

In the Supreme Court of the United States

No. 24 _____

TÜRKIYE HALK BANKASI A.Ş., APPLICANT

v.

UNITED STATES OF AMERICA

**APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**

To the Honorable Sonia Sotomayor
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Second Circuit

Pursuant to Rules 13.5, 30.1, and 30.2 of this Court, counsel for Türkiye Halk Bankası A.Ş. (Halkbank) respectfully requests a 60-day extension of time, to and including May 5, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. On April 19, 2023, this Court affirmed in part and vacated and remanded in part the Second Circuit’s prior decision in this case. App., *infra*, 1a-26a. The court of appeals entered its judgment on remand on October 22, 2024. *Id.* at 27a-70a. Rehearing and en banc review were denied on December 6, 2024. *Id.* at 71a. Unless extended, the time for filing a petition for a writ of certiorari will expire on March 6, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case arises from the criminal prosecution of Halkbank, a sovereign instrumentality and state bank owned by the Republic of Türkiye. App., *infra*, 5a, 30a. The U.S. Government seeks, for the first time in world history, to try criminally a foreign sovereign

instrumentality in a domestic court. The U.S. Government concedes that foreign sovereigns are entitled to absolute criminal immunity, yet argues that this absolute immunity does not extend to sovereign instrumentalities acting under sovereign direction. *Id.* at 53a. This Court granted Halkbank’s first certiorari petition in 2022 and thereafter remanded the matter to the Second Circuit to reconsider Halkbank’s argument that it is immune from prosecution at common law. On remand, the Second Circuit held again that it was bound to defer conclusively to the U.S. Government’s charging decision and to deny absolute immunity. This case raises profound questions regarding U.S. and international immunity law as well as the constitutional separation of powers.

2. Halkbank is a Turkish state bank created by the Turkish legislature and under complete government control. Halkbank C.A. Br. 6; Türkiye C.A. Br. 12-14. It has no branches or employees in the United States. Türkiye C.A. Br. 21. Halkbank serves numerous government functions in Türkiye, including managing government development and social welfare programs, providing natural disaster relief, and collecting taxes. Halkbank C.A. Br. 5-7; Türkiye C.A. Br. 7-14. The Republic of Türkiye considers Halkbank “an arm of” and “an integral part of the Republic of Türkiye.” Türkiye C.A. Br. 8, 16. “Türkiye created the [b]ank to function as an extension of itself.” *Id.* at 16.

A grand jury returned a six-count indictment in October 2019 charging Halkbank with (1) conspiracy to defraud the United States; (2) conspiracy to violate the International Emergency Economic Powers Act; (3) bank fraud; (4) conspiracy to commit bank fraud; (5) money laundering; and (6) conspiracy to commit money laundering. App., *infra*, 34a. Halkbank pleaded not guilty to all counts in March 2020. C.A. App. 9.

3. On August 10, 2020, Halkbank moved to dismiss the indictment on several grounds, including that Halkbank is immune from criminal prosecution on the ground of foreign sovereign immunity. App., *infra*, 34a; C.A. App. 13. The district court denied Halkbank’s motion on October 1, 2020. App., *infra*, 34a-35a.

Halkbank appealed the district court's order insofar as the court had denied Halkbank's motion to dismiss on sovereign immunity grounds. App., *infra*, 35a. On October 22, 2021, the court of appeals affirmed. *Id.* It first held that Halkbank was not immune from prosecution under the Foreign Sovereign Immunities Act (FSIA). *Id.* It next held that Halkbank was not entitled to immunity under the common law, reasoning that “at common law, sovereign immunity determinations were the prerogative of the Executive Branch,” and thus were binding on the courts, *id.* at 35a-36a, even though there was no precedent at common law for courts to defer to a decision of the Executive to prosecute a foreign sovereign, *see In re Investigation of World Arrangements*, 13 F.R.D. 280, 291 (D.D.C. 1952); *see also Berizzi Bros. Co. v. The Pesaro*, 271 U.S. 562, 574 (1926).

On May 13, 2022, Halkbank filed its first petition for a writ of certiorari with this Court, which was granted on October 3, 2022.

