IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAMARK JOSE LÓPEZ BELLO, Plaintiff, v. BRADLEY T. SMITH, in his official capacity as Acting Director, Office of Foreign Assets Control, *et al.*, Defendants.	Civil Action No. 1:21-cv-01727 (RBW)

DEFENDANTS' CONSOLIDATED OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

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INTRODUCTION

In passing the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. §§ 1901-1908 ("Kingpin Act"), Congress expressly sought to equip the Executive Branch with the tools needed to dismantle entire drug trafficking networks. Modeled on the successful implementation of Executive Order No. 12978, which was issued under the International Emergency Economic Powers Act ("IEEPA") to combat drug trafficking and associated violence in Colombia, the Kingpin Act authorizes the Office of Foreign Assets Control ("OFAC") to block not only the assets of drug kingpins, but also the assets of the kingpin's corporate entities, his supporters, and those acting on his behalf—provided OFAC also takes action against the kingpin himself. Exercising this authority, and cognizant of the ever-present risk of asset-flight, OFAC frequently blocks the assets of a drug kingpin and those who have dealings with him at the same time. Such was the case in February 2017, when OFAC simultaneously designated as Specially Designated Narcotics Traffickers ("SDNTs") Plaintiff Samark Jose López Bello and Executive Vice President of Venezuela and international drug trafficker Tareck Zaidan El Aissami Maddah ("El Aissami"). As explained in Defendants' motion to dismiss or, in the alternative, for summary judgment, OFAC determined that Plaintiff materially assists in and provides support or services to El Aissami's international narcotics trafficking activities, and Plaintiff also acts for or on behalf of El Aissami. *See* Mem. in Supp. of Defs.' Mot. to Dismiss or, in the Alternative, for Summ. J. at 13-17, ECF No. 10-1 ("Defs.' Mem.").

Plaintiff now asks this Court to overturn OFAC's well-reasoned decision, but his combined opposition and cross-motion identify no agency error. *See* Mem. of P.&A. in Supp. of Pl.'s Cross-Mot. for Summ. J. & in Opp'n to Defs.' Mot. to Dismiss or, in the Alternative, Mot. for Summ. J., ECF Nos. 11, 12-1 (collectively, "Pl.'s Opp."). First, asserting claims under the Administrative

Procedure Act ("APA"), Plaintiff picks at the edges of OFAC's decision, complaining about the agency's treatment of a particular news article and stating that "nearly all" of the agency's disclosed findings are not expressly tied to El Aissami's narcotics trafficking. *Id.* at 13-15. But Plaintiff's argument is grounded on a misunderstanding of both the APA and the specific Kingpin Act provisions at issue, and when viewed in its entirety, the administrative record—including the classified and privileged portions that Plaintiff has not seen but will be made available to the Court for its *ex parte, in camera* review—amply supports OFAC's determination.

Plaintiff also claims that OFAC's decision is arbitrary and capricious and exceeds its authority because, at the time he was materially assisting, providing support or services to, or acting for or on behalf of El Aissami, El Aissami had not yet been designated as a SDNT. *Id.* at 13, 17-24. That argument, however, finds no basis in law or logic. The Kingpin Act expressly permits designation of a kingpin's frontman so long as the kingpin is also designated; prior designation of the kingpin in a separate administrative action is not required. Indeed, to construe the statute in the manner envisioned by Plaintiff would require the Court to turn a blind eye to the long-established goals of the Kingpin Act, that is, to bankrupt drug trafficking operations while minimizing the risk of asset flight. Moreover, adopting Plaintiff's position would further undermine these goals; OFAC would need to wait until after a kingpin's designation to take action against his supporters and subordinates. During the interim, assets could be dissipated, drug trafficking continued, or investigative efforts diminished.

Plaintiff fares no better in repurposing his argument about the timing of OFAC's decision as a Fifth Amendment claim. *Id.* at 25-33. Even if Plaintiff can assert rights under the Fifth Amendment, the fair notice doctrine he invokes only requires that OFAC provide notice of the substance of the Kingpin Act's requirements, not notice of specific actions it intends to take

pursuant to that authority. Thus there is no constitutional mandate that OFAC alert Plaintiff that it has deemed El Aissami a SDNT before it may impose sanctions against Plaintiff. Again, to adopt Plaintiff's theory would significantly hinder OFAC's ability to effectuate the core purpose of the Kingpin Act.

Plaintiff's remaining arguments are equally unavailing. As to his claim that OFAC's decision effectuated an unlawful seizure, *id.* at 41-45, Plaintiff fails to demonstrate that he has any Fourth Amendment rights, and in any event, he makes no serious effort to confront the precedent from this District—including that from this Court—holding that OFAC's blocking actions are simply not seizures within the meaning of the Fourth Amendment. But even if the Fourth Amendment applied, Plaintiff's conclusory assertions that OFAC's action was unreasonable are patently insufficient to demonstrate that OFAC should have obtained a warrant prior to blocking his assets.

Finally, Plaintiff cannot prevail on his Fifth Amendment argument that OFAC failed to provide him adequate notice of the basis for his designation. *Id.* at 33-40. The redacted administrative record, press release, press chart, Federal Register notice, and unclassified and non-privileged summaries of otherwise protected information are more than sufficient to explain the reasons for OFAC's decision. Moreover, binding and persuasive D.C. Circuit precedent forecloses Plaintiff's request for access to classified and law enforcement privileged materials. At this point, Plaintiff may meaningfully utilize OFAC's administrative procedures in order to seek removal from the list of Specially Designated Nationals and Blocked Persons ("SDN List"). *See* 31 C.F.R. § 501.807. The Fifth Amendment requires nothing more.

Defendants' motion to dismiss or for summary judgment should therefore be granted, and Plaintiff's cross-motion should be denied.

DISCUSSION

I. OFAC's Decision Accords With The APA

A. The Decision To Designate Plaintiff Is Supported By Substantial Evidence

As detailed in Defendants' motion, OFAC reasonably concluded, based on the evidence before the agency, that Plaintiff acts for or on behalf of, and materially assists and provides support or services for the international narcotics trafficking activities of, El Aissami, whom OFAC has also determined meets the criteria for designation as a SDNT. Defs.' Mem. at 12-22. This conclusion is entitled to substantial deference. *E.g.*, *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007) ("[O]ur review—in an area at the intersection of national security, foreign policy, and administrative law—is extremely deferential." (citations omitted)); *Zarmach Oil Servs., Inc. v. U.S. Dep't of the Treasury*, 750 F. Supp. 2d 150, 155 (D.D.C. 2010) ("[C]ourts owe a substantial measure of 'deference to the political branches in matters of foreign policy,' including cases involving blocking orders." (citation omitted)).

In response, Plaintiff asserts that OFAC improperly relied on an article published by the Venezuelan newspaper *Reportero 24*, because the agency neither expressly assessed the source's credibility nor attempted to "corroborate" its reporting that Plaintiff serves as a frontman for El Aissami. Pl.'s Opp. at 13-14 (citing Admin. R. ("AR") 0027); *see id.* at 3, 15-17. This argument, however, is both factually and legally flawed. The unclassified and non-privileged record is replete with reporting that confirms the information in the *Reportero 24* article. AR at 0452 (stating that "El Aissami . . . has closed business deal of the daily El Universal through his front m[a]n Samark Lopez Delgado"); *id.* at 0602 (noting that "various news publications link [Plaintiff] to . . . El Aissami"; Plaintiff "is the new owner, as a frontm[a]n of [media outlet] Ultimas Noticias"; and "there is a relationship between [Plaintiff] and financial transactions of public officials, specifically

. . . El Aissami"); *id.* at 0658 (summarizing otherwise protected information that Plaintiff "is the 'frontman' for Tareck El Aissami"; "was used by El Aissami to purchase news outlets in Venezuela"; "is identified as the 'business representative,' 'money manager,' and 'money launderer' for El Aissami"; and "handles financial matters for El Aissami[,]" including those related to managing Venezuelan bonds and procuring vehicles in the United States).

Plaintiff's argument is also unpersuasive insofar as he assumes that the redacted administrative record includes the full extent of OFAC's findings. As Defendants have explained, Defs.' Mem. at 7 n.2, 13 n.3, in addition to the unclassified and non-privileged record provided to Plaintiff, the classified and privileged portions of the record further support OFAC's conclusion that Plaintiff meets the criteria for designation under 21 U.S.C. § 1904(b)(2)-(3). The Kingpin Act expressly permits the government to rely on and lodge such information with the Court for *ex parte, in camera* review. *See Fares v. Smith*, 901 F.3d 315, 319, 324-25 (D.C. Cir. 2018) (citing 21 U.S.C. § 1903(i)); *Sulemane v. Mnuchin*, No. CV 16-1822 (TJK), 2019 WL 77428, at *5 (D.D.C. Jan. 2, 2019); *cf. Nat'l Council of Resistance of Iran v. Dep't of State*, 251 F.3d 192, 197 (D.C. Cir. 2001) (observing, in the context of IEEPA, that "the record can, and in our experience generally does, encompass classified information . . . as to which the alleged terrorist organization never has any access" (internal quotations marks omitted)). Accordingly, Defendants respectfully refer the Court to the unredacted record for additional information supporting OFAC's decision. *Islamic Am. Relief Agency*, 477 F.3d at 734 ("[A]lthough we deem it unnecessary to sustain OFAC's actions, the classified record contains extensive evidence that [the plaintiff meets the criteria for designation].").[1]

[1] Plaintiff complains that the administrative record provided by OFAC is heavily redacted, Pl.'s Opp. at 16, but he does not contend that OFAC has improperly redacted classified or law enforcement privileged information, nor does he explain why such redactions render OFAC's decision arbitrary and capricious.

