UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, **v.** **FIROZ PATEL,** **Defendant.**	**Criminal No. 23-cr-166 (DLF)**

GOVERNMENT'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS RE: DOUBLE JEOPARDY (ECF No. 68)

A defendant commits a crime; he is convicted and sentenced. Later, he commits new crimes using money related to the first crime. May the government prosecute him for his new crimes?

To ask the question is to answer it. But Patel offers a convoluted argument against this straightforward answer. He claims that the Double Jeopardy Clause and his plea agreement somehow immunized him against prosecution for future crimes under different statutes. He cites no authority supporting his theory. None exists. The Court should deny his motion to dismiss.

I. The indictment does not violate double jeopardy

Under the Double Jeopardy Clause, no person "shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The Clause "protects against successive prosecutions for the same offense after acquittal or conviction and against multiple criminal punishments for the same offense." *Monge v. California*, 524 U.S. 721, 727–28 (1998); *see United States v. Ginyard*, 511 F.3d 203, 207 (D.C. Cir. 2008).

But the Double Jeopardy Clause does not protect defendants from successive prosecutions for related but different crimes, even closely related ones. As the Supreme Court has explained, "a

mere overlap in proof between two prosecutions does not establish a double jeopardy violation," and "the introduction of relevant evidence of particular misconduct in a case is not the same thing as prosecution for that conduct." *United States v. Felix*, 503 U.S. 378, 386 (1992); *cf. United States v. Szpyt*, 785 F.3d 31, 40 (1st Cir. 2015) (noting that "the government is free to bring separate charges on a different, though similar, conspiracy" and collecting cases).

The question instead is whether the two prosecutions are for the "same offense," based on the same-elements test, also called the *Blockburger* test. *United States v. Trump*, __ F.4th __, 2024 WL 436971, at *23 (D.C. Cir. Feb. 6, 2024); *see Felix*, 503 U.S. at 385; *Blockburger v. United States*, 284 U.S. 299, 304 (1932). Under that test, if "'each offense contains an element not contained in the other,' the offenses are different," and "double jeopardy does not bar prosecution." *Trump*, 2024 WL 436971, at *23 (citations omitted). Thus, for example, "a substantive crime and a conspiracy to commit that crime are not the 'same offence' for double jeopardy purposes." *Felix*, 503 U.S. at 389.

Patel cannot satisfy the same-elements and does not try. The Double Jeopardy Clause has no relevance here. In the old case, Patel pleaded guilty in July 2020 to two conspiracy counts: one count of conspiracy to commit offenses against the United States under 18 U.S.C. § 371 and one count of conspiracy to launder monetary instruments under 18 U.S.C. § 1956(h). *United States v. MH Pillars et al.*, No. 18-cr-00053 (KBJ), ECF No. 90 (D.D.C. July 16, 2020) (Plea Agreement). The conduct underlying the conspiracy charges occurred between January 2007 and November 2015. *Id.*, ECF Nos. 81 (Superseding Information) and 91 (Statement of the Offense).[1]

Not so here. Patel now stands accused of committing new substantive offenses in April 2021: laundering monetary instruments under 18 U.S.C. § 1956(a)(1)(B)(i) and engaging in

[1] *See also United States v. Patel*, No. 20-cr-00113 (KBJ), ECF Nos. 3, 4, 11 (D.D.C.).

monetary transactions in property derived from specified unlawful activity under 18 U.S.C. § 1957(a). ECF No. 5. Neither of these counts is a conspiracy charge. And "[e]ach of the offenses created requires proof of a different element" than the old charges did. *Blockburger*, 284 U.S. at 304. Thus, even if the new charges rested on the same "single act" as the charges to which Patel pleaded guilty in 2020, *Blockburger*, 284 U.S. at 304, his double-jeopardy claim would fail.

But of course, the new charges do *not* rest on the same act as Patel's plea in the old case. This fact is obvious from the face of the present indictment. The grand jury alleges that Patel committed his new crimes "[o]n or about April 27, 2021" (ECF No. 5)—long after his July 2020 guilty pleas and his November 2020 sentencing in the old case, and even longer after the 2007–2015 offense conduct to which he pleaded guilty in the old case.[2]

Patel's double-jeopardy claim has other problems as well. For one thing, *in rem* civil forfeitures "are neither 'punishment' nor criminal for purposes of the Double Jeopardy Clause." *United States v. Ursery*, 518 U.S. 267, 292 (1996). As for criminal forfeiture, it is "an element of the sentence imposed *following* conviction or, as here, a plea of guilty"—not an offense element. *Libretti v. United States*, 516 U.S. 29, 39 (1995). Thus, "[d]ouble jeopardy does not apply to the forfeiture findings because forfeiture is a component of a sentence rather than an offense for which the defendants were tried." *United States v. Wittig*, 575 F.3d 1085, 1096 (10th Cir. 2009) (quotation marks omitted).

