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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 430 (KPF)

5 ROMAN STORM,

6 Defendant.

7 -----x

8 New York, N.Y.
9 April 9, 2026
10:00 a.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES

14 JAY CLAYTON,
15 United States Attorney for the
Southern District of New York
16 BY: BEN ARAD
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18 COOLEY LLP
19 Attorneys for Defendant
20 BY: BRIAN E. KLEIN
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23 HECKER FINK LLP
BY: DAVID E. PATTON

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1 (Case called)

2 MR. ARAD: Good morning, your Honor. AUSAs Ben Arad
3 and Thane Rehn for the government, Special AUSA Kevin Mosley
4 also for the government.

5 THE COURT: Thank you and good morning.

6 MR. KLEIN: Good morning, your Honor. Brian Klein.
7 With me at counsel table is Mr. Storm is here, Keri Curtis
8 Axel, Viviana Andazola Marquez, Mr. Patton.

9 THE COURT: Thank you very much. Good morning to each
10 of you. Thank you.

11 It is my understanding that Mr. Arad and Mr. Klein are
12 taking the lead this morning with respect to oral argument; is
13 that correct?

14 MR. ARAD: Yes, your Honor.

15 MR. KLEIN: Yes, your Honor. I'm actually splitting
16 it a little bit with Ms. Axel, who will handle money laundering
17 and sanctions, but I will be handling venue and 1960. Sorry if
18 that wasn't clear when your clerk came out.

19 THE COURT: It was not.

20 I'm not sure I need the seating chart of who you are.
21 I know who you this many months into things. Let me begin, as
22 I always should, by thanking you for the work on the motions.
23 These were anything but perfunctory. There was enormous care
24 and attention paid to them. I've sat with them for a while and
25 I've reread the trial transcript and looked at a lot of

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1 exhibits. It may not look like it, but I've tried very hard to
2 pare down my questions. I think I have fewer questions, but
3 they might be rather long for me to get them out. I would ask
4 you to focus on the question that I'm asking and not the one
5 you wish I would ask. I might ask a few questions that are
6 replicating questions I've asked in the past with respect to
7 the motions to dismiss. That is in part because, perhaps as a
8 result of the trial testimony or exhibits, I might have new
9 thoughts on these, but I am asking you. And I know it's so
10 hard to do this, don't read too much into my questions. I have
11 issues, you'll see what my issues are, but if I didn't need
12 assistance from you, I wouldn't be having this oral argument.
13 If my mind was made up one way or the other, I wouldn't drag
14 you all in. I'm not doing this for fun – let's put it that
15 way.

16 There are certain decisions that I don't intend to
17 revisit today, and I will just tell you what they are so that
18 you can not pose arguments on them. They include the
19 significance, or not, of Tornado Cash's failure to register;
20 the need for Tornado Cash to have had physical custody of the
21 assets; the claim that Tornado Cash comprises only pools that
22 were made immutable as distinguished from the DUI, the COI, and
23 other ancillary components; the applicability, or not, of the
24 IEEPA informational materials exception; IEEPA arguments based
25 on blocked property; the tool service dichotomy set forth in

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1 the *Van Loon* decision that does not today bind me; and there
2 are arguments that were based on *United States v. Hoskins*,
3 902 F.3d 69, and *United States v. Amen*, 831 F.2d 373 that I'm
4 not discussing. And generally speaking, I'm not revisiting
5 most of the constitutional arguments. I'm also not especially
6 moved by the briefing or the Supreme Court's decision in *Cox*
7 *Commc'ns, Inc. v. Sony Music Ent.* It doesn't, I believe, help
8 my analysis, so I didn't intend on discussing it today.

9 Now, here's the slightly strange thing, Mr. Klein. I
10 have questions for you, for better or worse, I have more
11 questions for your adversaries, but it's your motion, so I'm
12 going with you. I think what's going to happen is that after
13 you hear me question the government, you will want to follow up
14 with your own thoughts. What I mean to say is I'm not going to
15 re-ask the questions of the government to you, but as you're
16 listening to me discuss certain issues with them, I'm confident
17 that there's something you're going to want to follow up on,
18 and I will give you an opportunity in reply to give me that
19 information because the questions I have, they're not directed
20 to you for some of these issues, but I'm sure you want to be
21 heard on them.

22 Let me begin, please, with venue. If you're ready to
23 begin, sir, I'm ready to begin with you. So, sir, it does seem
24 to me that some of the arguments you're making ask me to draw
25 different or unfavorable inferences for the government, and I

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1 don't think I can do that at this procedural posture of the
2 case. Certainly, if there are inferences that are completely
3 inappropriate or that no one could reasonably draw, I get that,
4 but it does seem at times that you're saying you're suggesting
5 that there's another way of looking at evidence. I understand
6 that there is, and it's in fact a way that you've suggested to
7 the jury that they ought to look at it, but they did not agree
8 with you. I'm just not sure that that is Rule 29 worthy.

9 Separately, sometimes you're suggesting to me a burden
10 here with venue that I think is higher than preponderance, so
11 I'm just going to ask you to keep that in mind when I'm asking
12 these questions.

13 You argue, sir, for substantial contacts test. This
14 is multifactor analysis that is sometimes used where the
15 defendant's contacts with the district are minimal, and I do
16 understand that, but one of the cases on which you rely, which
17 is *United States v. Kirk Tang Yuk*, 885 F.3d 57 specifically
18 says, in a section that you've elected not to quote to me, that
19 when an overt act in furtherance of a criminal conspiracy has
20 been committed in this district, this supplemental inquiry has
21 no relevance. The court goes on to say that a defendant
22 participating in a conspiracy that is being conducted in part
23 in the district of prosecution necessarily has sufficient
24 substantial contacts to justify a finding of venue that is
25 otherwise proper. So this would suggest, sir, that if I find a

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1 covenant of good faith and fair dealing overt act, and we'll
2 talk about what that might be, then venue is satisfied and I
3 don't have to go to the substantial contacts theory.
4 Conversely, if I don't find a qualifying overt act, I don't
5 have to proceed to the substantial contacts test because we've
6 already failed at the first step. Is my read of this case
7 correct?

8 MR. KLEIN: Your Honor, I would just want to clarify
9 the substantial contacts test. We applied that for the Infura
10 payments. So I want to make sure that's been cabined in that
11 area. So I just want to make that clear at the outset. We
12 haven't argued that test for the other three bases the
13 government alleges established venue under the preponderance
14 test, so I want to make that part clear at the outset.

15 THE COURT: Okay.

16 MR. KLEIN: I think there, there isn't an overt act.
17 So that's why we argued it there.

18 THE COURT: What I'm saying, and perhaps I wasn't
19 clear a moment ago, if I don't find an overt act, I don't have
20 to get to substantial contacts because I haven't found an overt
21 act; is that correct?

22 MR. KLEIN: We don't disagree with you on that, your
23 Honor, and that's why we focused it on the Infura payments.

24 THE COURT: That's why I'm wondering why do I have to
25 focus on substantial contacts at all. What I'm saying, again,

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1 is if I find a qualifying overt act, I don't have to do the
2 substantial contacts analysis according to the *Kirk Tang Yuk*
3 case, that's what it says. If I don't find a qualifying overt
4 act, then I never have to get to the substantial contacts test
5 because I don't have a qualifying overt act. That's what that
6 case says. I'm trying to harmonize because I'm trying to
7 understand what it means in this context, because it seems
8 strange to append it as a separate level of inquiry when
9 finding an overt act in the district seems to viciate its
10 applicability.

11 MR. KLEIN: Well, what I think we say is, your Honor,
12 the way we read that case and the way we read when you apply
13 substantial contacts is if there's a question and sort of an
14 equitable question about the weakness of the case and you could
15 rely on it as a secondary test, and where we focus that test is
16 in the Infura payments, and so that's where we think, in
17 particular, that test applies. So, again, I just want to be
18 clear about that part. So I don't necessarily disagree with
19 your Honor, but I'm saying I think the tenor of that decision,
20 the tenor of when to apply it is if there's a real sense that
21 their argument is weaker and then you can apply it there.
22 That's why we used it in the Infura payment section.

23 THE COURT: When you're speaking about weaker
24 argument, you mean with respect to a particular overt act
25 qualifying or not qualifying?

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1 MR. KLEIN: Yes, your Honor.

2 THE COURT: So in ascertaining whether a particular
3 overt act qualifies, I could then use this test?

4 I'll try that again, this time coherently, sir.

5 I read the language from the decision a moment ago.

6 MR. KLEIN: Yes, you did.

7 THE COURT: And it says if there is an overt act, I
8 don't need to use this test. That's what it says.

9 MR. KLEIN: You don't need to, but you still could use
10 it, your Honor.

11 THE COURT: No, actually, I'm being too nice. When an
12 overt act has been committed in this district, the supplemental
13 inquiry has no relevance. I'm trying to figure out when to use
14 it then. That's the problem that I'm having, sir.

15 MR. KLEIN: I think you should use it for the Infura
16 payments, your Honor, where there is no overt act where you
17 could look at both tests and you could use it there. That's
18 why we directed your attention to it in the Infura payments
19 area. You haven't relied on that test in any other basis.

20 THE COURT: Okay. And we're in agreement, the
21 qualifying overt act has to be committed by a member of the
22 conspiracy and has to be reasonably foreseeable to your client?

23 MR. KLEIN: And material, your Honor.

24 THE COURT: I'm headed there next, sir, yes.

25 MR. KLEIN: Okay. Since then.

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1 THE COURT: Okay. The materially further band to the
2 conspiracy, that's from the *Royer* case, and I understand that.
3 I've only seen it in two Second Circuit cases. When I saw it,
4 the sentence that it's included in says – I'm quoting from
5 *Royer* – this includes not just acts by coconspirators, but also
6 acts that the conspirators caused others to take that
7 materially further the ends of the conspiracy. Now, you and I
8 could have long discussions about that, and which, and whether
9 something is limiting or a positive, yes, I still remember how
10 to diagram sentences, the nuns were very explicit in that
11 regard, sir. But I want to understand, I took the materially
12 furthering language to apply to acts that coconspirators caused
13 others to take. You're suggesting that this materially
14 furthering standard includes, as well, acts taken by
15 coconspirators?

16 MR. KLEIN: Yes, your Honor. And I had underlined the
17 same thing, your Honor. So I think we're on the same page
18 here, literally, yes, your Honor. We think it applies to any
19 act has to be materially in furtherance of the conspiracy.

20 THE COURT: I understand it has to be in furtherance
21 of the conspiracy. It's this material furtherance that I'm not
22 sure about because it only shows up, as I saw it, in the *Royer*
23 case and then repeated in *United States v. Lange*, 834 F.3d 58.
24 I don't see it showing up in other discussions of overt acts.

25 MR. KLEIN: Well, I think it may not because it's so

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1 obvious it's material it's not an issue. But where it is
2 immaterial or *de minimus*, then they discuss it, and I think
3 that's the point of the *Royer* case. So I think we read that
4 same sentence broader than your Honor appears to be reading it.
5 We think any act in furtherance must be material.

6 THE COURT: Again, I don't know how to read it.

7 MR. KLEIN: Oh, sorry.

8 THE COURT: That's why we're having the discussion,
9 again. But I appreciate that you're asking me to read it in a
10 manner that the "material furtherance" language applies both to
11 acts taken by coconspirators or the defendant, him or herself,
12 and acts that coconspirators caused others to take.

13 MR. KLEIN: Yes, your Honor.

14 THE COURT: Let me please put to the side the
15 communications with the BitMart attorney. I think the
16 government has more problems with that than you do, and that's
17 why not I'm not asking you questions about it, but I do want to
18 talk about some of the other arguments.

19 With respect to the Infura payments, and I guess
20 perhaps you'll bring in the substantial contacts test here, I'm
21 understanding or the government was arguing that those payments
22 were designed to keep Tornado Cash afloat. We can talk about
23 whether there is sufficient evidence whether they went to a
24 Manhattan-based bank account. I understand your view is that
25 they don't. I'm trying to understand whether you are arguing,

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1 as a baseline matter, that keeping Tornado Cash operational
2 could not or was not an overt act for any account in this case.

3 MR. KLEIN: Yes, your Honor. What Infura was doing
4 was not in furtherance of the conspiracy. So --

5 THE COURT: So Infura was allowing Tornado Cash to
6 run, correct? The services that Infura provided allowed for
7 the operation of Tornado Cash some component of the Tornado
8 Cash protocol, did it not?

9 MR. KLEIN: A component, maybe, but not Tornado Cash
10 overall. So I want to be specific there.

11 THE COURT: Okay. No, I appreciate you're very
12 concerned about that, yes. I'm saying and the government's
13 arguing that the services provided by Infura allowed Tornado
14 Cash, as a protocol, and I know you guys disagree about what I
15 should be looking at and how narrowly I should be looking at
16 that, but it allowed it to operate.

17 MR. KLEIN: Those were for the UI, your Honor.

18 THE COURT: Yes, sir.

19 MR. KLEIN: And so not for Tornado Cash operating, to
20 be very clear. So that's why I want to draw that distinction.

21 THE COURT: Fair enough. But was not the UI the
22 principal way by which Tornado Cash was accessed? The people
23 didn't access the pools directly because that messed up the
24 anonymity issue.

25 MR. KLEIN: No, they could access it directly --

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1 THE COURT: They could, but they elected not to in the
2 main.

3 MR. KLEIN: Most people did. The evidence trial did
4 establish that most people did access the pools through the UI,
5 but the UI was not an essential component, it didn't transfer
6 any funds. We're not going to do what all that, necessarily,
7 past that.

8 THE COURT: Thank you.

9 MR. KLEIN: So the UI was one tool that someone could
10 use to interface with the Tornado Cash protocol.

11 THE COURT: Correct.

12 MR. KLEIN: So it's not part of the protocol, your
13 Honor, that's where I'm going to draw the distinction. It's a
14 tool that allows to you access the smart contract pools.

15 THE COURT: I think the government will tell me that
16 you're slicing the salami too thinly, and I understand that.
17 We'll see. I appreciate that that's your argument, that's
18 always been your argument, that I should look more narrowly
19 than the government wants me to as to what constitutes Tornado
20 Cash. But the point is, if, under my construction of things,
21 the services Infura provided allowed users to access
22 Tornado Cash, you're saying that's not an overt act?

23 MR. KLEIN: Yes, your Honor.

24 THE COURT: Because why? Because it wasn't undertaken
25 with a criminal purpose, because all it did was keep afloat a

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1 business that was not itself or per se illegal or something
2 else?

3 MR. KLEIN: For many reasons, your Honor, the UI is a
4 non-essential tool --

5 THE COURT: Did it have to be essential to be an overt
6 act, sir? Well, I guess you would say yes under the material.

7 MR. KLEIN: Yes.

8 THE COURT: The material furtherance that I'm not sure
9 I agree with. All right.

10 MR. KLEIN: It's a non-essential tool, your Honor,
11 it's a neutral tool. So it's not a tool designed specifically
12 to engage in money laundering. You could, legitimate users
13 could and did use it --

14 THE COURT: I saw the neutral tool argument made
15 throughout your briefing. It wasn't obvious to me that that's
16 something that courts looking at sufficiency of the evidence
17 challenges or looking at overt acts are looking for this
18 neutral versus not neutral tool. It's just something I've not
19 seen in the case law.

20 MR. KLEIN: I think that has arisen in this case, your
21 Honor, obviously, and it's a major component of this case, and
22 there's a lot of, I think we can all agree, unique components
23 to this case that there are interceptions of lots of different
24 areas of the law. So I think we'd emphasize that point because
25 I think it is important for many of the charges here, in fact

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1 all of them. So, it is a non-essential neutral tool. I think
2 that's an important part.

3 These payments, I mean, I would just start stepping
4 back even. Even if your Honor found that, there's still no
5 connection to New York.

