IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

In re Grand Jury Investigation of Possible Violations of 18 U.S.C. § 1956 and 50 U.S.C. § 1705	:	**Case No.**
	:	**GJ No. 18-2**
	:	**UNDER SEAL**

UNITED STATES' MOTION TO COMPEL PRODUCTION OF DOCUMENTS REQUESTED VIA ADMINISTRATIVE SUBPOENA ISSUED PURSUANT TO 31 U.S.C. § 5318(k)(3)

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves to compel [redacted] to produce documents requested pursuant to an administrative subpoena. *See* 31 U.S.C. § 5318(k)(3). As grounds for this request, the United States relies on the following points and authorities.

I. BACKGROUND

A. Mingzheng International Trading Limited, Sun Wei, and Kim Tong Chol

A grand jury in the District of Columbia is investigating the activities of the North Korean state-run Foreign Trade Bank (FTB), Mingzheng International Trading Limited (Mingzheng), which was operated by Sun Wei (Wei) and Kim Tong Chol (Chol), and their suspected co-conspirators. Mingzheng was incorporated in Hong Kong and was operated by Wei and Chol. Mingzheng has allegedly laundered millions of U.S. dollars for the benefit of FTB.

In 2013, the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), which is located in Washington, D.C., designated FTB pursuant to Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters" (E.O. 13382) for facilitating transactions on behalf of North Korea's proliferation network. On August 22, 2017, OFAC designated Mingzheng pursuant to E.O. 13382 for providing financial services to United Nations (U.N.)- and U.S.-designated FTB by, among other things, conducting

U.S. dollar denominated transactions on behalf of FTB. On June 29, 2017, OFAC designated Sun Wei pursuant to E.O. 13382 for establishing and operating a front company on behalf of FTB. On September 27, 2017, OFAC designated Chol, an FTB representative in China, pursuant to Executive Order 13722 of March 15, 2016, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea" (E.O. 13722) for being an official of the Government of North Korea. Any property (or interests in property) of designated persons in the possession or control of U.S. persons or within the United States must be blocked.

B. Mingzheng's Illicit Payments on Behalf of the North Korean Government

Subpoena returns from financial institutions that clear U.S. dollar wires have revealed that Mingzheng made illicit U.S. dollar payments for the benefit of the North Korean government between October 2012 and January 2015 totaling at least $105,339,483.59. Email search warrant returns have confirmed that FTB used Mingzheng to launder U.S. dollar payments. Specifically, these returns revealed that Mingzheng acted as a front company for a covert Chinese branch of FTB. This practice was consistent with the findings of the U.N. Panel of Experts' Report as to how North Korean financial institutions use foreign nationals to establish covert branches abroad to allow them to continue to illegally transact U.S. dollars. *See* 2017 Report of the Panel of Experts at 1.

Further, subpoena returns revealed that the $105,339,483.59 in wire transfers transited through the United States via correspondent U.S. banks clearing those transactions before they reached the intended beneficiary. These transactions are detailed in the below table, which is limited to [redacted] (6150 Account), as this is the relevant account for the instant motion. Mingzheng had two other accounts with [redacted] and

[redacted] which account for the remainder of Mingzheng's U.S. dollar wire transactions.[1]

TABLE 1: Total Illicit [redacted] Wires Involving [redacted] 6150 Account

Bank	Transactions Count	Transaction Amount
SPDB 6150 Account	388	$57,931,904.75
TOTALS	**388**	**$57,931,904.75**

These U.S. dollar wire transactions by [redacted] which cleared through U.S. correspondent bank accounts, violated U.S. law because a license was required to process payments in which FTB had an interest, yet no license was sought or obtained.

The U.S. correspondent banks blocked (i.e., froze) a small subset of these transactions, which funds the United States subsequently forfeited. *See United States v. $1,071,251.44 of Funds Associated With Mingzheng Int'l Trading Ltd.*, 342 F. Supp. 3d 38 (D.D.C. 2018). Specifically, from on or around October 19, 2015, to on or around November 18, 2015, Mingzheng was a party to 20 blocked wire transfers totaling $1,902,975.69, which transited through the U.S. financial system. These transfers included 13 outgoing wires, totaling $1,349,258.16 in which Mingzheng was listed as the remitter, and seven incoming wires, totaling $553,717.53 in which Mingzheng was listed as the beneficiary. These 20 transactions involved eight transactions from the [redacted] 6150 Account (listed below), four transactions from Mingzheng's account at [redacted] and eight transactions from its account at [redacted]

[1] The government issued grand jury subpoenas to [redacted] and [redacted] which unlike [redacted] have branches in the United States. *See In re Grand Jury Proceedings Bank of Nova Scotia*, 740 F.2d 817 (11th Cir. 1984). Those subpoenas are the subject of separate motions to compel.

TABLE 2: Illicit Mingzheng Wires on Behalf of FTB – [redacted] 6150 Account

#	Date	Wire Amount	Party Sending Wire	Party Receiving Wire
1	10/19/15	$9,932.00	Mingzheng	Counterparty 1
2	10/20/15	$162,018.00	Counterparty 2	Mingzheng
3	10/22/15	$96,345.42	Mingzheng	Counterparty 3
4	11/02/15	$42,632.00	Mingzheng	Counterparty 4
5	11/06/15	$140,000.00	Counterparty 5	Mingzheng
6	11/12/15	$45,000.00	Counterparty 6	Mingzheng
7	11/17/15	$57,749.07	Counterparty 7	Mingzheng
8	11/6/15	$100,000.00	Counterparty 7	Mingzheng
	TOTAL	**$653,676.49**		

According to a confidential source, whose information has proven to be reliable, Chinese banks collect invoices, among other due diligence data, when conducting transactions on behalf of North Korean entities. The confidential source was aware of this in part because the source conducted such transactions at banks in the People's Republic of China on behalf of North Korean entities. Based in part on the source's information, the United States believes that [redacted] possess due diligence records related to the transactions in question.

C. Administrative Subpoena

Pursuant to 31 U.S.C. § 5318(k)(3)(A)(i), "[t]he Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account, including records maintained outside of the U.S. relating to the deposit of funds into the foreign bank." Prior to the enactment of this provision, the government could not subpoena records from foreign banks with no presence in the United States.[2] The International Money Laundering

[2] Courts have long recognized that the government may subpoena records stored overseas for foreign banks that maintain a presence in the United States. *See In re Search of Info. Associated with [redacted]@gmail.com that is Stored at Premises Controlled by Google, Inc.*, No. 16-mj-00757, 2017 WL 3445634, at *15 (D.D.C. July 31, 2017).

