No._____

IN THE SUPREME COURT OF THE UNITED STATES

JAVED ASEFI,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether federal jurisdiction exists in a prosecution under 18 U.S.C. § 1962(d) where neither the activities of the alleged enterprise nor the individual predicate racketeering acts have a substantial effect on interstate commerce.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Javed Asefi respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The Ninth Circuit affirmed petitioner's convictions, finding, *inter alia*, that the district court did not err in failing to dismiss the indictment because "'all that is required to establish federal jurisdiction in a RICO prosecution is a showing that the individual predicate racketeering acts have a *de minimis* impact on interstate commerce." *United States v. Asefi*, 788 Fed. Appx. 449, 451 (9th Cir. 2019) (unpublished) (attached as Appendix A).

JURISDICTION

On September 24, 2019, the Ninth Circuit affirmed petitioner's convictions via memorandum disposition. *See* Appendix A. On October 8, 2019, Petitioner filed a timely petition for rehearing en banc, which was denied on November 1, 2019. *See* Appendix B. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISION

Article I, Section 8 of the United States Constitution states: "The Congress shall have the power to… regulate commerce with foreign nations, and among the several states, and with the Indian tribes…"

STATEMENT OF THE CASE

This case arose after a grand jury returned an indictment charging Petitioner Javed Asefi and 11 other codefendants with, *inter alia*, conspiracy under the Racketeer Influenced and Corrupt Organizations Act, in violation of 18 U.S.C. § 1962(d) ("RICO conspiracy"), for their alleged roles in a ticket-fixing bribery scheme operating within the Superior Court of the State of California, County of Orange.

The lead defendant, Jose Lopez, Jr., was a clerk with the Superior Court. Clerk's Record (CR) 1 at 2. The government claimed that from at least 2010 until March 23, 2015, Lopez accepted bribes from the other 11 defendants to enter fraudulent minutes that made it appear a case had been resolved in a manner favorable to the person charged when, in truth and fact, no court proceeding or resolution had taken place. *Id.* at 3. The government alleged that the scheme affected approximately 1,034 cases, including 69 misdemeanor driving under the influence cases, 160 other misdemeanor cases, and 805 traffic-related infraction cases. *Id.* at 4.

The indictment described Petitioner as a "middleman." *Id.* The "middlemen" allegedly "solicited and facilitated the payment of bribes" on Lopez's behalf. *Id.* In Petitioner's case, the government claimed that he had "found people to refer to

defendant Lopez through [his] work with car dealerships." *Id.* As overt acts, the indictment listed several instances in which Petitioner had allegedly "collected money" from customers for Lopez and others in which Petitioner had sent text messages to the customers regarding the resolution of their cases. *See* e.g., *id.* at 9, 24. The government later returned a First Superseding Indictment to amend the allegations on the individual bribery counts but did not add any new substantive charges against Asefi or the other codefendants. *See* CR 209.

Following some pretrial litigation regarding the validity of the indictment (*see e.g.*, CR 183, 206) and the district court's denial of those motions (CR 299), all defendants except Asefi pleaded guilty to the charges. *See* CR 301-343.

The government then returned a Second Superseding Indictment ("SSI") with Petitioner as the sole remaining defendant. CR 357, Ninth Circuit Excerpts of Record ("ER") 470. The SSI alleged six different counts, but Counts 1 and 2 alleged the same RICO conspiracy and bribery from the previous indictments. ER 475-497.

Before trial, Petitioner moved to dismiss the SSI. *See* CR 420. As relevant to this petition, he argued that the district court lacked jurisdiction as to the RICO conspiracy count because the indictment did not allege that the activities of the

enterprise (the Orange County Superior Court) had a substantial effect on interstate commerce. *Id.*

The government opposed the motion. *See* CR 431, 432. It argued that because the Superior Court had entered into contractual obligations with third-party vendors, "it engaged in economic activity (which was interstate in nature) and its activities affected interstate commerce." CR 431 at 8. It further argued that the Superior Court's activities had a *de minimis* impact on interstate commerce. *Id.* at 11-17.