If Patel could clear all these hurdles, his double-jeopardy theory would still fail. Patel fundamentally misreads his plea agreement and sentence in the old case. He now argues that the $4,620,459.45 forfeiture money judgment in the old case "represent[s] the full value of the

[2] This Court has already found that the old case and this case are "not related" under Local Rule 57.12(a)(1). Minute Order 7/29/2023.

unlawful proceeds subject to forfeiture in that case," so he cannot be prosecuted in connection with the 450 BTC here (equivalent to more than $20 million). Mot. 11.

But Patel is simply wrong. First, he cites no authority for the theory that the government could charge money laundering here based only on properties adjudged forfeitable in the old case. And the Court has already rejected that theory when denying Patel's motion for a bill of particulars. ECF No. 70 at 3. Yet even if Patel's theory were correct—which, again, it is not—he misstates the scope of the forfeiture in the old case.

Forfeiture in the old case was *not* limited to the value of the specific properties listed in the forfeiture order that added up to $4,620,459.45. The plea agreement did not limit Patel's potential forfeiture obligations to $4,620,459.45. Nor did the parties agree, as Patel now claims, that $4,620,459.45 "represent[s] the full value of the unlawful proceeds subject to forfeiture in that case." Mot. 11. On the contrary, Patel "agree[d]" in the plea agreement "that this plea agreement permits the government to seek to forfeit *any* of [his] assets, real or personal, that are subject to forfeiture under any federal statute, *whether or not this agreement specifically identifies the asset*." Plea Agreement ¶ 9(c) (emphasis added). "Regarding any asset or property," Patel "agree[d] to forfeiture of all interest in: (1) any property, real or personal, involved in the offense" to which he pleaded guilty and "any property traceable thereto," along with "(2) any substitute assets for property otherwise subject to forfeiture." *Id.* (citing 18 U.S.C. § 982(a)(1) and 21 U.S.C. § 853(p)).

Patel ignores this language from his plea agreement, and no wonder—it refutes his double-jeopardy claim, just as it refutes his fallback claim of a plea breach (addressed in the next section). Patel ignores other aspects of the plea agreement, too. For example, he agreed to:

- "take all necessary actions to identify all assets over which [he] exercises or exercised control, directly or indirectly, at any time since November 2012 or in which [he] has or had during that time any financial interest";

- "take all steps as requested by the Government to obtain from any parties by any lawful means any record of assets owned at any time by" Patel;
- "submit a completed financial statement on a standard financial disclosure form . . . within 10 days";
- release his "tax returns for the previous five years";
- "take all steps as requested by the Government to pass clear title to forfeitable interests or to property to the United States"; and
- "testify truthfully in any judicial forfeiture proceeding."

Plea Agreement ¶ 9(e). If Patel's current theory had merit, none of these provisions in the plea agreement would make sense. If, as Patel now claims, the parties agreed that the $4,620,459.45 money judgment satisfied all his possible forfeiture obligations, there would have been no need to include these provisions about Patel's future obligations.

The Final Consent Order of Forfeiture likewise undermines Patel's theory. Just as the plea agreement did not limit forfeiture to the $4,620.459.45 money judgment, the forfeiture order also did not impose such a limit. The Court also "determine[d], based upon the evidence and information before, including the defendant's plea hearing," that "*any property*, real or personal, involved in the commission of Count One, and *any property traceable to such property* is subject to forfeiture." *MH Pillars*, ECF No. 132 at 3 (emphasis added).

In other words, other property could be subject to forfeiture. And the 450 BTC was such property, because the funds were involved in or traceable to Patel's criminal conduct. Patel admitted as much in the old case: In his sentencing memorandum, he acknowledged that "all of the money that flowed through his platform is deemed to be illegal." *MH Pillars*, ECF No. 118 at 4 n.1; *see also id.* at 10–11 (acknowledging that all transactions on platform were attributable as part of $250 million to $550 million Guidelines loss range). Patel now argues otherwise, of course.

But his present arguments about the BTC's true source are merits arguments about his guilt or innocence on the new charges—not double-jeopardy arguments.

Because the 450 BTC were funds involved in or traceable to criminal conduct, they were forfeitable. Yet Patel tried to avoid forfeiture and hide the funds through criminal means. It was that conduct, in April 2021, that resulted in the new charges in this new case. Nothing in the Double Jeopardy Clause restricted the government from prosecuting Patel for these new crimes.

Patel cites no authority to the contrary—no case in which any court has found a double-jeopardy violation on facts remotely like those here. Mot. 10–13. First, he quotes a pair of Fifth Circuit cases for general points about plea bargains that lend no support to his double-jeopardy claim. Mot. 11–12. Next, he cites *United States v. Andrews*, 146 F.3d 933, 936 (D.C. Cir. 1998), for the proposition that double jeopardy "prohibits successive prosecutions and successive punishments for the same *predicate* criminal offense." Mot. 12 (emphasis added). But the word "predicate" appears nowhere in *Andrews*. And the D.C. Circuit in fact rejected the defendants' double-jeopardy theory, holding that a prior SEC civil monetary penalty did not preclude the defendants' later indictment by a grand jury "for essentially the same conduct." 146 F.3d at 935, 938–42. If *Andrews* has any relevance here, it undercuts Patel's claim.