Abatement and Anti-Terrorist Financing Act of 2001, codified as Title III of the USA PATRIOT Act of 2001, amended the Bank Secrecy Act to empower the Executive to obtain such records in order "to investigate and disrupt transnational money laundering networks." *United States v. Sedaghaty*, No. 6:05-cr-60008, ECF No. 277, at 13 (E.D. Or. Feb. 26, 2010) (citing Pub. L. 107-56, 115 Stat. 272 (2001)) (Attached).

The statute directs the government to first make a written request to the U.S. bank maintaining a correspondent account for the foreign bank about the identity of the authorized recipient for a subpoena. *See* 31 U.S.C. § 5318(k)(3)(B)(i) (U.S. bank must keep on file "the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account."). The U.S. correspondent bank must terminate the correspondent banking relationship with the foreign bank within 10 days of receiving written notice from the government that the foreign bank failed to comply with such subpoena or initiate proceedings in a United States court to contest it. *See* 31 U.S.C. § 5318(k)(3)(C). This termination order comes from either the Attorney General or the Secretary of the Treasury, "after consultation with the other." *Id.* The failure to terminate the correspondent banking relationship with the foreign bank subjects the U.S. bank to "a civil penalty of up to $10,000 per day until the correspondent relationship is so terminated." 31 U.S.C. § 5318(k)(3)(C)(iii).

D. United States' Criminal Investigation and Administrative Subpoena Request

FTB, Mingzheng, Wei, and Chol are the subjects of a grand jury investigation into violations of: the federal money laundering statute, 18 U.S.C. § 1956; the International Economic Emergency Powers Act (IEEPA), 50 U.S.C. § 1705; and the Bank Secrecy Act, 31 U.S.C. § 5318A.

On or about December 24, 2017, the United States sent an administrative subpoena (pursuant to 31 U.S.C. § 5318(k)(3)) to [redacted] designated agent for service of process for records regarding its correspondent account at JP Morgan Chase. The subpoena sought:

> 1. All documents relating to correspondent banking transactions for Mingzheng International Trading Limited.
>
> 2. All documents relating to correspondent banking transactions for Account Number [redacted]
>
> The records should cover the period from January 1, 2012,[3] through the present and should include, but not be limited to:
>
> (a) signature cards;
> (b) documentation of account opening;
> (c) account ledger cards;
> (d) periodic account statements;
> (e) due diligence (including invoices); and
> (f) records (copied front and back) of all items deposited, withdrawn, or transferred.

[redacted] has refused to comply, claiming that the government lacks personal jurisdiction and that providing the documents would violate supposed Chinese bank secrecy laws.[4] [redacted] additionally maintains that it will only comply with a formal Mutual Legal Assistance Agreement (MLAA) request from the United States to the Chinese government.[5]

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[3] Prior subpoena returns revealed that Mingzheng made illicit U.S. dollar payments beginning in at least October 2012. The United States seeks records predating October 2012 to establish a baseline analysis of the flow of funds. *See United States v. Manafort*, Crim. No. 18-0083, 2018 WL 3367872, at *9-10 (E.D. Va. July 9, 2018) (seizure of financial records for periods before the time alleged in the search warrant was permissible because those earlier records could have a bearing on the alleged tax and bank fraud violations in later years)

[4] The parties have been in discussions about enforcement of the subpoena. In the intervening time, the government has continued its grand jury investigation and presentation of evidence.

[5] The United States and China have an agreement to cooperate in the prosecution of criminal matters. *See* Agreement Between the Government of the United States of America and the Government of the People's Republic of China on Mutual Legal Assistance in Criminal Matters, June 19, 2000, 2000 U.S.T. LEXIS 144.

E. [redacted] Contacts with the United States

[redacted] is prohibited from clearing financial transactions through the United States involving property in which any party on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) has an interest, unless licensed by OFAC or exempt. [redacted] is also prohibited, unless licensed by OFAC or exempt, from clearing financial transactions through the United States involving property in which a non-listed entity has an interest, if that entity's ownership is made up by 50 percent or more of a sanctioned entity. As a result, [redacted] filters U.S. dollar transactions by cross referencing the parties to their transactions against OFAC's SDN List and any 50 percent subsidiaries. When a sanctioned entity has an interest in a transaction that clears through the United States, OFAC mandates that any bank in the United States that is asked to process such transaction freeze the funds, place them in a blocked funds account, and report the blocking to OFAC. [redacted] has been involved in numerous transactions (detailed below) that were blocked or rejected pursuant to OFAC regulations. When a transaction is blocked, either the banks or the parties involved in the transaction may petition OFAC for a license to unblock the funds.

[redacted] has had extensive contacts with OFAC. According to OFAC, [redacted] was involved in approximately 306 blocked or rejected transactions between June 1998 and February 2018. For 90 of these transactions, [redacted] was the originating bank, and for one of those transactions [redacted] was also the beneficiary bank. For one transaction, [redacted] was the originating party (i.e., the bank was the initiator, as opposed to a customer, of the transaction). For 215 of the transactions, [redacted] was the beneficiary bank, and for two of those transactions [redacted] was also the beneficiary party (i.e., the bank was the ultimate beneficiary of the transaction).

There have been approximately 14 license requests related to blocked transactions involving [redacted] between January 2015 and March 2018. In 12 applications, [redacted] was the

beneficiary bank, and in two applications, [redacted] was the originating bank. [redacted] itself did not submit any of these license requests. Overall, OFAC approved five of the 14 requests. That is, OFAC permitted the release back to the originator (or, in rarer cases, the onward processing) of these five transactions after OFAC reviewed them.[6]

II. ARGUMENT

The grand jury's investigative power permits it to "inquire into all information that might possibly bear on its investigation until it has identified an offense or has satisfied itself that none has occurred." *United States v. R. Enters., Inc.*, 498 U.S. 292, 297 (1991). Courts exercise limited control over the grand jury's proceedings and "extend great deference to this historic institution and its broad powers." *In re Grand Jury*, 286 F.3d 153, 159 (3d Cir. 2002). Moreover, "the law presumes, absent a strong showing to the contrary, that a grand jury acts within the legitimate scope of its authority." *R. Enters.*, 498 U.S at 301. Numerous statutes empower Executive agencies to "wield broad power to gather information through the issuance of subpoenas." *Resolution Trust Corp. v. Thornton*, 41 F.3d 1539, 1544 (D.C. Cir. 1994). "In this way, an agency 'is . . . analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.'" *Id.* (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642–43 (1950)).[7]

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[6] This is only a snapshot of the blocked transactions and licenses involving [redacted] Additional blocked transactions and licenses exist prior to these dates; however, that information is not as easily accessible.

[7] The administrative subpoena at issue seeks the production of documents for the grand jury, which information is essential to its investigation.