The district court denied the motion to dismiss. *See* CR 460, ER 124. It found that it was "unpersuaded by Defendant's argument...that the RICO enterprise's activities must 'substantially affect' interstate commerce. This standard does not apply here, and instead applies only to a determination of whether federal regulations addressing issues of intrastate commerce are constitutional pursuant to Congress' Commerce Clause powers." ER 126-127. It noted that "the SSI alleges that OCSC was both engaged in interstate commerce and that its activities affect interstate commerce. This is sufficient at this stage of the proceedings." ER 127

The matter ultimately proceeded to trial, with the jury acquitting Petitioner on Count 3, but convicting him on the remaining counts. The district court imposed a

24-month sentence, and Petitioner appealed. He argued before the Ninth Circuit that the RICO conspiracy allegations should have been dismissed for lack of federal jurisdiction because the government had not alleged or proven that either the alleged enterprise or the individual predicate racketeering acts had a substantial effect on interstate commerce. But the Court disagreed, relying on *United States v. Frega*, 179 F.3d 793, 800 (9th Cir. 1999) to find that "[b]ecause RICO is aimed at activities which, in the aggregate, substantially affect interstate commerce, 'all that is required to establish federal jurisdiction in a RICO prosecution is a showing that the individual predicate racketeering acts have a de minimis impact on interstate commerce.'"

This petition follows.

REASON FOR GRANTING THE PETITION

Review is warranted to address the question of whether federal jurisdiction exists in a RICO prosecution where both the activities of the enterprise and the individual predicate racketeering acts have a *de minimis* effect on interstate commerce.

1. Introduction.

"The Constitution creates a Federal Government of enumerated powers." *United States v. Lopez*, 514 U.S. 549, 552 (1995) (citing U.S. Const. Art. I, § 8). But the general enforcement of criminal laws is not one of them. "States historically have been sovereign" in criminal law. *Id.* at 564. Nevertheless, the

Commerce Clause does delegate to Congress the power to regulate interstate and foreign commerce, *id.* at 552-53, and the RICO Act was enacted pursuant to that authority. But as demonstrated below, when a regulation does not regulate a channel or instrumentality of commerce, the regulated activity must have a "substantial effect" on interstate commerce. Because the indictment did not allege that, and the facts do not show that, this case should have been dismissed for lack of federal jurisdiction.

2. When Commerce Clause jurisdiction is not based upon the channels or instrumentalities of interstate commerce, it requires a "substantial effect on interstate commerce."

Over the years, this Court's jurisprudence has identified "three general categories of regulation in which Congress is authorized to engage under its commerce power." *Gonzales v. Raich*, 545 U.S. 1, 16 (2005). These categories are: (1) the use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities that "substantially affect interstate commerce." *See United States v. Alderman*, 565 F.3d 641, 646 (9th Cir. 2009) (*citing United States v. Lopez*, 514 U.S. 549, 558–59 (1995)).

When a regulation does not address the channels or the instrumentalities of commerce (categories one and two above) Congress's power to regulate is thus limited to the third category—those activities "*that have a substantial effect* on

interstate commerce." *Gonzales*, 545 U.S. at 17 (emphasis provided). While these regulations can sometimes lawfully reach "purely local activities," they are nevertheless limited to "purely local activities that are part of an economic 'class of activities' *that have a substantial effect* on interstate commerce." *Id. (citing Wickard v. Filburn*, 317 U.S. 111, 128-129 (1942) (emphasis provided). As this Court stated in *Wickard*, "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress *if it exerts a substantial economic effect on interstate commerce.*" *Wickard*, 317 U.S. at 125 (emphasis provided).