Further, as far as Defendants are aware, no court has held that OFAC is required to expressly assess the credibility of each source it considers; rather, the salient question is whether "the record reflects substantial evidence of" the basis for designation. *See Joumaa v. Mnuchin*, No. CV 17-2780 (TJK), 2019 WL 1559453, at *7 (D.D.C. Apr. 10, 2019), *aff'd*, 798 F. App'x 667 (D.C. Cir. 2020); *accord Zevallos v. Obama*, 10 F. Supp. 3d 111, 120 (D.D.C. 2014), *aff'd*, 793 F.3d 106 (D.C. Cir. 2015) (rejecting claim that OFAC's decision was arbitrary and capricious because "[w]hen viewed as a whole, the record shows that the foreign trial court documents, newspaper articles, and DEA reports and documentation all provide substantial evidence from which OFAC concluded that Mr. Zevallos 'plays a significant role in international narcotics trafficking,' and warranted designation as an SFNT in June 2004" (quoting 21 U.S.C. § 1907(7)). Longstanding APA precedent also confirms that "an agency's decision need not be a model of analytic precision to survive a challenge[,]" and "[a] reviewing court will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Frizelle v. Slater*, 111 F.3d 172, 176 (D.C. Cir. 1997) (citation omitted); *see also Treasure State Res. Indus. Ass'n v. EPA*, 805 F.3d 300, 309 (D.C. Cir. 2015) ("Under the APA, [the agency] must 'conform to certain minimal standards of rationality.'" (citation omitted)). And as the Supreme Court has explained, "[t]he Government, when seeking to prevent imminent harms in the context of international affairs and national security, is not required to conclusively link all the pieces in the puzzle before we grant weight to its empirical conclusions." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 35 (2010). Consistent with these pronouncements, courts considering sanctions-related challenges have upheld OFAC's decisions without the type of granular analysis contemplated by Plaintiff. *E.g.*, *Joumaa*, 2019 WL 1559453, at *8 (holding record demonstrated a sufficient nexus between the plaintiff's money laundering and narcotics trafficking, based in part on OFAC's finding that the

plaintiff "is associated with a designated [] individual in the pick up of bulk drug proceeds in Europe to launder to Colombia"); *see also Islamic Am. Relief Agency*, 477 F.3d at 734 (concluding substantial evidence supported designation decision, where "the unclassified record evidence is not overwhelming" but "contain[ed] various types of evidence from several different sources, and cover[ed] an extended period of time").

The case cited by Plaintiff to suggest that OFAC improperly failed "to assess the accuracy or credibility" of the *Reportero 24* article, Pl.'s Opp. at 14, is inapposite. *New Orleans v. SEC*, 969 F.2d 1163, 1167 (D.C. Cir. 1992), cited in Pl.'s Opp. at 14, 16, concerned the Securities and Exchange Commission's failure to make statutorily required findings under the Public Utility Holding Company Act of 1935, specifically "an affirmative finding that an acquisition 'will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system.'" *New Orleans*, 969 F.2d at 1165 (quoting 15 U.S.C. § 79j(c)(2)). The court faulted the agency for relying on a report that concluded the "costs of replacing generating capacity in the future will be outweighed by the benefits derived from selling the spin-off plants," because the agency did so "without ascertaining the accuracy of the data contained in the study or the methodology used to collect the data." *Id.* at 1167. No similar cost-benefit finding or report is at issue here, nor is there any basis for Plaintiff's assertion that the *Reportero 24* article is "a central piece of evidence" that warrants special, in-depth treatment. Pl.'s Opp. at 16. And notably, *New Orleans* did not arise in the national security and foreign policy context, where courts must defer to the Executive Branch's collection of evidence. *See Holder*, 561 U.S. at 34-35. Indeed, the D.C. Circuit has expressly held that OFAC may "rely on unverified open source materials like news media reports"—that is, like the *Reportero 24* article—"to justify designation decisions under the

Kingpin Act[,]" *Zevallos*, 793 F.3d at 112-13, and nothing in *Zevallos* suggests that any particular treatment of such reports is required under the APA.

Plaintiff's argument also overlooks the administrative process that he may utilize to challenge OFAC's factual findings. Plaintiff at any time may petition the agency for removal from the SDN List, and he may present arguments and submit evidence that he believes demonstrate that an "insufficient basis exists for the designation," or that "the circumstances resulting in the designation no longer apply." 31 C.F.R. § 501.807; *see Joumaa*, 798 F. App'x at 668 ("Under the APA, [the SDNT] must show that the 'rationale' behind his original designation 'was never true or is no longer true.'" (quoting *Zevallos*, 793 F.3d at 112)). Thus if Plaintiff believes that the reporting in the *Reportero 24* article is flawed or unreliable, he may argue that point to OFAC, which will consider his position and issue a decision. 31 C.F.R. § 501.807(d); *see also Strait Shipbrokers Pte. Ltd. v. Blinken*, No. CV 21-1946 (BAH), 2021 WL 3566594, at *7 (D.D.C. Aug. 12, 2021) ("Plaintiffs do not support their assertion that defendants must do more at the time of designation than (1) provide the authority for the designations and (2) generally describe the conduct that prompted the designations."); *Rakhimov v. Gacki*, No. CV 19-2554 (JEB), 2020 WL 1911561, at *6 (D.D.C. Apr. 20, 2020), *appeal dismissed*, No. 20-5121, 2020 WL 4107145 (D.C. Cir. July 1, 2020) ("[T]he Court cautions that its decision applies only to the agency's initial designation determination. . . . As Plaintiff concedes, the delisting process supplies a superior avenue for him to provide evidence that would call that designation into question in the first instance.").

Plaintiff next argues that the Court should set aside OFAC's decision because "nearly all of OFAC's factual allegations lack an apparent nexus to El Aissami's narcotics trafficking activities, a requirement for Plaintiff's designation under 21 U.S.C. § 1904(b)(2)." Pl.'s Opp. at

14; *see id.* at 15-16. As an initial matter, Plaintiff appears to agree with Defendants that OFAC need not establish such a nexus to justify his designation under § 1904(b)(3), *see* Pl.'s Opp. at 14-15; Defs.' Mem. at 14 n.4, and this separate basis for designation is sufficient to uphold OFAC's decision. *See Pejcic v. Gacki*, No. 19-CV-02437 (APM), 2021 WL 1209299, at *8 (D.D.C. Mar. 30, 2021) (where OFAC determined that the plaintiff met the criteria for designation under two separate sections of the applicable Executive Order, holding that "even if [the plaintiff's] material support for Karadzic has ceased, OFAC could reasonably conclude that [the plaintiff's] independent conduct justifies continued designation" (internal citation omitted)). Nevertheless, the unclassified and non-privileged portions of the record sufficiently demonstrate the link between Plaintiff's activities and El Aissami's international narcotics trafficking for purposes of § 1904(b)(2). OFAC's multi-year investigation revealed the extent of El Aissami's international narcotics trafficking activities, including that "[h]e facilitated shipments of narcotics from Venezuela, to include control over planes that leave from a Venezuelan air base, as well as control of drug routes through the ports in Venezuela," and that "he oversaw or partially owned narcotics shipments of over 1,000 kilograms from Venezuela on multiple occasions, including those with the final destinations of Mexico and the United States." AR at 0006. Plaintiff's involvement in El Aissami's activities is clear: OFAC found that Plaintiff "is a key frontman for El Aissami and in that capacity launders drug proceeds[,]" *id.*, and that "[Plaintiff] is identified as the . . . 'money launderer' for El Aissami[,]" *id.* at 0658. The evidence available to OFAC also indicated that Plaintiff "is in charge of laundering drug proceeds through Petróleos de Venezuela, S.A. (PDVSA) and organizing the air and maritime cocaine routes to transport cocaine to the Middle East and Asia." *Id*. at 0658. And given that "[m]oney is fungible," *Holder*, 561 U.S. at 31, 37, even if some portion of Plaintiff's work assisted El Aissami in his other activities, such assistance still frees up

El Aissami's resources and thus furthers his narcotics trafficking. *See Kadi v. Geithner*, 42 F. Supp. 3d 1, 35 (D.D.C. 2012). Based on the highly deferential standard that the Court must apply, these findings readily support OFAC's conclusion that Plaintiff meets the criteria for designation under § 1904(b)(2). And as noted above, the classified and privileged portions of the record further support OFAC's determination.

Plaintiff is also incorrect in asserting that Defendants have made "an effective admission that the unclassified summaries, by themselves, do not support a designation made pursuant to § 1904(b)(2)." Pl.'s Opp. at 17; *see also id.* at 36 ("The third and fourth unclassified summaries set forth factual allegations that appear to be sourced from third parties and that have unclear relevance to the legal bases for Plaintiff's designation or the purposes of the Kingpin Act (as there is no apparent relation to narcotics trafficking)."); *id.* at 39 (similar). OFAC has not argued that each piece of evidence, or the summaries standing alone, satisfies the APA's requirements, because that is not the applicable standard. Rather, the question is whether the record *in its entirety* supports OFAC's decision, which it does here for the reasons stated above and in Defendants' memorandum. *See Joumaa*, 798 F. App'x at 668 ("While OFAC did not link *every* instance of money laundering to the drug trade, nothing in the Kingpin Act requires it to do so. We do not ask whether every piece of evidence 'standing alone' could support OFAC's decision, but whether 'all the evidence together provides [an] adequate basis.'" (quoting *Zevallos*, 793 F.3d at 113-14)). And in any event, the summaries criticized by Plaintiff are highly probative of the criteria for designation under § 1904(b)(2), as they provide that Plaintiff "is in charge of laundering drug proceeds through [PDVSA]," is the "money manager" and "'money launderer' for El Aissami[,]" and "handles financial matters for El Aissami." AR at 0658.

Finally, Plaintiff argues that OFAC's decision is arbitrary and capricious because "El Aissami was not designated under the Kingpin Act at the time of the conduct alleged by OFAC in support of Plaintiff's designation." Pl.'s Opp. at 13. That argument appears coextensive with Plaintiff's claim that OFAC exceeded its statutory authority, and is discussed below.[2]

B. OFAC's Designation Of Plaintiff And El Aissami On The Same Day Is Neither Arbitrary And Capricious Nor In Excess Of The Agency's Authority

Plaintiff argues throughout his cross-motion that OFAC's decision is improper because, at the time Plaintiff was materially assisting, providing support or services to, and acting for or on behalf of El Aissami, El Aissami was not designated by OFAC as a SDNT. Pl.'s Opp. at 2, 13, 19-27. This theory animates Plaintiff's APA claims that OFAC's decision is irrational and exceeds the agency's authority, and thus must be set aside pursuant to 5 U.S.C. § 706(2)(A) and § 706(2)(B). *Id.* at 2, 13, 19-24. Plaintiff's claims, however, fail based on the Kingpin Act's text, its purpose, and common sense.