This Court should compel production of the requested documents, because [redacted] has purposefully availed itself of the United States financial system by transacting in U.S. dollars that passed through correspondent banks in the United States, and has specific contacts with regulators in Washington, D.C. "A well-established principle is that courts have the power to exercise authority on people and entities over whom they have personal jurisdiction, including compelling those individuals or entities to retrieve documents from abroad." *In re Search of Information Associated with [Redacted]@Gmail.com*, 2017 WL 3445634, at *14; *see also In the Matter of a Grand Jury Subpoena Directed to Marc Rich & Co.*, 707 F.2d 663, 667 (2d Cir. 1983) (foreign witness may not resist grand jury subpoena on the grounds that documents are located overseas as long as the court enforcing the subpoena "can obtain personal jurisdiction of the summoned witness"). This is "settled law," because "a country can regulate conduct occurring outside its territory which causes harmful results within its territory." *In re Sealed Case,* 832 F.2d 1268, 1274 (D.C. Cir. 1987) (internal quotation marks and citation omitted), *abrogated on other grounds by Braswell v. United States,* 487 U.S. 99 (1988). The government bears the burden of showing that the Court has personal jurisdiction over the bank.[8] *Cf. id.*

"Courts may exercise two forms of personal jurisdiction: 'general or all-purpose jurisdiction, and specific or case-linked jurisdiction.'" *Pension Benefit Guar. Corp. v. Asahi Tec*

[8] A stringent burden-of-proof requirement for jurisdiction "might well invert the grand jury's function, requiring that body to furnish answers to its questions before it could ask them." *In re Sealed Case*, 832 F.2d at 1274 (internal quotation marks and citation omitted). Accordingly, both Circuits to consider personal jurisdiction in the criminal context set the following test: "'if the [prosecutor] shows that there is a reasonable probability that ultimately it will succeed in establishing the facts necessary for the exercise of jurisdiction, compliance with the grand jury's subpoena may be directed.'" *Id.* (quoting *Marc Rich & Co.*, 707 F.2d at 679). "The government need not prove what would be necessary to confer jurisdiction over the companies for purposes of trial." *Id.* Because the administrative subpoena here is relevant to of a grand jury's investigation of criminal violations, the same standard should apply.

Corp., 979 F. Supp. 2d 46, 57 (D.D.C. 2013) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "Specific jurisdiction exists where a claim arises out of the non-resident party's contacts with the forum."[9] *Pension Benefit Guar.*, 979 F. Supp. 2d at 57 (citing *Helicopteros Nacionales de Columbia, S.A. v. Hall,* 466 U.S. 408, 414 & n. 8 (1984)). When considering specific personal jurisdiction under a federal statute that allows for nationwide service, such as an administrative subpoena issued pursuant to 31 U.S.C. § 5318(k)(3), the forum for which a court examines the party's contacts is the entire United States, rather than a specific district. *Gucci Am. v. Weixing Ling*, 768 F.3d 122, 142 & n.21 (2d Cir. 2014) (noting consensus amongst the circuits that, "when a civil case arises under federal law and a federal statute authorizes nationwide service of process, the relevant contacts for determining personal jurisdiction are contacts with the United States as a whole" and suggesting that the district court could consider the bank's nationwide contacts to evaluate specific jurisdiction) (internal citations omitted); *SEC v. Knowles*, 87 F.3d 413, 417 (10th Cir. 1996) (same). Moreover, because the investigation relates to the possible violation of federal laws, the right to inquire of a witness depends upon "contacts with the entire United States, not simply [one] state." *Marc Rich & Co.*, 707 F.2d at 667 (internal citation omitted); *see also* W. Bryson et al., Subpoenas to Foreign Witnesses and Extraterritorial Subpoenas, *Grand Jury Law & Practice* § 6:7 (2d ed., December

[9] In contrast, general jurisdiction exists where a non-resident party maintains sufficiently systematic and continuous contacts with the forum state, regardless of whether those contacts gave rise to the claim in the particular suit. *See Helicopteros Nacionales*, 466 U.S. at 414–15. For corporations, general jurisdiction is "fairly regarded as at home," which has been defined as generally being either its "place of incorporation" or its "principal place of business." *Daimler AG v. Bauman*, 571 U.S. 127, 134 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011)). Because there is specific jurisdiction over the parties, the Court need not consider general jurisdiction.

2017 Update) ("Specific jurisdiction will support a subpoena only if it is limited to testimony or documents related to the witness's contacts with the United States.").[10]

In deciding whether the exercise of personal jurisdiction over a foreign corporation comports with due process, courts consider whether: (1) the foreign corporation has the requisite "'minimum contacts' with the United States," and (2) the exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice." *In re Sealed Case,* 832 F.2d at 1273-74 (citing *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945)). Due process guarantees are satisfied "if the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 472–73 (1984) (internal quotation marks and citation omitted).

A. This Court Has Specific Personal Jurisdiction over [redacted] Because it Has Sufficient Minimum Contacts with the United States and the Exercise of Personal Jurisdiction Comports with Traditional Notions of Fair Play and Substantial Justice

In order to exercise specific jurisdiction, a foreign corporation's in-forum contacts must be purposeful, the controversy must be related to those in-forum contacts, and the exercise of jurisdiction must be reasonable. *See Bristol-Myers Squibb Co. v. Sup. Ct. of Cal., San Fran. Cty.*, 137 S. Ct. 1773, 1780-84 (2017) (holding that relatedness requires that the activity or occurrence taking place in the forum state be subject to the state's regulation, and the court must consider whether the state has a legitimate interest in the claim in question) (internal citations omitted). "'[T]he commission of some single or occasional acts of the corporate agent' may sometimes be

[10] When considering whether there is personal jurisdiction sufficient to enforce an administrative subpoena such as this, courts need not look to a state's long-arm statute, because the subject at issue is the possible violation of a federal criminal statute, which implicates the party's contacts with the entire United States. *See Marc Rich & Co.*, 707 F.2d at 667.

enough to subject the corporation to [specific] jurisdiction in that State's tribunals with respect to suits relating to that in-state activity." *Daimler AG v. Bauman*, 571 U.S. 127, 126-28 (2014) (quoting *Int'l Shoe*, 326 U.S. at 318); *see also Weixing Ling*, 768 F.3d at 137 (court looked to the connection between the nonparty's single or occasional contacts with the forum and "the order at issue"). Indeed, "[e]ven a single purposeful contact may be sufficient to meet the minimum contacts standard when the underlying proceeding is directly related to that contact." *Knowles*, 87 F.3d at 419. "[L]ess substantial contacts are sufficient to establish jurisdiction over a witness" than over a party, because appearing to testify or produce documents "is far less burdensome than appearing to defend oneself in litigation." *Grand Jury Law & Practice* § 6:7; *see also In re Search of Info. Associated with [Redacted]@gmail.com*, 2017 WL 3445634, at *14 (court's enforcement jurisdiction is broad when enforcing a subpoena for the production of documents).