This Court has drawn a distinction between a mere "effect" and a "substantial effect"—and made clear that the Constitution requires the latter. In *United States v. Lopez*, 514 U.S. 549, 559 (1995), for example, the Court acknowledged that as of 1995, "our case law ha[d] not been clear whether an activity must 'affect' or 'substantially affect' interstate commerce." But *Lopez* answered that question conclusively: "We conclude, consistent with the great weight of our case law, *that the proper test requires an analysis of whether the regulated activity 'substantially affects' interstate commerce.*" *Id.*

When a federal statute fails to pass that test, it is unconstitutional. *See id*, (striking down federal statute regulating possession of guns in school zones). *See*

also United States v. Morrison, 529 U.S. 598, 610–12 (2000) (striking down statute that provided a federal civil remedy for victims of gender-motivated violence). As discussed below, the RICO statutory framework is no exception to this constitutional rule, and should require a "substantial effect" on interstate commerce from either the enterprise or the individual predicate racketeering acts to pass muster under the Commerce Clause.

3. To be constitutional, RICO must retain the "substantial effect" requirement; cases upholding a "de minimis" nexus are premised on the regulated enterprise or activity already having a "substantial effect" on interstate commerce.

a. RICO only reaches enterprises that are either "engaged in" or whose "activities affect" interstate commerce; because the OCSC was not itself "engaged in" interstate commerce, the government must proceed on a "activities affect" theory.

Under the constitutional principles described above, there must be a substantial effect on interstate commerce for the government to lawfully exercise its power under the Commerce Clause. RICO purports to honor those limitations in that it only reaches "enterprise[s] engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1962(c). This sets up two different avenues to federal RICO jurisdiction: 1) an enterprise that "engages" in interstate commerce; or 2) an enterprise whose "activities affect" interstate commerce.

The first prong of the RICO statute, "engages in" interstate commerce, does not apply here. For purposes of RICO, an entity "is generally 'engaged in commerce' when it is itself directly engaged in the production, distribution, or acquisition of goods or services in interstate commerce." *United States v. Robertson*, 514 U.S. 669, 672 (1995). *Cf. United States v. Am. Bldg. Maint. Indus.*, 422 U.S. 271, 285 (1975) ("since the Benton companies did not participate directly in the sale, purchase, or distribution of goods or services in interstate commerce, they were not 'engaged in commerce' within the meaning of § 7 of the Clayton Act."). *See also Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 195 (1974) (same).

The Orange County Superior Court is the entity that the government framed as its alleged RICO enterprise. But the Superior Court is simply not in the commerce business. It does not engage in commerce because it does not directly produce, distribute or acquire goods or services in interstate commerce. *See Robertson*, 514 U.S. at 672. Its business is not buying or selling goods interstate either. Thus, to establish federal jurisdiction, the government needed to show that the Superior Court is an enterprise whose "activities affect" interstate commerce instead. And as discussed below, "activities affect" commerce must be read to mean "activities substantially affect" commerce.

b. An "activities" theory requires more than a "de minimis" effect on interstate commerce.

The government argued below that only a "de minimis" connection to interstate commerce is required under Ninth Circuit case law, *citing United States v. Juvenile Male*, 118 F.3d 1344, 1347 (9th Cir. 1997), *United States v. Fernandez*, 388 F.3d 1199, 1218 (9th Cir. 2004), and *United States v. Shryock*, 342 F.3d 948, 984 n.6 (9th Cir. 2003). But those cases do not do away with the "substantial effect" requirement, because they either: 1) addressed an "engaged in" enterprise as described above, 2) addressed overall activity that unquestionably had a substantial effect on interstate commerce, or 3) both. In light of this Court's case law, these cases should be read to hold that when an enterprise or its overall activities have a "substantial effect" on interstate commerce, then a defendant's individual activities need only have a de minimis effect beyond the already existing substantial effect. Thus "substantial effect" can be satisfied either by the enterprise itself, the overall activities of the enterprise, or the defendant's individual acts. But none of these cases support the notion that the enterprise, the overall activity, and the defendants' individual acts can collectively amount to a mere de minimis effect and still be constitutional. Ultimately, these cases do not do away with this Court's "substantially affects" case law.