1. The Statutory Language Support's Defendants' Position

The Kingpin Act permits the Secretary of the Treasury to block the assets of foreign persons "materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a significant foreign narcotics trafficker so identified in the report required under subsection (b) or (h)(1) of section 1903 of this title, or foreign persons designated by the Secretary of the Treasury pursuant to this subsection." 21 U.S.C. § 1904(b)(2). Similarly, the Secretary may block the assets of foreign persons "owned, controlled, or directed by, or acting for or on behalf of, a significant

[2] Plaintiff does not challenge OFAC's determination that he in fact owns the blocked property. Pl.'s Opp. at 8-9; *see* AR at 0029-43. While Plaintiff states "third party plaintiffs have sought to execute, and have executed, on their outstanding judgments against the FARC against properties owned or controlled by Plaintiff in the United States[,]" Pl.'s Opp. at 9, such third-party actions are irrelevant to these proceedings, as the issue before the Court is whether substantial evidence supports OFAC's 2017 decision to designate Plaintiff under the Kingpin Act.

foreign narcotics trafficker so identified in the report required under subsection (b) or (h)(1) of section 1903 of this title, or foreign persons designated by the Secretary of the Treasury pursuant to this subsection[.]" *Id.* § 1904(b)(3). Contrary to Plaintiff's argument, the statute does not limit OFAC to reliance only on conduct that took place after the designation of the kingpin. *See id.* § 1904(b). Nor did Congress use qualifying language in § 1904(b)(2)-(3), whereby the Secretary may impose sanctions only against those who materially assist, provide support or services to, or act for or on behalf of "foreign persons designated *in a separate prior action* by the Secretary of the Treasury pursuant to this subsection." Derivative designations are thus permitted so long as the government blocks the property of both the derivative designee and the foreign person whom he is assisting, providing support or services to, or acting for or on behalf of—either through a determination by the Secretary or identification in a Presidential report. Accordingly, OFAC's designation of El Aissami permitted the agency also to designate his frontman Plaintiff, simultaneously or as part of a later action, even though El Aissami was not formally declared a SDNT at the time of the reporting relied on by OFAC.

2. Defendant's Interpretation Comports With The Kingpin Act's History And Purpose

To the extent there is any ambiguity in the statute, Defendants' interpretation has the "power to persuade" and is therefore entitled to deference. *See Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). First, Defendants' view is consistent with the history of the statutory language at issue. *See United States v. Braxtonbrown-Smith*, 278 F.3d 1348, 1352 (D.C. Cir. 2002) ("Where the language is subject to more than one interpretation and the meaning of Congress is not apparent from the language itself, the court may be forced to look to the general purpose of Congress in enacting the statute and to its legislative history for helpful clues." (citation omitted)). As Defendants have noted, Defs.' Mem. at 3-4, Congress modeled the Kingpin Act on IEEPA and

Executive Order No. 12978, which declared a national emergency based on "the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause," Exec. Order No. 12978, 60 Fed. Reg. 54,579, 54,579 (Oct. 21, 1995) ("EO 12978"); *see also* 21 U.S.C. § 1901. To address that emergency, the President authorized the blocking of assets of "foreign persons determined by the Secretary of the Treasury . . . materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of *persons designated in or pursuant to this order*; and . . . persons determined by the Secretary of the Treasury . . . to be owned or controlled by, or to act for or on behalf of, *persons designated in or pursuant to this order*." EO 12978, § 1(b)(ii)-(c) (emphases added). Congress based the criteria for designation under the Kingpin Act on the relevant text in the Executive Order, simply changing "persons designated in or *pursuant to this order*" to "a significant foreign narcotics trafficker so identified in the report required under subsection (b) or (h)(1) of section 1903 of this title, or *foreign persons designated by the Secretary of the Treasury pursuant to this subsection*." 21 U.S.C. § 1904 (emphases added).[3] And as OFAC utilized the authority in IEEPA and EO 12978 to impose simultaneous designations like that at issue here—including before enactment of the Kingpin Act itself—Congress's drafting cannot be said to restrict the timing or sequencing of derivative designations. *See* Treasury Names Front for the Colombian Drug Cartel, https://www.treasury.gov/press-center/press-releases/Pages/rr2475.aspx; 63 Fed. Reg. 28,898, 28,898-99 (May 27, 1998). This statutory lineage also explains why Plaintiff is incorrect in suggesting that "[i]f Congress had instead sought

[3] The phrase "persons designated in" EO 12978 refers to those individuals listed in the President's Annex to the Order. *See* 60 Fed. Reg. at 54580. Thus just as EO 12978 contemplates designations derived from sanctions imposed by both the President and OFAC—"persons designated in and pursuant to this order"—so too does the Kingpin Act, *see* 21 U.S.C. § 1904 (referring to both identifications in the Presidential report and designations by the Secretary).

to permit the kind of action undertaken by Defendants in this case, then it would have chosen different language to give expression to that intention[,]" such as substituting "persons engaged in narcotics trafficking activities or their supporters" for "foreign persons designated by the Secretary of the Treasury pursuant to" 1904(b)(2) or (b)(3). Pl.'s Opp. at 20. Congress adopted its chosen language based on EO 12978, and in doing so sought to confer the same broad discretion to sanction kingpins and those who act for or support them. *See* 21 U.S.C. § 1901(a)(3) (emphasizing that in fashioning the Kingpin Act after IEEPA and EO 12978, Congress intended to apply "similar authorities . . . worldwide").

Plaintiff's theory likewise cannot be reconciled with the express purpose of the Kingpin Act. Plaintiff simply asserts that "Congress had its reasons for requiring prior designation before imposing sanctions on persons providing support and services to significant foreign narcotics traffickers or other persons subject to sanctions under the Kingpin Act." Pl.'s Opp. at 20. But he makes no mention of what those reasons might be, let alone cite any legislative materials to support his speculation, or explain how his reading would further the goals of the statute. *See id.* Indeed, noticeably absent from the legislative history is any indication that Congress would categorically prefer the Executive Branch to designate a kingpin and then wait some unspecified amount of time and see if his money launderers, distributors, or foot soldiers continue to support him once a formal SDNT designation has been made. That is likely because the statute is designed not simply to humiliate kingpins, or warn those who might be involved in kingpins' illicit activities, but to "disrupt these criminal organizations and bankrupt their leadership." H.R. Rep. No. 106-457 at 42 (1999), *as reprinted in* 1999 U.S.C.C.A.N. 304, 313. And Congress made clear its view that simply sanctioning the kingpins—while necessary—would be insufficient to achieve these goals. *Id.* at 43 (stating that "[t]he targets of this legislation are not only the drug kingpins, but those

involved in their illicit activities," including "money laundering" and "managing the assets of these criminal enterprises"); *see also id.* at 45-46 (focusing on the Executive Branch's ability to take action against drug kingpins and individuals acting in support of drug kingpins, not on whether such kingpins were previously sanctioned by the government at the time of the support).

By contrast, it is impossible to discern how Plaintiff's theory is consistent with Congress's stated intent. Plaintiff would have OFAC first sanction a drug kingpin, monitor how the kingpin's supporters and frontmen respond to the designation, and then sanction those individuals if they continue to support him or act on his behalf. Pl.'s Opp. at 22. The outcome of this wait-and-see strategy is obvious: the kingpin's supporters and frontmen will move money on his behalf, and since the trafficking organization can continue to operate, this asset flight "would likely cripple the Kingpin Act." *Zevallos*, 793 F.3d at 117. Perhaps even worse, kingpin supporters could undertake actions to thwart law enforcement and impede investigations. *See Zevallos*, 10 F. Supp. 3d at 120 (noting SDNT's "connections to various intimidation tactics employed—including murder or the threat thereof—against would-be witnesses against him and judges involved in his cases"). On this basis alone, the Court should reject Plaintiff's interpretation. *See Braxtonbrown-Smith*, 278 F.3d at 1352 ("[T]he court must avoid an interpretation that undermines congressional purpose considered as a whole when alternative interpretations consistent with the legislative purpose are available." (citation omitted)).

The flaw in Plaintiff's logic stands in even sharper relief when considered in the context of the portion of § 1904(b)(3) permitting designation of individuals or entities "owned, controlled, or directed by" the kingpin, where the risk of asset flight is even more acute. For instance, if a kingpin controls a shell company that facilitates the laundering of his illicit proceeds, designation of the kingpin will undoubtedly prompt his shell company to disburse those funds—not convene a board

meeting to discuss whether to disassociate from him. Under this and other readily imagined scenarios, it would defy common sense to construe Congress's language as requiring OFAC to designate only the kingpin until the agency finds that individuals or entities continue to be controlled by their now-designated leader.

Plaintiff also undermines his APA arguments by correctly acknowledging that Congress did not intend OFAC to designate only those who knowingly engage in sanctionable conduct. *See* Pl.'s Opp. at 23; *cf. Kadi*, 42 F. Supp. 3d at 18 ("Kadi's intent in donating to terrorist causes or to SDGTs is not relevant here."). Because a frontman may be designated even if he does not know of a kingpin's designation status, Plaintiff cannot seriously dispute that OFAC could have designated El Aissami and immediately thereafter designated Plaintiff based on evidence that Plaintiff acts for or on behalf of El Aissami, or materially assists or provides support or services for El Aissami's international narcotics trafficking activities. But in Plaintiff's view, OFAC could not simultaneously designate Plaintiff and El Aissami using the same evidence. Neither Congress nor any court has indicated that the Kingpin Act, or any other sanctions authority, favors such a form-over-substance approach to national security and foreign policy.

3. Plaintiff Fails To Distinguish The Precedent Supporting Defendants' Interpretation

Courts have recognized that OFAC's sanctions decisions are appropriately influenced by asset-flight concerns; thus OFAC may consider how the timing of its actions affects its ability to effectuate the goals of the Kingpin Act. *See* Defs.' Mem. at 19 (citing *Zevallos*, 793 F.3d at 116, and *Holy Land Found. for Relief & Dev. v. Ashcroft*, 219 F. Supp. 2d 57, 77 (D.D.C. 2002), *aff'd*, 333 F.3d 156 (D.C. Cir. 2003)). Plaintiff responds that the discussion of asset flight in *Zevallos* and *Holy Land Foundation* concerned pre-deprivation notice, not fair notice. Pl.'s Opp. at 22-23. But the question at hand is whether OFAC's decision comports with the APA—not fair notice

under the Fifth Amendment—and in any event nothing in those opinions suggests that asset-flight considerations should be cabined to certain types of constitutional claims, particularly given Congress's stated statutory goal of disrupting and bankrupting entire trafficking networks. *See Zevallos*, 793 F.3d at 116; *Holy Land Found.*, 219 F. Supp. 2d at 77. Plaintiff also has no effective response to the authority relied on by Defendants explaining that OFAC may consider the "genesis and history" of a sanctions target, and may impose sanctions for conduct that predates other relevant designations or even the issuance of the sanctions authority itself. *Holy Land Found.*, 333 F.3d at 162; *Joumaa*, 798 F. App'x at 669; *Islamic Am. Relief Agency*, 477 F.3d at 734; *Kadi*, 42 F. Supp. 3d at 18-21. This authority reinforces that OFAC reasonably considered Plaintiff's dealings with El Aissami before El Aissami was determined to be a SDNT.