1. Minimum Contacts Are Easily Established Here, Because of the Breadth of the [redacted] Business in the United States, as well as the Injury the [redacted] Conduct Caused in the United States

Minimum contacts are easily established where a foreign business does "considerable business" throughout the United States. *In re Sealed Case*, 832 F.2d at 1273 n.3. Minimum contacts also exist for a foreign corporation that does not regularly do business in the United States, if its conduct abroad causes injury within the United States. *Id.* at 1274. Minimum contacts exist here under either theory.

The D.C. Circuit previously noted that a foreign bank that does "considerable business in the United States" "plainly" has the "minimum contacts with this country to establish jurisdiction under *International Shoe*[.]" *In re Sealed Case*, 832 F.2d at 1273 n.3. It is uncontroverted that [redacted] is a major financial institution, which conducts transactions totaling hundreds of millions of dollars. [redacted] availed itself of the privileges of conducting transactions in U.S. dollars via

correspondent accounts in the United States. Obtaining the benefit of access to United States currency and the United States' financial system comes with the price of being subject to U.S. legal process. *See Gucci Am., Inc. v. Weixing Li*, 135 F. Supp. 3d 87, 94-97 (S.D.N.Y. 2015) (finding personal jurisdiction over Bank of China where, among other things, its correspondent banking relationship gave its clients access to "the dollar as a stable and fungible currency . . . and the United States"); *Nike, Inc. v. Maria Wu*, No. 13-cv-08012, 2018 WL 4907596, at *8 (S.D.N.Y. Sept. 25, 2018) (*aff'd*, 2018 WL 6056259 (S.D.N.Y. Nov. 19, 2018)) (banks' establishment and maintenance of correspondent accounts was sufficient to support the exercise of personal jurisdiction over the banks for purposes of mandating compliance with subpoenas); *see also In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. 3:15-cv-2672, 2017 WL 66281, at *22 (N.D. Cal. Jan. 4, 2017) (holding that defendant purposefully availed itself of the benefits of doing business in the United States by taking advantage of the markets available here and by placing English-translated documents on websites specifically for the benefit of U.S. investors). Moreover, as evidenced by the subpoena returns from the correspondent banks in the United States, all U.S. dollar transactions in this matter (totaling more than $100 million dollars) transacted through entities located in the United States.

Even if [redacted] did not do considerable business with the United States, any of its prior interactions with OFAC serve as the requisite contact to establish personal jurisdiction. *See Godo Kaisha IP Bridge 1 v. Broadcom Ltd.*, No. 16-cv-0134, 2017 WL 970383, at *5 (E.D. Tex. March 1, 2017) (finding that the consolidated regulatory filings were relevant to determining whether the court had specific personal jurisdiction over the defendant company). [redacted] contacts with the District of Columbia (via OFAC), let alone the United States (via U.S. dollar transactions cleared through the United States), directly relate to the investigation into sanctions and money laundering

violations, the lynchpin of which is OFAC's role in the transactions. *See Knowles*, 87 F.3d at 419 (ongoing business relationship and a brokerage account sufficient to support specific personal jurisdiction because underlying SEC investigation concerned those admitted contacts).

Any single Mingzheng transaction is sufficient to tie the respective bank to the forum and the claim at issue, and each transaction caused injury within the United States. Mingzheng hid its connection to FTB, which caused banks to process transactions through the United States, after the banks checked their OFAC filters. However, 20 of these transactions were blocked pursuant to OFAC regulations for a suspected connection to FTB. [redacted] actions of processing Mingzheng's transactions are the subject of the administrative subpoena request; and thus, [redacted] in-state activity is the crux of the question at issue. *See Daimler*, 571 U.S. at 127.

Assuming *arguendo* [redacted] neither did considerable business in the United States nor did they have forum-related contacts about the subject at issue, there is still specific personal jurisdiction because the conduct in question caused injury within the United States—to wit, criminal violations of U.S. money laundering and sanctions laws that threaten the United States' national security. The United States has a strong interest in combating money laundering, particularly when the U.S. financial system is used by foreign actors to promote criminal activity. *See Sedaghaty*, No. 6:05-cr-60008, ECF No. 277, at 13 (noting that Congress expanded the authority to collect overseas bank records in the USA PATRIOT Act, because "preexisting authorities [] had proven outmoded and inadequate in cases in which money laundering involved foreign entities") (internal citation omitted); *see also* USA PATRIOT Act of 2001, Pub. L. No. 107–56, 115 Stat. 272, § 302(a)(8) ("United States anti-money laundering efforts are impeded by outmoded and inadequate statutory provisions that make investigations, prosecutions, and forfeitures more difficult, particularly in cases in which money laundering involves foreign

persons, foreign banks, or foreign countries."). Moreover, the "United States has a strong national interest in the effective enforcement of its criminal laws." *Davis*, 776 F.2d at 1035. As noted in the OFAC designation and the forfeiture action, Mingzheng's U.S. dollar transactions facilitated North Korea's sanctions evasions and contributed to its proliferation program. North Korea—a sanctioned nation, which is also a designated state-sponsor of terrorism—laundering funds to enrich its weapons of mass destruction program poses one of the gravest threats to the national security of the United States. *See* www.state.gov/j/ct/list/c14151.htm. Such actions thus caused grievous harm to United States.

2. Exercising Jurisdiction Comports with Notions of Fair Play, Because [redacted] Purposefully Directed their Banking Activities into the United States

"Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" *Burger King,* 471 U.S. at 476 (internal citation omitted). But "where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Id.* at 477. As discussed above, [redacted] purposefully engaged in millions of dollars worth of transactions in this case alone, which funds routed through the United States, and for which no OFAC license was sought or obtained. "[T]here is no due process rational that would preclude exercising personal jurisdiction over" [redacted] because of its purposeful activity to make use of the U.S. dollar system, which had a substantial connection with the forum, and from which [redacted] drew upon the benefits of acting in the forum. *Xie v. Sklover & Co.*, 260 F. Supp. 3d 30, 43 (D.D.C. 2017).

