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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 UNITED STATES OF AMERICA,
10
11 Plaintiff,
12 v.
13 ARASH GHahreMAN (4),
14 Defendant.

Case No.: 13CR4228-DMS
UNITED STATES' SUPPLEMENTAL
BRIEFING RE RESPONSE IN OPPOSITION
TO DEFENDANT GHahreMAN'S MOTIONS TO
DISMISS COUNTS 7 THROUGH 9 OF THE
SUPERSEDING INDICTMENT

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16 The UNITED STATES OF AMERICA, by and through its counsel, Laura
17 E. Duffy, United States Attorney, and Shane Harrigan, Assistant U.S.
18 Attorney, hereby files this Supplemental Briefing to its response in
19 opposition to Defendant Arash Ghahreman's motion to dismiss Counts 7
20 through 9 of the Superseding Indictment. The United States' response
21 in opposition is based upon the files and records of this case,
22 together with the attached Statement of Facts and Supplemental
23 Memorandum of Points and Authorities.

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I.

STATEMENT OF FACTS

A. INTERNATIONAL MONEY LAUNDERING CHARGES

1. Counts 7 through 9

Counts 7 through 9 of the Superseding Indictment charge defendant Arash Ghahreman ("GHAHREMAN") with international money laundering. Specifically, Count 7 charges that from beginning at a date unknown and continuing up to June 17, 2013, GHAHREMAN conspired with Koorush Taherkhani and others to transfer and transmit funds to a place in the United States from and through a place outside the United States with the intent to promote the carrying on of a specified unlawful activity ("SUA"), in violation of 18 U.S.C. §§ 1956(h) and 1956(a)(2)(A). Counts 8 and 9 charge substantive violations of international money laundering - that is, on March 6 and June 17, 2013, GHAHREMAN aided and abetted the transmittal and transfer of \$18,000 and \$32,500, respectively, to a place in the United States from and through a place outside the United States with the intent to promote the carrying on of a SUA, all in violation of 18 U.S.C. §§ 1956(a)(2)(A) and 2.

2. Factual Summary

The international money laundering charges arise from GHAHREMAN's actions in directing and causing his coconspirator Koorush Taherkhani to wire transfer money from a bank in Dubai, United Arab Emirates, to a bank in San Diego, California, as payment for the gyrocompasses and electron tubes that he and his coconspirators sought to export unlawfully.

On January 31, 2013, GHAHRAMEN emailed the HSI undercover agent ("UCA") a scanned signed copy of the sales contract for the purchase

1 of gyrocompasses from the UCA's San Diego based company, which
2 document bore the signature of GHAHREMAN and codefendant Taherkhani.
3 Pursuant to this contract, GHAHREMAN and his codefendants agreed to
4 pay for the gyrocompasses in installment payments. Two days later, on
5 February 2, 2013, GHAHREMAN emailed the UCA and stated that he asked
6 Taherkhani to make the first installment payment (i.e. "place an order
7 transferring the first payment to your bank account as soon as
8 possible to speed up the process"). The first installment payment was
9 ten percent of the contract price for the gyrocompasses, i.e.,
10 approximately \$28,000.

11 On February 19, 2013, Taherkhani emailed the UCA (with a cc: to
12 GHAHREMAN), in which he attached a funds transfer receipt from a bank
13 in Dubai showing a transfer to the UCA bank account in the amount of
14 \$9,965.00, as a down payment for the gyrocompasses. On February 20,
15 2013, the UCA's bank account received a wire transfer in the same
16 amount from a bank in Dubai. Thereafter, on March 6, 2013, GHAHREMAN
17 and Taherkhani caused the remainder of the initial installment payment
18 to be made. On that day, GHAHREMAN sent the UCA an email in which he
19 attached a funds transfer receipt from a bank in Dubai showing the
20 transfer of \$18,000 to the UCA's bank account. That same day, the UCA
21 received an incoming wire transfer of \$18,000.00 from a bank in Dubai
22 to his San Diego bank account.

23 At the same time that GHAHREMAN and Taherkhani were attempting to
24 purchase and unlawfully export the gyrocompasses, they were also
25 attempting to purchase and unlawfully export electron tubes from the
26 United States. Ultimately, the parties agreed that as a prelude to
27 the completion of larger transactions, GHAHREMAN and codefendant Ergun
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1 Yildiz would meet with the UCA in the Nevada to view and take delivery
2 of one (1) gyrocompass and two (2) electron tubes. GHAHREMAN and his
3 codefendants agreed to make full payment for the two (2) electron
4 tubes and an additional installment payment for the gyrocompass prior
5 to exporting the items from the United States.

6 On June 13, 2013, GHAHREMAN and Yildiz met with the UCA at a
7 hotel suite in Henderson, Nevada. During that meeting, GHAHREMAN and
8 Yildiz viewed a gyrocompass and two electron tubes, which unbeknownst
9 to them were inert devices. GHAHREMAN and Yildiz discussed the
10 gyrocompass and electron tube transactions as well as future
11 transactions involving the unlawful export of goods to Iran. After
12 viewing the gyrocompass and the electron tubes, Yildiz telephoned
13 Taherkhani and informed him that they had a "good strategy" to ship
14 the gyrocompass and electron tubes out of the U.S. and confirmed that
15 Taherkhani would wire a payment of \$32,590 to the UCA's bank account.

