No. 20-1321 ORIGINAL

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

JOHN CHING EN LEE,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

John Ching En Lee
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QUESTIONS PRESENTED

1. Whether Petitioner is entitled to a Certificate of Appealability since he has made a substantial showing that he was denied Due Process under the Due Process Clause of the Constitution, because the Government did not prove beyond a reasonable doubt the elements of Falsity, Intent, Materiality, required for conviction under 18 USC 1001.

2. Whether Petitioner is entitled to a Certificate of Appealability since he has made a substantial showing that he was denied Effective Assistance of Counsel under the Sixth Amendment to the Constitution because Trial Counsel's improper stipulation to Jury Instruction was based on arbitrary and contradictory evidence.

3. Whether Petitioner's 2255 Motion presents an exception to the Law of the Case Doctrine because the conviction is clearly erroneous and its enforcement would work a manifest injustice.

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The United States District Court for the Northern District of California convicted Petitioner of 18 USC 1001 after a jury trial on June 30, 2016. United States v. John Ching En Lee, 3:15 CR-00541-SI, Appendix A. Petitioner timely filed a Rule 29 motion and the District Court on September 20, 2016, acquitted Petitioner on Count 2 but affirmed Count 1. United States v. John Ching En Lee, 3:15 CR-00541-SI, Dkt. No. 136, Appendix B. A direct appeal was then filed with the United States Court of Appeals for the Ninth Circuit and the appeal was denied on June 6, 2018. United States v. John Ching En Lee, 726 F. App'x 589, 590 (9th Cir. 2018), Appendix C. A Petition for Writ of Certiorari was filed with the Supreme Court of the United States on November 19, 2018, and the petition was denied on February 19, 2019. John Ching En Lee v. United States, 139 S. Ct.1169, Docket Number 18-597, Appendix D.

A Rule 2255 motion was filed with the United States District Court for the Northern District of California on October 10, 2018, and Petitioner also filed a motion to amend the 2255 motion on May 16, 2019. The District Court denied the motion to amend, denied the 2255 motion itself, and declined to issue a Certificate of Appealability on August 28, 2019. United States v. John Ching En Lee, 3:15-CR-00541-SI/18-CV-06223-SI, Dkt. Nos. 164, 165, 183, 188, Appendix E. Petitioner timely filed a Notice of Appeal seeking a Certificate of Appealability. On December 14, 2020, the United States Court of Appeals for the Ninth Circuit issued an order of two Circuit Judges denying a Certificate of Appealability. United States v. John

Ching En Lee, N0. 19 -16745, Docket Entry No. 2, Appendix F. Petitioner timely filed a Motion to Reconsider and the motion was denied on January 14, 2021. United States v. John Ching En Lee, No. 19 -16745, Docket Entry No. 4, Appendix G.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Ninth Circuit affirmed the denial of Petitioner's application for a Certificate of Appealability on December 14, 2020. Petitioner's Motion for Reconsideration was denied on January 14, 2021. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a public and speedy trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory of process for obtaining witnesses in his favor, and to have assistance of counsel for his defense.

Section One of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 USC 1001(a) provides in relevant part that: Except otherwise as provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully-

> (1) falsifies, conceals, or covers up by any trick, scheme, or device, a material fact;
>
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
>
> (3) make or use any false writing or document knowing the same to contain materially false, fictitious, or fraudulent statement of entry; Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

28 US 2241(a) provides:

> Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

28 USC 2253(c) provides:

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
>
> (B) the final order in a proceeding under section 2255.
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 USC 2255(a) provides:

> A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

STATEMENT OF THE CASE AND FACTS

Petitioner worked for United States Immigration and Citizenship Services at the San Francisco Office as an Immigration Officer from May 2004 to December 2015. An indictment against Petitioner was filed in November 2015, Petitioner was placed on suspension in December 2015, and subsequently fired in December 2017.