In order to present a compelling case to the contrary, the objecting party must show Constitutional unfairness via five factors: (1) burden on the party; (2) interest of the forum in adjudicating the matter; (3) plaintiff's interest; (4) interest in efficient resolution of the controversy; and (5) balancing substantive social policies at issue. *See Asahi Metal Indus. Co. v. Sup. Ct. of Cal., Solano Cty.*, 480 U.S. 102, 113-114 (1987). [redacted] cannot carry its burden here. First, [redacted] will not be seriously burdened, as they are accustomed to handling whatever nominal logistical difficulties arise from litigation in the United States, especially as [redacted] is represented by able counsel. *Nike*, 2018 WL 4907596, at *12. As to factors two and three, the enforcement of U.S. criminal laws to preserve national security (further discussed *infra* at Section B(2)(e)) presents a compelling interest of the forum in adjudicating this matter. *See id.* at *13. Fourth, the most, and likely only, efficient resolution of the request can be via subpoena, due to the significant likelihood that production via any mutual legal assistance request will be severely delayed, unanswered, or incomplete (further discussed *infra* at Section B(2)(d)). *See id.* (relying on subsequent comity analysis to conclude that subpoena requests "provide the fastest and most practical means" for production of Chinese bank records located overseas) (quoting *Gucci*, 135 F. Supp. 3d at 100). Finally, the government's national security interest trumps any punishment that a Chinese bank could suffer, but likely will not (further discussed *infra* at Section B(2)(e)). *See id.* (relying on subsequent comity analysis to balance the substantive policy issues).[11]

[11] Much of the analysis of the five factors overlaps with the comity analysis discussed *infra*. In particular, if the [redacted] argument as to burden relates to potentially violating Chinese law, "such an argument [is] more appropriately considered in a separate comity analysis." *Nike*, 2018 WL 4907596, at *12 (citing *Gucci*, 135 F. Supp. 3d at 99).

B. Executive Agencies Are Entitled to Judicial Enforcement of Administrative Subpoenas

"Courts routinely enforce subpoenas, whether they are grand jury subpoenas [] or subpoenas issued by administrative agencies of the United States []. That enforcement authority is deeply rooted in the common law tradition, as first explained by Chief Justice Marshall in *United States v. Burr*, 25 F. Cas. 30 (C.C.D. Va. 1807)." *Comm. on Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 71 (D.D.C. 2008); *see also Sedaghaty*, No. 6:05-cr-60008, ECF No. 277, at 19 (compelling foreign bank to produce records subpoenaed pursuant to 31 U.S.C. § 5318(k)(3)). "In a proceeding to enforce an administrative subpoena, 'the court's role . . . is a strictly limited one.'" *United States v. Apodaca*, 251 F. Supp. 3d 1, 8 (D.D.C. 2017) (quoting *FTC v. Texaco, Inc.*, 555 F.2d 862, 871–72 (D.C. Cir. 1977) (en banc)). "'So long as the investigation is for a lawfully authorized purpose, the documents sought are relevant to the inquiry, and the demand is reasonable, the agency has a right to judicial enforcement of the subpoena.'" *Id.* (quoting *Texaco, Inc.*, 555 F.2d at 871-72). "A district court *must* enforce a federal agency's investigative subpoena if the information sought is 'reasonably relevant,' or, put differently, 'not plainly incompetent or irrelevant to any lawful purpose of the agency,' and not 'unduly burdensome' to produce." *Id.* at 12 (emphasis added) (quoting *FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992)). "In a proceeding to enforce an administrative subpoena, the agency's own appraisal of relevancy must be accepted so long as it is not obviously wrong." *Id.* at 12 (internal quotation marks omitted). "Indeed, in light of the broad deference afforded the investigating agency, it is essentially the respondent's burden to show that the information is irrelevant." *Id.* at 12 (quoting *Invention Submission Corp.*, 965 F.2d at 1090). Courts examine the reasonableness of subpoenas for foreign bank records under the rubric of comity analysis. *See,*

e.g., Gucci, 135 F. Supp. 3d at 101-03. Here, [redacted] cannot demonstrate that the subpoena in question is unreasonable.

1. Courts Apply Comity Analysis Only after the Objecting Party Demonstrates a True Conflict of Law, which [redacted] Cannot Do Here

International comity is the "degree of deference that a domestic forum must pay to the act of a foreign government not otherwise binding on the forum." *de Csepel v. Republic of Hungary*, 714 F.3d 591, 606 (D.C. Cir. 2013) (internal quotation omitted). However, a court "will abstain from exercising jurisdiction in the interests of international comity only where there is a true conflict between domestic and foreign law." *United States v. All Assets Held at Bank Julius Baer & Co., Ltd.*, 772 F. Supp. 2d 205, 210 (D.D.C. 2011) (internal quotation omitted). Thus, before this Court considers questions of comity, [redacted] must first carry its burden to show that Chinese bank-secrecy law prohibits disclosure of the requested bank records. *See In re Sealed Case*, 825 F.2d 494, 498 (D.C. Cir. 1987) (per curiam); *SEC v. Lines Overseas Mgmt., Ltd.*, Civ. A. No. 04-0302, 2005 WL 3627141, *10 (D.D.C. 2005) ("LOM has not met its burden of establishing that compliance would violate foreign law").

[redacted] cannot simply allege a theoretical violation of unenforced Chinese laws. In fact, Chinese banks have previously failed to carry their burden because they "point[ed] to no case where a Chinese bank was subjected to liability for disclosing the type of information sought" here.[12] *Gucci*, 135 F. Supp. 3d at 101-03 (Chinese bank failed to demonstrate actual likelihood that compliance with subpoena would result in criminal or civil liability under China's bank-secrecy law, which conferred an individual privilege on customers rather than reflecting a national

[12] China appears to have recently enacted a Mutual Legal Assistance (MLA) law that directs private parties not to share information with foreign parties related to MLA requests in criminal cases.

policy entitled to substantial deference). Moreover, "while China has bank secrecy laws that prevent disclosure of an individual's account information, such protection can be waived by several different public bodies." *Id.* Thus, "China's bank secrecy laws merely confer an individual privilege on customers [i.e., Mingzheng in this case] rather than reflect a national policy entitled to substantial deference." *Id.*; *see also Motorola Credit Corp. v. Uzan*, 73 F. Supp. 3d 397 (S.D.N.Y. 2014) (holding that noncompliance with subpoenas in creditor's action by French banks would undermine United States interests in enforcing its judgments, and compliance would not undermine France's interests in relation to its "blocking statute" prohibiting discovery, since France did not generally enforce the statute); *but see Tiffany (NJ) LLC v. Qi Andrews*, 276 F.R.D. 143, 157 (S.D.N.Y. 2011) (Mag. Rpt. & Rec.) (concluding "China's multitude of criminal and civil regulations . . . evidence its strong interest in bank confidentiality").[13]