6 THE COURT: Found what, please, sir?

7 MR. KLEIN: Found that the UI was material to the
8 furtherance of the conspiracy. There's still, as we all know
9 in this test, whether it was a connection to this district.

10 THE COURT: Yes.

11 MR. KLEIN: And that's woefully -- there's no
12 existence of that evidence. So it's only pure speculation by
13 the government. So I think that's the starting point, is like,
14 is there any connection to any of this, Infura, to this
15 district? And there is none. It's only speculation by the
16 government about those payments and what you could, like, kind
17 of payment after March, did it have an invoice, did it mention
18 New York. Somehow that means, if you remember, your Honor, and
19 I'm sure you do, the payments starting in March were all
20 cryptocurrency. They were not sent to New York. There's no
21 evidence, the government didn't argue that. What the evidence
22 does show is there was an invoice sent for those cryptocurrency
23 payments that reference New York, but that was for a bank
24 account in New York that our client didn't use, he paid in
25 cryptocurrency. So the only bank account that possibly could

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1 have been used is when they were paying in fiat before March,
2 so February or earlier. There is no evidence that those
3 payments went to a bank account in New York. It's pure
4 speculation that a March invoice referring to a bank account in
5 New York actually is a bank account when they paid in fiat in
6 February and earlier. So there is no tie to New York for this
7 Infura payments. And that's a key starting point here, and I
8 don't want that to get lost in the discussion.

9 THE COURT: I understand. I know the government
10 disagrees with you. They suggest that if I look at the bank
11 records in their totality, I'm going to see payments, fiat
12 payments to New York.

13 MR. KLEIN: The only thing they latch onto is, I
14 think, your Honor, is there is a Peppersec record, bank record,
15 there was some reference to New York, which has only been
16 highlighted here. At this late stage, I don't think this was
17 ever brought up with the jury, but even that isn't enough, your
18 Honor. We talk about how a ministerial payment to a third
19 party is not enough. And so the payment wasn't directly to
20 Infura, obviously it went to a bank account. And the sliver of
21 possible evidence, which we disagree with, it doesn't meet the
22 preponderance standard set, or in speculation, is that those
23 payments went to a New York bank before February and earlier.

24 THE COURT: A lot of your arguments are predicated on
25 the premise that Tornado Cash began its life as a non-criminal

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1 enterprise. There's no evidence, for example, that it was
2 developed in order to facilitate the commission of crimes,
3 there's no evidence that people sat in a room and said let us
4 build a better mousetrap specifically for criminals. And, of
5 course, the government suggests that, over time and as a result
6 of information or certain actions that were taken, things
7 became criminal, and I know you disagree with that. But are
8 you suggesting that because Tornado Cash at its inception was
9 not criminal, or at least the government hasn't argued
10 otherwise, that anything done to keep Tornado Cash afloat could
11 not be an overt act and could not support a conviction?

12 MR. KLEIN: Your Honor, what we said, and to be clear,
13 and I'll start off with this point, which needs to be very
14 clear, a cryptocurrency mixer is legal, the government's agreed
15 with that. We filed a motion in limine asking not to argue
16 against that and you ruled it was moot. So, starting the
17 cryptocurrency mixer -- perfectly legal. Just that abstract
18 idea, and that's what started here.

19 So, maintaining your cryptocurrency mixer and
20 continuing in this universe of helping that code or do things,
21 that would also be legal, because if -- a cryptocurrency mixer
22 itself is legal, right. So we need to have that in mind when
23 we look at all this evidence. The government can't argue and
24 isn't going to argue that running a cryptocurrency mixer itself
25 is illegal. And so I think that's an important starting point

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1 here and that's where we would start when you think about this,
2 that that is very clear. So it's legal to have a
3 cryptocurrency mixer, it's legal to operate one, full stop.

4 The government's arguments, and again, I spent a lot
5 of time on this, as you know, talking about how it's all
6 backwards-looking. It's well, you built this thing, you learn
7 bad people were misusing it to some degree, and you didn't take
8 steps to stop them or fix it, right. That's the nutshell of
9 what they've argued, is the evidence that shows -- that they
10 claim shows there was a bad agreement at the start. The
11 problem with that, your Honor, is of course that's just really
12 a negligence case, which we've said repeatedly. I don't want
13 to beat that drum a lot, of course, but that's what we're
14 saying, is all their evidence is negligence evidence. And if
15 they're committed to use --

16 THE COURT: Let's pause there, please, because at
17 times you argue this is a case of inaction. The government's
18 made very clear, and you may disagree with it, but they made
19 very clear that they're not holding your client liable for your
20 client's inaction, but for affirmative conduct in which he
21 engaged. So I'm understanding the pivot to be that this
22 affirmative conduct is, at most, negligence and not willful
23 conduct warranting the imposition of criminal penalties. If
24 you're going to talk to me about inaction, I'm probably not
25 going to listen to you because I don't think that's what the

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1 government is -- you just say it in your briefing.

2 MR. KLEIN: I'm not -- in responding to your question,
3 I'm not saying that, but your theory is broader. But yes, for
4 answering your question, your Honor, and taking your
5 supposition that they're arguing that the affirmative steps
6 they took when they were running it, like the Chainalysis
7 oracle, adding features, that those were half measures or those
8 were window dressings.

9 THE COURT: Yes.

10 MR. KLEIN: And those affirmative steps show somehow
11 that back at the beginning, this was a criminal conspiracy and
12 throughout it was.

13 THE COURT: But my point, sir, is I may ultimately
14 agree with you that the affirmative conduct posited by the
15 government does not suffice. I'm asking you not to argue to me
16 today that your client's being prosecuted for his inaction.
17 That's what I'm saying.

18 MR. KLEIN: We maintain that argument. I won't argue
19 it to your Honor. But we do think he is being prosecuted for
20 not taking certain steps. And I'll give you an example, which
21 is clearly they brought up Mr. Werlau, this expert, to talk
22 about they should have had a user registry.

23 THE COURT: Yes.

24 MR. KLEIN: And so they didn't do that, right. So
25 it's not just things he did that -- they actually put in

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1 affirmative evidence that said, hey, here's something you could
2 have done. And now stepping back, we have a lot of problems
3 with Mr. Werlau's registry because I will tell you now, your
4 Honor, I think it's so obvious and common sense tells us if
5 they had actually done the user registry, which only asks for a
6 name and email address, the government would have been pounding
7 this table throughout the trial about how that was window
8 dressing and a half measure. Common sense tells us and our
9 expert even told the jury that wouldn't have been effective at
10 stopping people from misusing it because, of course, a North
11 Korean hacker could enter in a fake name and enter in a fake
12 email address and then just still use it, the UI. So this is
13 where we're getting in this issue of both of what they claim
14 are affirmative actions, which show intent, which we disagree
15 with, but also inaction. That's why I want to be specific
16 there.

17 THE COURT: I appreciate the clarification. I
18 understand.

19 Let's switch to the existence and the ability to
20 access the Tornado Cash website. The government has argued
21 maintenance of a website can itself be an overt act. Why isn't
22 it one here?

23 MR. KLEIN: Well, first of all, the website did
24 nothing to further the misuse. The website is a neutral
25 website just like it had information. It didn't say, come in

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1 hackers, welcome all money launderers.

2 THE COURT: It would have been surprising for them to
3 do that though.

4 MR. KLEIN: You'd be surprised what people put on
5 websites, your Honor.

6 THE COURT: All right.

7 MR. KLEIN: A lot of the cases we looked at and they
8 tried to cite to are literally message boards and websites for
9 child pornographers, right, that actually do do those things.
10 So I want to be clear about that. There are cases where people
11 do do that. So having a neutral informational website, it
12 doesn't specifically -- it's neutral. It's not saying anything
13 to anybody about using money laundering. There's no evidence
14 of that. We put that in. You can look at it. There's no way
15 to read it that way. And so maintaining a website like that is
16 not in furtherance of the conspiracy.

17 THE COURT: With respect to Mr. Ahmed's depositive
18 assets, you suggested that doesn't suffice to constitute an
19 overt act because it was too brief and it was too insubstantial
20 to further the conspiracy. I thought the point was, there's
21 the overt act, was the fact that Mr. Storm and his colleagues
22 maintained a website that could be accessed by customers like
23 Mr. Ahmed and where deposits could be made.

24 MR. KLEIN: Well, there's a lot of problems with
25 Mr. -- that's one point we raised. There's a lot of problems

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1 with that evidence as a basis for venue.

2 First of all, he didn't actually use Tornado Cash for
3 his hack, right. When he got up and testified, he said, I went
4 there to see the later wallet that I used, right.

5 THE COURT: Yes.

6 MR. KLEIN: So when he used Tornado Cash was not to
7 launder money, not to violate sanctions. So let's just start
8 there, right, Counts One and Three. He used it, what he
9 claimed was, for this discrete purpose. He doesn't recall --
10 he testified that -- I think he saw it or used it, but he
11 didn't actually recognize the website when he was asked about
12 it. And his -- that's not as a basis for venue, your Honor. I
13 mean, he happened to be in New York, but he used a neutral tool
14 before he even committed the crime.

15 THE COURT: You keep talking about neutral tool. My
16 memory of the charge for an overt act is that it has to be in
17 furtherance of the conspiracy. The act itself does not have to
18 be illegal, it just has to be in furtherance of the conspiracy.
19 And by the way, my charge nowhere has the words "materially
20 further." So I'm just not sure. The neutral tool construct
21 that you're giving me, it may just be because of the nature of
22 this case, but I just don't remember charging the jury that
23 that's what it -- I don't remember you asking me to charge the
24 jury that the overt act had to be itself non-neutral.

25 MR. KLEIN: That was a while ago and I don't remember,

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1 so I don't want to go back and guess what we objected to. I
2 know we put our objections on the record.

3 But, your Honor, what he was doing was not in
4 furtherance of the conspiracy they charged Mr. Storm of
5 committing, which was money laundering, violating sanctions and
6 operating an unlicensed money transferring business. What he
7 was doing was just moving funds through Tornado Cash and then
8 later committing the crime.

9 THE COURT: Turning now to the counts of conviction, I
10 realize I have a whole lot here about action. Just noting at
11 the government's opposition at pages 3 and 8 and 14 and 87,
12 there are -- and I will be discussing this with government at
13 some length -- what the government considers to be the
14 affirmative conduct in this case. But later on you say, okay,
15 maybe there was affirmative conduct, but there's no proof that
16 it was taken -- I believe your words were that it was taken or
17 done for the criminal purpose of assisting bad actors. Now,
18 maybe, but it sounds to me as though the government argued to
19 the contrary, everybody argued this at length, and the jury
20 disagreed. Why is it that I should be -- this isn't a Rule 33.
21 There's no suggestion yet that I instructed the jury
22 incorrectly. If they were presented with the same evidence
23 that we're talking about today, they made a contrary decision.
24 Why should I invade and overturn that decision?

25 MR. KLEIN: So I think the portion you're talking

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1 about is in the money laundering or sanctions provision.

2 THE COURT: It's money laundering, yes.

3 MR. KLEIN: So I'm happy to hand this off to Ms. Axel.
4 She did a fantastic job with that and seems very ready to
5 address it.

6 MS. AXEL: Yes, your Honor. And I apologize, I'm
7 fighting a cold here.

8 THE COURT: Sorry hear that.

9 MS. AXEL: So you may hear me, I feel a little bit
10 like I'm speaking through a tunnel.

11 I think, your Honor, we view the consistent use of the
12 word "affirmative conduct" to actually be insincere, I think.
13 There really is not affirmative conduct that they point to,
14 other than continuing to support the protocol, push out
15 upgrades to the protocol, continue to support the UI. That's
16 the only alleged affirmative conduct. None of the so-called
17 affirmative conduct has any nexus to an unlawful purpose.

18 THE COURT: It seems to me, as well, the government is
19 arguing that the affirmative conduct includes acts of
20 concealment — and I will talk to government about this, as
21 well, so they can be forewarned — regarding either the
22 centralization or not of governance and the monetization or the
23 money that Mr. Storm could or could not derive from it. So
24 those things, as well, consilient of that information, also
25 seems to be part of the affirmative conduct they're outlining.

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1 You may think it's not sufficient, but I think it includes
2 that, as well.

3 MS. AXEL: Is your Honor referring to what they call
4 kind of consciousness of guilt evidence?

5 THE COURT: No. What I'm saying is the government's
6 opposition at page 3 where they're talking about the conduct
7 that was taken, it includes concealment of criminal proceeds
8 and the movement of funds. At page 87 of the government's
9 opposition, when they're talking about the IEEPA account in
10 Lazarus Group, they say, as well, that conduct included lying
11 to the public about the effect of purported screening
12 mechanisms he had implemented to profit handsomely from the
13 Lazarus Group's payment of relayer fees. What I'm saying is
14 you say it's just maintaining Tornado Cash and improving
15 Tornado Cash. As an initial matter, your adversaries say those
16 improvements, and the way in which they were reached and the
17 discussions that were had, suggest that Mr. Storm and his
18 colleagues deliberately refrained from making improvements that
19 would tamp down on criminal activity. They believe that
20 amounts to criminal conduct. You may disagree and we'll talk
21 about it.

22 Separately, they're saying that actions taken by your
23 client to conceal information about the ability to control
24 components of the protocol and about the money that he could
25 and was making from Tornado Cash is also part of the

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1 affirmative conduct. That's at least what I'm understanding.
2 So please engage on that.

3 MS. AXEL: Your Honor, first of all, before you
4 stopped me, the formulation the Court gave me, again, was one
5 of inaction, a failure to take some sort of remedy. So, again,
6 I think it's very clear, we'll just start with this, the Court
7 already addressed inaction in the discussion with Mr. Klein. I
8 think it's very clear from the authorities we have that an
9 inaction is not sufficient to reach a criminal agreement, to
10 reach willful participation, neither of those things.

11 THE COURT: I think the difficulty I was having with
12 Mr. Klein, and he was very helpful at clarifying it, is that
13 sometimes it's like two sides of a coin, what you're saying is
14 inaction and the government is disclaiming as inaction. The
15 government would then say, well, actually, it was choosing to
16 do something else. When you choose to do something else, your
17 action sort of includes with it inaction in another context.
18 And so I'll walk back a little bit my concerns about your
19 arguments about predicating things on inaction. I'm just
20 noting that I think what the government is talking about is
21 your client making decisions to do one thing over another.

22 MS. AXEL: What they have said multiple times, and,
23 again, we reference closing argument, your Honor, simply to
24 kind of attempt to parse out what their argument actually was.
25 I think they simply doubled down on this in their papers. The

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1 founders agreed to maintain the business and it continue its
2 operations. And, again, we already talked about it with
3 Mr. Klein, there was an agreement here that there's no evidence
4 that this was illegal from the outset or had an unlawful
5 purpose from the outset. So, and then agreed to maintain it,
6 including upgrading software and finding a way to monetize it,
7 even after they knew it had become a haven for hackers, money
8 launderers, and sanctions evaders.

9 So, again, we have this idea that because there's
10 general public knowledge that this product, the protocol, the
11 software itself can be misused, they continue to upgrade it and
12 ultimately seek to monetize it. That is the heart of their
13 argument and that is one that's based on -- it's inadequate as
14 a matter of criminal purpose. There's no direct evidence, not
15 even circumstantial evidence that they wanted to facilitate
16 money laundering or sanctions evasion. There's zero of it. No
17 evidence of a desire to break the law. We've given the
18 Court --

19 THE COURT: There's a fair amount of internal
20 communications that one could read to suggest that Mr. Storm
21 and his colleagues had concerns that they were allowing
22 criminal conduct to take place under Tornado Cash and that they
23 themselves could be liable for it. There is. We can't deny
24 that there is. Now, whether their concerns actually bear out
25 to criminal liability may be a different issue. They weren't

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1 unaware of the possibility of liability for what was going on
2 in Tornado Cash.