16 On or about June 17, 2013, defendant Taherkhani caused \$32,590 to
17 be wired from a bank in Dubai to the UCA's San Diego bank account as
18 partial payment for the gyrocompass and full payment for the two
19 electron tubes. YILDIZ and GHAHREMAN then accepted delivery of the
20 gyrocompass and the two electron tubes and attempted to unlawfully
21 export the items from the U.S., via a commercial carrier, for end use
22 in Iran.

23 **B. DEFENDANT'S MOTION TO DISMISS COUNTS 7-9**

24 On December 6, 2013, GHAHREMAN filed several motions, including a
25 motion to dismiss Counts 7 through 9 of the Indictment. On December
26 13, 2013, the United States filed its Response in Opposition to
27 GHAHREMAN's motions. At the March 27, 2013, hearing on GHAHREMAN's
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1 motion, this Court requested supplemental briefing on the issue of
2 whether the money laundering statute requires that the alleged money
3 transfers to pay for the gyrocompasses and the electron tubes be
4 "separate and apart" from the charged illegal exportation activity.
5 The United States hereby files its Supplemental Briefing in opposition
6 to GHAHREMAN's motion to dismiss Counts 7 through 9 of the Superseding
7 Indictment.

8 **II.**

9 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

10 **A. THE INTERNATIONAL MONEY LAUNDERING CHARGES**
11 **(COUNTS 7, 8 AND 9) SHOULD NOT BE DISMISSED**

12 GHAHREMAN wrongly charges that, for § 1956(a)(2)(A) to apply, any
13 monetary transfer must have been "separate and apart from," not "part-
14 and-parcel," of the unlawful activity that was meant to be promoted-
15 i.e., the purchase of and attempt to export gyrocompass and the
16 electron tubes. [Defendant's Brief ("Def. Br.") at 24:16-28 and 25:1-
17 11.]

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19 As noted in the United States' initial pleadings, the transfers
20 here meet the established elements of § 1956(a)(2)(A), that is,
21 defendant must have 1) transmitted or transferred money to the U.S.
22 from a place outside the U.S., 2) with the intent to promote the
23 carrying on of a SUA. See 9th C. Model Crim. Jury Instr. § 8.148
24 (April 2011 ed.). Here, the wire transfers of monies from Dubai to
25 San Diego were plainly meant to further the purchase and illegal
26 export of the gyrocompasses and the electron tubes, in violation of 18
27 U.S.C § 554 (smuggling goods from the U.S.) and 50 U.S.C. §§ 1702 and
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1 1705 (IEEPA). Both offenses are specified unlawful activities. 18
2 U.S.C. § 1956(c)(7)(D).

3 No authority supports GHAHREMAN's suggestion that a transfer in
4 violation of § 1956(a)(2)(A) cannot arise because of or be driven by
5 the SUA that it is intended to promote. Contrary to GHAHERMAN's
6 motion, the statute's plain language only requires a transfer of funds
7 "with the intent to promote the carrying on of specified unlawful
8 activity." 18 U.S.C. § 1956(a)(2)(A). Nowhere does it require or imply
9 that it requires "a transmission that is separate and apart from the
10 unlawful activity" [See Def. Br. at 24:23-26].
11

12 Although the Ninth Circuit has not yet weighed in on the issue,
13 as the United States noted in its initial pleadings, the Second and
14 Seventh Circuits have found that for a prosecution under §
15 1956(a)(2)(A), the SUA need not be separate and distinct from the
16 financial transaction.
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18 In United States v. Piervinanzi, 23 F.3d 670 (2d Cir. 1994),
19 defendants attempted money transfers with the intent to promote the
20 same SUA - a bank fraud - that generated the illegally acquired funds
21 in the first place. The Second Circuit rejected the argument that
22 because "the overseas transfer of the bank funds[] was simply a
23 component of the bank frauds . . . there was no analytically distinct
24 'secondary' activity and thus no criminal laundering violative of §
25 1956(a)(2)." 23 F.3d at 677.
26

27 In United States v. Krasinski, 545 F.3d 546 (7th Cir. 1999),
28 defendant was a Canadian ecstasy source of supply who provided ecstasy

1 to his U.S. coconspirators/drug traffickers. In furtherance of their
2 drug operation, defendant and his coconspirators each transported or
3 transmitted the money used to purchase the ecstasy from the U.S.
4 across the international border to Canada. Defendant was convicted of
5 conspiracy to distribute ecstasy and international money laundering
6 charges in violation of § 1956(a)(2)(A). On appeal, defendant argued
7 that his conduct did not qualify as money laundering under subsection
8 (a)(2)(A). In rejecting defendant's argument, the Seventh Circuit
9 found that there is no requirement under subsection (a)(2)(A) that the
10 transmission must be distinct from the SUA, noting that:

12 "the promotion element [of the money laundering statute] can
13 be met by 'transactions that promote the continued
14 prosperity of the underlying offense,' i.e., that at least
15 some activities that are part and parcel of the underlying
16 offense can be considered to promote the carrying on of the
17 unlawful activity."