2. The Government's Issuance of the Subpoena Is Reasonable in the Face of Comity Concerns

Assuming *arguendo* that a true conflict of law exists here, compelling the production of foreign-based bank records is not unreasonable based on comity concerns. The obligation of comity "expires when the strong public policies of the forum are vitiated." *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 937 (D.C. Cir. 1984); *see also United States v. One Gulfstream G-V Jet Aircraft*, 941 F. Supp. 2d 1, 10 (D.D.C. 2013) (dismissal based on doctrine of comity not appropriate where it "would be contrary to the policies or prejudicial to the interest of

[13] These cases, in which courts balanced China's bank secrecy interests with the interests of the plaintiffs, all involved private parties and a lesser national interest—the enforcement of copyright laws to protect economic interests. This motion involves a criminal investigation by the federal government of a more serious national interest—the enforcement of economic sanctions against a foreign government that has been sanctioned for its weapons of mass destruction program and deemed a state sponsor of terrorism. *See* USA PATRIOT Act of 2001, Pub. L. No. 107–56, 115 Stat. 272, § 221 (2001).

the United States") (internal quotation marks and citation omitted). "And although courts recognize comity as an important objective, there is little doubt that [a] United States Court has the power to order any party within its jurisdiction to testify or produce documents regardless of a foreign sovereign's views to the contrary." *In re Sealed Case*, 832 F.2d at 1283 (internal quotation and citation omitted); *see also Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for the Southern Dist. of New York*, 482 U.S. 522, 544 n.29 (1987) (it is "well settled" that the operation of foreign law "do[es] not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that [law]."); *but see Tiffany*, 276 F.R.D. at 153-56, 158 (in private trademark infringement suit, nonparty foreign bank could not be compelled to produce bank documents due to conflict between United States and Chinese banking laws and comity considerations; court focused on fact that there was no clear record of non-enforcement of Hague Convention Requests by China, so that the plaintiff was required to first try that alternative means of securing the bank records).[14] Assessments as to threats to national security and diplomatic consequences to U.S. government actions are squarely within the purview of the U.S. government.

In the context of a "criminal case brought by the Government," a court owes "'some deference to the determination by the Executive Branch . . . that the diplomatic consequences of the discovery request would be outweighed by the benefits of disclosure.'" *In re Grand Jury Subpoena dated Aug. 9, 2000*, 218 F. Supp. 2d 544, 562 (S.D.N.Y. 2002) (quoting *United States v. Davis*, 767 F.2d 1025, 1035 (2d Cir. 1985)); *see also United States v. Baker Hughes Inc.,* 731 F. Supp. 3, 6 n.5 (D.D.C. 1990) ("not the Court's role to second-guess the executive branch's

[14] Courts have subsequently found a pattern of non-enforcement of Hague Convention Requests by China (further discussed *infra* at Section B(2)(d)).

judgment as to the proper role of comity concerns" when "the United States has decided to go ahead with the case"). Ultimately, the government's decision to initiate a criminal investigation is evidence that the "delicate balance of foreign affairs" would not be disturbed by the administrative subpoenas. *See, e.g.*, *United States v. Sum of $70,990,605*, 991 F. Supp. 2d 154, 169 (D.D.C. 2013) (noting that international comity does not apply where the Executive Branch has initiated the suit, since it is a "coordinate branch of government that bears responsibility for the conduct of foreign relations [and] has made the decision to bring the suit") (internal citation omitted); *One Gulfstream*, 941 F. Supp. 2d at 10-11 (same).

Once comity analysis is triggered, courts conduct a "particularized analysis of the respective interests of the foreign nation and the requesting nation" to "demonstrate due respect for any special problems confronted by a foreign litigant on account of its nationality or the location of its operations." *Societe Nationale*, 482 U.S. at 5446 (Hague Convention did not deprive district court of jurisdiction it otherwise possessed to order foreign national party before it to produce evidence physically located within a foreign signatory nation) (footnote omitted). Accordingly, where a party claims that foreign law forbids disclosure, a district court must consider the following factors: (i) the importance to the litigation of the documents requested; (ii) the degree of specificity of the request; (iii) whether the information originated in the United States; (iv) the availability of alternative means of securing the information; and (v) the extent to which noncompliance would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located. *Id.* at 543-44 & n.28.

a. Factor One: the information sought is critical to the investigation

The subpoenaed documents are the foundation of the United States' investigation and related prosecution for illicit activity. Without the Chinese bank records, the government lacks

visibility as to the identities of the financial facilitators behind this scheme, the source of the illicit funds into these accounts, where remaining funds may have been transferred, and [redacted] role in facilitating such activities. *See United States v. Manafort*, 313 F. Supp. 3d 213, 232-34 (D.D.C. 2018) (search warrant for financial records was sufficiently particular, because specific criminal allegation required examination of extensive paper trail to determine scope of any violations, and nature and volume of defendant's international dealings supported broad requests for records).

b. Factor Two: the request is sufficiently specific

The subpoena is tailored to specific financial records at a bank which Mingzheng used to launder funds and violate U.S. sanctions. The request does not seek voluminous records, and the request is date limited. Thousands of U.S. banks answer similar requests on a daily basis. *See, e.g.*, *Richmark*, 959 F.2d at 1475 ("While TFC sought a great deal of information, all of it was directed at identifying Beijing's current assets in order to execute the judgment. Further, TFC's request was reasonably limited in time: it sought only recent financial documents.").

c. Factor Three: the records originated outside the United States

The bank records originated in China. This is the sole factor that weighs in favor of [redacted]

d. Factor Four: the government has the discretion to choose between available discovery methods, particularly when alternate means have a low likelihood of success

In this case, an official request via the MLAA with China is not a viable alternative. Generally, comity requires that, "[i]f the information sought can easily be obtained elsewhere, there is little or no reason to require a party to violate foreign law." *Richmark Corp.*, 959 F.2d at 1475. While the MLAA with China remains an effective law-enforcement tool in some investigations, China has not provided – via the MLAA channel – records similar to those subpoenaed in this investigation in at least 10 years. To the contrary, in the past 10 years, previous MLAA requests for production of similar records to China remain unanswered. Accordingly, this

factor counsels in favor of disclosure. *See, e.g.*, *Richmark Corp.*, 959 F.2d at 1476 ("The absence of other sources for the information TPC seeks is a factor which weighs strongly in favor of disclosure."); *Strauss*, 249 F.R.D. at 442 ("plaintiffs do not have direct or ready access to Credit Lyonnais's records through means other than discovery demands").