Plaintiff likewise fails to establish the inapplicability of *Kadi*, the sanctions precedent most relevant to his claim. To reiterate, in that case the court rejected the plaintiff's APA arguments regarding OFAC's designation decision, where OFAC concluded that the plaintiff provided financial support to an individual designated *on the same day* as the plaintiff. 42 F. Supp. 3d at 11-24. In other words, and as here, OFAC reasonably designated the plaintiff for providing support to an individual who was not formally sanctioned as a SDN at the time of the illicit conduct. Plaintiff claims *Kadi* is inapposite because "*Kadi* does not deal with a Kingpin Act designation but rather one under [IEEPA]—an entirely different statute, and under an Executive order with completely distinct and separate designation criteria." Pl.'s Opp. at 23. But as the D.C. Circuit has explained, "[t]he Kingpin Act was modeled on a specific, successful application of a similar statute, [IEEPA]." *Zevallos*, 793 F.3d at 109-10; *see also* 21 U.S.C. § 1901(a)(3) ("IEEPA was successfully applied to international narcotics traffickers in Colombia and based on that successful case study, Congress believes similar authorities should be applied worldwide."). Thus "the

context of the IEEPA provides a helpful analogy" in considering Plaintiff's challenge. *Cf. Zevallos*, 10 F. Supp. 3d at 129. And while Plaintiff is correct that "Kadi did not raise a fair notice claim under the Fifth Amendment," Pl.'s Opp. at 23, the plaintiff in that case did raise claims under the APA, and the court held that substantial evidence supported the designation, *Kadi*, 42 F. Supp. 2d at 11-24.

Moreover, for purposes of Plaintiff's argument, the criteria for designation under the Kingpin Act and the basis for the designation in *Kadi* are not nearly as dissimilar as Plaintiff suggests. OFAC designated the plaintiff in that case pursuant to § (d)(1) of Executive Order No. 13224, which permits the sanctioning of persons determined "to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to this order *or determined to be subject to this order*." Executive Order No. 13224, § 1(d)(i), 66 Fed. Reg. 49,079, 49,080 (Sept. 25, 2001) (emphasis added). There is no material difference between this operative language and that in § 1(b)(ii)-(c) of EO 12978, which authorizes the designation of persons materially assisting, providing support for, or acting for or behalf of "persons designated in or pursuant to this order[,]" or of the Kingpin Act itself, which authorizes the designation of persons engaging in similar conduct for "foreign persons designated by the Secretary of the Treasury pursuant to this subsection[,]" 21 U.S.C. § 1904(b)(2)-(3). And just as nothing in *Kadi* indicates that "determined to be subject to this order" should be construed to mean "previously determined to be subject to the order," the Court here should decline Plaintiff's invitation to construe "designated by the Secretary" as "previously designated by the Secretary."

Indeed, the relevant portions of Executive Order No. 13224 and the Kingpin Act are by no means outliers; numerous other sanctions authorities are similarly structured and have served as

the basis for imposing simultaneous designations. For instance, Executive Order No. 13660, which addresses the threat posed by the situation in Ukraine, in part authorizes sanctions of persons determined "to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order." Executive Order No. 13660, § 1(a)(iv)-(v), 79 Fed. Reg. 13,493, 13,493 (March 10, 2014). OFAC exercised its authority under Executive Order No. 13660 to simultaneously block the assets of a company that "provides martial arts and tactical military courses to foreign military, law enforcement, and Russian-speaking compatriots from European and Asian States[,]" as well as the company's president for acting for or on behalf of the company. *Treasury Designates Individuals and Entities Involved in the Ongoing Conflict in Ukraine*, https://www.treasury.gov/press-center/press-releases/pages/sm0114.aspx (designation of Gennadii Anatolievich Nikulov and Wolf Holding of Security Structures). Likewise, an Executive Order addressing the proliferation of weapons of mass destruction allows OFAC to designate persons determined "to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order," Executive Order No. 13382, § 1(a)(4) 70 Fed. Reg. 38,567, 38,567 (July 1, 2005), which has led OFAC to designate, as part of the same action, a China-based company and individuals working for that company. *Treasury Imposes Sanctions on Supporters of North Korea's Weapons of Mass Destruction Proliferation*, https://www.treasury.gov/press-center/press-releases/Pages/jl5059.aspx. OFAC has likewise utilized its authority under the Executive Order designed to address serious human rights abuse and corruption to simultaneously designate an individual who "stole billions of dollars from the Angolan government through embezzlement"—as well as the company owned or controlled by the individual, and the

individual's spouse for materially assisting or supporting the company. *See Treasury Issues Sanctions on International Anti-Corruption Day*, https://home.treasury.gov/news/press-releases/jy0523 (designations of Manuel Helder Vieira Dias Junior, Baia Consulting Limited, and Luisa De Fatima Giovetty); Executive Order No. 13818, § 1(a)(iii), 82 Fed. Reg. 60839 (Dec. 26, 2017) (using similar operative language of "any person whose property and interests in property are blocked pursuant to this order"). And consistent with this approach, OFAC has repeatedly imposed simultaneous designations under the Kingpin Act. *See, e.g., Treasury Sanctions Peruvian Narco-Terrorist Group and Three Key Leaders*, https://home.treasury.gov/news/press-releases/jl10066; *Treasury Sanctions Key Sinaloa Cartel Network*, https://home.treasury.gov/news/press-releases/jl2298; *Treasury Targets Major Lebanese-Based Drug Trafficking and Money Laundering Network*, https://home.treasury.gov/news/press-releases/tg1035. In each of these instances, derivative designation was appropriate because the person or entity being supported or acted for was also being designated, that is, was a person or entity whose assets were blocked pursuant to the applicable order or statute. Were Plaintiff's theory correct, an essential tool in OFAC's ability to further U.S. national security and foreign policy interests would be rendered useless. Congress could not have intended such a result in passing the Kingpin Act.

Congressional inaction in the face of ongoing simultaneous designations under the Kingpin Act and other IEEPA Executive Orders provides further evidence that Plaintiff's strained reading is contrary to Congress's intent. OFAC reports on its Kingpin Act designations every year to Congress, 21 U.S.C. § 1903(d)(1), and if Congress thought there were constitutional or statutory problems with the ways the agency was implementing the statute, presumably it would have said so. *See Dames & Moore v. Regan*, 453 U.S. 654, 680-81 & n.10 (1981) (finding congressional

acquiescence in the practice of claims settlement by executive agreement based on both the enactment of related statutes and the fact that "Congress has consistently failed to object to this longstanding practice . . . even when it has had an opportunity to do so.").[4]

The Court should therefore grant Defendants' motion as to Count I and Count II of the Amended Complaint.

II. Plaintiff's Fair Notice Claim Fails

Plaintiff's cross-motion leaves no doubt about the extreme position he takes regarding his Fifth Amendment fair notice claim. Pl.'s Opp. at 24-33. Plaintiff does not argue that OFAC has failed to notify regulated parties of its interpretation that the Kingpin Act permits simultaneous designations. *See id.*; *see also* Defs.' Mem. at 25-29 (discussing statutory language and decades-long history of adjudications providing such notice); Pl.'s Opp. at 32 (claiming this discussion is "beside the point" and "irrelevant"). Rather, Plaintiff argues that OFAC violated his purported rights under the Fifth Amendment because it failed to provide him advance notice that dealing with El Aissami would be sanctionable. Pl.'s Opp. at 24-33. This argument is without merit.

As a threshold matter, Defendants maintain that any vestiges of Plaintiff's presence within the United States are insufficient to confer constitutional protection. *See* Defs.' Mem. at 22-24. Plaintiff responds by claiming Defendants have misstated the applicable standard, which is not

[4] Defendants do not believe that their position is in tension with a separate portion of the legislative history—not relied on by Plaintiff—noting that § 1(b)(ii) EO 12978 "uses an additional designation basis for foreign firms or individuals that 'materially * * * assist in or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities' of the named drug kingpins or other, already designated SDNTs." H.R. Rep. No. 106-457 at 46. Given the stated goals of the Kingpin Act and the absence of any limiting language in the statute, as well as the lack of any similar observation in the House Report regarding § 1(c), the phrase "already designated" should not be understood to preclude designation of a kingpin and his supporter on the same day, but rather indicates Congress's preference for not allowing the kingpin to escape designation. Nor can Plaintiff rely on the House Report's observation that "[i]n implementing the Colombia IEEPA–SDNT program, OFAC analysts identify and research foreign targets that can be linked by evidence to individuals or entities already designated pursuant to E.O. 12978." *Id.* at 47. While that statement was generally true as a factual matter, it does not suggest that OFAC, having identified potential targets, cannot simultaneously designate them.

true. *See* Pl.'s Opp. at 28. Unlike what transpired in *National Council of Resistance of Iran v. Department of State*, 251 at 202, cited in Pl.'s Opp. at 28, Defendants accurately quoted the Supreme Court's pronouncement that "aliens receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country." Defs.' Mem. at 23 (quoting *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990)); *see Nat'l Council*, 251 F.3d at 201-202. Defendants have likewise accurately quoted the D.C. Circuit's holding regarding the substantial connections test. *See* Defs.' Mem. at 23 ("[N]on-resident aliens who have insufficient contacts with the United States are not entitled to Fifth Amendment protections." (quoting *Jifry v. FAA*, 370 F.3d 1174, 1182 (D.C. Cir. 2004))); *see also, e.g.*, *Bautista-Rosario v. Mnuchin*, No. 1:20-CV-2782 (CJN), 2021 WL 4306093, at *3-4 (D.D.C. Sept. 22, 2021) (applying same analytical framework as that articulated by Defendants here).[5]

Yet even assuming that Plaintiff can assert rights under the Fifth Amendment, his fair notice claim is grounded on a fundamental misunderstanding of the relevant doctrine, and so fails on the merits. To reiterate, Plaintiff argues that the Constitution prohibits OFAC from designating a drug kingpin's frontman unless OFAC first designates the kingpin as a SDNT, and the frontman continues to support or act for the kingpin. Pl.'s Opp. 26-27 (complaining that Plaintiff could not have "divine[d] that El Aissami would be designated"); *id.* at 30 ("Absent the public identification of those persons with whom certain dealings could lead to a derivative Kingpin Act designation—such as the one suffered by Plaintiff—OFAC would entirely have failed to apprise the public as to what conduct is regulated by the Kingpin Act."). The fair notice doctrine, however, is not concerned with such levels of specificity. Rather, the question is whether an agency has provided "adequate notice of the substance of the rule[,]" *Howmet Corp. v. EPA*, 614 F.3d 544, 553 (D.C.

[5] Further, given Plaintiff's allegations that his blocked property has been subject to writs of garnishment and execution, Am. Compl. ¶¶ 88-112; Pl.'s Opp. at 7, the extent of his current, U.S.-based financial interests is unclear.