On April 19, 2023, this Court vacated and remanded in relevant part. App., *infra*, 4a. It held that the FSIA is a purely civil statute, but concluded the Second Circuit “did not fully consider the various arguments regarding common-law immunity that the parties press[ed] in [the Supreme] Court.” *Id.* at 18a. It remanded the matter back to the Second Circuit to reconsider the parties' common-law arguments. *Id.*

4. On remand, Halkbank and the government submitted briefs to the Second Circuit and that court heard argument. On October 22, 2024, the Second Circuit affirmed on the same grounds as before. The court again concluded, based on what it described as “binding” Second Circuit precedent, App., *infra*, 43a n.5, that it must defer to the Executive's decision to indict, *id.* at 44a-53a, and that the Executive's determination was “consistent” with common-law immunity, *id.* at 46a. Although the court of appeals acknowledged that foreign sovereigns are entitled to absolute criminal immunity, including for commercial acts, it held that it must defer to the Executive's view that sovereign *instrumentalities* receive only limited immunity. *Id.* at 31a-32a, 53a. And rejecting Halkbank and Türkiye's

views, it deferred to the Executive's view that Halkbank's conduct was commercial, not sovereign. *Id.* at 61a-70a.

Halkbank petitioned for panel and en banc rehearing on November 4, 2024, which the Second Circuit denied on December 6, 2024. *Id.* at 71a. Halkbank thereafter moved to stay the mandate pending the filing and disposition of a petition for a writ of certiorari, to which the government consented. On December 18, 2024, the Second Circuit stayed the mandate.

5. Counsel for applicant respectfully requests a 60-day extension of time, to and including May 5, 2025, within which to file a petition for a writ of certiorari. As noted earlier, this prosecution is unprecedented. The case also presents complex issues concerning separation of powers, the common law of sovereign immunity, the international law that influences the U.S. common law of immunity, and the protections given foreign sovereign instrumentalities for conduct within their sovereign's territory. The Second Circuit's deference holding is in conflict with basic tenets of our system of divided government. And the Second Circuit's substantive analysis of foreign sovereign immunity law breaks new ground in several ways, including by extending the commercial-activities exception to the criminal context for the first time and in holding that instrumentalities are entitled to less protective immunity from jurisdiction—neither of which has precedent in U.S. or international law. Among other issues, the Second Circuit's decision conflicts with the decision of the U.S. Court of Appeals for the Fourth Circuit in *Yousuf v. Samantar*, 699 F.3d 763, 773 (4th Cir. 2012), which held that Executive immunity determinations are generally *not* entitled to conclusive deference.

The undersigned counsel of record also has several proximate briefing deadlines between now and the current filing deadline. These include a January 27, 2025, filing deadline for a reply brief in support of summary judgment in *Philip Morris USA, Inc. v. U.S. Food & Drug Administration*, No. 2:24-cv-00143 (S.D. Ga.); a February 24, 2025, filing deadline

for an opening brief in *Siren Retail Corp. v. NLRB*, Nos. 24-6926, 24-7342 (9th Cir.); a February 24, 2025, opening brief deadline in *Starbucks Corp. v. NLRB*, No. 24-60500 (5th Cir.); and a February 28, 2025, opening brief deadline in *Starbucks Corp v. NLRB*, No. 24-60516 (5th Cir.).

Undersigned counsel also must assist in preparation for oral argument in *Philip Morris USA Inc. v. U.S. Food & Drug Administration*, No. 2:24-cv-00143 (S.D. Ga.), which is to occur on February 26, 2025; and has oral argument in *Cantero v. Bank of America, NA & Hymes v. Bank of America, NA*, Nos. 21-400, 21-403 (2d Cir.), on March 3, 2025. Additionally, other trial and appellate co-counsel, who have their own prior commitments, will also require time to review the draft petition.

Finally, as Halkbank has no branches, offices, or employees in the United States, and the Turkish-speaking Halkbank officials overseeing this litigation are located more than 5,000 miles and eight time zones away in Istanbul, preparation for U.S. legal proceedings take significantly longer than they would for English-speaking U.S. clients.

Additional time is therefore needed to prepare and print the petition in this case.

Respectfully submitted,

/s/ Lisa S. Blatt

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CORPORATE DISCLOSURE STATEMENT

Applicant Türkiye Halk Bankası A.Ş. is 91.49% owned by the non-party Turkish Wealth Fund, which is part of and owned by the Turkish State. No publicly held corporation owns 10% or more of the stock of non-party Turkish Wealth Fund.

/s/ Lisa S. Blatt _____

LISA S. BLATT