Relatedly, the United States has discretion to choose between available discovery methods. *See In re Sealed Case*, 832 F.2d at 1283 (court recognized that there was no basis in finding that treaty with Switzerland supplied the exclusive vehicle for obtaining documents in Switzerland). This is particularly true when the chosen method provides for sanctions for noncompliance, which is a real risk here, whereas the alternative method requested by the bank provides no sanction. *See Nike*, 2018 WL 4907596, at *16 (noting that in prior civil cases where plaintiff sent a request for bank records via the Hague Convention to the Chinese government for execution, the Chinese Ministry of Justice stated that it only "partly executed" request) (internal citations omitted). Unlike with a MLAA, administrative subpoenas have a sanctions mechanism for noncompliance. *See* 31 U.S.C. § 5318(k)(3)(C) (granting the Executive the power to order the termination of the foreign bank's correspondent banking relationship if the foreign bank failed to comply with the administrative subpoena). Moreover, '"as a general matter, '" the outcome of a request to the Chinese Ministry of Justice pursuant to a treaty such as the Hague Convention "'will undeniably result in delays of unknown, and perhaps considerable, duration. '" *Nike*, 2018 WL 4907596, at *16 (quoting *Gucci*, 2011 WL 6156936, at *8). Requiring the United States to request the information through MLAA channels with China is inconsistent with the overriding interest in "the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and *to eliminate unjustifiable expense and delay*." Fed. R. Crim. P. 2 (emphasis added); *see also Societe Nationale*, 482 U.S. at 542-43 (Court found that a rule of first resort to

the Hague Convention would be "inconsistent with the overriding interest in the 'just, speedy, and inexpensive determination' of litigation in our courts") (internal citation omitted); *In re Sealed Case*, 832 F.2d at 1284 (treaty with Switzerland for assistance in criminal matters could not block enforcement of subpoena seeking documents).

e. Factor Five: noncompliance would undermine national security of the United States, while compliance would not substantially harm China

The balance of national interests is arguably the most important comity factor. *See Richmark Corp.*, 959 F.2d at 1476. It weighs heavily in favor of disclosure in instances of federal criminal investigations, where the requested documents are highly important to the investigation. *See, e.g., In re Grand Jury Subpoena Dated Aug. 9, 2000*, 218 F. Supp. 2d at 562 (United States has an "unquestionably strong" interest in enforcing its criminal laws). Indeed, courts have consistently concluded that "the United States' interest in law enforcement outweighs the interests of the foreign states in bank secrecy and the hardships imposed on the entity subject to compliance." *Sedaghaty*, No. 6:05-cr-60008, ECF No. 277, at 16 (E.D. Or. Feb. 26, 2010); *see, e.g., Linde v. Arab Bank, PLC*, 706 F.3d 92, 95, 111-12 (2d Cir. 2013) ("foreign jurisdictions' interests in enforcing their bank privacy laws" outweighed by United States' interest in "arming private litigants with the 'weapons available in civil litigation' to deter and punish the support of terrorism"); *Davis*, 767 F.2d at 1034-35 (Cayman Islands' interest in bank secrecy overridden by United States' "strong" interest in enforcing criminal laws); *United States v. Bank of Nova Scotia ("Bank of Nova Scotia I")*, 691 F.2d 1384, 1389-91 (11th Cir. 1982) (Bahamian bank secrecy law overridden by grand jury's need for financial information in narcotics and tax investigation); *United States v. Field*, 532 F.2d 404, 407-10 (5th Cir. 1976) (Cayman Islands' bank secrecy laws overridden by needs of grand jury investigating financial crimes); *United States v. First Nat'l City*

Bank, 396 F.2d 897, 900-05 (2d Cir. 1968) (German bank secrecy laws overridden by grand jury's interest in investigating criminal violations of antitrust laws, the "cornerstones of this nation's economic policies"); *Strauss v. Credit Lyonnais, S.A.*, 249 F.R.D. 429, 443 (E.D.N.Y. 2008) ("The interests of the United States and France in combating terrorist financing . . . outweigh the French interest in bank secrecy laws and its generally-asserted interest in 'sovereignty.'"); *In re Grand Jury Subpoena dated Aug. 9, 2000*, 218 F. Supp. 2d at 554 ("Courts consistently hold that the United States interest in law enforcement outweighs the interests of the foreign states in bank secrecy and the hardships imposed on the entity subject to compliance.").

Moreover, the hardships, if any, that [redacted] faces are minimal. *See Nike*, 2018 WL 4907596, at *18 (relying on expert opinion in finding that "it is unlikely that the [Chinese] Banks or their employees would face serious repercussions if ordered to comply with the Subpoenas");[15] *see also Gucci*, 2011 WL 6156936, at *11 ("Bank[s] ha[ve] cited no specific instance in which a Chinese financial institution was punished for complying with a foreign court order directing the production of documents.").

In sum, the question at the core of this investigation—e.g., how North Korea, a nuclear armed state that is a state sponsor of terrorism, financed its weapons of mass destruction program in spite of extant sanctions—is vital to the United States' national security interest. Accordingly, the "vital role" of the grand jury's "investigative function to our system of jurisprudence" and the "crucial importance" of the United States' interest in combatting the threat posed by North Korean sanctions violations as well as overall money laundering, outweighs China's "interest in protecting

[15] Relying on declaration of Donald Clarke (Dkt. 83), a Professor of Law at the George Washington University School of Law and consultant in the field of Chinese Law.

the [purported] right of privacy incorporated into its bank secrecy laws." *Nova Scotia I*, 691 F.2d at 1391.

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Because of "the obvious importance of the requested documents []; the lack of a proven, viable alternative means by which those documents may be secured without substantial delay and imposed limitations; the specific focus of the document requests; and, on the whole, the greater national interest of the United States []," the balance of interests in the comity analysis weighs in favor of compelling production of the Chinese bank records. *Nike*, 2018 WL 4907596, at *18.

3. *In re Sealed Case* does not limit the Court's Authority to Compel Production

As reflected above, precedent from the Circuit and this Court demonstrate that the United States has the authority to compel the production of records located overseas. *See In re Sealed Case*, 832 F.2d at 1284; *In re Search of Information Associated with [Redacted]@Gmail.com*, 2017 WL 3445634, at *14. And, an older *per curiam* Circuit decision is not controlling here. *In re Sealed Case*, 825 F.2d 494 (D.C. Cir. 1987). That case involved a subpoena to a "bank owned by the government of Country X" seeking documents created and held in Country Y, a country that forbade the disclosure of information about banking transactions or bank documents created in Country Y. *Id.* The government also issued a subpoena to the bank's manager, who had worked in Country Y. *Id.* The manager agreed to testify before the grand jury about "his knowledge of the targets and their activities that he learned in his personal capacity." *Id.* at 495. However, the manager "refused to testify before the grand jury about the targets' banking activities or produce documents on the ground that to do so would violate Country Y's banking secrecy laws." *Id.* at 498. Critically, the United States did *not dispute* this assessment of Country Y's bank secrecy

laws. *Id.* After the United States obtained an order compelling the bank to surrender its documents, the bank refused and the district court found it in civil contempt. *Id.* at 496.