Patel's citation to *United States v. Jorn*, 400 U.S. 470, 479 (1971), falls just as flat. He cites it for the general point that a criminal defendant has in interest "finality" and avoiding repeated prosecutions for "the same criminal charges after they have already been resolved." Mot. 12. But again, Patel's present prosecution involves different criminal charges based on new crimes that postdate his guilty plea and sentencing in the old case. These new charges were not "resolved through the final disposition in the [old] case." Mot. 12. Indeed, such resolution would have been

impossible: When Patel pleaded guilty and was sentenced in 2020, he had not yet committed the 2021 crimes for which he is now charged.

Patel's two final citations are to *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Blackley*, 986 F. Supp. 600, 603 (D.D.C. 1997), where Judge Lamberth denied a defendant's *Brady*-based motion to compel discovery. Mot. 13. Neither case supports Patel's double-jeopardy claim. Nor do they support his discovery argument. Patel has no right—under *Brady* or otherwise—to receive internal government deliberative materials about whether an ex-prosecutor from his old case subjectively believed or did not believe "that the 450 Bitcoin at issue in this case was forfeitable" in the old case. Mot. 13. An ex-prosecutor's subjective belief years ago about the potential forfeitability of certain assets in a different case has no relevance to Patel's guilt or innocence here, or to his double-jeopardy claim.

For all these reasons, the present indictment does not violate double jeopardy.

II. The indictment does not violate Patel's 2020 plea agreement

Patel's fallback argument fares no better. He claims that even if double jeopardy does not bar this prosecution, his 2020 plea agreement does—and the government breached that agreement when the grand jury returned the present indictment.

Patel's breach claim is groundless. If anyone breached the plea agreement, it was Patel. He had no right to hide assets from the government or commit new crimes with those assets. To the contrary, as noted, the plea agreement expressly required him to "take all necessary actions to identify all assets" under his "control, directly or indirectly," to pass title to them to the government, and to disclose them in a financial statement. Plea Agreement ¶ 9(e).

The present charges also do not depend on whether the 450 BTC were forfeitable in the old case. The new indictment includes a new forfeiture allegation. ECF No. 5 at 2–3. And as this

Court recently noted when denying Patel's motion for a bill of particulars, "neither" of the charges in this indictment "requires the government prove beyond a reasonable doubt that the 'property' or 'criminally derived property' subject to those statutes 'qualif[ies] as being subject to forfeiture' or another legal order." ECF No. 70 at 3 (brackets in original) (quoting ECF No. 62 at 4).

The government also never promised Patel in the old case that he would be immune from prosecution for future crimes committed after his plea and sentencing. Quite the opposite: The 2020 plea agreement informed Patel that "[n]othing" in the agreement "shall be construed . . . to protect [Patel] from prosecution for any crimes not included within this Agreement or committed by [Patel] after the execution of this Agreement." Plea Agreement ¶ 11. Patel also confirmed that he "understands and agrees that the Government reserves the right to prosecute [him] for any such offenses." *Id.*; *see also id.* ¶ 3 (government agreeing not to "further prosecute[]" Patel "for the conduct set forth in the attached Statement of Offense"). The plea agreement was clear—it gave Patel no protection against future prosecutions for new crimes.

Nor did the plea agreement say, as Patel now claims, that the $4,620,459.45 "represented the full extent of the forfeitable proceeds in the case." Mot. 14. As discussed, Patel in fact "agree[d] that this plea agreement permits the government to seek to forfeit *any* of [his] assets, real or personal, that are subject to forfeiture under any federal statute, *whether or not this agreement specifically identifies the asset*." Plea Agreement ¶ 9(c) (emphasis added). He also agreed to forfeit "all interest in: (1) any property, real or personal, involved in the offense to which" he "plead[ed] guilty, and any property traceable thereto; and (2) any substitute assets for property otherwise subject to forfeiture." *Id.* And he had to disclose his assets. Plea Agreement ¶ 9(e). Patel ignores all this in his current motion. Despite repeatedly asserting that the $4,620,459.45 forfeiture money

judgment in the old case represented the "full value" or "full extent" of forfeitable assets, he cites no language from the plea agreement so stating—because there is none.

The Final Consent Order of Forfeiture in the old case likewise made clear that Patel's forfeiture obligations could exceed the $4,620,459.45 worth of specified assets. The Court "determine[d]" based on the overall record that "*any property*, real or personal, involved in the commission of Count One, and *any property* traceable to such property is subject to forfeiture." *MH Pillars*, ECF No. 132 at 3 (emphasis added).

In sum, Patel's breach claim rests on his assertions that the government "waived the right to any proceeds beyond the value of the money judgment entered against" him (Mot. 14) and that the $4,620,459.45 sum "represent[s] the full extent of the assets the Government [was] entitled to" in the old case (Mot. 15). But those assertions are false. The 2020 plea agreement left the government free to prosecute Patel for his new 2021 crimes.

CONCLUSION

The present indictment does not violate double jeopardy. Nor did the government breach the plea agreement by obtaining this indictment. The Court should deny Patel's motion to dismiss.

Respectfully submitted,

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