Cir. 2010) (citation omitted), or, put differently, whether an agency's interpretation "allows regulated parties to 'identify, with ascertainable certainty, the standards with which the agency expects them to conform[,]'" *SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021, 1043 (D.C. Cir. 2017) (citation omitted); *see also, e.g.*, *Satellite Broad. Co. v. FCC*, 824 F.2d 1, 2 (D.C. Cir. 1987) ("Several other sections of the FCC's rules did address that matter but, unfortunately, did so in a baffling and inconsistent fashion."). Thus in failing to challenge the standard provided by the Kingpin Act—and instead focusing on a particular application of that standard, which comports with OFAC's historical practice and interpretation—Plaintiff misses the mark entirely.[6]

The case law concerning the fair notice doctrine, including that cited by Plaintiff, confirms as much. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012), cited in Pl.'s Opp. at 25-27 (holding the agency failed to provide fair notice that indecent language within the meaning of 18 U.S.C. § 1464 included "a fleeting expletive or a brief shot of nudity"); *Karem v. Trump*, 960 F.3d 656, 665 (D.C. Cir. 2020), cited in Pl.'s Opp. at 24, 27 (concluding that a journalist was likely to succeed on the merits of his Fifth Amendment claim because "nothing put him on notice of 'the magnitude of the sanction'—a month-long loss of his White House access, an eon in today's news business—that the White House 'might impose' for his purportedly unprofessional conduct at the non-press-conference event"); *Fabi Constr. Co. v. Sec'y of Labor*, 508 F.3d 1077, 1088 (D.C. Cir. 2007), cited in Pl.'s Opp. at 25 (regulations at issue failed to provide fair notice of the agency's interpretation that the definition of "formwork" included slabs); *Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000), cited in Pl.'s Opp. at 30-31 (faulting the agency for not previously articulating that the regulatory term "minority-controlled" required "*de facto*

[6] Defendants have previously explained that the Kingpin Act and OFAC's regulation clearly set forth the standard of conduct that can result in designation. *See* Defs.' Mem. at 26-27. Thus Plaintiff had notice of what standards OFAC would apply to his and El Aissami's activities. Plaintiff does not argue otherwise.

minority control in the non-profit context"). And unlike the agency interpretations at issue in those cases, here the Kingpin Act plainly discusses the types of conduct that can lead to designation, as well as the consequence of designation. 21 U.S.C. § 1904. Nor does Plaintiff dispute OFAC's record of public action pursuant to the Kingpin Act of simultaneous designations of traffickers and their supporters. *See* Defs.' Mem. at 27-28.

Two additional considerations establish the weakness of Plaintiff's argument. First, whereas precedent regarding the fair notice doctrine is generally focused on the need to provide advance notice of what type of conduct is prohibited or how it may be punished, courts have repeatedly recognized that, due to asset-flight concerns, OFAC need not provide advance notice of specific blocking actions. *See, e.g.*, *Zevallos*, 793 F.3d at 116 ("[P]roviding notice before blocking the assets of international narcotics traffickers would create a substantial risk of asset flight."). Second, if Plaintiff's theory were correct, OFAC would not only have to provide notice to those materially assisting, providing support or services to, or acting for or on behalf of a kingpin that the kingpin is a "person[] subject to sanctions pursuant to the Kingpin Act[,]" Pl.'s Opp. at 30, but OFAC would presumably have to provide notice to those individuals that the specific conduct in which they themselves are engaging constitutes material assistance, the provision of support or services to, or acting for or on behalf of the kingpin within the meaning of the statute. Likewise, by Plaintiff's reasoning, OFAC could not designate a foreign person for "playing a significant role in international narcotics trafficking[,]" 21 U.S.C. § 1904(b)(4), without first notifying the kingpin that the agency viewed his conduct as sanctionable under the statute. Such a requirement is inconsistent with binding precedent such as *Zevallos*, would undoubtedly lead to asset flight, and would defeat a central purpose of the statute, namely dismantling drug trafficking operations

through coordinated actions against the kingpin and his supporters and frontmen. 21 U.S.C. §§ 1901-02; H.R. Rep. No. 106-457 at 42-43.

Plaintiff's remaining arguments are unpersuasive. He contends that Defendants "conflate pre-deprivation notice with fair notice[.]" Pl.'s Opp. at 31. But the cases discussing why pre-deprivation notice is not required by the Kingpin Act apply with equal force to Plaintiff's (incorrect) conception of fair notice, because in both cases the danger of asset flight provides a compelling reason not to alert a would-be SDN to his future designation. *Zevallos*, 793 F.3d at 116. And while Plaintiff seeks to discount the government's asset-flight concern as a "policy argument[,]" Pl.'s Opp. at 31, it is in fact highly relevant to the Court's analysis, *see Ark. Dep't of Hum. Servs. v. Sebelius*, 818 F. Supp. 2d 107, 122 (D.D.C. 2011) (explaining that the fair notice doctrine should not apply where "agencies would be unable to administer their regulations efficiently"); *Freeman United Coal Min. Co. v. Fed. Mine Safety & Health Rev. Comm'n*, 108 F.3d 358, 362 (D.C. Cir. 1997) (courts should not apply doctrine where doing so would "open[] up large loopholes allowing conduct which should be regulated to escape regulation" (citation omitted)).

Plaintiff's argument also fails insofar as he suggests that the Fifth Amendment tolerates sanctions only against those who knowingly engage in conduct proscribed by the Kingpin Act. *See* Pl.'s Opp. at 1 ("Plaintiff bec[a]me aware that his purported dealings with El Aissami were sanctionable under the Kingpin Act when El Aissami himself was sanctioned. At that point, however, it would have been too late for Plaintiff to conform his purported conduct to the requirements of U.S. law[.]"); *see id.* at 26 (arguing potential SDNTs must be "on alert that engaging in such conduct involving a person sanctioned pursuant to the Kingpin Act is itself sanctionable"); *id.* at 27 (claiming fair notice would have required OFAC to first designate El Aissami, and then designate Plaintiff only if he "elected to continue to engage in sanctionable

dealings with [El Aissami] on an ongoing basis at the time of his designation").[7] No court has held that such a scienter requirement applies to OFAC's Kingpin Act designation decisions, and that argument is irreconcilable with case law explaining that OFAC may impose sanctions for conduct that predates other relevant designations or even the issuance of the sanctions authority itself. *Holy Land Found.*, 333 F.3d at 162; *Joumaa*, 798 F. App'x at 669; *Islamic Am. Relief Agency*, 477 F.3d at 734; *Kadi*, 42 F. Supp. 3d at 18-21.

The Court should also reject Plaintiff's argument that "had he not been designated simultaneous with El Aissami, he could have chosen to cease any dealings with El Aissami following the latter's Kingpin Act designation[,]" and "having had the ability to have made that choice would have furthered the Kingpin Act's policy objective of isolating those involved in international narcotics trafficking activities." Pl.'s Opp. at 31; *see also id.* at 2 (arguing that Plaintiff should have been entitled to "remediate his conduct (to the extent necessary) to act consistent with the requirements of U.S. law"). That argument is, at a minimum, highly dubious, given that, according to the publicly filed Superseding Indictment in the Southern District of New York, Plaintiff failed to distance himself from El Aissami even after their designations. Superseding Indictment ¶¶ 3, ECF No. 67, *United States v. El Aissami*, No. 19-cr-144 (S.D.N.Y.) (explaining that shortly after OFAC's action, Plaintiff "used U.S.-based companies to charter private flights, including at times on U.S. registered aircraft, for [El Aissami] and [Plaintiff] in connection with travel in and between, among other places, Venezuela, Russia, Turkey, and the Dominican Republic."). Second, the purpose of the Kingpin Act is not furthered by a wait-and-see approach by OFAC, but rather by the agency's decisive action to disrupt and bankrupt drug

[7] Plaintiff's position is at times unclear. Elsewhere in his cross-motion, Plaintiff suggests that "constructive knowledge" might suffice for Fifth Amendment purposes. Pl.'s Opp. at 27. And with respect to his APA claims, Plaintiff does not argue that any knowledge requirement applies. *See id.* at 23.

trafficking networks. *See* H.R. Rep. No. 106-457 at 42-43. And Defendants note that Plaintiff is encouraged to "remediate his conduct" at any time, and he may submit evidence of such remediation to OFAC through its established delisting process. 31 C.F.R. § 501.807. The Fifth Amendment requires nothing more. *Zevallos*, 793 F.3d at 116-17.

The Court should therefore grant Defendants' motion as to Count III of the Amended Complaint, as well as Count V insofar as it asserts a claim under the Fifth Amendment.

III. Plaintiff's Fourth Amendment Claims Fails

In their motion, Defendants explained that OFAC was not required to obtain a warrant in connection with its designation of Plaintiff as a SDNT. Defs.' Mem. at 29-39. Specifically, Plaintiff's Fourth Amendment claims fails because he cannot assert any Fourth Amendment rights; OFAC's decision did not effectuate a seizure; and even if OFAC "seized" Plaintiff's property, any such seizure was reasonable. *Id.* Plaintiff's arguments to the contrary are unpersuasive.

As to the threshold question of whether Plaintiff may assert rights under the Fourth Amendment, Plaintiff simply repeats the arguments made in support of his Fifth Amendment claim. Pl.'s Opp. at 42. He offers no response to Defendants' explanation that considering Plaintiff "among 'the People' of the United States" is not only inconsistent with the historical purpose of the Fourth Amendment, but is also irreconcilable with precedent indicating that Fourth Amendment rights should be reserved for those who have demonstrated allegiance to the United States or participated in the political community—and not those such as Plaintiff who have threatened U.S. national security and foreign policy interests. *See* Defs.' Mem. at 31 (citing and quoting *Verdugo-Urquidez*, 494 U.S. at 272-73; *United States v. Verdugo-Urquidez*, 856 F.2d 1214, 1234 (9th Cir. 1988) (Wallace, J., dissenting); and *United States v. Esparza-Mendoza*, 265 F. Supp. 2d 1254, 1264-67 (D. Utah 2003), *aff'd*, 386 F.3d 953 (10th Cir. 2004)). And while

Plaintiff insists that his property, past travel, and "indicia of [his] family life in the United States" are sufficient, Pl.'s Opp. at 42-43, he nonetheless fails to explain why, cite any authority in support of his position, or distinguish the cases relied on by Defendants. Pl.'s Opp. at 42-43; *see* Defs.' Mem. at 31-32.