Petitioner took out a bank loan in August 2006 to help wife to start a massage therapy business. In March 2008, Petitioner's wife and 2 other girls were arrested for alleged solicitation of prostitution. Wife was never convicted and the other 2 girls were never prosecuted. Wife received 6 months diversion in June 2009, but diversion was terminated early in November 2009, after only 5 months, and wife became a naturalized U.S. citizen in June 2010.

Agent John Henderson and Agent Richard Fuentes from the Office of Inspector General came to interview Petitioner in August 2009. There was **no video tape, no audio tape, no Q&A, no signed sworn statement** by Petitioner for the interview. Agents claimed that Petitioner denied having provided start-up funding to wife's business. This gave rise to Count 1 of the indictment. In October 2013, 2 different agents came to interview Petitioner regarding an unauthorized database search that Petitioner had performed in March 2009, **4 years and 7 months earlier**. Agents allege that Petitioner had denied having run those searches during the October 2013 interview. This alleged denial was the basis for Count 2 of the indictment.

Petitioner was indicted in November 2015 under 2 counts of 18 USC 1001. Count 1 was for alleged false statement made to agents during the August 2009 interview denying having provided **start-up funding to wife back in August 2006.** Count 2 was for allegedly denying running unauthorized searches in the government data base in March 2009. Petitioner was convicted of both counts in October 2016. A Rule 29 motion was filed and the district court acquitted

Petitioner on count 2 but upheld count 1. An appeal was filed with the 9th Circuit but was denied in June 2018. A Petition for Writ of Certiorari was filed and denied by the U.S. Supreme Court in February 2019. A 2255 motion was filed with the District Court in October 2018 but was denied in August 2019 and District Court also refused to issue a certificate of appeal ability. A request for certificate of appealability was filed with the 9th Circuit in October 2019 but was denied on December 14, 2020. A motion to reconsider the denial was filed with the 9th Circuit and was denied on January 14, 2021.

THE CERTIFICATE OF APPEALABILITY STANDARD

To obtain a certificate of appeal ability, a habeas petitioner must make a "substantial showing of the denial of a constitutional right" 28 U.S.C. 2253(c)(2). He satisfies this standard by demonstrating that jurists of reason could disagree with the District Court's resolution of his case or that the issues presented were adequate to deserve encouragement to proceed further. He need not convince a judge, or, for that matter, three judges, that he will prevail, but must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. Miller-El v. Cockrell, 537 US 322.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's denial of Petitioner's request for a certificate of appeal ability (COA) was unreasonable and conflicts with this Court's decision in Miller-El v. Cockrell, 537 U.S. 322, 337 (2003), because Petitioner has made the requisite showing for a COA to issue.

This Court should grant the writ because there was insufficient evidence to support the conviction and Petitioner was also denied effective assistance of counsel. The issue of insufficient evidence and ineffective assistance of counsel are intertwined and will be discussed below.

DISCUSSION

In 1970, the Court held in *In re Winship*, 397 U.S. 358, 364 (1970), that the Due Process of Law Clauses of the Fifth and Fourteenth Amendments protect the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.

A conviction under 18 USC 1001 requires a defendant to have actually made a false statement, the statement must be made with intent, and the statement must be material. In this case, trial testimonies by both Agents do not show the funding question was ever asked, do not show Petitioner ever made a false denial, do not show there was intent, and do not show the alleged false statement was material.

I. (A) IMPEACHED TRIAL TESTIMONIES OF AGENT JOHN HENDERSON AND RICHARD FUENTES DO NOT SHOW START-UP FUNDING QUESTION WAS EVER ASKED.

- It must first be pointed out that the Primary Job of Agent John Henderson at the interview was to Take Notes, besides Being a Witness. (TR 299, Lines 2-10).

- During trial, Agent John Henderson and Agent Richard Fuentes gave conflicting testimonies and contradicted each other.
- Agent Fuentes contends he asked Petitioner several times about funding (TR 273, Lines 13-15).
- Agent Fuentes claimed that Petitioner's answers about funding "varied" each time (TR 273, Lines 19-21).
- Agent Henderson first said that Agent Fuentes asked Petitioner the funding question several times (TR 289, Lines 14-16).
- Agent Henderson then impeached both himself and Agent Fuentes by saying he **ONLY REMEMBERED** Agent Fuentes **ASKING THE FUNDING QUESTION 1 TIME** (TR 316, Lines 15-19).
- Agent Henderson said he **DID NOT KNOW EXACTLY WHAT FUNDING QUESTION** Agent Richard Fuentes asked because **HE DID NOT RECORD** the questions (TR 316, Lines 20-22).