3 MS. AXEL: Well, again, you're referring to
4 consciousness of guilt evidence. Again, I think the case law,
5 it is very clear, you can't rely on consciousness of guilt
6 evidence to come in and satisfy its intent. It's insufficient.
7 We cited case law that said that. It actually is very weak
8 evidence. I actually think, too, your Honor, when you look at
9 the evidence itself, it's very weak. "The guys were effed"
10 comment comes in the context of discussing -- comes right
11 before discussing the sanctions oracle, which they did
12 implement. So the consciousness there is we need to do
13 something at which point they did something. So I think a lot
14 of that evidence is very -- it's cabined within the context.
15 The other statement about law enforcement is in that same chat,
16 all of which is, you know, Mr. Storm weighing against his
17 colleagues to implement the Chainalysis oracle, which they did.
18 So I think you can't take that evidence out of that context and
19 suggest that it provides some other broader thing.

20 Again, we have no evidence here of a desire to break
21 the law. Again, so consciousness of guilt here is like the
22 knowledge that somebody else might investigate. It is hardly
23 really surprising after OFAC issues a specific order affecting
24 this particular wallet. And this happens really, really, late,
25 your Honor, in the alleged conspiracy.

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1 So I think the evidence they point to is knowledge of
2 illicit use coupled with continued promotion of the platform.
3 That doesn't get you there. Consciousness of guilt and even,
4 again, lies to victims. What are the lies to victims? About
5 the effectiveness of a remedy? I mean we reject that those are
6 lies anyway.

7 THE COURT: Well, yes, right, that's a problem. The
8 problem is that, again, you have a fundamental disagreement
9 over whether they could make changes to Tornado Cash that would
10 or would not have this effect or be effective. But, as well,
11 right, the government's arguing that when they told victims
12 that there was nothing they could do, that in fact there was
13 something they could do.

14 MS. AXEL: Again, your Honor, you're characterizing
15 the statements much as the government does.

16 THE COURT: Well, I have to because that's where we
17 are. I have to give the best inferences because that is what
18 the jury found. I'm not doing it in my capacity as me, I'm
19 doing it because, at this stage, I must give the government's
20 best inferences for this evidence. Not unrealistic ones,
21 but --

22 MS. AXEL: Well, it's not realistic, and I guess
23 that's what I was going to say about the alleged light. So,
24 for example, the statement to BitMart or to any of the victims.
25 What the victims asked was, can you get my money back, you

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1 know, can you trace this, what can you do about it. They
2 haven't pointed to a single alleged lie where anyone came in
3 and said, you know, can you make changes to the protocol to
4 prevent this kind of action in the future. No one asked that.
5 What they asked was, my money was stolen, can you trace it?
6 No, they can't. That's the question. That's the BitMart
7 question. And it didn't lull anybody. It wasn't intended to
8 lull anybody. The BitMart attorney testified that after he
9 received that communication, he then did in fact inform law
10 enforcement and take that next step. There's no lulling there
11 to try to get somebody not to inform law enforcement. And
12 again, this is against the backdrop of this being a totally
13 public project with which Mr. Storm was affiliated.

14 So, getting back to the Court's concealment question,
15 I don't think there is evidence of concealment here. That is
16 not evidence of concealment, to provide a lawful answer. And
17 the Court can actually look at the exhibit itself and see if it
18 is capable of the inference that the government is urging.

19 Keep in mind on money laundering and sanctions
20 evasion, we don't have a jury verdict here. Even if we did,
21 the Court can look at the exhibit itself and say is it capable
22 of that inference that they're urging from it, which is somehow
23 that it deceived victims about what changes could be made.
24 It's not about that. And the Court can actually look at that.

25 So, you know, what they have, your Honor, on the

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1 conduct is a grab bag of stuff that's actually very weak. I
2 quoted from their argument on the bottom of page 71 and 72 when
3 they get to trying to summarize evidence, they point to the
4 sheer volume of laundered funds, communications received about
5 Tornado Cash concealing dirty money, founders internal
6 knowledge about laundering – those are all one thing. Those
7 three things are all one thing. That's what they point to
8 continually. You're on notice, you received information, you
9 learned about hacks, you knew Tornado Cash was being misused.
10 Four, consciousness of guilt, which I just addressed. And
11 five, millions of dollars of Torn ultimately sold at the end.
12 And none of that, your Honor, amounts to an agreement to an
13 unlawful purpose.

14 On the inaction front, I would remind the Court that
15 there's a series of cases here that I think are critical,
16 including *Morissette*, you can't presume intent. You must
17 actively participate in a criminal venture with full knowledge.
18 That's *Rosemond*. And then, your Honor, I think, very
19 critically, *Falcone*, the Second Circuit case that was recently
20 cited in the *Smith & Wesson* case, and I think, your Honor,
21 that's very similar here. This is a prohibitory case where
22 the defendant sold sugar and knew that one of the places he
23 sold sugar to was a still that was using it to make prohibited
24 liquor. The court there said that it's not enough that the
25 defendant does not forego a lawful activity. He must in some

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1 sense promote the venture himself. And the Supreme Court
2 recently cited this in *Smith & Wesson*. Also, in *Falcone* and in
3 *Twitter*, the Supreme Court cited the *Direct Sales* case,
4 inference of knowledge, and another old Supreme Court case,
5 inference of knowledge of a conspiracy can't be drawn merely
6 from knowledge the buyer will use the goods illegally. I think
7 those all go to the inaction problem here. You can have the
8 affirmative conduct of continuing to run a business, you can
9 even know that someone is going to misuse your product as in
10 the *Falcone* case, but the question is whether you joined how to
11 common-goal in that venture, and that's ultimately where *Direct*
12 *Sales* comes up. *Direct Sales* says, well, ultimately, the
13 seller -- sorry. The seller, based on extensive pattern of
14 knowledge, does join in a common goal with the buyer, but until
15 you get to that common goal with the actual unlawful actor, you
16 don't have a criminal conspiracy. And I guess, if this is a
17 good opportunity, but I can wait and answer the Court's
18 questions, as well.

19 THE COURT: Go ahead, because my next question, and I
20 don't have many more on this substance, goes to the 1960 claim.
21 So go ahead.

22 MS. AXEL: Okay. Great. So this is a good segue,
23 your Honor, for me to address the argument that we've, I think,
24 very fully developed in these papers, but I would like to
25 reorient the Court because I think I cited the cases in the

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1 wrong order.

2 THE COURT: Okay.

3 MS. AXEL: I would like to --

4 THE COURT: I'm troubled by your suggestion I need to
5 be reoriented.

6 MS. AXEL: Because of the way we presented the issue,
7 your Honor.

8 THE COURT: Okay. Go ahead.

9 MS. AXEL: I think the Court will appreciate this.

10 So, your Honor, we've argued to the Court -- and I
11 think it's crystal clear, actually -- that a coconspirator has
12 to conduct the money laundering transaction. You have to agree
13 that as part of the criminal agreement, the defendant must
14 agree that a coconspirator will conduct the actual transaction.
15 And this is an argument we made at jury instructions and at the
16 close of the case, and I think --

17 THE COURT: But this was also part of, I think, your
18 motion to dismiss that I rejected, no?

19 MS. AXEL: I think your Honor focused there on
20 knowledge and intent and not the fact that the conduct of the
21 specific money laundering transaction, the agreement to
22 conduct, it has to be a coconspirator that's going to conduct
23 the transaction. I don't think that was fully developed in the
24 motion to dismiss, I think maybe by the time of the motion for
25 reconsideration, but not in the motion to dismiss.

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1 And here's why I think we're absolutely right and we
2 had a lot more time I think to dig into the research here. I
3 think, your Honor, starting with *Twitter*, the most recent
4 Supreme Court case, it says that a significant limiting
5 principle of conspiracy liability is an agreement with the
6 primary wrongdoer to commit the wrongful act.

7 And then I think there's really two other Supreme
8 Court cases that I would ask the Court to read because I think
9 they're completely clear on this point. One is *Ocasio v.*
10 *United States* – these are recent cases – and *Salinas v. United*
11 *States*. In *Ocasio*, it says a defendant must reach an agreement
12 with the specific intent that the underlying crime be committed
13 by some member of the conspiracy. In other words, each
14 conspirator must have specifically intended that some
15 conspirator commit each element of the substantive offense.
16 That's the problem, and we've been trying to focus on that from
17 the motion to dismiss when the Court and I had the mob boss
18 dialogue and from that point forward, but I think this case law
19 really hits the nail on the head. *Salinas*, a person may be
20 convicted of conspiracy so long as he agrees with another
21 person that they or one or more of them will engage in the
22 conduct that constitutes the crime. And *Salinas*, I think,
23 relevantly, cites the model penal code for the underlying
24 principles of conspiracy. *Salinas* is a RICO case. But, also,
25 RICO was passed in the '70s, similar to 1956(h). And what the

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1 Supreme Court says is you look to the common law at the time to
2 see what Congress intended for this particular statute. And
3 this is the model penal code. And the model penal code says a
4 coconspirator has to be the one that's going to commit the
5 substantive act. And that's always been the problem, is the
6 problem here, your Honor, for conducting, and it's a problem on
7 knowledge. And they're related sort of reciprocal. But you
8 can't have a money laundering case, a conspiracy to money
9 launder. You can't say that the defendant intended to commit
10 the object, he can't agree to object of the crime unless he
11 agrees to the elements of that, and that includes agreeing that
12 some coconspirator will conduct the actual money laundering
13 act. We obviously don't have that here. And without that,
14 your Honor, they've extended, they've attempted to extend
15 conspiracy liability beyond the breaking point far beyond where
16 it was ever meant to go. And I think, again, then you return
17 back when you read *Twitter* and you read *Smith & Wesson* and you
18 say, this is what the Supreme Court would say in this case,
19 this is beyond the scope of criminal conspiracy to say I
20 developed something that's misused by bad actors that the
21 government admits are third parties and are not part of the
22 same conspiracy.

23 And I would also then draw the Court back to *Direct*
24 *Sales*, because *Direct Sales* says that, at the end of the day,
25 it's one conspiracy or *Blumenthal*, another prohibition era

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1 case. In *Blumenthal*, the Court says you can have downstream
2 coconspirators. It's also a whiskey case involving whiskey
3 sales and you've got pubs down at the far end. These people
4 don't have to know each other, but when somebody agrees to the
5 conspiracy, they have to understand that this is a common goal,
6 that the whole conspiracy only makes the end users responsible
7 for what happened at the beginning. And the whole conspiracy,
8 like relevant conduct, your Honor, if they're in -- I'm sorry,
9 your Honor. I know you can follow me, so I tend to speed up.
10 You can only hold those downstream coconspirators liable for
11 the whole thing if we're in the same conspiracy together.

12 THE COURT: You're still not listening to my hand
13 signals. Please slow down.

14 MS. AXEL: I'm sorry.

15 And so here where we have clear government theory, the
16 government says things like it's never been our theory that the
17 bad actors are in the conspiracy and we say, yes, that's the
18 problem with your theory.

19 THE COURT: Yes.

20 MS. AXEL: And so they've actually admitted they do
21 not have a viable money laundering theory under *Twitter*,
22 *Ocasio*, *Salinas*, *Falcone*.

23 THE COURT: Let me return to Mr. Klein. Thank you.

24 MS. AXEL: Thank you.

25 THE COURT: Mr. Klein, you argue in your papers that

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1 Mr. Storm needed advance knowledge of the criminal nature of
2 the transactions, and I wanted to be sure that I understood the
3 timeframe there. You're making that argument on a
4 transaction-by-transaction basis that he had to know *ex ante*
5 that a transaction was going to be processed through
6 Tornado Cash that was itself illegal in some way?

7 MR. KLEIN: Yes, your Honor.

8 THE COURT: But with respect, for example, to the
9 Ronin hack, if it was obvious – and it seemed to be obvious to
10 your client and his colleagues – that the Lazarus Group was
11 laundering the proceeds of this hack through Tornado Cash, at
12 some point, wasn't it enough to know that that was what they
13 were doing, that they were attuned to it? I'm not sure how he
14 could have known before the transaction was effectuated that it
15 was effectuated, but he did know that for six weeks they were
16 laundering the proceeds of the hack through Tornado Cash.

17 MR. KLEIN: Your Honor, I don't think that's what the
18 evidence actually shows and what he knew. So, to be clear,
19 there was reporting about the Ronin hack, there was reporting –
20 and this is third-party reporting – that those proceeds were
21 going to potentially go through Tornado Cash, the smart
22 contract pools. And I know we all know this, but I think it's
23 worth emphasizing, he had no contact with the hackers. They
24 didn't come and ever tell him we're about to send the proceeds
25 through.

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1 THE COURT: Of course.

2 MR. KLEIN: That's, I think, important because that
3 does happen in cases, right. Often, money launderers do know
4 those things. Often, people running unlicensed transmitting
5 businesses that violate subsection C do know those things,
6 that's how they're proving it. So that they are engaged – and
7 this ties into Ms. Axel's point – with the people committing
8 the crimes and they have full awareness of the specific funds
9 that are being processed are from an illegal source.

10 And so there was -- the evidence does show there was
11 concern, and they did discuss about it because of this
12 third-party reporting. And they took some steps, including
13 the Chainalysis oracle, but they didn't know the specific funds
14 and when, how, where. And that's really important, your Honor,
15 because the government put on an FBI agent, as you remember,
16 who talked, Mr. DeCapua, talked a lot about how all these funds
17 moved. And what we learned from that and what the jurors
18 looked toward and every inference points to, the hackers just
19 didn't take it from the hack in none of the exhibits they had
20 and just moved it directly into Tornado Cash. It was
21 constantly moving around and doing different laps in different
22 wallets and generating new wallets to tons of intermediary
23 wallets. And then, at some point, some funds might have gone
24 through Tornado Cash. But the actual, knowing those specific
25 funds were coming through, when, where, how, or even if they

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1 went through — no. And what we do know is that sometimes after
2 he did learn that, people did come in and say, hey, my funds
3 are in a smart contract pool — again, a third party telling him
4 that, but that's after when he couldn't do anything. Because
5 we all can agree, and this is undisputed by the government,
6 what's in the smart contract pool, only the user with the
7 secret note has access. Our client never had access, never
8 could do anything.

9 And so I think we stand by that argument, we stand by
10 that application of the law, we stand by what the facts
11 indisputably showed here.

12 THE COURT: Thank you.

13 I would like to turn now to the government. Mr. Arad,
14 I actually want to move backwards, and that's because, as I
15 think is evidenced from the briefing and from the questions and
16 discussion had this morning, there's just a fundamental dispute
17 about whether the trial evidence demonstrated inaction or
18 culpable inaction, or negligent conduct, or willful misconduct.
19 So I think I have to go back and make sure I understand the
20 government's theory of the case so that I didn't miscite
21 arguments when I was having my discussions with Mr. Klein and
22 Ms. Axel.

23 So, starting at step 1, the government's not arguing
24 that Mr. Storm and his colleagues committed a crime in
25 developing and launching Tornado Cash, correct?

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1 MR. ARAD: Correct.

2 THE COURT: The government is not arguing that
3 Mr. Storm and his colleagues committed a crime in not shutting
4 down Tornado Cash upon learning that bad actors were using it
5 to launder criminal proceeds, correct?

6 MR. ARAD: That is one way in which the defendant and
7 his coconspirators could have avoided committing a crime, could
8 have stopped committing a crime. There were several ways in
9 which they could have stopped committing crimes. One of them
10 would have been to shut down the service, another would have
11 been to simply withdraw.

12 THE COURT: If all that the evidence showed was that,
13 and we can perhaps have a smaller timeframe, if Mr. Storm
14 learned that someone was using Tornado Cash to launder
15 proceeds, are you suggesting that his failure to shut down
16 Tornado Cash exposed him to criminal liability or, if you will,
17 is a basis on which I can uphold his conviction in this case?