Even if he were able to assert rights under the Fourth Amendment—and he cannot—Plaintiff's argument fails on the merits. According to Plaintiff, OFAC's decision to designate him as a SDNT should be viewed as a routine, domestic law enforcement matter that interferes with his possessory interests. Pl.'s Opp. at 43-44. Once again, however, he fails to account for precedent contradicting his position—including that from this Court. *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F. Supp. 2d 34, 48 (D.D.C. 2005) (Walton, J.) ("OFAC's blocking of the IARA-USA's assets does not create a cognizable claim under the Fourth Amendment."); *see also Holy Land Found.*, 219 F. Supp. 2d at 79 ("[T]he freezing of [] accounts is not a seizure entitled to Fourth Amendment protection."); *Zarmach Oil Servs.*, 750 F. Supp. 2d at 160 (rejecting argument that the blocking of funds constituted a seizure within the meaning of the Fourth Amendment).[8] Plaintiff's theory also ignores Congress's distinction between the authorities conferred on the Executive Branch in the Kingpin Act and "[l]aw enforcement and intelligence activities." 21 U.S.C. § 1904(d) (instructing that such activities are "not affected" by the Kingpin Act). Nor can Plaintiff advance his argument by inventing a rule that blocking orders issued against foreign nationals living abroad constitute Fourth Amendment seizures when they have "knowing and intentional domestic consequences[,]" Pl.'s Opp. at 43; as evidenced by Plaintiff's

[8] Citing *Islamic American Relief Agency* and *Holy Land*, Plaintiff vaguely states that "OFAC blocking orders hav[e] faced Fourth Amendment scrutiny by several courts, including those in this circuit." Pl.'s Opp. at 44-45. Plaintiff's characterization is rather imprecise: in those cases, the courts considered but rejected the plaintiffs' Fourth Amendment claims. And Defendants have discussed why *Al Haramain v. U.S. Dep't of the Treasury*, 686 F.3d 965 (9th Cir. 2012), and *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 647 F. Supp. 2d 857 (N.D. Ohio 2006), cited in Pl.'s Opp. at 44-45, do not compel a different conclusion, Defs.' Mem. at 34-35 n.9.

failure to identify any supporting authority, no court has ever so held.

Plaintiff is also incorrect in asserting that "the D.C. Circuit 'has expressed some reluctance to find that, categorically, blocking orders could never be "seizures" under the Fourth Amendment.'" Pl.'s Opp. at 43-44 (quoting *Kadi*, 42 F. Supp. 3d at 37); *see id.* at 43 (citing *Kadi* for the proposition that "the D.C. Circuit has remained agnostic over whether an OFAC blocking constitutes a 'seizure' within the meaning of the Fourth Amendment"). But *Kadi* was a district court case, not a D.C. Circuit case, and the opinion makes clear that any "reluctance" was not attributable to the D.C. Circuit. *See Kadi*, 42 F. Supp. 3d at 37. Additionally, in *Kadi* the court rejected the plaintiff's Fourth Amendment claim, holding that "[e]ven assuming that the blocking order at issue here constituted a 'seizure,' having already concluded . . . that OFAC's decision to maintain the . . . designation of Kadi was supported by substantial evidence, it follows that the blocking order was not issued unreasonably or without probable cause." *Id.* Accordingly, the substantial evidence supporting OFAC's decision here provides yet another reason Plaintiff's claim fails.

Finally, Plaintiff offers no basis to conclude that any seizure was unreasonable. His conclusory statements to the contrary, Pl.'s Opp. at 44, are plainly insufficient. Indeed, Plaintiff still makes no effort to assert a privacy interest in any of his blocked property, and fails even to acknowledge, let alone grapple with, the government's weighty interests here. *See id.* at 44-45.

The Court should therefore grant Defendants' motion as to Count IV of the Amended Complaint, as well as Count V insofar as it asserts a claim under the Fourth Amendment.

IV. OFAC Provided Plaintiff Sufficient Notice Of The Reasons For Its Decision

A. OFAC's Disclosures Comply With Any Fifth Amendment Obligations

According to Plaintiff, OFAC violated his purported due process rights because the agency considered classified information but did not utilize "other procedural safeguards" to inform Plaintiff of the basis for its designation decision. Pl.'s Opp. at 33-40. Such safeguards, Plaintiff contends, include requiring OFAC to produce unclassified summaries of classified information. *Id.* But even if Plaintiff can assert rights under the Fifth Amendment—which he cannot, for the reasons discussed in Defendants' motion and above—this argument ignores relevant case law and the actual process that Plaintiff received.

1. Due Process Does Not Require OFAC To Provide Plaintiff Access To Classified Or Privileged Materials, Or To Produce Unclassified And Non-Privileged Summaries Of Otherwise Protected Information

Plaintiff insists that OFAC must provide each SDNT "a full and complete understanding of the reasons for [his] designation." Pl.'s Opp. at 34; *see id.* at 37 (suggesting OFAC must confirm that the information provided to a SDNT includes "all of the factual bases for its decision"); *id.* at 39 (similar). But that argument must give way to the text of the Kingpin Act, which expressly permits the Executive Branch to rely on classified information and submit that information to a court for *ex parte* and *in camera* review. *See Fares*, 901 F.3d at 319 (citing 21 U.S.C. § 1903(i)); *Sulemane*, 2019 WL 77428, at *5. That statute, moreover, does not require the government to summarize classified information in connection with an administrative or judicial proceeding. *See id.* In other words, the Kingpin Act contemplates that the government may designate a SDNT based on classified information that he never sees. *Id.*

Additionally, and contrary to Plaintiff's argument, *see* Pl.'s Opp. at 34, 37, the D.C. Circuit has never concluded that OFAC must disclose to a SDNT each and every reason for its decision.

Instead, and consistent with the text of the Kingpin Act, the Court of Appeals has repeatedly held that there is no due process violation when a federal agency makes a decision based on classified information not disclosed to a foreign national, and that it is entirely proper for a court to take this classified information into account during its *ex parte* and *in camera* review of the agency's action. In *Fares*, for example, the D.C. Circuit flatly rejected an argument that OFAC cannot rely on undisclosed classified and law enforcement privileged information to support a Kingpin Act designation. 901 F.3d at 324-25. Similarly, in *Holy Land Foundation*, the D.C. Circuit held that due process permitted the government, pursuant to IEEPA, to rely on classified information submitted *ex parte* and *in camera* to support the designation of a domestic entity as a SDN, finding unpersuasive the argument "that due process prevents its designation based upon classified information to which it has not had access[.]" 333 F.3d at 164. And although not in the economic sanctions context, *Jifry v. FAA* is particularly instructive; there, the D.C. Circuit held that the government satisfied the notice requirements of due process by informing foreign pilots that their airmen certificates had been revoked based on TSA's determination that they were a "security threat." 370 F.3d at 1183-84. The court reached its decision even though the notice of that revocation "did not include the factual basis for" the determination, "which was based on classified information," and plaintiffs had argued that "without knowledge of the specific evidence on which TSA relied, they [were] unable to defend against the charge that they are security risks." *Id.* at 1178, 1184 (noting that the D.C. Circuit "rejected the same argument" that an agency is not permitted to rely on undisclosed classified information with respect to the designations of foreign terrorist organizations in *Nat'l Council*, 251 F.3d 192, and *People's Mojahedin Org. of Iran v. Dep't of State*, 327 F.3d 1238 (D.C. Cir. 2003)).

The D.C. Circuit has also made clear that "'due process require[s] the disclosure of *only*

the unclassified portions of the administrative record.'" *Holy Land Found.*, 333 F.3d at 164 (quoting *People's Mojahedin Org. of Iran*, 327 F.3d at 1242); *see also Nat'l Council*, 251 F.3d at 208-09 (holding that under the Due Process Clause, the agency "need not disclose the classified information to be presented *in camera* and *ex parte* to the court," and that "[t]his is within the privilege and prerogative of the executive, and we do not intend to compel a breach in the security which that branch is charged to protect"); *cf. Rakhimov*, 2020 WL 1911561, at *7 ("It is well established . . . that the APA does not require OFAC to provide [a SDN plaintiff] with the classified or law-enforcement-privileged information supporting his designation." (citation omitted)).[9] Thus the relevant question is not whether OFAC has provided Plaintiff "a full and complete understanding of the reasons for [his] designation[,]" *see* Pl.'s Opp. at 34, but rather whether OFAC has disclosed the unclassified portions of the record, and whether that record provides Plaintiff "a basis from which to understand his designation, and thereby offer rebuttal arguments and evidence in response[,]" *Zevallos*, 10 F. Supp. 3d at 131. For the reasons discussed in Defendants' motion and below, OFAC has satisfied this standard.

Notably, the specific "other procedural safeguards" or "alternative means" proposed by Plaintiff, Pl.'s Opp. at 33-34, 36—requiring OFAC to produce unclassified summaries of classified information, *id.* at 36-40—have never been mandated by any court in this Circuit considering a designation action. Rather, courts have observed that while "unclassified summaries of classified information on which an agency relied may be helpful to litigants, they are not required." *FBME*

[9] Plaintiff focuses his arguments on the redaction of classified information. Pl.'s Opp. at 33-40. Insofar as he raises the same claims with respect to redactions of law enforcement privileged information, they are similarly unpersuasive. *See Joumaa*, 2019 WL 1559453, at *10 n.14 (holding plaintiff "has no right to classified evidence that OFAC relies on for his designation, nor to law-enforcement privileged evidence OFAC relies on when he fails to assert any distinction between the two." (citing *Fares*, 901 F.3d at 323-24)); *see also FBME Bank Ltd. v. Lew*, 125 F. Supp. 3d 109, 118-19 (D.D.C. 2015) ("[A]mple precedent" allows agencies to "use certain sensitive information, without disclosing it, in proceedings imposing targeted financial measures on persons and organizations.").

Bank Ltd., 125 F. Supp. 3d at 119 n.2; *see also Strait Shipbrokers Pte. Ltd.*, 2021 WL 3566594, at *11 ("Plaintiffs further request unclassified summaries or access of cleared counsel to classified material, . . . but these forms of access to classified material are not required."); *Rakhimov*, 2020 WL 1911561, at *7 (declining the plaintiff's request that the court "impose the unprecedented remedy of mandating the issuance of an unclassified summary[,]" and "instead allow[ing] the reconsideration process to unfold").

Plaintiff's reliance on *Fares* is misplaced. *See* Pl.'s Opp. at 33-34, 36-40. The D.C. Circuit in that case did not require that OFAC disclose "all the factual bases underlying OFAC's decision[,]" *id.* at 37; instead, the court affirmed the ability of the Executive Branch to rely on classified and law enforcement privileged information that is not disclosed to a SDNT, *see Fares*, 901 F.3d at 324. Further, while that court, in dicta, *permitted* the reliance on summaries of protected information to support a designation, it did not hold that such summaries are *required* by the Due Process Clause. *Id.* at 324-25. And Plaintiff's statement that, per *Fares*, "[d]isclosure of some but not all of the allegations against a designee impairs their ability to fully clear their names for delisting[,]" Pl.'s Opp. at 34, is at best inaccurate; the D.C. Circuit, in explaining why the plaintiffs' legal theory was unusual in the sanctions context, stated that "*[d]esignees can contest that* agency disclosure of some but not all of the allegations against them impairs their ability to fully clear their names for delisting, leaving them 'stumbl[ing] towards a moving target.'" *Fares*, 901 F.3d at 322 (quoting *Zevallos*, 793 F.3d at 118) (emphasis added). An observation about what a SDNT may argue plainly does not establish a bright-line rule that OFAC must disclose each and every reason for its designation decisions.

