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An Unforeseen Obstacle? How the Doctrine of Foreign Sovereign Immunity May Impede the DOJ's Enforcement Efforts Against Foreign Actors

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By Andrew St. Laurent, Joseph DeBlasi

On May 12, 2025, Matthew R. Galeotti, Head of the Criminal Division of the Department of Justice, issued a [department-wide memorandum](#) setting forth the department's enforcement priorities in the white-collar crime sphere.

In it, the department announced an effort to combat crime that “poses a significant threat to U.S. interests,” including the “enabling of shadow-banking and sanctions evasions by hostile nation-states and terror regimes.” Galeotti wrote that the department will prioritize ten high-impact areas, many of which are directed towards foreign actors.

Some areas include “financial institutions and their insiders that that commit sanctions violations”; “[c]omplex money laundering, including Chinese money laundering organizations, and other organizations involved in laundering funds used in the manufacturing of illegal drugs”; and “[b]ribery and associated money laundering that impact U.S. national interests[.]”

A potential obstacle to these enforcement efforts is the doctrine of foreign sovereign immunity. This doctrine, as its name suggests, has been used by courts to grant judicial immunity to foreign states, their instrumentalities, and their respective heads of state.

The U.S. Supreme Court recently grappled with this doctrine in *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264 (2023), which may provide insight as to how courts will address future actions brought as a result of the Galeotti memorandum. The memorandum is likely well-supported by existing law regarding foreign sovereign immunity, which gives considerable deference to decisions by the Executive.

Turkiye Halk Bankasi and the Foreign Sovereign Immunities Act

In *Turkiye Halk Bankasi*, the United States indicted Halkbank, a bank owned by the Republic of Turkey, for conspiring to evade U.S. sanctions against Iran. The indictment alleged Halkbank laundered billions of dollars of Iranian oil and gas proceeds through the global financial system in violation of U.S. sanctions.

Halkbank moved to dismiss the indictment, setting forth two arguments grounded in the foreign sovereign immunity doctrine. First, Halkbank claimed that as an instrumentality of a foreign state, it was immune from criminal prosecution under the Foreign Sovereign Immunities Act (FSIA). Second, it argued the doctrine of common-law foreign sovereign immunity shielded it from prosecution.

In its *Turkiye Halk Bankasi* opinion, the Supreme Court explained that the FSIA codifies a baseline principle of immunity for foreign states and their instrumentalities. From this baseline, the FSIA sets forth exceptions to that principle, including, for example, commercial activities. 28 U.S.C.A. §1605(a)(2).

Because the Supreme Court has consistently maintained that the FSIA only applies in civil actions, the court rejected Halkbank's attempt to extend the act's grant of immunity to foreign states or instrumentalities in criminal proceedings.

Specifically, it held "it is not our role to rewrite the FSIA based on purported policy concerns that Congress and the president have not seen fit to recognize." *Turkiye Halk Bankasi*, 598 U.S. at 280. The court remanded the common-law arguments.

Common-Law Foreign Sovereign Immunity for State-Owned Entities

On remand, the Second Circuit held Halkbank should not be afforded common-law foreign sovereign immunity. *United States v. Bankasi*, 120 F.4th 41 (2d Cir. 2024). The court found, as was the traditional practice prior to the FSIA, "in the common-law context, we [still] defer to the Executive's determination of the scope of immunity." *Id.* at 48 (cleaned up).

Proceeding under this approach, the court found that by bringing the criminal action, the Executive Branch had assessed the prosecution's impact on its diplomatic relations and concluded that foreign policy concerns should not bar the action.

The court further held that the Executive Branch's determination is owed deference in both seeking to grant or deny immunity, and applies equally to criminal and civil cases. Lastly, it considered the nature of the conduct alleged, which the court categorized as commercial.

Because commercial activity is not a "strictly political or public act" that has historically been entitled to immunity, the court found no reason to deny deference. *See Heaney v. Gov't of Spain*, 445 F.2d 501, 503-504 (2d Cir. 1971) (finding a contract by the Spanish government to "generate adverse publicity" against the British government was a political act entitled to immunity).

However, the court left open the question of "whether deference to the Executive in this context should be cabined if, unlike here, the Executive's denial of immunity to a foreign sovereign derogated from the common law[.]" *United States v. Bankasi*, 120 F.4th at 59.