In *United States v. Juvenile Male*, 118 F.3d 1344, 1347 (9th Cir. 1997), for example, the defendants were charged with a conspiracy to rob a Subway sandwich store, with the goal of using the money to purchase firearms. The Ninth Circuit set out to "determine whether the Government must prove that the defendant's *individual racketeering activities* had more than a 'de minimis effect' on interstate commerce in order to establish federal jurisdiction in a RICO prosecution." *Id.* (emphasis provided). The Court first observed that this is an open question under this Court's case law. *See id.* at 1347 ("In *United States v. Robertson*, 514 U.S. 669 (1995), the Supreme Court left open the question of whether individual RICO predicate acts must 'substantially affect' interstate commerce.") So the *Juvenile Male* panel looked to a Hobbs Act case, *United States v. Atcheson*, 94 F.3d 1237 (9th Cir. 1996), for guidance by analogy. In *Atcheson*, the Court addressed a similar Commerce Clause challenge to a Hobbs Act conviction, and reasoned that "[w]here the crime itself directly affects interstate commerce, as in the Hobbs Act, no requirement of a substantial effect is necessary to empower Congress to regulate the activity under the Commerce Clause." *Id.* at 1242-43. To establish jurisdiction in an individual case under the Hobbs Act, the Government therefore needed only to prove that the crime had a "de minimis effect" on interstate commerce. *Id.* at 1243.

But *Juvenile Male* took this reasoning from *Atcheson* and extended it a step further. It analogized the Hobbs Act jurisdictional requirement to the purportedly "similar"—and yet different[1]—jurisdictional language in the RICO statute that describes "any enterprise engaged in, or the activities of which affect, interstate or foreign commerce." It concluded that "the RICO statute, like the Hobbs Act, regulates activities which, in the aggregate, have a substantial effect on interstate commerce; hence, the de minimis character of individual instances arising under [the] statute is of no consequence." *Juvenile Male*, 118 F.3d at 1348 (emphasis provided).

Thus by its own terms *Juvenile Male* did not abandon the overall requirement of a "substantial effect" on interstate commerce—it merely held that the substantial effect need not come from the individual predicate acts when it was already present in the aggregate.

United States v. Shryock, 342 F.3d 948 (9th Cir. 2003), was decided after *Juvenile Male* and largely relied upon it. There, the Ninth Circuit observed that

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1 It is a distinction with a difference. The Hobbs Act regulates anyone who "obstructs, delays, or affects commerce or the movement of any article or commodity in commerce." 18 U.S.C. § 1951. The statute thus regulates commerce itself. The RICO statute regulates "any enterprise engaged in, or the activities of which affect, interstate or foreign commerce." Thus, because RICO is not targeted at interference with commerce itself like the Hobbs Act is, the question remains as to what kind of nexus to commerce is required constitutionally.

"the heart of [the defendant's] crimes, drug trafficking and extortion, are quintessential illegal economic activities." *United States v. Shryock*, 342 F.3d 948, 984 n.6 (9th Cir. 2003). The jury instructions in that case took care of the substantial-effect requirement in the aggregate, by stating that "the jurisdiction requirement is met if 'the enterprise or its activities engaged in or involved interstate or international drug trafficking, use of interstate communication devices, or possession or use of weapons which traveled in interstate commerce.'" *Shyrock*, 342 F.3d at 985. Thus, *Shyrock* required a finding that the enterprise itself engaged in interstate or international drug trafficking, interstate communications, or use of interstate travelling weapons. Because those activities are "quintessential illegal economic activities" involving interstate commerce, they confer federal jurisdiction on their face.

But as discussed above, "engaged in" is a different route to Commerce Clause jurisdiction, and because the Superior Court is not "engaged in" commerce under *Robinson*, it does not apply here. And once that jury found that the enterprise itself "engaged in" interstate commerce, the question on appeal became whether "sufficient evidence supported the jury's finding that the crimes charged had at least a de minimis effect on interstate commerce." *Id.* Again, where the enterprise's activities are already of the kind that have a "substantial effect" on commerce, the

individual crimes needed to only have a *de minimis* one. But *Shyrock* never addressed the key question here: whether the enterprise's activities can have a de minimis effect, and then the individual's activities also have a de minimis effect. *Shyrock* did not hold that the enterprise and its activities could together have only a de minimis effect on interstate commerce.[2] The Constitution and this Court's caselaw still requires that the enterprise's activities generally and/or the defendant's actions specifically together add up to a substantial effect on interstate commerce.