18 MR. ARAD: No, your Honor. But I want to be very
19 clear about a few things in that answer.

20 THE COURT: Okay.

21 MR. ARAD: I was listening very carefully to the
22 Court's question.

23 THE COURT: Thank you.

24 MR. ARAD: The question was whether that knowledge
25 that someone had misused Tornado Cash would require him to take

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1 a step like shutting it down, and the answer to that very
2 narrow question is no. But the evidence at trial showed a lot
3 more than that. He didn't just learn that someone had misused
4 Tornado Cash in the past. He learned over a period of years
5 that multiple criminal actors were regularly using Tornado Cash
6 at huge volumes. And I want to take this to the Ronin hack
7 because this sort of represents the whole case in a nutshell.

8 With respect to the Ronin hack, the defendant not only
9 learned that these sanctioned North Korean cyber criminals -- so
10 not just someone -- were laundering money through Tornado Cash,
11 he learned they were doing it to the scale of hundreds of
12 millions of dollars --

13 THE COURT: Please stop. I might even agree with you.
14 Are you saying that Mr. Storm's failure to shut down
15 Tornado Cash upon learning of the Lazarus Group's use of
16 Tornado Cash to launder the proceeds of the Ronin hack in and
17 of itself exposed him to criminal liability?

18 MR. ARAD: It's his continuing to operate
19 Tornado Cash, which is not the same thing.

20 THE COURT: Are you sure? I need to understand,
21 because I feel like I just said that. I just said failing to
22 shut it down, you said continuing to operate. Are they not two
23 sides of the same coin?

24 MR. ARAD: I am sure. I think the nuances do matter
25 here, your Honor. He could have, for example, withdrawn. He

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1 didn't have to shut down Tornado Cash, he didn't have to say
2 Tornado Cash is no longer a going concern, we're not going to
3 pay for the website, we're not going to do this, we're not
4 going to do that. All he had to say is, I am stepping back, I
5 am not going to participate in this anymore because I know that
6 everything that I do to participate in the Tornado Cash
7 enterprise in its current state is promoting these criminal
8 activities.

9 THE COURT: This is what confuses me. I thought what
10 you were going to be arguing to me based on many, many
11 discussions we've had in the past is not that operating
12 Tornado Cash is a basis for a criminal conviction and not that
13 continuing to operate with knowledge that there are some bad
14 actors using it, I thought what you were saying was that the
15 conscious decision to implement improvements to or developments
16 of the Tornado Cash software with knowledge that the system was
17 then being used by bad actors and the decision to do that while
18 monetizing or trying to implement a relay or register tied to
19 the Torn token that ended up resulting in some monetary
20 benefits to Mr. Storm, that that's what got the conduct.

21 So I want to understand perhaps, and maybe I should
22 have asked the question this way, at what point factually did
23 criminal liability inhere?

24 MR. ARAD: Once the defendant knew that his service
25 was in large part serving criminal actors and would continue to

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1 do so. Every step he took that was in furtherance of that
2 service was a criminal act. There are multiple categories of
3 conduct that fall under that umbrella, which I will call
4 operating Tornado Cash. The Court drew an important
5 distinction between what I might call the humdrum daily
6 operations of Tornado Cash and certain acts that the defendant
7 undertook to improve Tornado Cash to make it more effective in
8 ways that would serve these criminals.

9 THE COURT: But please pause because, and this was the
10 basis for these questions in the first instance, I wanted to be
11 sure you weren't saying that merely developing and launching
12 Tornado Cash and finding out it was being misused was itself a
13 basis for criminal liability, and you're not saying that, but
14 you seem to suggest that the decision to continue operations
15 upon learning that a substantial portion of clients were using
16 it for bad ends subjected him to criminal liability, and that's
17 what concerns me. Maybe I was misunderstanding the
18 government's theory of the case, and that's embarrassing if
19 it's true, but I thought the point was that knowledge plus
20 improvements, not just maintenance, but improvements plus
21 monetization was what the government was predicated criminal
22 liability on. But if what you're saying is that merely keeping
23 the business afloat while knowing that it was being used for
24 bad purposes, that that's enough for criminal liability, then
25 tell me, but I'm concerned if that's your theory. And I don't

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1 think that's what the jury convicted on, but we'll see.

2 MR. ARAD: The theory that your Honor understood the
3 government to be pursuing is the full package. That was the
4 full set of evidence that the government presented to the jury
5 and asked the jury to conclude guilt from. And I believe that
6 that is what the jury did.

7 But the government's theory is broader than that. The
8 government's theory is that at some point when this business
9 became obviously to the defendant in large part serving only
10 criminal actors -- and this next point is key -- and even the
11 legitimate transactions that went through Tornado Cash became
12 illegitimate because they also facilitated the criminal ends of
13 the money transmitting of the money laundering and of the
14 sanctions evasion --

15 THE COURT: Because they kept the pools afloat?
16 You're saying legitimate transactions in Tornado Cash, folks
17 who were concerned about privacy and not committing bad acts.

18 MR. ARAD: Right.

19 THE COURT: But putting their money in there, they
20 were allowing what? They were keeping pools afloat that
21 allowed bad actors to use them for bad means?

22 MR. ARAD: They were helping in a number of ways. And
23 by the way, I'm not suggesting that they --

24 THE COURT: They clearly had no knowledge of that.

25 MR. ARAD: I was just about to say, I'm not suggesting

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1 that they had knowledge of that, but I'm saying that once the
2 money was mixed, the presence there of what otherwise might be
3 considered money from clean transactions dirtied that money and
4 dirtied those transactions, not from the perspective of the
5 innocent depositors of which there were a few, but from the
6 perspective of the defendant and his coconspirators.

7 And there were a number of ways in which this was
8 true, your Honor. One is the anonymity set. The size of the
9 pools mattered to making Tornado Cash an effective tool of
10 concealing money. And so the innocent funds that were in there
11 helped to hide the criminal funds.

12 With respect to sanctions evasion --

13 THE COURT: And therefore what? Therefore what?
14 Therefore, Mr. Storm is criminally liable because even the
15 non-criminal users were aiding the criminal users and he's
16 somehow -- I mean, my concern, as I hope you know, is we have a
17 standard of willfulness here. You're suggesting that
18 maintaining this knowing that there are bad actors and that
19 there are good actors who are perhaps hiding the bad actors
20 unwittingly is willful conduct on the part of Mr. Storm?

21 MR. ARAD: Once the extent of criminal activity rises
22 to the level that it did for the time period that it did on
23 Tornado Cash, yes, your Honor. We focused a lot on the Court's
24 instruction on willfulness, which was that to act willfully
25 means to act knowingly and with a wrongful purpose, either to

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1 disobey or disregard a law.

2 THE COURT: Yes.

3 MR. ARAD: Every morning that the defendant went to
4 work on Tornado Cash, once he knew that hundreds of millions of
5 dollars of criminal proceeds were passing through his system
6 and would continue to pass through his system, and in the
7 example of the Lazarus Group, knew exactly which criminal group
8 was making those deposits and had information about the primary
9 wallet from which those deposits were coming, yes. At that
10 point, every time the defendant went to work, he knew that
11 every act he took in furtherance of Tornado Cash was in
12 furtherance of those transactions and more would come later.

13 THE COURT: But you're not asking me to sustain the
14 jury's conviction or to allow the other claims to go forward to
15 a retrial based merely on the Ronin hack, because the Ronin
16 hack was at the tail end of this conspiracy. You're suggesting
17 to me that just learning that a percentage, and I think, was it
18 at the trial, was it Agent DeCapua who did a conservative
19 estimate at 37 percent or something along those lines?

20 MR. ARAD: That was during an earlier hack. During
21 the Ronin hack, it was around 55 percent.

22 THE COURT: Okay. Fine, it's not 100 percent.
23 37 percent or 55 percent, once they knew that, they had an
24 obligation to stop or to withdraw. My concern, sir, and it's
25 interesting because I might argue that you were doing better

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1 before you started talking, but you're suggesting -- I was
2 fine, I understood your argument that it was one thing to let
3 Tornado Cash lie and remain operational, it was something else
4 to try and improve on it. It was something else to improve on
5 it in a manner that made it more appetizing for folks who were
6 using it for criminal conduct and to refrain from implementing
7 measures that you argue and the defense contests would do
8 something to tamp down on the criminal conduct, but now you are
9 saying that letting the pools remain operational in the face of
10 knowledge that a substantial percentage of the transactions
11 were being used for criminal conduct is itself a sufficient
12 basis for liability. Why are you taking that on?

13 MR. ARAD: I'm not, your Honor.

14 THE COURT: But you just did.

15 MR. ARAD: It's not that letting the pools remain was
16 a sufficient basis for criminal liability.

17 THE COURT: Okay.

18 MR. ARAD: It was taking active steps to maintain and
19 improve them.

20 And I just want to be clear about one thing. I was
21 trying to listen very carefully to your Honor's question, which
22 is what is the government's theory of the case, what is the
23 most expansive theory of the case the government has what is
24 outside the bounds of the government's theory of the case,
25 which is a different question from, on a Rule 29 motion, did

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1 the government present enough evidence for the jury to
2 reasonably convict. And there, I just want it to be clear that
3 I was trying to answer your Honor's question as directly as I
4 could.

5 THE COURT: I understand that, but I guess what you're
6 suggesting is that the construction that I offered earlier in
7 this conversation about what I understood the government's
8 theory to be was in fact what was argued to the jury and what
9 you believe they in fact convicted on, but you're letting me
10 know so that I don't get worried about such things, that there
11 was an even more expansive basis on which I could sustain the
12 jury's conviction.

13 MR. ARAD: Yes.

14 THE COURT: I just don't know why you're biting that
15 off as an appellate issue. I mean, you are and you did, I'm
16 not sure why, but that's fine, that's what you did.

17 Let me understand something different. Ms. Axel and I
18 had a substantial discussion about the two sides of the action
19 coin, inaction versus action that excludes other actions. What
20 is the conduct of Mr. Storm that subjects him to criminal
21 liability in this case?

22 MR. ARAD: His conduct was, your Honor, multifold. At
23 every turn, Mr. Storm took steps to enhance the Tornado Cash
24 protocol in ways that would make it more effective, yes, for
25 all of its users, including its criminal users who were a

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1 substantial portion. He enhanced the protocol in order to make
2 it profitable for himself. He did that in a way that, in turn,
3 made it more effective for criminals to use because the
4 presence of relayers was the icing on the cake that made every
5 transaction that went through Tornado Cash truly secret on the
6 Blockchain.

7 THE COURT: It may be that I can't formulate an
8 adequate hypothetical here, but it seems to me that if you are
9 making improvements to your website, Windows makes improvements
10 to improve functionality, to perhaps change the screen so I can
11 have it look more to my liking, and I, as noncriminal, may find
12 these developments to be beneficial and in fact useful, and
13 some criminal may like to choose his background colors, as
14 well. It can't be that an improvement to a website on that
15 level that benefits good and bad actors equally matters. I'd
16 like to understand, maybe you are arguing that the particular
17 improvements that Mr. Storm and his colleagues implemented to
18 Tornado Cash were particularly focused on aiding those who were
19 engaged in criminal activity by design, not by effect.

20 MR. ARAD: That's correct, your Honor. Many of the
21 improvements that the defendant undertook did aid criminals in
22 their activity.

23 There is an interesting issue in this case, which is
24 that the fundamental business that Tornado Cash was in was
25 concealing money. Now, there can be legitimate uses for it. I

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1 think it's worth raising that only two witnesses at trial who
2 testified that they used Tornado Cash for lawful purposes,
3 testified that they used it a total of about five times in
4 small denominations, but in theory there were lawful uses for
5 Tornado Cash. But the scale of unlawful uses for Tornado Cash
6 is what tipped the balance. When the defendant undertook steps
7 like implementing the relayer network, he was doing that and
8 the consequence was to make the service more effective for
9 criminal actors.

10 Now, part of the reason for presenting that evidence,
11 your Honor, was to show that, at every step, the defendant
12 faced a choice – he could withdraw from committing these
13 crimes, he could alter the Tornado Cash protocol so that it
14 would be less hospitable to criminal actors, he could have done
15 any number of those things, and yet, at every turn, he chose
16 not to.

17 And coming back to the Court's definition of
18 "willfulness" that it gave to the jury. He knew that he was
19 acting unlawfully, and we know that because once things started
20 looking dark around the time of the Ronin hack is when all of
21 the consciousness of guilt evidence comes up. And so the
22 defense is presenting a theory that it wants the Court to
23 uphold over the jury's verdict that at no point in implementing
24 all of these improvements to Tornado Cash and foregoing any
25 change that he well knew how to make that would have made the

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1 platform less hospitable to criminal actors, at no point did
2 the defendant understand himself to be participating in
3 unlawful activity, but the jury didn't reach that conclusion
4 and there was ample evidence from which it could draw that very
5 reasonable inference.

6 THE COURT: Let me go back a moment, please. You
7 talked about the relayed network, and what you said is that
8 the consequence of the relay network was to make Tornado Cash
9 more effective for bad actors; do I understand that correctly?

10 MR. ARAD: Yes.

11 THE COURT: But I don't think I understood the
12 documentary evidence that was introduced to suggest that that's
13 what they were talking about as they were implementing the
14 relay network. So you used the word "consequence" rather
15 than, for example, "design" or "purpose." That's interesting
16 to me because it's one thing, as I suggested earlier, and I'm
17 sorry my Windows analogy wasn't sufficiently transferable to
18 this case, but it's one thing to implement something that
19 everybody likes that's beneficial to everybody and that also
20 has the consequence, has the effect of aiding bad actors, but
21 I'm not sure I saw, with respect to the relay registry as
22 distinguished from the Chainalysis oracle, conversations
23 suggesting that they knew and they wanted the relay registry
24 to aid bad actors in their use of Tornado Cash. Is there such
25 evidence?

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1 MR. ARAD: Not in the form of communications
2 specifically about the relay network, but in their broader
3 conduct, there absolutely is such evidence, your Honor. For
4 example, in the defendant's statements, his outright lies that
5 there was nothing that he and his coconspirators could do to
6 change the Tornado Cash protocol. They started making those
7 statements at least as early as December of 2021, and they
8 crafted that premeditated response at least as early as March
9 of 2021, nine months before that statement was ever made to
10 Mr. Evans regarding the BitMart hack. That's just one example
11 of the way in which the defendant did have on his mind that
12 criminals were using Tornado Cash and that he wanted to
13 distance himself from that as a matter of perception as much as
14 possible.

15 For example, your Honor is right to bring up the
16 Chainalysis oracle in part because it does actually apply here.
17 The defendant there said, before its implementation, we need to
18 tell everybody that we're not doing this kind of thing. That
19 demonstrates his willfulness because he's not concerned with
20 actually doing something that will be effective. He's
21 concerned with creating air cover for himself. The jury could
22 reasonably draw the inference, and it did, from that kind of
23 evidence that the defendant willfully acted with an unlawful
24 purpose. And the parsing of those communications, the way that
25 Ms. Axel was doing moments ago, is a fine exercise, but it's an

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1 exercise for the jury, it's not an exercise for the Court after
2 a verdict has been delivered.

3 THE COURT: One moment, please, sir. I'm realizing
4 that I'm actually getting ahead of myself, and that is because
5 I really do have some questions about venue. I thought it was
6 obvious during the trial that I was interested, I won't say
7 concerned, but I will say interested in the government's
8 evidence of venue. So let me go to that and then I'll go back
9 to these substantive issues.

10 I should note, just as a last matter of housekeeping,
11 there was appended to perhaps the defendant's reply brief a
12 technological facts appendix. Did you see that, sir? It's the
13 last couple of pages, I believe, of the reply brief.