I. (B) AGENT HENDERSON'S TESTIMONY SHOWS PETITIONER NEVER MADE A FALSE STATEMENT.

The government's allegation that Petitioner made false statement was actually Agent Henderson's own **Assumption/Speculation** after hearing Petitioner's response of not sharing money with wife.

- And in your handwritten notes, if you can turn to the second page, that's Government Exhibit 55, the bottom Bates Number says

JL001014. (TR 302, Lines 4-6). And the **entirety of the statement reads "Not Fund Any of It"**; is that right? **"That's correct".** (TR 302, Lines 11-13).

- Did you see any comments there about Mr. Lee's funding of the business? "Yeah, I would refer to the last two digits, 16, "not share money, no income, her money -- "her own money "I am sorry." (TR. 303, Lines 6-10).
- It doesn't say anything about whether he funded her business; correct? "I think the "not share money would be included in that". (TR 303, Lines 14-16).
- How so? **"If they are not sharing money, that means he is not sharing the money, "GIVING HER CAPITAL TO IMPROVE THE BUSINESS, OPEN IT, or SOMETHING LIKE THAT."** (TR 303, Lines 17-20).
- So what you just said is a **"SPECULATION" about what that note might have meant?** TR 303, Lines 24-25. "It was about money. That's it." (TR 304, Line 1).

I. (C) PETITIONER'S ALLEGED FALSE DENIAL WAS NOT MATERIAL

As the Supreme Court has counseled, "in deciding whether a statement is 'material requires the determination of at least two subsidiary questions of purely historical fact; (a) 'what statement was made?' and (b) 'what decision was the

agency trying to make?" United states v. Gaudin, 515 U.S. 506,509 (1995) (quoting Kungys v. United States, 485 U.S. 759, 770 (1988)).

The funding question was already **MOOT/IRRELEVANT at the August 2009** interview. The Agent argues that had Petitioner disclosed that he had provided a loan, this would have made the Agent's job easier. TR 239. This argument **lacks merits.**

Both Agent Fuentes and Agent Henderson were investigating **(1)** "if Mr. Lee had anything to do with any **IMMIGRATION BENEFITS** to the individuals that were arrested there", TR 188, Lines 24-25, TR 189, Line 1, and **(2)** "if there had any type of **HUMAN TRAFFICKING**, what his role in that was", TR 189, Lines 2-3, and **(3)** "if he was getting outside gain or some type of monetary, I guess you'd say compensation for his role in that." TR 189, Lines 4-5. "That there might have been an **OUTSIDE INCOME** and that was mostly what **I WAS FOCUSING ON.**" TR 259, Lines 1-2.

Therefore, going **out of their way in subpoenaing Petitioner's financial records** is a **natural and necessary consequence,** since outside income was what the agents were focusing on. Any diligent and competent agents would have done what the agents in this case did, Petitioner's alleged false denial irrelevant.

I. (D) THE GOVERNMENT NEVER PROVED THE ELEMENT OF INTENT.

The government never proved the element of intent. How can the government argue that there was intent when evidence does not even show Agents asking the relevant question, and no evidence of Petitioner making a false denial?

Petitioner was denied effective assistance of counsel under the 6th Amendment. In Strickland v. Washington, 466 U.S. 668 (1984), the Court held that reversal of a conviction requires that the defendant show first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial.

II. (A) DEFENSE COUNSEL'S PERFORMANCE WAS DEFICIENT

Defense counsel had initially requested a unanimity jury instruction but later agreed with the government on the wording of the jury instruction. Defense counsel should not have agreed with the instruction because there is no evidence to support it. No reasonable and objective attorney would have agreed to such a jury instruction when presented with **illusory, contradictory, arbitrary** evidence.