Other Circuit authority supports this construction. In *Waucaush v. United States*, 380 F.3d 251, 257 (6th Cir. 2004), the Sixth Circuit explained why a collective de minimis standard was insufficient. "[W]here the enterprise itself did not engage in economic activity," it held, "a minimal effect on commerce will not do." *Id.* at 256. *See also United States v. Crenshaw*, 359 F.3d 977, 985 (8th Cir. 2004) ("the district court in this case instructed the jury that it need only find that the enterprise had a 'minimal' effect on interstate commerce in order to convict the

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2 Finally, *United States v. Fernandez*, 388 F.3d 1199, 1218 (9th Cir. 2004) did not add anything substantive to the analysis. Its holding was merely that "an indictment need not set forth facts alleging how interstate commerce was affected, nor otherwise state any theory of interstate impact." *Id. Fernandez* did not address whether an enterprise's activities and the individual crimes together could only amount to a de minimis effect on interstate commerce.

defendants. Requiring the government to prove a minimal effect on interstate commerce in particular cases does not seem adequate by itself to establish that the regulated activity on the whole 'substantially affects' interstate commerce.") (emphasis provided). *Waucaush* distinguished cases requiring only a de minimis effect on commerce, explaining that in those cases, "a minimal connection sufficed . . . only because the enterprise itself had engaged in economic activity." *Id.* at 255. *See e.g. United States v. Riddle*, 249 F.3d 529, 537 (6th Cir. 2001) (minimal connection sufficed because the enterprise itself engaged in gambling business, extortion, and fencing stolen merchandise); *United States v. Crenshaw*, 359 F.3d 977, 986 (8th Cir. 2004) (upholding RICO conviction when intrastate acts of violence furthered clear interstate economic enterprise); *United States v. Feliciano*, 223 F.3d 102, 118 (2d Cir. 2000) (describing RICO narcotics trafficking and money laundering offenses as "economic activities that in the aggregate have a substantial effect on interstate commerce.")

Notable, the First Circuit took a different view in *United States v. Nascimento*, 491 F.3d 25, 37 (1st Cir. 2007), reasoning that "the appellants urge us to read a single phrase in the statute as requiring different things in different situations: in a case involving an enterprise engaged in economic activity, the government would have to show only a de minimis effect on interstate commerce,

whereas in a case involving an enterprise engaged in violence but not in economic activity, the government would have to show a more substantial effect on interstate commerce." *Id.*

But Petitioner is not advocating for different requirements in different situations. There should be, and is, one requirement at all times—a substantial effect on interstate commerce. Sometimes that substantial effect can be satisfied merely by the nature of the conduct that the RICO statute is directed at: an enterprise that is engaged in interstate commerce itself, for example; or activity that itself has a substantial effect on interstate commerce, like the international drug trade. In those situations, the effect of the defendant's individual actions on interstate commerce need only be *de minimis*, because the "substantial effect" that the law requires already exists in the aggregate. But where the enterprise or its activities do not have a substantial effect on interstate commerce already, the substantial effect then must be fulfilled by the individual criminal acts. It is not a matter of "requiring different things in different situations," it is a matter of always requiring a substantial effect, which must be fulfilled by the defendants' activities if not by the nature of the enterprise or its general activities itself.

In sum, this Court's jurisprudence does not require only a *de minimis* effect on interstate commerce when considering the enterprise's activities and the

individual defendants' acts together. The Ninth Circuit erred in finding to the contrary. Certiorari should be granted to the address this important question of constitutional law.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Dated: January 30, 2020

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APPENDIX

A

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JAVED ASEFI, AKA Joey, Defendant-Appellant.	No. 18-50070 D.C. No. 8:16-cr-00113-JLS-10 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Argued and Submitted September 10, 2019
Pasadena, California

Before: WARDLAW, BENNETT, and MILLER, Circuit Judges.