14 MR. ARAD: I don't have it in front of me, your Honor.

15 THE COURT: Okay. My point is, and maybe this is
16 something you can tell me about after we switch sides again,
17 whether you agree with the factual statements that are
18 contained in the technological facts appendix, whether you
19 believe that they somehow impact your arguments for sufficiency
20 or the defense arguments to the contrary. Or maybe, just more
21 broadly, how, if at all, should I consider the statements?
22 Because you will recall or have refreshed that there are just
23 statements about what this technology could and could not do
24 and how, if at all, it matters. So I do want to know whether
25 you think I can consider this, whether you think it's actually

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1 an effort to revise what was actually shown to the jury and
2 sort of a revision as to history or something like that. So
3 your colleagues will keep in mind that that's something that
4 you're going to discuss at break.

5 Let's please move to venue. I know, too, that venue
6 is a preponderance standard, but sometimes it matters. And I
7 saw in the last year that Judge Subramanian vacated a
8 conviction in *United States v. Eisenberg* on venue grounds. And
9 so I don't think that you're challenging my views as to the
10 substantial contacts analysis, although I can hear from you if
11 you want, but could you engage, please, on the material
12 furtherance line of cases and whether I have misunderstood or
13 how I should perhaps properly understand the language from the
14 decisions I mentioned earlier.

15 MR. ARAD: Yes, your Honor.

16 I want to start with the *Royer* case, which the defense
17 raised. The *Royer* case was about a website that had about 300
18 subscribers, and venue was found proper where only seven of
19 them were in the district in question, which is the Eastern
20 District of New York. There wasn't even evidence presented in
21 that case that any of those individuals actually traded on the
22 information that was published on the website, but the court
23 determined that it was reasonable for the jury to find venue on
24 two separate theories, one of them being some trades must have
25 taken place by those seven subscribers or, together or in the

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1 alternative, some of those seven subscribers had to disseminate
2 that information further within that district and trades had to
3 be made on that further dissemination, too. The materiality
4 language in *Royer* was not there to, in any way, say that overt
5 act was required in order for the crime to be committed. And I
6 think actually that the materiality language focuses more on
7 the act in furtherance than it does on the consequences that
8 follow from it.

9 So, for example, the basis on which we rely, one of
10 the bases on which we rely, which has to do with making the UI
11 accessible in the Southern District of New York, is the overt
12 act. It's not Mr. Ahmed's use that is the overt act, and this
13 is something that the defense conflated in its briefing, I
14 think the Court picked up on it, so I don't need to speak about
15 that further, but the question is whether the overt act is
16 material. Whether the overt act is material is largely a
17 function of its capacity to further the charged crime. So
18 making this website public in the EDNY in the *Royer* case had
19 tremendous capacity to further the objectives of the offense.
20 That's essentially the conclusion the court reached there. It
21 was the materiality of the overt act itself, which was
22 publishing it there that mattered.

23 I can say more about it, your Honor, but --

24 THE COURT: No. I guess the point is I'm surprised
25 that you took the bait, the *Royer* bait because, again, this

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1 material furtherance language I see in *Royer*, I see in *Lang*, I
2 don't know that I'm seeing it in other Second Circuit cases.

3 MR. ARAD: That's right.

4 THE COURT: But yet, you didn't say, hey, Failla, it's
5 very limited to two cases, don't worry your pretty little head
6 about it, you actually do engage with it without suggesting it
7 doesn't apply. I'm trying to figure out when and where it
8 applies you seem to suggest it does.

9 MR. ARAD: I should have started with that, your
10 Honor. I went straight to addressing the fact that it does
11 exist somewhere, but that is not the main point. The main
12 point is that the case law does not require that the overt act
13 materially furthered the offense. In the cases where the word
14 comes up, if we have to assign some meaning to it, I think that
15 the way that I described might be the limited nature in which
16 we do that.

17 THE COURT: I see. I appreciate the clarification.

18 I think I'm still having problems understanding the
19 venue arguments that are predicated on the conversations with
20 the BitMart attorney, and I think this is something we
21 discussed during the trial, even accepting that the statements
22 made to the BitMart attorney were false, I'm not sure how those
23 responses really furthered any of the charged conspiracies.
24 You say it disincentivized victims from coming forward and
25 approaching law enforcement, okay, I'm not sure, but once

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1 again, I think I may have to step back a few paces.

2 As I understood it, you were not suggesting that
3 Mr. Storm had an obligation to respond to the BitMart attorney
4 at all; is that correct?

5 MR. ARAD: That's correct.

6 THE COURT: And I don't think you were arguing — this
7 is from my notes from the trial — that failing to respond to
8 inquiries from victims or failing to respond to law enforcement
9 notices would itself suffice as an overt act.

10 MR. ARAD: I don't believe that it would, your Honor,
11 but that's not the case that we have here.

12 THE COURT: Okay. Here, what you're saying is that
13 responding falsely does amount to an overt act, correct?

14 MR. ARAD: Yes.

15 THE COURT: So he didn't have a duty to speak, but if
16 he spoke, he shouldn't speak falsely?

17 MR. ARAD: I think that's right, your Honor, yes.

18 THE COURT: How does speaking falsely become an overt
19 act?

20 MR. ARAD: The reason is that the most reasonable
21 inference to draw about his intention in making that lie was
22 that he was trying to create distance between or the perception
23 of distance between himself and his coconspirators on one hand
24 and the criminal activity on the other hand, and that is
25 exactly what he did. On cross-examination, Mr. Evans said that

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1 he had no reason to disbelieve the statement. Well, there you
2 go, the ruse worked, and it worked for a long time.

3 THE COURT: But how is that an overt act in
4 furtherance of any of the charged conspiracies? Is the
5 argument that the false statement keeps Tornado Cash
6 functioning and thereby keeps open a viable means for money
7 laundering, or for operating an unlicensed money transmitting
8 business, or for committing IEEPA sanctions? It seems a bit
9 attenuated for me to say that disincentivizing victims from
10 speaking up furthers the conspiracies. I need help connecting
11 the dots.

12 MR. ARAD: It is disincentivizing the victims from
13 speaking up. But, more broadly than that, your Honor, it's a
14 key component of getting away with any crime, which is
15 concealing your involvement in the offense. That's what the
16 lie was doing. The defendant was not just answering the
17 question, he actually, he went too far. We might be having a
18 different conversation if he simply said, I can't get your
19 money back. It's immaterial that he wasn't asked whether
20 there's anything else that he could do to control the protocol.
21 The fact that he wasn't asked that and nevertheless came forth
22 with this lie is evidence that he was pursuing a purpose other
23 than merely answering the question. The only reasonable
24 inference to draw is that that purpose was to conceal his
25 involvement in criminal activity.

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1 THE COURT: But you heard me speaking with Ms. Axel,
2 she believes what he said was factually accurate, that they
3 couldn't control it.

4 MR. ARAD: That's true, your Honor. I only hesitate
5 because I was taking the Court's signal earlier that perhaps
6 you didn't want to delve into the question of whether it was
7 just the pools or all of the different ancillary parts.

8 THE COURT: I don't, but I do.

9 MR. ARAD: That is this question, unfortunately, so I
10 think we have to go there.

11 The defendant didn't control the pools after the
12 trusted key ceremony, that's true, that was undisputed at
13 trial, but the central dispute of this whole case is whether
14 the defendant exercised meaningful control over the
15 Tornado Cash protocol as a whole.

16 THE COURT: Does that mean, sir, that the viability of
17 any of the counts of conviction distills to whether in fact
18 Mr. Storm and his colleagues could, could affect the
19 Tornado Cash protocol writ large?

20 MR. ARAD: Well, in a hypothetical world where his
21 statement to the BitMart lawyer was true where there was
22 nothing that they could do to affect the protocol, it would be
23 a lot harder to make an argument that they were taking steps in
24 furtherance of these offenses. The affirmative steps were in
25 exercising their control over the protocol.

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1 THE COURT: The 250 changes.

2 MR. ARAD: Exactly. And that's the power of the
3 defendant's lie to Mr. Evans. He's saying, I don't have
4 control over this, anything it does is not on me.

5 THE COURT: Okay, but hang on a second. At the time
6 he said that, he in fact did not have the ability to do
7 anything to retrieve those funds.

8 MR. ARAD: That's not what he said, though, your
9 Honor. He said a lot more than that.

10 THE COURT: And so if he had just said, sorry, friend,
11 I can't get your money back, you and I wouldn't be having this
12 conversation?

13 MR. ARAD: We wouldn't have that piece of evidence.

14 THE COURT: All right. Keep going on this if there's
15 something else to add. I may have derailed you.

16 MR. HAMMOND: No, I don't think so, your Honor. I
17 think I've made the point.

18 THE COURT: Let's talk, please, about the Infura
19 payments.

20 MR. ARAD: Yes.

21 THE COURT: Why are they venue? Why are they overt
22 acts? Did I correctly remember that your argument, if I look
23 at the bank records in their totality, I will see payments made
24 to a Manhattan bank account?

25 MR. ARAD: You'll see payments made with a notation in

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1 NY, and also a notation for a 347 area code.

2 THE COURT: Yes, but 347 to me touches on the tiniest
3 bit of Manhattan as distinguished from other areas of New York.

4 MR. ARAD: Those were the touchstones from which the
5 defendant could foresee that there was a chance that his
6 payments were going to New York.

7 THE COURT: I see.

8 MR. ARAD: And I do want to fixate for a moment on the
9 levels of conviction that everybody has to have in the locust
10 of the acts and the likelihood that they would take place. The
11 jury had to find by a preponderance, more than 50 percent, that
12 this was foreseeable to defendant, but the degree of
13 foreseeability does not have to be by a preponderance. For
14 example, there are cases where mere knowledge that a
15 coconspirator sometimes travels to New York and New Jersey
16 without anything more specific that would delineate the SDNY
17 are sufficient to know that a phone call with that person in
18 furtherance of the conspiracy may be going into New York. And
19 so the area code and the fact that there's an NY notation, and
20 the fact that the part of New York that is known to be the
21 financial capital of the United States, and arguably of the
22 world, is Manhattan in the SDNY. All of that is enough for the
23 defendant to have foreseen that these payments would be going
24 to a Manhattan account.

25 THE COURT: I believe Mr. Storm is arguing, though,

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1 that payments went from an account with which he had no
2 involvement. Maybe I misunderstood that.

3 MR. ARAD: I don't believe that's right, your Honor.

4 THE COURT: Where was the location or where did the
5 crypto payments go? Are you not seeking to predicate venue on
6 those?

7 MR. ARAD: We are not seeking to predicate venue on
8 those.

9 THE COURT: So it's just the fiat payments?

10 MR. ARAD: Yes.

11 THE COURT: One of which seems to slightly predate the
12 relay registry, but you tell me that's okay because the
13 relay registry was in contemplation at that time?

14 MR. ARAD: More than in contemplation. There was work
15 being done to bring it to life.

16 THE COURT: Let me please understand, as well, how the
17 communications with Mr. Schmidt suffices overt acts for the
18 conspiracy charged in Count Three. You say that they concerned
19 Tornado Cash's operations and profitability. Even if those
20 were obviously or recently foreseeably taking place in the
21 Southern District of New York, how does that further the IEEPA
22 conspiracy charged in Count Three?

23 MR. ARAD: Well, actually, your Honor, I would say
24 more than just that one of those conversations was about the
25 profitability of Tornado Cash, it was about keeping

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1 Tornado Cash, quote-unquote, afloat. Tornado Cash was under a
2 real threat at that time of not having enough funding to
3 continue to operate, and the obvious consequence of that is
4 that criminals wouldn't be able to use it anymore. And so the
5 defendant was having a conversation with one of his investors
6 about finding somewhere an injection of capital that could
7 allow Tornado Cash to continue to engage in these kinds of
8 transactions.

9 THE COURT: Of course. But there's really no
10 suggestion that someone said to Mr. Schmidt or that your
11 defendant, Mr. Storm, said to Mr. Schmidt, we really need to
12 keep this thing afloat because we have so many hackers that are
13 dependent on us.

14 MR. ARAD: No, but that's not required to meet the
15 requirements of an overt act in furtherance of the conspiracy.
16 It was the defendant's purpose to keep Tornado Cash afloat so
17 that --

18 THE COURT: So that they could, so that hackers could
19 use it?

20 MR. ARAD: Regardless of whether he said that to
21 Mr. Schmidt or not.

22 THE COURT: Well, no, but is that your argument? Your
23 argument is not that Mr. Storm was sad that one of his ventures
24 was coming to a possible failure, you're suggesting that, aware
25 that it was being used for criminal conduct, he wanted to

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1 perpetuate or to keep it afloat for that purpose and that's why
2 he was seeking capital infusions?

3 MR. ARAD: In part. And there's no issue with that.
4 That's the reason the Court gave a dual intent instruction to
5 the jury. The government nowhere argues that Mr. Storm had no
6 intent to service noncriminal actors. That's not what's
7 required in order to sustain this conviction, but it was among
8 his intentions. It was a significant intention of his. At
9 that point, your Honor, it was obviously a huge part of the
10 business. I mean, the defendant knew that before the media and
11 the broader world got wind of it, but by June of 2022, it was
12 widely known in the crypto community that Tornado Cash was
13 being used at an enormous scale to facilitate one of the
14 largest thefts of cryptocurrency ever committed.

15 THE COURT: The hack had already happened at the time
16 he was having the discussions with Mr. Schmidt?

17 MR. ARAD: Yes.

18 THE COURT: This wasn't the one in check, this was the
19 Ronin hack that happened?

20 MR. ARAD: That was the Ronin hack, your Honor, but
21 the conspiracy was still ongoing because the defendant was
22 continuing to take steps – and this goes back to affirmative
23 conduct – that tied back to the conspiracy. Like, for example,
24 liquidating his and his coconspirators' Torn in a secretive
25 manner using somebody else's name on a Russian Binance account.

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1 All of these activities are linked.

2 THE COURT: But couldn't that liquidation, I mean, it
3 could be for any number of reasons, including personal expenses
4 that he had, but the use of the -- I'm understanding in this
5 space that anonymity is at a premium. So using somebody else's
6 Binance account might not necessarily be for criminal purposes,
7 but might just be a concern that if potential investors in
8 Tornado Cash were to see that one of the developers was himself
9 cashing out, they might be less willing to infuse capital into
10 it.

11 MR. ARAD: Perhaps one could see it that way, your
12 Honor, yes, but that kind of analysis is for the jury to do.
13 The government presented mountains of evidence that the
14 defendant at this point in time, based on his communications
15 with his coconspirators, was panicking about what was going to
16 happen to Tornado Cash and panicking about the possibility of
17 criminal liability, Googling "are Tornado Cash criminals,"
18 sending around articles showing that people got, quote, five
19 years for sanctions. The jury was well within the realm of
20 reasonability to take all of that into account in assessing
21 what his state of mind was around this time and as context for
22 why he was liquidating funds in that secretive manner.

23 So the defense could and did make that argument to the
24 jury, that maybe there's some other reason that he is doing
25 this for privacy and it's not that he's trying to get away with

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1 a crime, but the government presented evidence to the contrary
2 from which the jury could reasonably conclude that he was
3 trying to get away with a crime.

4 THE COURT: I was planning on returning back to
5 substantive discussions about the counts of conviction.
6 Mr. Arad, there's discussion from the defense, including in
7 their reply brief, about testimony from their expert witness
8 and others that the UI could not have transferred the funds.
9 This is when you make the responsive argument that, indeed, it
10 was the wallet could be used as a conduit for a deposit, I
11 believe, and there was a different question about withdrawals.
12 Perhaps you're going to tell me that this is just a variation
13 on the custody argument that I've already rejected, but I guess
14 I might look at it as a more persuasive argument than the
15 arguments that were presented to me and that I rejected
16 previously. Could you please engage with the discussion of
17 sort of the reading and writing aspects of deposits and
18 withdrawals through Tornado Cash, and whether it really is
19 enough for a 1960 purposes for Mr. Storm to have known that
20 these transactions could have been effectuated using a
21 particular user's wallet.