18 545 F.3d at 551. (internal citations omitted)(emphasis added). As
19 such, the Seventh Circuit found that the fact that "co-conspirators in
20 the United States brought or sent him money in Canada, and, in return,
21 he supplied them with Ecstasy pills" was "enough" to satisfy the
22 promotion requirement of subsection (a)(2)(A). Id.

23 The cases cited by GHAHREMAN for the proposition that the "the
24 legislative history of the money laundering statute indicates that
25 Congress passed [§ 1956(a)(2)(A)] to punish conduct separate from the
26 underlying criminal conduct, not to create an alternative charge aimed
27 at punishing the same conduct twice" are inapposite. [Def. Br. at
28 24:25-28 and 25:1.]. Each of those cases cited by GHAHREMAN involves

1 a different provision of the money laundering statute than the
2 provision at issue here.¹ The rationale for reading those other
3 provisions of § 1956 to require a clear distinction between the SUA
4 and laundering activity does not apply to subsection (a)(2)(A), the
5 offense GHAHREMAN is charged with. The plain text of those other
6 provisions expressly requires that the offense involve "proceeds" of
7 unlawful activity followed by a prohibited transaction. See, e.g.,
8 subsections (a)(1)(A) and (a)(2)(B). As the Second Circuit has
9 recognized, "[b]y contrast, [subsection (a)(2)(A)] contains no
10 requirement that 'proceeds' first be generated by unlawful activity,
11 followed by a financial transaction with those proceeds, for criminal
12 liability to attach." Piervinanzi, 23 F.3d at 680. Rather,
13 subsection (a)(2)(A) only requires the transfer of monies with a
14 specific intent. "The fact that Congress uses different language in
15 defining violations in a statute indicates that Congress intentionally
16 sought to create distinct offenses." 23 F.3d at 680 ("The clearly
17 demarcated two-step requirement which Piervinanzi advocates in the
18 construction of § 1956(a)(2) is apparent in other provisions of the
19 federal money laundering statutes, but not in § 1956(a)(2). We have no
20 authority to supply the omission."); see also Krasinski, 545 F. 3d at
21 551 ("The absence of a 'proceeds' requirement in section 1956(a)(2)(A)
22 reflects that Congress decided to prohibit any funds transfer out of
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¹ United States v. Savage, 67 F.3d 1435, 1441 (9th Cir. 1995)
26 (addressing subsection (a)(2)(B)); and United States v. Brown, 186
27 F.3d 661, 667 (5th Cir. 1999), United States v. Febus, 218 F.3d 784,
28 789-90 (7th Cir. 2000), and United States v. Santos, 553 U.S. 507, 509
(2008) (each addressing subsection 1956(a)(1)(A)).

1 the country that promotes the carrying on of certain unlawful
2 activity.").

3 Finally, in a Southern District of California case involving
4 identical export and international money laundering charges, Judge
5 Lorenz rejected an identical argument made by defendant to dismiss
6 international money laundering charges under subsection (a)(2)(A).
7 United States v. Nazemzadeh, 2014 WL 310460 *12 (S.D. Cal. Jan. 15,
8 2014). In Nazemzadeh, defendant caused a wire transfer of \$21,400 from
9 a company in Netherlands to a San Diego bank account to facilitate the
10 unlawful export of an MRI coil. In rejecting defendant's motion to
11 dismiss the international money laundering count, Judge Lorenz
12 similarly distinguished subsection (a)(2)(A) from other subsections of
13 the money laundering statute and adopted the reasoning of the Seventh
14 and Second Circuits finding that "the transmission of the \$21,400
15 advanced the goals of the unlawful exportation of the MRI coil without
16 a license and therefore, the wire transfer did not need to constitute
17 a separate offense from the underlying offense." Id. at *13.

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IV.

CONCLUSION

For the foregoing reasons, the United States respectfully requests this Court to deny GHAHREMAN's motion to dismiss Counts 7 through 9 of the Superseding Indictment.

DATED: May 1, 2014.

Respectfully submitted,

LAURA E. DUFFY
United States Attorney

/s/Shane P. Harrigan
SHANE P. HARRIGAN
Assistant United States Attorney

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 13cr4228-DMS
)	
Plaintiff,)	
)	
v.)	
)	CERTIFICATE OF SERVICE
ARASH GHahreman (4),)	
)	
Defendant.)	
_____)	

I, the undersigned declare under penalty of perjury, that I am over the age eighteen years and I am not a party to the above-entitled action; that I served the following document: United States' Supplemental Briefing Re Response in Opposition to Defendant Ghahreman's Motion to Dismiss Counts 7 through 9 of the Superseding Indictment, in the following manner: by electronically filing with the U.S. District Court for the Southern District of California using its ECF System, which electronically notifies them.

**Ellis M. Johnston, Esq.,
Attorney for the Defendant**

Dated: May 1, 2014.

/s/Shane Harrigan
SHANE HARRIGAN
Assistant U.S. Attorney