Javed Asefi appeals his conviction and 24-month sentence for RICO conspiracy, bribery, making false statements in a citizenship application, and criminal contempt. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Asefi first argues that the district court erred in denying his motion to dismiss Count 1 of the indictment, the RICO conspiracy charge. "We review the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

denial of a motion to dismiss an indictment for facial invalidity or insufficiency de novo." *United States v. Frega*, 179 F.3d 793, 805 n.10 (9th Cir. 1999). Like the district court, we are "bound by the four corners of the indictment, must accept the truth of the allegations in the indictment, and cannot consider evidence that does not appear on the face of the indictment." *United States v. Kelly*, 874 F.3d 1037, 1047 (9th Cir. 2017).

Asefi argues that the indictment is insufficient for failing to allege that the activities of the RICO enterprise (here, the Orange County Superior Court) "substantially affect" interstate commerce. This is incorrect. "Because RICO is aimed at activities which, in the aggregate, substantially affect interstate commerce, 'all that is required to establish federal jurisdiction in a RICO prosecution is a showing that the individual predicate racketeering acts have a de minimis impact on interstate commerce.'" *Frega*, 179 F.3d at 800 (quoting *United States v. Juvenile Male*, 118 F.3d 1344, 1348 (9th Cir. 1997)).

The indictment alleged that the Superior Court, which "constituted an enterprise as that term is defined" by RICO, "was engaged in, and its activities affected, interstate commerce." That allegation, which tracks the jurisdictional language of the RICO statute (18 U.S.C. § 1962(c)), and the truth of which we "must accept," *Kelly*, 874 F.3d at 1047, satisfies the government's pleading

burden, the RICO statute, and the Commerce Clause. The district court did not err in failing to dismiss Count 1.

2. Asefi next contends that Count 4 (making false statements in a naturalization proceeding) was improperly joined with the RICO and bribery charges. He also claims that even if Count 4 were properly joined under Rule 8 of the Federal Rules of Criminal Procedure, the district court erred in denying his Rule 14 motion to sever Count 4. "We review misjoinder under Rule 8(a) de novo and refusal to sever under Rule 14 for abuse of discretion." *United States v. Prigge*, 830 F.3d 1094, 1098 (9th Cir. 2016).

"It is well settled that the motion to sever 'must be renewed at the close of evidence or it is waived.'" *United States v. Alvarez*, 358 F.3d 1194, 1206 (9th Cir. 2004) (quoting *United States v. Restrepo*, 930 F.2d 705, 711 (9th Cir. 1991)). An exception to this rule exists where "a renewal at the close of all evidence would constitute an unnecessary formality." *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1208 (9th Cir. 1991). Asefi did not renew his motion to sever at trial and has not shown renewal was an unnecessary formality. Because Asefi did not renew his motion for severance at trial, the district court had no reason to believe the prejudice cited by Asefi prior to trial manifested during trial. *See United States v. Kaplan*, 554 F.2d 958, 966 (9th Cir. 1977). Thus, Asefi has waived his severance claim.

As for joinder, proof of Asefi's involvement in the courthouse bribery scheme (and later lies to the FBI) would support a conviction on Count 4. Because "the same facts must be adduced to prove each of the joined offenses," *United States v. Portac, Inc.*, 869 F.2d 1288, 1294 (9th Cir. 1989), joinder was proper here. Asefi did not raise his claim for retroactive misjoinder below, and thus waived it.

3. Asefi next argues that Count 4 was duplicitous because it lumped many false statements together under the same charge and therefore permitted the jury to convict without unanimously finding that Asefi made any one false statement. We review this issue de novo. *United States v. Martin*, 4 F.3d 757, 759 (9th Cir. 1993). We are guided by the "presumption against construing penal statutes so as to lead to multiple punishment." *United States v. UCO Oil Co.*, 546 F.2d 833, 837 (9th Cir. 1976).

Count 4 alleged a violation of 18 U.S.C. § 1015(a), which prohibits "knowingly mak[ing] any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens." Given the presumption, and the statute's repeated use of the word "any," we conclude that multiple false statements in a single naturalization document simply constitute "multiple ways of committing the same offense." *United States v. Arreola*, 467 F.3d 1153, 1161 (9th

Cir. 2006); *see also United States v. McCormick*, 72 F.3d 1404, 1409 (9th Cir. 1995) (no error in failing to give a specific unanimity instruction on an indictment that charged multiple false statements in a single passport application).