22 MR. ARAD: Yes, your Honor, happy to. At the outset,
23 I do think this is a way of repackaging the control argument,
24 but I will put that aside now that I've said it.

25 I actually think that a useful way to analyze this

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1 issue is through an analogy that the defense offered in its
2 reply brief, which was to somebody who sends an email, I think
3 it was to a banker with instructions to send a particular wire,
4 somehow saying that that would not be conducting a transaction.
5 But imagine this, somebody starts a business, a criminal
6 business that transfers money from one place to another for
7 criminals. What he says is, I have a bank account at whatever
8 bank, send me the money to that account, and I will have it
9 sent somewhere else. Then he instructs his banker to send the
10 money forward and he takes a fee for this service. Is he not
11 engaging in unlicensed money transmitting? Of course he is.
12 He's transferring money from one place to another. The days
13 where one person alone could take every action that was
14 required in order to effectuate a transfer without the
15 involvement of anybody else or any other tools were the days
16 when somebody could take a bag of cash and hand it over to
17 somebody, but that's not the world that we live in anymore.

18 And so what the Tornado Cash protocol did was a lot
19 more than just writing an email. On the deposit side, it gave
20 instructions to the depositor's wallet. The wallet wasn't just
21 a conduit, it was an instrumentality of Tornado Cash in
22 creating that transfer. And on the withdrawal side, it's even
23 clearer that Tornado Cash is the one making the transfer
24 because, there, it's the relayer itself that writes to
25 Blockchain. Not only that, it's not as if some third-party

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1 relay individual is on his own without any input from
2 Tornado Cash doing this. The relayers used infrastructure that
3 they downloaded from Tornado Cash which is itself what was
4 doing the writing. So it was Tornado Cash infrastructure with
5 a Tornado Cash relayer, which is part of the cohort operating
6 Tornado Cash for the purpose of transferring money from one
7 place to another for a profit that was conducting these
8 withdrawals. So, even by the defense's analogy to an email,
9 it's obvious that Tornado Cash was conducting these
10 transactions.

11 THE COURT: Let me change topics, please.

12 I discussed previously these arguments regarding
13 governance, centralization, and the simulacrum of
14 centralization at Tornado Cash. It's showing up, for example,
15 at pages 6 to 9 of your opposition and later at page 36. I am
16 trying to understand what you're arguing. For example, I think
17 I do understand the arguments that you're making regarding the
18 relayer registry and the push to use Torn, and the monetization
19 or appreciation of value of Mr. Storm's assets, but what you
20 then say is that there is a false decentralization narrative
21 that aimed to forestall attention from law enforcement and
22 others, thus furthering the conspiracy. And you say later that
23 the purpose of certain governance proposals or efforts to get
24 votes for those proposals was to create the false impression
25 that Mr. Storm or his colleagues had less control over

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1 Tornado Cash than in fact they did.

2 Did I understand those correctly to be your arguments?

3 MR. ARAD: Yes.

4 THE COURT: What is the legal significance of those
5 arguments? Are those conversations or efforts themselves overt
6 acts? Are they bases for venue? Are they part of the tapestry
7 of evidence from which I can discern something about
8 Mr. Storm's intent? Do they fulfill some other element of the
9 offense?

10 MR. ARAD: All of those purposes, your Honor. From
11 the beginning of this case, the defendant has been telling the
12 court of public opinion and this court of law that he does not
13 control the Tornado Cash protocol, and we saw at trial that
14 that's not true. So the question becomes, well, why did he do
15 that? And the answer is so that he wouldn't be held
16 responsible for Tornado Cash. I mean, that's essentially the
17 answer to your Honor's question in a nutshell. It's hard to
18 think of another explanation of why the defendant would stick
19 to that story so obviously untrue, other than because he was
20 trying to pull the wool over someone's eyes. The jury was
21 asked by us to draw that conclusion and reasonably did because
22 why else? And even if there were some other reason that one
23 could come up with in theory, it was for the jury to decide
24 whether that purpose behind the defendant's concealment was
25 actually his purpose. That's not what the jury decided.

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1 I'm happy to speak, your Honor, and I want to make
2 sure that I'm addressing your Honor's concerns. So if there's
3 a particular example that you'd like me to talk through, I'd be
4 very happy to do that.

5 THE COURT: Well, it's this idea of a false
6 decentralization narrative you repeated several times in your
7 opposition. I wanted to understand in what sections of my
8 analysis I should be including that evidence, and you're
9 suggesting at various points.

10 MR. ARAD: Yes. As to venue and as to each
11 substantive count, that's correct, your Honor.

12 THE COURT: You also talk about a conspiracy to
13 implement the relayer registry and to connect the fees earned
14 by Tornado Cash to the value of the Torn tokens. Which
15 conspiracy might that be? Or is that just another conspiracy,
16 but not one that's charged in this case? Is it ancillary to
17 one of the ones that is charged? Again, how are you asking me
18 to view what you consider to be the design and implementation
19 of the relayer registry and its correlation to the Torn token?

20 MR. ARAD: So the relayer registry is relevant also to
21 every substantive count and in a certain sense to venue, as
22 well. The reason is the relayer registry had two consequences,
23 accomplished two things that are relevant to the elements of
24 the offenses charged in this case. One of them was it enhanced
25 the anonymity that the protocol provided, the other is that it

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1 made it a profitable business. The second, I think, is the
2 focus of your Honor's question, so that's where I'll go.

3 Every step the defendant took in undertaking the
4 project of bringing about the relayer, and perhaps with respect
5 to the relayer, it would have been less confusing to use the
6 word "project" or "undertaking" than "conspiracy." But every
7 step that he and his coconspirators – and there I am using the
8 term "conspiracy" deliberately – took, in order to implement
9 the relayer registry, showed that their motivation was profit
10 because every design decision that they made was designed to
11 enhance demand for the Torn token. Obviously, the purpose of
12 enhancing demand for any commodity is to raise its price. The
13 fact that relayers had to stake Torn created demand for it.
14 The fact they lost some of their staked Torn every time they
15 executed a transaction created demand for it. The fact that
16 anonymity mining was paid in Torn created demand for it. The
17 fact that, in theory, it was a governance token created demand
18 for it, in theory. All of those things gave value to the Torn
19 token, all of them were connected to Tornado Cash. And so it's
20 just impossible to say that making money was not an objective
21 of Tornado Cash. The jury can't reasonably have been expected
22 to conclude that the defendant undertook a two-, two-and-a-
23 half-year effort that resulted in millions and millions of
24 dollars in gains for him and his coconspirators and that all
25 happened by accident.

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1 THE COURT: At page 50 of your opposition, you don't
2 need to turn to it, you simultaneously argue that Mr. Storm was
3 not legally obligated to adopt a user registry, but that his
4 decision not to adopt one in the face of his knowledge of
5 criminal conduct involving Tornado Cash could be considered
6 evidence of his criminal intent. Indeed I believe you're
7 arguing to me that I could consider that in determining whether
8 the government has demonstrated willfulness as required by
9 these statutes. Is there not a tension in that argument
10 beginning by saying that Mr. Storm had no obligation to do
11 something, but then saying his failure to do so could support a
12 criminal conviction? I am concerned that that allows the jury
13 to convict Mr. Storm for not doing what he was not legally
14 required to do. Perhaps what you'll say is, no, Failla, it's
15 not just that it's all of these other things. But please help
16 me understand what I think is the tension by beginning a
17 sentence saying he doesn't have to do this, and yet it can
18 support willfulness. Are you saying it can support willfulness
19 on its own?

20 MR. ARAD: On its own, no. That alone --

21 THE COURT: Okay.

22 MR. ARAD: That alone would not be enough. Combined
23 with other evidence that the government presented of the
24 defendant's willfulness, it plays a role, or it can play a
25 role.

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1 Now, I want to just unpack that a little bit.

2 So, why is it that the fact that he had an option to
3 do something, but forewent that option, goes to his
4 willfulness.

5 THE COURT: Yes, because one might say that that's
6 inaction.

7 MR. ARAD: If the only way that he could stop
8 facilitating, engaging in, completing these criminal
9 transactions would have been to withdraw or to shut down
10 Tornado Cash, perhaps there would have been some argument that
11 he wasn't willfully engaging in criminal activity, he just
12 didn't want to give up this thing that he had developed that
13 arguably had other legitimate uses. But the fact that he could
14 have done this, he could have done what Mr. Werlau suggested,
15 and knew he could have done it for two reasons, one of them,
16 the relayer registry was built basically the same way using the
17 same kind of architecture – and this argument was made to the
18 jury and evidence was presented on it – and two, and more
19 importantly, his coconspirator Roman Semenov told him that this
20 was possible.

21 So the defendant knew he could do this. He had
22 essentially done the same kind of thing before. There can't be
23 an argument here that, actually, all he really wanted were the
24 legitimate transactions, because if that's all he wanted, he
25 could have had it, but he chose not to. He chose to have the

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1 criminal ones, too.

2 THE COURT: You're suggesting that knowledge requires
3 conduct at some point or at least when there are options
4 available -- well, no, that knowledge requires him to have done
5 something, or if he did something, that that something may end
6 up impacting the willfulness analysis, because I think we said
7 earlier if all he had done was operate Tornado Cash and just
8 left it there or kept operating it, I think you'd have perhaps
9 a harder argument on willfulness. You're suggesting it was his
10 decision to improve, build upon it, and make it even better for
11 folks who would seek to use it for bad purposes is what brings
12 us here.

13 MR. ARAD: That's correct, and his choice to marshal
14 resources toward the ends of making it more effective and more
15 profitable that show those were his priorities. In other
16 words, that was his intention. And to use the defendant's
17 words, so what if it's stolen. He wanted all of that money.
18 He didn't want to take only the funds of innocent users,
19 because if that had been his intention, there were other
20 courses of action that he could have taken, some more drastic
21 than others, and he decided not to. That is what reveals his
22 priorities and his intentions.

23 THE COURT: Before trial when we talked about the
24 feasibility of implementing these measures, and it is my
25 failing, I used the expression "any idiot," which I'd rather

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1 people not keep throwing back at me, but the point was, was
2 something readily available and could be done? Is it your
3 argument that between Semenov's statements about this being
4 practicable, the fact that, later on, they did do a registry
5 that was substantively identical to the idea that Mr. Werlau
6 was suggesting, and Mr. Werlau's testimony that a jury could
7 find that, contemporaneously, Mr. Storm had the knowledge that
8 this was a thing he could do, it might not be perfect, right, I
9 don't think you were suggesting it was a cure-all?

10 MR. ARAD: Correct.

11 THE COURT: But it was something. And he chose not to
12 do it. And knowing that it was there, knowing it could be done
13 and choosing not to do it, that allows for the count of
14 conviction?

15 MR. ARAD: Yes.

16 THE COURT: And that allows the other two counts to go
17 forward to a retrial?

18 MR. ARAD: Correct.

19 Now, I'm not saying that that necessarily would have
20 been required for the jury to conclude that the defendant, in
21 taking active steps for Tornado Cash, was committing these
22 offenses, it was just one piece of evidence that went to his
23 criminal intent.

24 THE COURT: It would seem to me in the absence of
25 evidence in the record of an alternative that could be used to

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1 tamp down on the use of Tornado Cash by criminal actors or bad
2 actors, I think it would be much harder to demonstrate
3 willfulness or to demonstrate Mr. Storm's criminal liability.
4 Your argument, as I understood, to the jury was not merely that
5 he saw bad things happening, but he saw them, there was
6 something he could do to stop them or limit them and he chose
7 not to, and that's why we're here, correct?

8 MR. ARAD: That's right, your Honor. That's right.

9 THE COURT: Then what is your most recent point to me,
10 that even in the absence of measures that could be taken to
11 tamp down on criminal conduct, he could still be liable simply
12 by keeping it operational or seeking to monetize it?

13 MR. ARAD: And continuing to take steps to improve it
14 in ways to make it even more effective for criminal actors.

15 THE COURT: I see. You're looking from both ends of
16 the spectrum. Not merely efforts to tamp down criminal
17 activity, but efforts to enhance criminals' ability to an
18 experience with the Tornado Cash protocols?

19 MR. ARAD: That's right. My point with respect to the
20 possibility of implementing a system like Mr. Werlau described
21 is that that was evidence that the jury could reasonably
22 conclude from the defendant had a willful state of mind. There
23 was other evidence, also. And I don't believe that the
24 proposal Mr. Werlau put forth was necessary for the conviction.
25 The jury could have reasonably inferred that the defendant had

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1 a criminal state of mind from his lies, from his design of the
2 Torn token and the relay registry, from his internal
3 communications with his codefendants, et cetera. And so this
4 was just one brick in the wall of the defendant's criminal
5 intent.

6 THE COURT: Ms. Axel has suggested several things.
7 She says, first of all, it would change the character of
8 Tornado Cash entirely. I sense that's not something that moves
9 you because your view was it was criminal and that's okay to
10 change that character. But on the issue of the utility of
11 measures akin to those described by Mr. Werlau, I believe what
12 she's saying is it wasn't going to work, it could be avoided,
13 and the government would have said, aha, this is another half
14 measure. Why is she wrong?

15 MR. ARAD: That would be a silver bullet that would
16 defeat any theory that is based on the possibility of
17 preventing criminal actors from using the protocol.

18 THE COURT: Right.

19 MR. ARAD: And that's because it imagines a world
20 where some perfect solution could be devised. No perfect
21 solution could be devised. But the solution that Mr. Werlau
22 presented and the jury heard is similar to other measures that
23 other financial institutions take in order to prevent criminals
24 from using their services. When Mr. Ahmed testified, he
25 testified that he wouldn't use a service that required a

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1 username and password or any information from him, which was
2 part of Mr. Werlau's proposal. I mean, the jury heard
3 testimony from an actual criminal who actually used
4 Tornado Cash to further his criminal purpose that, if
5 Mr. Werlau's proposal had been implemented, he would not have
6 used Tornado Cash. So certainly the jury can reasonably infer
7 from that testimony that this actually would be effective. The
8 defense wants the Court to focus on the possibility that this
9 would be largely ineffective, but there was no evidence at
10 trial that this would be largely ineffective. Sure, it
11 wouldn't be perfect, but there was evidence that it would be
12 effective.

13 The other thing is, your Honor, the defendant never
14 rejected this idea because it might be ineffective. He
15 rejected it because he would make less money with it. We know
16 that because the fact that something's ineffective didn't stop
17 the defendant in other contexts.

18 THE COURT: Right. This was the no market for it,
19 correct, there was discussion about the market?

20 MR. ARAD: Yes, that's right, your Honor. It's the
21 compliance mixer discussion.

22 THE COURT: Let me turn to another area where I see
23 attention in the government's arguments. In the context of
24 Count One, the money laundering conspiracy, you argue that
25 because the charge is conspiracy, that no transaction need in

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1 fact occur, but you're simultaneously arguing, I think, that
2 the transactions needed to occur in order for Mr. Storm to have
3 developed the requisite knowledge, and therefore the requisite
4 willfulness. He didn't know until people were using
5 Tornado Cash to launder money that Tornado Cash could be used
6 to launder money. What I'm saying is, you did not argue, I
7 don't think, that, from the start, the development and the
8 launch of Tornado Cash was designed, was a money laundering
9 conspiracy, you're saying it became one over time, correct?

10 MR. ARAD: Correct.

11 THE COURT: You say that no transaction needs to in
12 fact occur because it's a conspiracy, which I get, and yet it
13 kind of does because it's only the conduct of these
14 transactions through Tornado Cash that gives you the ability to
15 argue knowledge and willfulness; is that not correct?