Defense counsel was deficient in that she **did not insist on an unanimity** jury instruction nor propose an alternative jury instruction. The government argues that defense counsel's decision was due to "strategic" reasons. This argument does not help the government. On the contrary, it only reinforces defendant's claim that defense counsel was deficient. Defense counsel's acquiescence cannot be said to be strategic. All strategic choices are calculated to bring beneficial results. An unanimity jury instruction would certainly make it much harder for the government to prove its case, especially when some the alleged funding questions were compound questions containing both funding and non-funding issues. Any reasonable and objective attorney would have insisted on an unanimity jury instruction when confronted with the following testimonies:

Agent Fuentes gave 5 versions of the questions he asked:

- **Version 1,** "I asked him, I said, "Well, did you **loan** her **OR give** her any money to start this business?" (TR 236, Lines 22-24); (emphasis added);
- **Version 2**, "I asked him if he had actually **funded OR assisted** with that business." (TR.237, Line 8-9); (emphasis added);
- **Version 2 Rebuttal**, The key word here is **"OR". Petitioner had admitted** that he did assist with the business, that is, translating documents, TR 253, Lines 9-11; Lines 20-22. Therefore, **where is the denial?**
- **Version 3**, "In a roundabout way, I asked if he had ever **PROVIDED ASSISTANCE** and he kept denying it." (TR 238, Lines 6-7); (emphasis added);
- **Version 3 Rebuttal**, Again, **Petitioner had admitted** that he provided assistance to wife, that is, translating documents. TR 253, Lines 9-11; Lines 20-22. Again, **where is the denial?**
- **Version 4**, "I asked him if he had ever given money to his wife to fund this business, to start it up." (TR 260, Lines 9-10); (emphasis added);
- **Version 5**, And you cannot recall, sitting here today, the terminology of any follow-up questions **relating to the funding** of the business, correct? "Correct". You believe you may have asked follow-up

questions? "Pretty sure I did because I kept asking similar questions around -- **ASSOCIATED** with the business or any **ASSISTANCE** he may have given the business or his **ASSOCIATION** with the business" (TR 261, Lines 20-25, TR. 262, Lines 1-3); (emphasis added).

- **Version 5 Rebuttal**, Agent Fuentes' claim that he kept asking similar questions is erroneous. **First, Funding, Association, Assistance**, are **NOT SIMILAR** at all. They are 3 separate and distinct topics. **Second, Association**, Petitioner correctly gave a denial answer such as his name was not on the lease of wife's shop, TR 262, Lines 10-14, he did not do any hiring of wife's employees, TR 262, Lines 15-17, his name was not on shop's utilities, TR 262, Lines 18-21, and he visited wife's shop infrequently, TR 262, Lines, 22-25. **Third, Assistance,** Petitioner correctly admitted to having translated documents for wife because her English was poor, TR 253, Lines 9-11, Lines 20-22.
- **Version 6**, On Re-Cross, defense counsel asked agent Fuentes for clarification: "to the best of your recollection, the precise terminology of that question was "Did you give your wife any money to fund the business?" TR 277, Lines 11-13.
- When given this wording, Agent Fuentes did not confirm it to be true. Rather, he answered with a different wording of the question:

"Did you assist her with funding, yes." TR 277, Line 14; (emphasis added).

- **Version 7**, When asked which of those two different wordings he asked Mr. Lee, Agent Fuentes again changed his answer to "Give her any money." TR 277, Lines 15-21; (emphasis added).
- **Version 8**, given by Agent Henderson on Direct; "He asked if John Lee had any involvement in contributing funds to the massage parlor business". TR 289, Lines 8-9; (emphasis added).

Defense counsel should not have agreed with the instruction because the versions were different, ranging from **funding, loans, gift, money**, **assistance**, or **association**. Some questions had **2 sub-questions**, and a **"no" answer** would be **literally true for one**, while a "no" answer would be a false statement for the other. For example, Version 1 and Version 5.