On appeal, the D.C. Circuit declared that it was not "decid[ing] the general issue of whether a court may order action in violation of foreign laws," and instead concluded that "even if a court has the power to issue such contempt orders under certain circumstances, on the particular facts of this case the order should not have issued." *In re Sealed Case*, 825 F.2d at 497-98. Those "particular facts" included that: the "government concede[d] that it would be impossible for the bank to comply with the contempt order without violating the laws of Country Y on Country Y's own soil"; and the bank manager's availability to "testify to as many of the facts that the grand jury may wish to ascertain" meant that the grand jury was not left "empty-handed" by reversal of the contempt order. *Id.* at 498-99.

For a number of reasons, this case, which involves an administrative subpoena, is not like *In re Sealed Case*, which dealt with the limits of grand jury subpoena. First, the statutory authority for the administrative subpoena specifically contemplates the collection of overseas bank records as requested here. In *Sedaghaty*, the court exercised such authority, even when contrary to Saudi Arabia's bank secrecy laws. *See Sedaghaty*, No. 6:05-cr-60008, ECF No. 277, at 15-18. Second, Chinese bank secrecy laws are not so robust as to preclude disclosure. *See Gucci*, 135 F. Supp. 3d at 101-03. In fact, courts have compelled production of Chinese bank records in spite of purported Chinese bank secrecy concerns in cases involving civil subpoenas, let alone criminal administrative subpoenas. *See id.* Third, the government does not have access to the testimony of a bank employee about his or her knowledge of the targets of this investigation and its activities. Additionally, the Circuit noted that the analysis would be different if the bank was more than a mere custodians of records. Here the government has information from a reliable confidential

source that Chinese banks collect due diligence records when conducting transactions for North Korean customers. The requested records are critical in determining what, if any, knowledge the bank had of the illicit activity being investigated.

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*. Although the Circuit opined that "it causes us considerable discomfort to think that a court of law should order a violation of [foreign] law," *In re Sealed Case*, 825 F.2d at 498, the Supreme Court had already declared that a country's "blocking statutes" could "not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence *even though the act of production may violate that statute*," *Societe Nationale*, 482 U.S. at 544 n.29 (emphasis added). As noted above in greater detail, neither comity, nor a concern for foreign law justifies allowing foreign banks to facilitate laundering money in the United States and violating U.S. sanctions. If a foreign bank does not wish to subject itself to the enforcement of U.S. criminal laws for conduct that occurs in the United States, that bank should neither establish branches in the United States nor conduct international U.S. dollar transactions, which necessarily travel through the United States. *See Nike*, 2018 WL 4907596, at *17 (Chinese banks' choice to do business in the United State and avail themselves of the myriad benefits that come with doing so, necessarily limits the force of the banks' arguments regarding China's superior bank secrecy interest) (internal quotation marks and citation omitted); *Gucci*, 2011 WL 6156936, at *10 ("Having made such a determination, and reaped the rewards that flow therefrom, the Bank[s] can hardly hide behind Chinese bank secrecy laws as a shield against the requirements faced by other United States-based financial institutions."). To find otherwise would create a perverse incentive for banks to station their records overseas, which would then insulate them for producing records, and allow for a drastic

oversight of the U.S. financial system. *See In re Sealed Case*, 832 F.2d at 1284 (court noted that if a party could so easily avoid discovery by storing records overseas and then insisting on a MLAT for production, "every United States company would have a foreign affiliate for storing sensitive documents") (internal citation and quotation marks omitted).

C. Requested Relief

The government's right and duty to inquire into the existence of possible criminal conduct is meaningless without the authority to require the production of evidence. *See Branzburg v. Hayes*, 408 U.S. 665, 688 (1972); *United States v. Mandujano*, 425 U.S. 564, 571 (1976). The government effects this enforcement via a motion to compel compliance. *See Gelbard v. United States*, 408 U.S. 41, 60 (1972) ("The usual procedure is, upon the Government's motion, to have a court order a grand jury witness to testify upon penalty of contempt for noncompliance."); *Sedaghaty*, No. 6:05-cr-60008, ECF No. 277, at 1. Once the motion is filed, and any related hearing held (if deemed necessary), the Court then enters an order compelling production.

The remedy for a violation of a court's order compelling compliance with a subpoena is civil contempt, including the imposition of coercive fines. *See In re Grand Jury Proceedings Bank of Nova Scotia*, 740 F.2d at 832-33 (coercive fine was not improper where bank failed to comply fully with subpoena); *see also United States v. Mongelli*, 2 F.3d 29, 30 (2d Cir. 1993) (*per curiam*) (noting that the district court may impose a coercive fine on a recalcitrant witness under 18 U.S.C. § 1826). Here, imposition of a daily $50,000 fine would be the least coercive sanction that is reasonably calculated to compel [redacted] to comply with the administrative subpoena. *Cf. Matter of Marc Rich & Co., A.G.*, 707 F.2d 663, 670 (2d Cir. 1983) (daily coercive fine of $50,000 imposed on Swiss financial institution that refused to comply with grand jury subpoena to produce records stored overseas); *Gucci Am., Inc. v. Weixing Li*, 1:10-cv-4974, D.E. #176 (imposing daily fine of

$50,000 on Chinese Bank for failing to produce overseas records, and awarding attorney's fees related to contempt motion).[16] Such a fine is both appropriate and available as a sanction for continued noncompliance, and it is reversible only for abuse of discretion. *See, e.g. United States v. United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947) (civil contempt sanctions are available, but they must only be compensatory or coercive, and may not be punitive); *In re Grand Jury Impaneled January 21, 1975 (Freedman),* 529 F.2d 543, 550-51 (3d Cir. 1976). [redacted] may avoid future liability by promptly complying with the administrative subpoena. If it fails to comply with the requested order to compel, the government will then move for a finding of contempt, and imposition of a daily fine.

Respectfully submitted,

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/s/

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[16] The Chinese bank produced a set of records approximately two months after the judge imposed the daily fine. *See Gucci Am., Inc. v. Weixing Li*, 1:10-cv-4974, D.E. #196.

Certificate of Service

I certify that on the 29th day of November, 2018, service was made of a copy of the foregoing motion to compel via electronic mail and via first class mail to Hank Bond Walther, 51 Louisiana Ave., N.W., Washington, D.C. 20001, hwalther@jonesday.com and Samidh Guha, 250 Vesey Street, New York, NY 10281, sguha@jonesday.com.

/s/
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