Nor did the district court in *Zevallos*, as Plaintiff suggests, hold that unclassified summaries of classified information are required under the Due Process Clause. *See* Pl.'s Opp. at 34 (citing

Zevallos, 10 F. Supp. 3d at 117). Rather, the court merely stated that due process "required OFAC to promptly provide the unclassified administrative record on which it relied in taking its blocking action." *Zevallos*, 10 F. Supp. 3d at 129. Here, Plaintiff does not claim that OFAC failed to promptly provide him the unclassified record. *See* Pl.'s Opp. at 33-40. Thus *Zevallos* is of no assistance to Plaintiff.

Plaintiff fares no better in relying on the Ninth Circuit's decision in *Al Haramain Islamic Foundation, Inc. v. U.S. Department of Treasury*, 686 F.3d 965 (9th Cir. 2012). *See* Pl.'s Opp. at 34, 37-40. This decision is non-binding and is flatly inconsistent with D.C. Circuit precedent. And even the Ninth Circuit acknowledged that "an unclassified summary may not be possible because, in some cases, the subject matter itself may be classified and cannot be revealed without implicating national security." *Al Haramain*, 686 F.3d at 983. The persuasive value of *Al Haramain* is even more limited, given that (1) *Al Haramain*—unlike this case—involved a domestic entity, and thus due process protections that do not apply here, *id.* at 979; and (2) the Ninth Circuit's due process analysis conflicts with the aforementioned decisions in this Circuit upholding the use of classified information, where the D.C. Circuit did not suggest that due process requires the government to summarize such information, *see Jifry*, 370 F.3d at 1183-84; *Holy Land*, 333 F.3d at 164; *Nat'l Council*, 251 F.3d at 208-09. Additionally, *Al Haramain* involved a "significantly untimely and incomplete notice" that provided "only one of three reasons for [the agency's] investigation and designation," *Al Haramain*, 686 F.3d at 986, whereas here OFAC has provided Plaintiff ample information from which to understand the basis for OFAC's decision. *See* Defs.' Mem. at 39-42 & Section IV.A.2, *infra.* Plaintiff is thus "unlike the plaintiff[] in *Al Haramain* . . . who w[as] left in the dark as to the reasons for [its] designation[]." *See Fares v.*

Smith, 249 F. Supp. 3d at 127; *see also Zevallos*, 793 F.3d at 117 (distinguishing *Al Haramain* on similar grounds).

2. OFAC Has Provided Plaintiff A Basis From Which To Understand His Designation

Yet the Court need not reach the question of whether unclassified summaries are always required or whether OFAC must employ "other procedural safeguards" or "alternative means" when relying on classified information. *See* Pl.'s Opp. at 33-34, 36. OFAC here exercised its discretion and disclosed to Plaintiff unclassified and non-privileged summaries of otherwise protected information considered by the agency, and those summaries, in conjunction with the rest of the administrative record provided to Plaintiff, more than adequately apprise him of the basis for OFAC's decision to designate him as a SDNT. *See Fares*, 249 F. Supp. 3d at 125-28 (holding that "the total body of information provided by OFAC to Plaintiffs"—which included the redacted administrative record, press release, and non-privileged summaries of law enforcement sensitive information—"satisfie[d] due process").

Plaintiff's arguments to the contrary are without merit. He first suggests that OFAC's evidentiary memorandum is too heavily redacted to allow him to understand the reasons for his designation. Pl.'s Opp. at 34-40; *see id.* at 5-6. But that memorandum is redacted only insofar as it contains classified and law enforcement privileged information, *see generally* Notice of Filing of Certified Index to AR, ECF No. 5; AR at 657; which, as discussed above, OFAC need not disclose. In other words, Defendants have not, as Plaintiff suggests, "provided minimal practical notice of the basis for [their] action against Plaintiff[,]" Pl.'s Opp. at 35, but rather have provided the maximum notice consistent with the national security and law enforcement interests of the United States.

Additionally, the unclassified and non-privileged evidence provided to Plaintiff—including that disclosed in OFAC's press release and the unclassified and non-privileged summaries of otherwise protected information, *id.* at 0006-07, 0658—explains OFAC's determination that Plaintiff materially assists or provides financial or technological support for or to, or provides goods or services in support of, the international narcotics trafficking activities of El Aissami; and that Plaintiff acts for or on behalf of El Aissami, 82 Fed. Reg. at 11,101; *see* 21 U.S.C. § 1904(b)(2)-(3). Specifically, OFAC's press release explained that "Lopez Bello is a key frontman for El Aissami and in that capacity launders drug proceeds[,]" and that "Lopez Bello is used by El Aissami to purchase certain assets." AR at 0006. OFAC also noted that Lopez Bello "handles business arrangements and financial matters for El Aissami, generating significant profits as a result of illegal activity benefiting El Aissami." *Id.* Further detail is provided in the unclassified and non-privileged evidentiary memorandum and exhibits transmitted to Plaintiff, including a July 2013 article describing Plaintiff as El Aissami's frontman, *id.* at 0208; *see id.* at 0027; open source reporting that, as of April 2014, Plaintiff was linked to El Aissami, Plaintiff "is the new owner, as a frontm[a]n of [media outlet] Ultimas Noticias," and "there is a relationship between [Plaintiff] and financial transactions of public officials, specifically . . . El Aissami," *id.* at 0600-04; and an April 2014 article stating that Plaintiff, acting as the frontman for El Aissami, purchased the newspaper El Universal for $130 million in Spain, *id.* at 0452.

In its unclassified and non-privileged summaries, OFAC also explained:

- "Venezuelan national Samark Jose Lopez Bello is the 'frontman' for Tareck El Aissami."
- "Lopez Bello is in charge of laundering drug proceeds through Petróleos de Venezuela, S.A. (PDVSA) and organizing the air and maritime cocaine routes to transport cocaine to the Middle East and Asia. Lopez Bello was used by El Aissami to purchase news outlets

in Venezuela, which were the most critical of the Chavez regime, with Venezuelan government funds in order to influence public opinion in Venezuela."

- "Lopez Bello is identified as the 'business representative,' 'money manager,' and 'money launderer' for El Aissami."
- "Lopez Bello handles financial matters for El Aissami. Lopez Bello also manages Venezuelan bonds, as a private party, and conducts unspecific deals which generate significant profits. This activity is done to benefit El Aissami via Lopez Bello. Lopez Bello also has procured vehicles in the U.S. that were transported to Venezuela and ultimately went to El Aissami and other Venezuelan government officials."

Id. at 0658.

Given this information, Plaintiff's suggestion that he is unable to grasp the basis for his designation, Pl.'s Opp. at 34-35, 38-39, strains credulity, *see Joumaa*, 2019 WL 1559453, at *11. At a minimum, such information permits Plaintiff to submit an administrative delisting petition, where he can argue and submit evidence that "insufficient basis exists for the designation," or that "the circumstances resulting in the designation no longer apply." 31 C.F.R. § 501.807; *see Kadi*, 42 F. Supp. 3d at 29 ("[N]otice and a meaningful opportunity to be heard are satisfied by the provision of a post-deprivation administrative remedy and the opportunity to submit written submissions to OFAC, even where (as here) the initial designation provided no notice or opportunity to be heard." (citing *Holy Land Found*., 333 F.3d at 163-64)).[10] For instance, Plaintiff can attempt to demonstrate that he lacked any involvement with El Aissami; never laundered drug

[10] While Plaintiff argues that he "remains inhibited, if not barred, from challenging his designation through OFAC's delisting procedures . . . ." Pl.'s Opp. at 37; *see id.* at 34 (claiming the information provided by OFAC "had the effect of inhibiting Plaintiff from challenging his designation through the delisting procedures set forth by OFAC"), he neglects to inform the Court that he has both submitted and withdrawn a petition for removal from the SDN List. *See* Decl. of Ripley Quinby, attached hereto as Ex. A.

proceeds, either generally or through PDVSA; is not associated with the transport of cocaine to the Middle East and Asia; and did not act as El Aissami's business representative, money manager, or frontman, either generally or specifically with respect to media-related purchases in 2013 and 2014, the procurement of vehicles in the United States that were transported to Venezuela for El Aissami, or the management of Venezuelan bonds for El Aissami. *See Pejcic*, 2021 WL 1209299, at *8 (noting that "[i]f Pejcic believes he is in possession of information that may lead to his delisting, he may supply that evidence in a renewed application to the agency" (citing *Zevallos*, 793 F.3d at 110)); *Bazzi v. Gacki*, 468 F. Supp. 3d 70, 80 (D.D.C. 2020) ("As OFAC notes, Bazzi can provide more than 'general' or 'blanket denials.' . . . . He can 'try to show—through an audit or otherwise—that he did not establish an account for Voltra Transcor Energy in connection with his father's attempt to move money and circumvent sanctions'; or that 'he did not form a petroleum company to maintain his father's access to the oil industry'; or that 'any Gambian government contracts with which he was involved had no connection to his father.'" (citations omitted)). Alternatively, Plaintiff can acknowledge his ties to El Aissami but nonetheless attempt to establish that he is no longer associated with him, and has, for example, divested any holdings linked to El Aissami and publicly denounced El Aissami's illicit activities. *See Rakhimov*, 2020 WL 1911561, at *7 ("As the agency explains, 'Rakhimov could,' and in fact already has, 'submitted information related to whether he knows or associates with any members of Thieves-in-Law, or whether he has ever knowingly collaborated with a member of Thieves-in-Law, including with respect to business matters.' . . . 'Or he can explain that any association with Thieves-in-Law has ceased.'").