16 MR. ARAD: That's right, your Honor. That's where
17 this case actually provides more than the law requires. The
18 law doesn't require that an actual transaction have taken
19 place, but in this case, many actual transactions took place.

20 THE COURT: I think you're misunderstanding my
21 argument. Had no transactions taken place at the time of the
22 launch and at the time that you brought these charges, I don't
23 think you'd be able to argue that the mere fact that one could
24 use Tornado Cash for bad purposes was enough to bring criminal
25 liability upon Mr. Storm, agreed?

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1 MR. ARAD: Agreed.

2 THE COURT: And therefore, yes, you're right, it's a
3 conspiracy charge. You don't actually need the transactions,
4 but you also wouldn't have had any basis to bring charges.
5 Here, it sounds like you did need the transactions to occur in
6 order to bring about the requisite knowledge. So saying this
7 is more than you need, well, yes and no, because without these
8 transactions, you wouldn't be able to argue – and we'll talk
9 about whether that's successful or not later on – that there
10 was a basis for knowledge or willfulness, correct?

11 MR. ARAD: That's right, your Honor. But the reason
12 that we focused on the legal requirement in our briefing and
13 the fact that the law does not require a transaction is that
14 the defense is making a legal argument here. It's saying the
15 law requires that the defendant know in advance all of the
16 details of a particular transaction before it happens, and that
17 can't be true if the law doesn't require a transaction to
18 happen in the first place.

19 And so, as a legal matter, a conviction is sound even
20 in the absence of knowledge of a particular transaction. It
21 has to be if it's also the case that a conviction would be
22 sound in the absence of any transaction. That's the argument.
23 It's a legal argument more than a factual one. I think the
24 tension --

25 THE COURT: The tension is because I am perceiving it

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1 as an argument about the evidence in the case and you're
2 arguing it as a response to their argument. But you're
3 actually leading into my next question, which is, and you heard
4 me discuss with defense counsel, the argument that Mr. Storm
5 needed knowledge in advance of each transaction in order to be
6 liable under Count Two. You heard those discussions, yes?

7 MR. ARAD: Yes.

8 THE COURT: Could you respond to them, please.

9 MR. ARAD: I did not hear one authority for that
10 proposition that he had to know of a particular transaction
11 before it took place.

12 THE COURT: Well, I believe what he says is it's the
13 statutory language itself that suggests that they must know at
14 the time of the transmission.

15 MR. ARAD: That's correct, your Honor, but the
16 statutory language itself doesn't say "engages in a particular
17 transaction that transfers money from one place to another."

18 THE COURT: All right. So you just simply disagree
19 with their construction of the statute.

20 MR. ARAD: It's more than that. We disagree with
21 their construction of the statute. In the very well developed
22 body of the case law on section 1960, there is no support for
23 that very narrow construction of the statute, and with good
24 reason. The purpose of 1960 is to curb the use of money
25 transmitting businesses by criminals in an evolving world.

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1 Requiring knowledge of a specific transaction before it happens
2 would obviously curb 1960's ability to meet that goal, and that
3 probably explains why no court has held that that is a
4 requirement.

5 I do want to also say something about the Ronin hack
6 with respect to this issue, your Honor.

7 THE COURT: Okay.

8 MR. ARAD: In the Ronin hack, the defendant knew,
9 again, over a period of weeks, that large amounts of money were
10 flowing through the Tornado Cash service. He had been sent
11 Blockchain records and links to Blockchain records that would
12 show this, including links to Etherscan. We know he knew how
13 to use Etherscan because he sent Etherscan links to confirm
14 payments he made of cryptocurrency to Infura. So we know that
15 if the defendant just looked at that data that a lot of people
16 were sending him, he would have seen the finite set of wallets
17 that this money was coming from.

18 THE COURT: Could he have stopped them?

19 MR. ARAD: Yes, he could have. The way that the
20 Chainalysis oracle worked is that it identified certain
21 addresses that money might come from and it blocked them. And
22 so if he identified those additional addresses simply by
23 looking at the Blockchain – and this is the analysis that
24 Mr. DeCapua did on the stand – he would have been able to block
25 them, but he didn't do it.

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1 Now, I guess that begs the question to the defense,
2 well, how much of a transaction does he need to know about in
3 advance, who's doing it, where it's coming from, that it's
4 coming soon, that it's going to come to the 100 Evepool instead
5 of other pools. What else? All of that information was at his
6 fingertips.

7 THE COURT: Let me please change topics, and this is
8 the last for now, unless there's something you feel compelled
9 to tell me.

10 In the reply brief, the defense notes that in the
11 constitutional section, that the prior challenges were facial
12 and these are as applied. I believe that's what it said.

13 MR. ARAD: It's just not accurate.

14 THE COURT: Let me make sure I did not misunderstood
15 that. Looking at page 55, the government misconstrues this
16 Court's prior rulings on due process, they were based on facial
17 challenges, has not previously ruled on whether the statute was
18 unconstitutional as applied.

19 MR. ARAD: I don't believe that's accurate, though.
20 Meaning, I didn't mean to suggest --

21 THE COURT: I didn't misread, you're saying that their
22 point is -- okay.

23 MR. ARAD: Exactly. That is what I was saying at the
24 start, your Honor.

25 THE COURT: I do appreciate that. Thank you.

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1 MR. ARAD: I have in front of me your Honor's oral
2 ruling. For example, on vagueness, just as an example. Moving
3 on, Mr. Storm also argues that the statutes are void for
4 vagueness --

5 THE COURT: Slow down, counsel.

6 MR. ARAD: Moving on. Mr. Storm also argues that the
7 statutes are void for vagueness both facially and as applied to
8 his conduct. That's at page 40. Page 38. Mr. Storm contends
9 that the application of these statutes to his conduct is a
10 content-based restriction on his freedom of speech.

11 THE COURT: And therefore you believe I've decided
12 this, but you're also sticking with the arguments in your
13 opposition?

14 MR. ARAD: Correct.

15 THE COURT: Those were the questions that I had for
16 you, sir. If there's something else you want to tell me that
17 you believe I did not appreciate based on the questions I've
18 asked you or your adversary or something else, please tell me
19 now and then we'll take a break and then I'll hear in reply
20 from your adversaries.

21 MR. ARAD: I don't believe so. Thank you, your Honor.

22 THE COURT: Let's take a break. I'm going to make
23 sure that I've asked all the questions I intended to ask, and
24 when we get back, Mr. Klein, Ms. Axel, if there are things that
25 you were writing down as I was hearing from Mr. Arad that you

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1 want to make sure I have in my head as I'm deciding this, I
2 would welcome that from you. I'll see you in 10 minutes,
3 please. Thank you.

4 (Pause)

5 Mr. Arad, did you have an opportunity to speak with
6 your colleagues about technological appendix?

7 MR. ARAD: We did discuss it, your Honor. The
8 government would respectfully request the opportunity to review
9 that in detail and write the Court about it.

10 THE COURT: A very brief letter, please.

11 MR. ARAD: Brief letter.

12 THE COURT: All right. Thank you.

13 Mr. Klein, would you or Ms. Axel like to be heard to
14 comment on some of the discussions I've been having with the
15 government?

16 MR. KLEIN: Yes, your Honor.

17 THE COURT: Thank you.

18 MR. ARAD: So.

19 MR. KLEIN: Your Honor, I want to start off with the
20 initial line of questioning you had for Mr. Arad about how
21 things transpired, what my client could have done or not done.
22 I'm quoting what I wrote down. What he said was once the
23 defendant knew in large part he was serving criminal actors and
24 they continued to do so, that was the crime. There is no basis
25 in law for that, your Honor. There is no basis in law for what

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1 is a large part. This is a whole cloth invention to this case.
2 It goes right to the heart of our argument the whole time, this
3 is a negligence case. So you pushed Mr. Arad on, like, well,
4 does that mean he had to stop? Would that have ended the
5 criminal liability? Could he have walked away? Mr. Arad said
6 he could have stopped, he could have walked away. The question
7 is when, what was the date he could have walked away? When did
8 it become a large part? Those questions aren't known, the
9 answers aren't known. You'd have to wait for this trial to
10 happen or there's no way my client could have known. This is
11 the real core problem here, your Honor, and I think, your
12 Honor, when you were talking about this, you said, well, I
13 thought you were going to get up and talk about knowledge, plus
14 improvements, plus monetization --

15 THE COURT: That is what I said.

16 MR. KLEIN: -- equals the crime.

17 THE COURT: Yes. Well, and I believe what Mr. Arad
18 said was that was what was presented to the jury, that's what
19 the jury voted to convict on, but they could have done less --
20 "they" being the government.

21 MR. KLEIN: Your Honor, that goes back to the
22 conversation we had two years ago when we talked about the
23 motion to dismiss, when you asked about WhatsApp. All those
24 things are present in all these other technologies we use every
25 day that are misused in large part, I don't know what that

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1 means, but definitely some percentage. I don't know if "large
2 part" is 3 percent, 5 percent, 15, 20, you get it.

3 THE COURT: Of course. Yes, I do, sir.

4 MR. KLEIN: That's the core problem here. And to be
5 clear, they've misrepresented the record the jury heard about
6 the percent that was in place because he talked about
7 37 percent or 50. These are narrow windows, your Honor, and
8 those exhibits -- the exhibit with the 37 percent is Government
9 Exhibit 3002-60. That's the 37 percent from this window of
10 February 25th through August 8th, 2022. The defense put in an
11 exhibit that covered the whole time period because the
12 government did not do that of the alleged conspiracy, which
13 dates from September 1st, 2022, to August 8th, 2022. That's
14 defense exhibit 8785-36, and this is based on the government's
15 analysis. So this is at best for them. That number, your
16 Honor, is, at most, 15 percent.

17 THE COURT: One-five, sir?

18 MR. KLEIN: 15.

19 THE COURT: Yes.

20 MR. KLEIN: So what does "in large part" mean? Nobody
21 knows. When should he have walked away? Nobody knows. And so
22 that's a core issue here, your Honor, that we have to address.
23 And I think Mr. Arad danced around whether he could have
24 stopped. But I think it bears pointing out, tornado Cash is
25 still running, the UI is still running because it is immutable

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1 and it can't stop running. And so it is still running. So we
2 had this discussion of whether he could have controlled and
3 whether he could have stopped it, he can't, it's still running
4 today, both the UI and the protocol, the smart contract pools.

5 I want to talk about a few other issues quickly
6 because I think we're all ready for lunch. The relayers. Your
7 Honor, it's important to remember, the relayers existed from
8 the start of Tornado Cash. They basically just sprang to life
9 with the relayer registry that Mr. Arad was talking about,
10 perhaps there was already a relayer registry before even that
11 one. This relayer registry he was talking about was an
12 improvement on it through a smart contract that decentralized
13 it so that no one was in control of the registry before people
14 were in control of the registry, and then it got pushed off and
15 so that was decentralized and run by a smart contract, and
16 that's an important point to keep in mind.

17 Another thing to keep in mind is the relayers were
18 never alleged to be coconspirators, they're independent third
19 actors. Mr. Storm never earned any fees, none of the founders
20 earned any fees as relayers, there's no evidence of that.

21 Let's talk for a moment about BitMart, the December
22 2021, the alleged lie about "I don't control" and I'm
23 paraphrasing "the protocol." The inquiry from Mr. Evans was,
24 and your Honor has these exhibits, can you give us information
25 about specific transactions, like identify them, and can you

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1 get us the money. We understand you have these funds. We know
2 from the government's own expert, Werlau, that information
3 wasn't available to my client, nor could he have given them
4 back the funds. The funds had already been in the smart
5 contract pools. That was a truthful response.

6 Talk about Infura for a moment, your Honor, the venue
7 basis. This 347 area code plus a notation of NY – your Honor,
8 the only reasonable inference to draw from that is it's not in
9 Manhattan, actually, as your Honor identified. 347, it's a
10 tiny sliver of the Southern District. The rest of it is not
11 the Southern District. This is, again, the thinnest, weakest
12 evidence of venue, it does not meet the preponderance standard
13 in any way. And to be clear, the government only offered a
14 bank record of Peppersec, they didn't offer the checks or wires
15 showing that, it's just a bank record from Peppersec.

16 The communications with Mr. Schmidt at dragonfly, I
17 don't want to get lost in the shuffle on this one. The only
18 reference to anything in this district, there is none,
19 obviously, but the only reference even to argue there is NY,
20 New York, in one chat from April 1st, not about Tornado Cash.
21 That should not be lost in the shuffle here.

22 THE COURT: I'm sorry you think I would, sir.

23 MR. KLEIN: I'm not. The discussion was not about
24 that, so I wanted to steer back into that.

25 THE COURT: All right.

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1 MR. KLEIN: There was discussion about the user
2 interface, your Honor, which I think is an important thing to
3 think about and talk about. Again, with deposits, as Mr. Arad
4 acknowledged, it didn't write to the Blockchain, it didn't
5 transfer the funds, to be very clear, on deposits. There's no
6 evidence of that under any definition of "transfer."

7 As for withdrawals, at most, all it did was provide
8 information to a relayer. It didn't itself transfer the funds,
9 and that is undisputed in the evidence that it didn't transfer
10 the funds.

11 When we talked about control of Tornado Cash and why
12 was that -- you asked Mr. Arad why was that statement -- why
13 was he talking about that, why was Mr. Storm saying he didn't
14 control it. And he said the only reason is because it was a
15 way to throw people off the scent. But what has been ignored
16 is the evidence that was heard at trial. And we heard that --
17 I'm surprised we got criticized for only calling two witnesses
18 on this point. I guess if we had a retrial, we'd have to call
19 20. But if you remember the coin --

20 THE COURT: Threaten me with a good time, sir, yes.
21 Go ahead.

22 MR. KLEIN: Well, Mr. Arad was the one criticizing us
23 for that. I don't think your Honor would want that either.

24 But remember the man from Coinbase who came in, the
25 security researcher, his testimony is critical here. He

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1 explained is the reason why you don't want someone to control
2 something like a crypto mixer – which is perfectly legal, not
3 theoretically legal, to be clear, actually legal, Mr. Arad said
4 theoretically – is because you need to know the funds are safe
5 and there's no backdoor key to get them, and if someone
6 controls it and someone runs it and has access, then the whole
7 thing collapses because no one's ever going to put their funds
8 in.

9 And what's interesting to me, your Honor, is there was
10 a lot of discussion, well, Mr. Storm, the founders, they needed
11 this clean money to hide the bad money. That makes no sense
12 logically because you need a lot of funds in there so that it's
13 anonymous. We can see that, at most, the mix was 85/15. So
14 it's like you wouldn't build a car to just rob a bank, which is
15 what they're basically arguing. You build a car, and that's
16 what they built. And so the fact that some people might rob a
17 bank with it is different. But the clean money, the people
18 using it for legitimate reasons was very high. And they want
19 that, too. That's the thing that's missing here. They want
20 other people for legitimate reasons using it, too. If I'm a
21 legitimate user, I don't want everyone else to be an
22 illegitimate user because I might get thrown in the mix there,
23 people might be suspicious of me. The point of this tool is to
24 allow lots of people to use it so that it's useful for
25 anonymizing and giving them privacy, and the biggest pool of

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1 people is legitimate users. And so if this project was ever
2 going to be successful and ever actually make Mr. Storm money,
3 it needed to capture a huge market. Just like if you look at
4 WhatsApp, you know, Meta didn't build WhatsApp to help
5 criminals, we know they use WhatsApp all the time, but they
6 built it for everybody.

7 With that, I'm going to hand off the last of the
8 discussion to Ms. Axel.

9 THE COURT: Thank you so much.

10 MS. AXEL: Thank you, your Honor. Just a few points
11 from me, and I think principally related to the IEEPA theories,
12 which we didn't really discuss in the opening argument, but I
13 think there's some things that bubbled to the surface, I think,
14 in your discussions with Mr. Arad.