Thus, a scenario may exist where the Executive Branch decides an indictment/prosecution should move forward, but the court decides that decision runs afoul of the common-law doctrine.

An example of this would be an attempt to prosecute a state-owned entity engaged in a "strictly political or public act," such as "acts concerning diplomatic activity." Although at least one case

has subsequently evaluated *Bankasi*, no court has yet squarely addressed this issue. *United States v. Pangang Grp. Co., Ltd.*, 135 F.4th 1142 (9th Cir. 2025).

Common-Law Foreign Sovereign Immunity for Individual Foreign Actors

Other courts have evaluated this doctrine through the lens of individual foreign actors. For example, in *Samantar v. Yousuf*, 560 U.S. 305 (2010), the former Prime Minister of Somalia sought to invoke FSIA immunity to shield himself from a civil lawsuit.

The Court found he was not entitled to FSIA immunity, but, like *Turkiye Halk Bankasi*, the U.S. Supreme Court did not decide whether he was entitled to common-law immunity and remanded the issue.

The Fourth Circuit, holding that “the common law, not the FSIA, continues to govern foreign official immunity,” denied immunity. *Yousuf v. Samantar*, 699 F.3d 763, 768 (4th Cir. 2012). Samantar argued he was entitled to immunity under two different common law doctrines: 1) “head-of-state” immunity; and 2) “foreign official” or “official acts” immunity. “Head-of-state” immunity is a “doctrine of customary international law pursuant to which an incumbent head of state is immune from the jurisdiction of a foreign state's courts.”

Conduct-based immunity, such as “foreign official” or “official acts” immunity, holds that “foreign officials are immune from claims arising out of their official acts while in office.” Because the U.S. never recognized Samantar as the official head of Somalia, he was not entitled to head-of-state immunity.

Also, because Samantar was alleged to have engaged in acts that are per se unattributable to the Sovereign, such as torture, genocide, and indiscriminate executions, he was not entitled to conduct-based immunity. *But see Does 1-5 v. Obiano*, 138 F.4th 955, 959 (5th Cir. 2025) (granting immunity to Rwandan president and finding many jurisdictions do not recognize this per se carve-out for immunity).

Similarly, in *United States v. Cordones*, No. 11 CR. 205 (AKH), 2022 WL 815229 (S.D.N.Y. Mar. 17, 2022), a military officer of Venezuela was indicted for conspiratorial federal narcotics charges. He moved to dismiss the indictment, claiming he was “entitled to immunity from prosecution under the common law,” for engaging in conduct he undertook “in his official capacity as a uniformed military officer of Venezuela and in furtherance of Venezuela’s foreign sovereign policy.”

The court rejected this argument and denied immunity. First, it reasoned that in choosing to prosecute the charges, the Executive had declined to grant immunity. Second, the court dispelled the notion that acts in furtherance of a narcotics conspiracy were official acts, stating “acts that flagrantly violate a foreign state’s own laws cannot, at the same time, constitute official acts entitled to deference.”

Foreign Sovereign Immunity and the Galeotti Memorandum

Revisiting the Galeotti memorandum, there are many well-settled principles that will shape forthcoming prosecutions against foreign actors.

The cases discussed above make clear that, for example: foreign state-owned entities cannot assert immunity from criminal prosecution under the FSIA; the common-law, not the FSIA, governs the immunity of foreign officials; parties indicted for any act that is not a “strictly political or public act,” such as money laundering and evading sanctions, cannot assert common-law foreign sovereign immunity; and individual actors cannot assert conduct-based immunity for actions that flagrantly violate the laws of their own state.

Thus, it appears that analogous future actions will not be barred by this doctrine.

Assuming foreign actor prosecutions increase under this administration, there is a heightened chance that new cases will not fit into these established principles. One scenario is a foreign official who facilitates bribes in a way that impacts U.S. interests—one of the high-impact areas named in the Galeotti memorandum.

This activity is arguably “purely political” in nature, and such acts have historically been granted immunity. Given this ambiguity, there is a likely chance that courts will build upon this authority and draft new law on these issues in the coming years.

Andrew St. Laurent is a partner and white-collar defense litigator with Harris St. Laurent & Wechsler. Joseph DeBlasi is an associate with the firm.

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