Plaintiff's remaining arguments are unavailing. First, Plaintiff appears to claim that the Court should not consider OFAC's press release in any due process analysis because "the purpose of OFAC's press release is not to provide notice to the designated person but rather to provide

notice to the public at large of the nature of the designation action and the reasons for taking it." Pl.'s Opp. at 35; *see id.* (complaining that the press release "set forth factual allegations without stating whether these allegations served as the factual basis for its determination that he meets the criteria for designation under the Kingpin Act"). The thrust of Plaintiff's contention is difficult to discern, as Plaintiff seems to concede that the press release states "the reasons for taking [the designation action.]" *Id.* Nevertheless, numerous courts have relied on OFAC's press release in assessing whether the agency provided adequate notice of the basis for its decision. *E.g.*, *Bazzi*, 468 F. Supp. 3d at 79 ("While OFAC produced no official summary to Bazzi here, its press release provided a 'sufficiently detailed summar[y]' to 'adequately explain OFAC's reasons' for designating Bazzi." (citation omitted)); *Rakhimov*, 2020 WL 1911561, at *5 (noting that OFAC "is entitled to rely on . . . its own 'press release' in making and justifying its designation decisions"); *cf. Strait Shipbrokers Pte. Ltd.*, 2021 WL 3566594, at *7 ("Plaintiffs' first argument—that the SDN designations were 'unexplained' and therefore arbitrary and capricious—has no merit. The day after the designations were made, the State Department issued a press release indicating that plaintiff Strait Shipbrokers had been sanctioned, pursuant to" the applicable Executive Order). Plaintiff provides no reason for the Court to find otherwise here, where the press release plainly relates to the bases for designation under 21 U.S.C. §§ 1904(b)(2)-(3). *See* AR at 0006.

Second, Plaintiff objects to the unclassified and non-privileged summaries—which OFAC was not required to provide in the first instance—stating that they repeat information contained in the record, "have unclear relevance to the legal bases for Plaintiff's designation," or are "conclusory in nature[.]" Pl.'s Opp. at 36. But simply because information appears in separate places in the record does not mean that Plaintiff has been deprived of due process. Further, given

the totality of information, the connection between the findings in the summaries and the bases for designation is self-evident. For instance, the information that Plaintiff "is identified as the . . . 'money launderer' for El Aissami[,]" and "is in charge of laundering drug proceeds through [PDVSA] and organizing the air and maritime cocaine routes to transport cocaine to the Middle East and Asia[,]" AR at 0658, is probative of OFAC's conclusion that Plaintiff materially assists in, and provides support or services for, El Aissami's international narcotics trafficking activities, 21 U.S.C. § 1904(b)(2); and acts for or on behalf of El Aissami, *id.* § 1904(b)(3). Likewise, findings that Plaintiff serves as El Aissami's "frontman[,]" "business representative," and "money manager," and in doing so benefits El Aissami by "purchas[ing] news outlets in Venezuela," "manag[ing] Venezuelan bonds," and "procur[ing] vehicles in the" United States, AR at 0658, supports OFAC's determination that Plaintiff acts for or on behalf of El Aissami, 21 U.S.C. § 1904(b)(3). *See also Joumaa*, 2019 WL 1559453, at *11 (rejecting argument that "OFAC failed to provide [SDNT] sufficient notice when it refused to explain, in its summary of the privileged and classified evidence, how each piece of information in the summary 'corresponds' or 'relates' to redacted portions of the administrative record").[11] And the facts in the summaries are hardly conclusory, as they detail the types and locations of Plaintiff's activities, such that Plaintiff may readily comment on such findings as part of an administrative petition for delisting. AR at 0658; *see Rakhimov*, 2020 WL 1911561, at *7 ("Presumably, if Rakhimov can demonstrate that he is not an international criminal, it will cast substantial doubt on the agency's conclusion that he collaborated with Thieves-in-Law.").

[11] Plaintiff's argument also conflicts with the well-recognized principle that the government may "supply privileged information in *summary form*," *Fares*, 249 F. Supp. 3d at 128 (emphasis added), and it is not surprising when "summaries [are] not highly fact-specific [to] ensur[e] that neither . . . sources nor national security [are] compromised," *Kiareldeen v. Ashcroft*, 273 F.3d 542, 548 (3d Cir. 2001).

The D.C. Circuit's decision in *Jifry* confirms the weakness of Plaintiff's argument. To reiterate, the court in that case held that the government satisfied the notice requirements of due process by informing certain pilots, all foreign nationals, that their airmen certificates had been revoked based on TSA's determination that they were a "security threat." 370 F.3d at 1184. In reaching its conclusion, the court declined to require the agency to disclose the specific reasons for the determination, which were classified. *Id*. at 1183-84. Nor did the court otherwise require the level of detail or "alternative means" envisioned by Plaintiff; instead, the court observed that "[i]n light of the governmental interests at stake and the sensitive security information, substitute procedural safeguards may be impracticable, and in any event, are unnecessary under our precedent." *Id.* at 1183. Thus the information conveyed by OFAC—plainly more detailed than a finding that a pilot poses a security threat—warrants a conclusion that Plaintiff has "received all the process that [he is] due under [binding] precedent." *See id.* at 1184.

Finally, Plaintiff incorrectly characterizes Defendants' position by omitting words and supplying ellipses, presumably as part of an effort to make Defendants appear unreasonable. Plaintiff states that, "[a]ccording to Defendants, for instance, the 'redacted administrative record . . . apprise[s] Plaintiff of the specific findings that support OFAC's conclusion,' pointing to a single paragraph in which OFAC cites anonymous online reporting alleging Plaintiff 'is a key frontman for El Aissami . . . .'" Pl.'s Opp. at 38 (quoting Defs.' Mem. at 40) (alterations Plaintiff's). But Plaintiff's "selective quotation is highly misleading," *Humberson v. U.S. Attorney's Off. for D.C.*, 236 F. Supp. 2d 28, 32 (D.D.C. 2003), as Defendants' brief makes clear their position that "*[t]he press release and* redacted administrative record *further* apprise Plaintiff of the specific findings that support OFAC's conclusion." Defs.' Mem. at 40 (emphases added). Plaintiff's

mischaracterization does nothing to advance his argument; there are enough disputes between the parties here without the need to invent more.

Accordingly, under these circumstances, OFAC has plainly provided Plaintiff "with a basis from which to understand his designation." *Zevallos*, 10 F. Supp. 3d at 131. Additionally, any error associated with the notice provided by OFAC would be harmless, given that the administrative record amply supports OFAC's decision. *See Zevallos*, 793 F.3d at 117. The Court should therefore grant Defendants' motion as to Count VI of the Amended Complaint.

B. OFAC's Disclosures Comply With Any APA Obligations

Defendants have also shown that OFAC's disclosures likewise comply with any APA obligations, and that Count VII of Plaintiff's Amended Complaint therefore fails. Defs.' Mem. at 43-44. Plaintiff neither addresses Defendants' argument nor cross-moves for summary judgment with respect to Count VII. *See generally* Pl.'s Opp. at 33-40. Accordingly, the Court should treat Defendants' uncontested argument as conceded. *See Joumaa*, 2019 WL 1559453, at *9.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's cross-motion and grant Defendants' motion to dismiss or, in the alternative, for summary judgment, and enter judgment in favor of Defendants on all claims.

Dated January 7, 2022

Respectfully submitted,

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Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAMARK JOSE LÓPEZ BELLO, Plaintiff, v. BRADLEY T. SMITH, in his official capacity as Acting Director, Office of Foreign Assets Control, *et al.*, Defendants.	Civil Action No. 1:21-cv-01727 (RBW)

DECLARATION OF RIPLEY QUINBY

I, Ripley Quinby IV, declare as follows:

1. I am currently employed as the Deputy Associate Director of the Office of Global Targeting at the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC").

2. I have been with OFAC as either a contractor or an OFAC government employee since 2015, first as a Sanctions Investigator, then as a Section Chief for OFAC's Strategic Targeting Section, and then as an Assistant Director for the Counterterrorism, Human Rights, and Corruption Division, before assuming my current position. In my present role, I oversee the production of evidentiary memoranda for the purposes of sanctions actions across all of OFAC's sanctions programs, including those pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"), 21 U.S.C. §§ 1901-1908. Further, I supervise the processing of administrative petitions from designated persons seeking reconsideration of their designation under the Kingpin Act as well as their removal from OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List").

3. The facts attested to herein are based on my personal knowledge or information made available to me in the course of my official duties.

4. On October 9, 2017, Plaintiff Samark Jose López Bello ("Plaintiff"), through his previous counsel, submitted an administrative petition (the "Petition") pursuant to 31 C.F.R. § 501.807 seeking reconsideration of Plaintiff's designation under the Kingpin Act and his delisting from OFAC's SDN List.

5. On October 10, 2017, OFAC acknowledged receipt of the Petition and notified Plaintiff's previous counsel that the Petition was under review.

6. On November 15, 2017, OFAC requested that Plaintiff provide it with additional information concerning the Petition by answering a questionnaire (the "Questionnaire").

7. Through his previous counsel, Plaintiff requested, and OFAC subsequently granted, nine extensions of time to respond to the Questionnaire.

8. On April 24, 2020, through his current counsel, Plaintiff submitted a letter to OFAC seeking an immediate recission of Plaintiff's designation under the Kingpin Act or, alternatively, a discussion with OFAC concerning issues raised by Plaintiff's counsel in the letter. Plaintiff also requested that OFAC hold the Petition in abeyance until OFAC responded to the letter or, alternatively, that OFAC extend the deadline for a response to the Questionnaire for an additional 90 days.

9. On May 27, 2020, OFAC granted Plaintiff's request for an extension of time to respond to the Questionnaire.

10. Through his current counsel, Plaintiff requested, and OFAC subsequently granted, three additional extensions of time to respond to the Questionnaire.

11. On June 2, 2021, Plaintiff's current counsel notified OFAC that Plaintiff had decided to voluntarily withdraw the Petition and desired to have the matter closed administratively without a decision.

12. On June 3, 2021, OFAC acknowledged Plaintiff's withdrawal of his petition and administratively closed the matter.

In accordance with 28 U.S.C. § 1746, I certify and declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: January 7, 2022

Ripley Quinby IV
Digitally signed by Ripley Quinby IV
Date: 2022.01.07 15:24:34 -05'00'

Ripley Quinby IV
Deputy Associate Director
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAMARK JOSE LÓPEZ BELLO,

Plaintiff,

v.

BRADLEY T. SMITH, in his official capacity as Acting Director, Office of Foreign Assets Control, *et al.*,

Defendants.

Civil Action No. 1:21-cv-01727 (RBW)

[PROPOSED] ORDER

Upon consideration of Defendants' motion to dismiss or, in the alternative, for summary judgment, ECF No. 10, and Plaintiff's cross-motion for summary judgment, ECF Nos. 11-12, it is hereby

ORDERED that Defendants' motion to dismiss or, in the alternative, for summary judgment, is GRANTED; and it is further

ORDERED that Plaintiff's cross-motion for summary judgment is DENIED; and it is further

ORDERED that this action is DISMISSED.

SO ORDERED

Dated: _____

_____
REGGIE B. WALTON
United States District Judge