15 So, first of all, your Honor, the whole conversation
16 you had about what the government's theory is, and is it
17 knowledge plus improvements or is it knowledge plus
18 improvements plus these other things, I think the IEEPA
19 conspiracy argument really highlights that because the period
20 of the alleged conspiracy does not begin until the OFAC
21 designation happens in April of 2022. And so at that point,
22 your Honor, the relayer registry proposal had already happened,
23 that had already happened and been implemented, voted on by the
24 community. And so the only continued action was maintaining
25 the UI. That's the only thing really left. And I think that's

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1 why Mr. Arad had to concede that, at the end of the day, their
2 case really is knowledge of misuse plus continued operation,
3 because that's all we had happening at that point.

4 Their consciousness of guilt evidence, again, this is
5 why they focused on that, also is around that time. It's
6 concerning the Ronin hack. And again, I would submit to you,
7 most of that evidence, all of it I can think of at the moment,
8 has to do with awareness of that and a discussion about whether
9 something was required to be done and they did the Chainalysis
10 oracle.

11 The relay registry, your Honor, was very public.
12 There's no concealment involved in that. It was done very
13 publicly. And again, the idea going back to knowledge plus
14 improvements or knowledge plus continued operation, I think,
15 again, I'd like to submit that the idea that there are
16 improvements that somehow are assisting criminals, I think
17 that's a red herring. There are no improvements here that it's
18 just criminals. We actually discussed this in prep and we
19 looked at the citations, there are no citations for that. The
20 relay registry, as I think the Court already mentioned in
21 comments, was not tailored to particularly help criminals.
22 Obviously monetization was a purpose, also decentralizing the
23 relay registry making it so that that was a smart contract,
24 it happened autonomously, that was all part of that proposal.
25 None of that assisted criminals. As Mr. Klein already said,

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1 relayers already existed. There was already a list for that.
2 So that, the use of relayers did not change with the relayer
3 registry proposal. But again, in the context of IEEPA, this
4 was already done at the time the Ronin hack happens and the
5 sanctions.

6 So their case really comes down to knowledge plus
7 continued operation, and we're back, your Honor, to the line of
8 cases that I mentioned before, and that a failure to take
9 action can't suffice for willfulness or agreement, *Falcone*,
10 *Direct Sales*, the Supreme Court *Morissette* case.

11 Further on willfulness. So, because we're in the zone
12 of knowledge plus continued operation, then they really are
13 talking about was the remedy good enough. They're pointing to
14 a failure to implement a better remedy, a remedy other than the
15 Chainalysis oracle because, again, our point in time begins
16 April 14th. So the only thing they did at that point was
17 implement the Chainalysis oracle. There's no evidence he
18 considered Mr. Werlau's user registry at all. I heard
19 reference to that, but there's no evidence that that idea was
20 considered. And as Mr. Klein said, the idea that somehow a
21 login and a password was going to somehow block DPRK is crazy
22 without a full KYC component to that, which they say, and no
23 one has said there's a legal duty to implement KYC with respect
24 to the user registry, it was left unclear what, if anything, it
25 would have done. But, in any event, there's no evidence that

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1 that idea was particularly put to Mr. Storm. We're conflating
2 things when we talk about the compliance mixer, because a
3 compliant mixer is not the user registry. Werlau just made
4 that up. It's totally separate. A compliant mixer, as was
5 talked about, was a whole different kind of mixer, your Honor,
6 and would not have solved the Ronin hack problem because Ronin
7 was using the existing mixer. So we're just mixing apples and
8 oranges and we're really just sort of inventing things and
9 conflating them. And then it ignores the evidence that did
10 exist, that DeCapua said it was a game of Whac-A-Mole.

11 Oh, I also meant to tell the Court, on the subject of
12 the user registry proposal, I would and -- substantive
13 components and how it is different from the relayer registry
14 technically is, the relayer registry is decentralized. I know
15 the Court has heard this word thrown around a lot, but it
16 actually is an autonomous thing. Someone stakes a certain
17 amount of Torn, they don't have to give a login and a password,
18 they don't have to give a name, and based on their address on
19 the Blockchain and the amount of Torn that they have, they
20 become listed on the registry by virtue of that smart contract.
21 So it is not a login and a password, it is not a KYC, there's
22 no human component. Simply through the algorithm, through the
23 programming language, you stake the amount of Torn, it computes
24 that it's staked, it puts your address on the list. That's it.
25 There's no component to that.

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1 So we covered that in TFA No. 7, your Honor, and I
2 would refer the Court to that.

3 With respect to this idea now that Mr. Storm could
4 simply have spun up some Blockchain explorer or daily thing
5 where he tracked wallets going through, I would refer the Court
6 to DeCapua's testimony that the hackers can make up hundreds of
7 addresses in a second. And that we covered in TFA No. 4.

8 And the intent of what we call TFAs, the Technology
9 Facts Appendix, we were speaking of an undisputed fact section
10 as akin to a summary judgment motion, your Honor, where we
11 would submit to you what we believe were undisputed or
12 indisputed facts, indisputable facts. And we did exercise some
13 discretion not to put things in there that we thought were
14 hotly debated.

15 THE COURT: Yes. Although, again, you put it in your
16 reply brief so the government didn't really have a chance to
17 respond to it.

18 MS. AXEL: Well, your Honor, we did put facts in the
19 opening brief, as well. So I do think that they were responded
20 to. So this was an effort to look at the facts that they put
21 in their opposition and the facts that we put in our opening.
22 Again, you would do this in a reply brief, you know, it's a
23 different motion, it's a different process in summary judgment,
24 but you would have a chance to somebody saying what they
25 thought was disputed and summarize it. And so on that, since

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1 we went to our facts that we put in before and their facts they
2 put in before and we tried to create a summary judgment. So I
3 would refer the Court to that on TFA 4.

4 And on the Blockchain explorer, the idea that they're
5 saying that he could just go to Chainalysis and consistently in
6 real time, there's no evidence that anybody could possibly do
7 that. It's inconsistent with DeCapua's testimony --

8 THE COURT: Slow down, please.

9 MS. AXEL: Of course.

10 If you want to ask who was in the best position to do
11 this, you would say Chainalysis. And do they have a product?
12 They do. It's called the oracle, and that's the product that
13 they used, the company that was in the best position to provide
14 that real time data, and that's the company whose product was
15 rolled out on the UI.

16 And we have in TFA 3 that in fact it did block
17 100 percent of transactions from the sanctioned wallet. Again,
18 they can Whac-A-Mole, they can move hundreds of wallets in a
19 second and move them. But it did work as it was intended to
20 work and they relied on Chainalysis to update it appropriately.
21 There's no evidence that that was a bad choice, even though
22 that's not a sufficient legal base to impose an additional
23 duty.

24 Before I leave the TFA, your Honor, and I'm almost
25 done, before I leave the TFA, I will say I also want to

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1 highlight No. 1 and No. 2. The words "decentralized" are
2 thrown around a lot. In this community, they can mean
3 different things. Decentralization is sometimes a governance
4 issue, who can make changes to a protocol, who has the power,
5 who do we defer to, but they also are often referred to as a
6 technical thing. And in that sense, the word "decentralized"
7 really means non-custodial and permissionless. And so we tried
8 to tease those apart because, from a technical standpoint, your
9 Honor, Tornado Cash was permissionless and noncustodial. And
10 those are very important when you get to concepts like
11 transfer. It has to do with whether or not the person really
12 controls the crypto or somebody else does. It's obviously kind
13 of a central reason for being in the Blockchain world, that
14 someone controls their own crypto and has the ability to do so.
15 And that's why everything in the architecture, that's why the
16 software architecture is built the way it is from beginning to
17 end, so that at all times, the user had control, otherwise
18 you're just running a totally different type of a system. And
19 so sometimes the word "decentralization" is used for that. And
20 I think those facts are undisputed, which is why we put them in
21 here.

22 There is disputes around governance and what kinds of
23 things could be done governance to affect the other elements,
24 as we say, the accessory, the auxiliary or accessory tools
25 around Tornado Cash. And for that reason, we did not put in a

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1 TFA on that, your Honor.

2 But, nevertheless, I think, just before I close, I
3 mean, it is important on the relayer registry to point out that
4 the evidence did show that governance is much like democracy.
5 The president might be able to overthrow the vote, but when we
6 say that everybody's vote matters, it's because people adhere
7 to the system. And with respect to the relayer registry vote,
8 Mr. Werlau's testimony is that the system was adhered to,
9 meaning the founders did not control that vote. Mr. Werlau put
10 that evidence in. So that was, in that sense, a decentralized
11 proposal adopted by the community according to Mr. Werlau's own
12 testimony. And, in fact, the proposal for it, again, was very
13 public. There was no concealment of that whatsoever. There's
14 a medium post, there's a proposal by the founders, and we saw
15 in trial the actual Ethereum page where the proposal is, where
16 the smart contract address is, where it's deployed once the
17 vote takes place on chain, and all of that came in in evidence.
18 That decision is made by the community and was a decentralized
19 one.

20 THE COURT: All right. This is a lot. I will sit
21 with this. I'm sure you're getting the transcript of this,
22 perhaps in an expedited fashion.

23 Mr. Arad, you seem to want to talk to me about
24 something.

25 MR. ARAD: I do, your Honor, very briefly. There are

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1 just three points I would like to make.

2 THE COURT: Yes, and I'll give Mr. Klein the very,
3 very last word because it is his motion.

4 MR. ARAD: Thank you, your Honor.

5 With respect to the BitMart communications, I
6 neglected to say one other thing that they accomplished for the
7 defendant, which is that not only did they conceal his
8 involvement in the money laundering, they also enhanced the
9 money laundering. They made it less likely that the criminals
10 would get caught, less likely that law enforcement would try
11 even to trace the funds and get back to them. And so those two
12 purposes that the defendant had in telling that lie were
13 reasonable bases from which the jury could infer his willful
14 intent.

15 With respect to the relayer registry, I also wanted to
16 just emphasize that one of the key purposes of the relayer
17 registry, one of those two that I mentioned was to enhance the
18 anonymity, which was very helpful to the criminal actors that
19 used Tornado Cash, and that's because relayers were required to
20 make it impossible to trace to the owner of the wallet that the
21 money went to after it left Tornado Cash. And so the
22 implementation of the relayer registry was very much an
23 implementation of a feature of Tornado Cash that made it more
24 useful to criminals.

25 So those are two points I wanted to make on specific

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1 pieces of evidence. My third point is broader.

2 We've discussed a lot today particular pieces of
3 evidence and whether a particular piece of evidence could be
4 taken as sufficient on its own to prove willfulness, for
5 example. The Court's task here, though, is to take all of the
6 evidence as a whole, which is how the jury considered the
7 evidence, and then ask from that tapestry of evidence, was it
8 reasonable for the jury to draw inferences that led it to
9 convict or, for the other two counts, would it have been
10 reasonable to arrive at that kind of conclusion from, again,
11 the overall tapestry of evidence that was presented. And so
12 even if no one piece of evidence or no hypothetical version of
13 a piece of evidence would have been sufficient on its own, put
14 together, the evidence that the government presented was
15 sufficient.

16 Thank you.

17 THE COURT: Thank you.

18 MR. KLEIN: Two last very brief points, your Honor,
19 just to respond to Mr. Arad.

20 Again, crypto mixing was legal, it was allowed. And
21 so making it better at enhancing anonymity or privacy cannot be
22 a crime because it's allowed to do that. Just building a
23 better crypto mixer is fine. And that would be useful for
24 everybody who uses it, all the legitimate users, too. So it
25 definitely does not indicate criminality.

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1 Lastly, which I failed to mention briefly, what we're
2 talking about in the user registry is like some sort of *de*
3 *facto* duty to do something that my client would have never
4 known about. We only learned about the user registry when
5 Mr. Werlau -- his expert testimony was disclosed to us and when
6 he testified.

7 So, again, that's where I would end. Thank you, your
8 Honor.

9 THE COURT: Thank you.

10 Friends, again, my understanding is that you are going
11 to get a transcript of these proceedings. The issue is that
12 the government had asked me to set a trial date on the theory
13 that the government is pursuing the earlier counts on which the
14 jury hung.

15 So, we have problems, as always. I have obligations
16 through July into August. I was thinking we'd do November
17 before Thanksgiving, but I'm told there's a conflict. I think
18 I had heard from the parties, as well, September into October.
19 But perhaps --

20 Mr. Arad, yes.

21 MR. ARAD: The government has no conflict with a
22 November date before Thanksgiving. The dates that we suggested
23 in our letter, which I believe were October 5th and 12th as
24 start dates, were the only dates that both sides could agree
25 on. But the government does have broader availability than

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1 that.

2 THE COURT: I can't do those dates in October for the
3 preservation of my marriage. So I'm out the week, I think it
4 would probably begin Friday the 16th. So I probably could
5 begin the 26th of October just to ensure that we're done by
6 Thanksgiving. But perhaps I could hear from the defense.

7 MS. AXEL: I have a November conflict, your Honor.

8 THE COURT: That's the problem. Okay.

9 MS. AXEL: Yes. I can look at the specific dates. I
10 mean, that's why if we started earlier in October, I was hoping
11 to be done --

12 THE COURT: Right. Which I can't do.

13 MS. AXEL: And then I think there's an early 2027
14 conflict.

15 THE COURT: I want this to be done before then. I
16 think something that ends before Thanksgiving, well before
17 Thanksgiving would keep my jury happier. You have a conflict
18 on the 26th of October?

19 MS. AXEL: No, I have a conflict. It's most of
20 November.

21 THE COURT: Oh, most of November.

22 MS. AXEL: It's a state court trial, so it's scheduled
23 on particular dates.

24 THE COURT: Yes. And for sure it's happening?

25 MS. AXEL: I can never say for sure.

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1 THE COURT: Of course. Same here. If you have a
2 conflict in November, then we can't do this in November.

3 MS. AXEL: If we have to do it in November, your
4 Honor, I guess I would like maybe a moment to see what I can do
5 on that, if the Court --

6 THE COURT: If you could. If you could. I currently
7 do not have a trial -- oh, I have a trial in November with a
8 *pro se* criminal defendant beginning on the 26th of October, but
9 I'll try and move it up and see if I can do it September into
10 October. After that, though, that trial will go right into
11 Thanksgiving, so that doesn't make sense for us to begin. My
12 December is reasonably clean. I have an obligation, a judicial
13 conference obligation, but that's two days, and if the jury
14 isn't sitting for two days, they'll probably thank us. So I
15 could start the 30th of November. So perhaps, Ms. Axel, I
16 won't put anything down just yet. You're welcome to caucus
17 with your team and with the government and let me know. Those
18 are the dates available to me. And then my January is totally
19 free. I just hadn't thought we were going out that far.

20 MS. AXEL: So the options would be October 26th,
21 November 30th, or January 2027?

22 THE COURT: Correct.

23 MS. AXEL: Could we have until the end of the week?

24 THE COURT: Today's Thursday, you can have until the
25 beginning of next week because I need you to see how viable

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1 these are. But yes. Talk amongst yourselves and get back to
2 me and I will be working on this.

3 Mr. Arad, anything I have neglected to do that I
4 should be doing now?

5 MR. ARAD: No, your Honor.

6 THE COURT: Thank you so much for your time, sir, and
7 your preparation.

8 Mr. Klein, anything else we should be doing now?

9 MR. KLEIN: No, but we're still hoping we don't have
10 to come back for a retrial.

11 THE COURT: I understand, sir, but I can't make my
12 decision based solely on that wish.

13 MR. KLEIN: I understand, your Honor.

14 THE COURT: I will be taking everything that you've
15 said today very seriously.

16 Thank you, everyone. We're adjourned.

17 * * *