4. Asefi makes three challenges to the jury instructions on the RICO conspiracy count: (1) the jury should have been instructed that to convict, it must find that he "agreed personally to facilitate the activities of the enterprise"; (2) the jury should not have been given a "deliberate ignorance" instruction; and (3) the jury should have received a multiple conspiracies instruction.

First, to the extent that Asefi argues that the district court misstated the elements of a RICO charge in its jury instructions, we review that issue de novo. *See United States v. Spillone*, 879 F.2d 514, 525 (9th Cir. 1989). The jury was properly instructed on the elements of a RICO offense. The instructions required the government to prove that Asefi "joined an agreement knowing of its objective to participate" in the enterprise, and prove that Asefi agreed to "facilitate . . . a scheme which . . . constitutes a RICO violation" where another was employed by or associated with the enterprise and participated in the management of the enterprise. The instructions thus properly instructed the jury that to convict, they had to find that Asefi was "aware of the essential nature and scope of the enterprise and intended to participate in it." *United States v. Fernandez*, 388 F.3d 1199, 1230 (9th Cir. 2004) (internal quotations and citations omitted).

Second, regardless of whether plain error or de novo review applies, Asefi has not shown that the district court erred in giving a deliberate ignorance instruction (also known as a "*Jewell*" instruction for *United States v. Jewell*, 532 F.2d 697, 702 (9th Cir. 1976)). We have repeatedly held that a *Jewell* instruction is proper in specific-intent cases (including conspiracy cases). *See United States v. Ramos-Atondo*, 732 F.3d 1113, 1120 (9th Cir. 2013) (rejecting appellants' argument that "it is impossible to conspire to be deliberately ignorant" and holding that "the *Jewell* standard eliminates the need to establish such positive knowledge to obtain a conspiracy conviction");[1] *United States v. Heredia*, 483 F.3d 913, 922 & n.13 (9th Cir. 2007) (en banc) (approving of *Jewell* instruction in possession-with-intent-to-distribute prosecution, and observing that "willful blindness is tantamount to knowledge"); *United States v. Nosal*, 844 F.3d 1024, 1039–40 (9th Cir. 2016) (approving *Jewell* instruction in aiding-and-abetting case). Asefi's defense invited the deliberate ignorance instruction here, and the district court did not err in instructing the jury.

[1] Asefi does not argue on appeal that the factual predicate for the *Jewell* instruction was lacking. Nor could he plausibly do so. The thrust of Asefi's defense to the RICO conspiracy charge was that he believed (even though one of the fixed tickets was his) that he was passing payments and information on to a lawyer who legitimately resolved the tickets, and that he did not ask questions about how the tickets were being dismissed.

Third, the district court did not err by refusing to give a multiple conspiracies instruction, regardless of the standard of review applied, *see United States v. Job*, 871 F.3d 852, 867 (9th Cir. 2017). Because Asefi stood trial alone, no multiple conspiracies instruction was required. *See United States v. Chen Chiang Lui*, 631 F.3d 993, 1000 (9th Cir. 2011).

5. Finally, Asefi argues that cumulative error requires reversal. But because we find no individual error, there was no cumulative error. *See United States v. Franklin,* 321 F.3d 1231, 1241 n.4 (9th Cir. 2003) ("Because no individual errors underlying [Franklin's] convictions have been demonstrated, no cumulative error exists.").

AFFIRMED.

APPENDIX

B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JAVED ASEFI, AKA Joey, Defendant-Appellant.	No. 18-50070 D.C. No. 8:16-cr-00113-JLS-10 ORDER

Before: WARDLAW, BENNETT, and MILLER, Circuit Judges.

Appellant, Jahved Asefi, filed a petition for panel rehearing and for rehearing en banc. [Dkt. 39]. The panel has unanimously voted to deny the petition for rehearing and rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc is **DENIED**.