions do not create a basis for specific jurisdiction over [redacted]

The Government's assertion that specific jurisdiction over [redacted] exists due to the existence of twenty blocked OFAC transactions—eight of which can be sourced back to a [redacted] account located in China—is incorrect.

Bally Gaming, Inc. v. Kappos, 789 F. Supp. 2d 41, 45-48 (D.D.C. 2011) (denying defendant's motion to dismiss plaintiffs' patent interference suit for lack of personal jurisdiction) (emphasis added); *Briggs v. Goodwin*, 569 F.2d 1 (D.C. Cir. 1977) *rev'd sub nom. Stafford v Briggs*, 444 U.S. 527 (1980) (reversing the district court's dismissal of the plaintiff-appellant's action against the defendant-appellee federal officers for civil rights violations) (emphasis added); *Boland v. Fortis Constr. Co., LLC*, 796 F. Supp. 2d 80 (D.D.C. 2011) (denying defendant's motion to dismiss for lack of personal jurisdiction) (emphasis added); *SEC v. Lines Overseas Mgmt, Ltd.*, No. 04-302, 2007 U.S. Dist. LEXIS 11753 (D.D.C. Feb. 21, 2007) (denying respondent-defendant's objections seeking modification of the magistrate judge's orders enforcing four administrative subpoena issued by the SEC against them) (emphasis added). The majority opinion in *In re Grand Jury Subpoena*, 912 F.3d 623 (D.C. Cir. 2019) did not address the issue of personal jurisdiction.

First, certain OFAC-related contacts that the Government alleges are attributable to Mingzheng, not [redacted]. The Government asserts that it is Mingzheng's, not [redacted], failure to obtain an OFAC license for these blocked transactions that gives rise to a basis for personal jurisdiction here. Reply Br. at 10 ("In these 20 instances, OFAC concluded that Mingzheng should have—but did not—get a license because Mingzheng was acting on behalf of a sanctioned entity (e.g., FTB)."). But the fact that *Mingzheng* failed to obtain a OFAC license should have no bearing on whether [redacted] is subject to personal jurisdiction. To find otherwise would undermine the fundamental principle that specific jurisdiction must rest on the contacts of the defendant (or here, the subpoenaed entity), not the contacts of others with whom the defendant (or subpoenaed entity) may interact. *See Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) ("[T]he relationship" between the defendant and the forum "must arise out of contacts that the defendant *himself* creates with the forum State.") (emphasis in original and citation omitted).

Second, the Government points to the "Banks' documented activity of interacting with OFAC—filtering U.S.-dollar correspondent transactions for compliance with the OFAC sanctioned-entity list and processing these 20 transactions which OFAC blocked" as a basis for jurisdiction. Reply Br. at 10. However, to the extent that transfers were blocked pursuant to an OFAC order, U.S. financial institutions in New York (*not* [redacted]) blocked these transactions and held these funds in New York until they were forfeited. *See United States v. 1,071,251.44 of Funds Associated with Mingzheng Int'l Trading*, 324 F. Supp. 3d 38, 40 (D.D.C. 2018) (stating that the "funds were frozen in accounts that Mingzheng maintained with *six U.S. financial institutions* . . . .") (emphasis added). The blocked OFAC transactions therefore do not alter the conclusion that [redacted] does not have sufficient contacts with this jurisdiction to justify the exercise of personal jurisdiction.

2. *The transfer of funds through New York correspondent accounts should not create a basis for specific jurisdiction*

The Government's only other basis for asserting that this Court should exercise personal jurisdiction over [redacted] is that certain wire transfers relating to Mingzheng were processed through [redacted] correspondent account at a U.S. financial institution in New York.[13] Once again, the Government improperly attributes Mingzheng's activity to [redacted] in its efforts to justify specific jurisdiction over the Bank. *See* Reply Br. at 7 ("*Mingzheng* funneled over-$100 million through the U.S. financial system via the Banks' New York correspondent accounts.") (emphasis added). In any event, even if the processing of transactions through [redacted] correspondent account in New York would constitute a "contact" with New York, the exercise of personal jurisdiction in this District on this basis alone would be unreasonable. It would subject thousands of participants in the U.S. correspondent banking industry to legal process, without warning, simply because certain transactions routed through their correspondent accounts are connected to an underlying legal proceeding in this district.

It is important to recognize the extraordinary breadth of the Government's demands upon this Court. The Government is seeking to have the Court assert personal jurisdiction over non-party [redacted] in Washington D.C. because certain funds relating to the subject of a criminal inquiry passed through a correspondent bank located in New York (i.e., not [redacted] New York branch, but [redacted] correspondent account at *another* bank) and these correspondent banks blocked those transactions in New York. If this theory were adopted, any bank that engaged in transactions that involve U.S. dollars being routed through a correspondent account in the U.S.—which involves hundreds, if not thousands, of international banks—would be subject to personal jurisdiction of

[13] The Government does not identify which U.S. financial institutions maintain the correspondent accounts through which the wire transfers were processed.

this Court (or presumably any other district court in the United States), where some connection can be drawn to an underlying criminal investigation. Such an expansive view of personal jurisdiction would violate traditional notions of fair play and substantial justice and undermine the due process protections to which [redacted] is entitled. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985) (citing *International Shoe Co. v. Washington*, 326 U.S.310, 320 (1945)); *GTE New Media Servs. v. BellSouth Corp.*, 199 F.3d 1343, 1350 (D.C. Cir. 2000) (finding that "expansive theor[ies] of personal jurisdiction" should not be permitted to "shred . . . constitutional assurances out of practical existence").

CONCLUSION

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

Dated: February 26, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on February 26, 2019, service was made of a copy of the foregoing Nonparty [redacted] Sur-Reply 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