The jury was supposed to first determine **what was asked** and **what was answered** before convicting Petitioner of making a false statement. This is true because in In re Winship, 397 U.S. 358, 364 (1970), the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment requires that the prosecution prove by beyond a reasonable doubt every fact necessary to establish each element of the crimes charged. For Petitioner, the prosecution did not do that because his own lawyer, by stipulation, reconciled the 8 different and competing versions into 1 statement presented to the jury as fact, as settled, and as supported by evidence.

The District Court Judge argued that the trial attorney's action was not beneath the standard of what a reasonable attorney would do. But having ambiguity in a false statement case is the most critical and most successful defense to that charge. There is no showing that taking away your client's primary defense by stipulation is what a reasonable attorney would do. "The government cannot sustain a materially false statement charge based merely on the government agent's interpretation of what the individual meant - there must be clear evidence of what was said and a full appreciation of the context in which the statement was made." United States v. Jiang, 476 F.3d 1026, 1030 (9th Cir. 2007).

II. (B) PETITIONER SUFFERED PREJUDICE.

Petitioner suffered prejudice because he was wrongfully convicted as a result of the jury stipulation. In this case, there is a reasonable probability, but for counsel's unprofessional error, the result of the proceeding would have been different. Strickland v. Washington. 466 U.S. 668, 687-688, 694 (1984). The government argues that an unanimity jury instruction was not necessary since all versions of Agent Fuentes questions dealing with funding were markedly similar. This argument is **erroneous**. The different versions by Agent Fuentes were **Not Markedly Similar at all as shown by rebuttals to Version 2, Version 3, Version 5, above.**

The District Judge also reasoned in her 2255 Motion denial that the wrongful stipulation claim was already raised and decided on appeal in the Ninth Circuit. This is not true. The Ninth Circuit noted that it had to review this issue by

the **very high CLEAR ERROR STANDARD** because Mr. Lee **"failed to preserve his objection** to the district court's failure to give a specific unanimity instruction for appeal, by stipulating to the false statement he allegedly made... "United States v. Ching En Lee, 726 F. App'x 589, 590 (9th Cir. 2018). At trial, it is that stipulation that took away the prosecution's burden to prove beyond a reasonable doubt every element of a crime. On appeal, it was that **stipulation that blocked** the Ninth Circuit to consider that error on appeal.

If the jury had been asked to grapple with which of the 8 versions of the statement were asked and answered, it very well could have ended the case like Jiang - unable to even know the very question to which petitioner supposedly said no. Instead, the trial attorney's stipulation took away the jury's task which resulted in Petitioner's conviction.

It is long established that the jury must agree to the same facts when finding that a person committed a crime. "In criminal cases this requirement of unanimity extends to all issues - character or degree of crime, guilt and punishment - which are left to the jury. A verdict embodies in a single finding the conclusions by the jury upon all the questions submitted to it." Andres v. United States, 333 U.S. 740, 748 (1948). "We think the proper inquiry in such a case is whether there is a reasonable likelihood that the jury has applied the challenged instruction in a way that prevents the consideration of constitutionally relevant evidence." Boyde v. California, 494 U.S. 370, 380 (1990).

The District Court should have realized that it is the jury's job to figure out what was said in the trial testimony. The trial attorney cannot stipulate to that. And when the trial attorney tried to do so, the judge should have realized that she cannot instruct the jury about what the evidence did or did not show. The judge's action of giving an instruction that takes away from the jury's job to find facts violated Petitioner's **constitutional right to a fair trial**, to a trial where the **prosecution has to prove every element of crime**, and to a trial where all 12 jurors have to agree on what was asked - or what was not.

(III). PETITIONER'S 2255 MOTION IS NOT BARRED BECAUSE IT IS AN EXCEPTION TO THE LAW OF THE CASE DOCTRINE BECAUSE THE CONVICTION IS CLEARLY ERRONEOUS AND ITS ENFORCEMENT WOULD WORK A MANIFEST INJUSTICE.

The bar against re-litigating issues in a section 2255 proceeding that were already raised and rejected on direct appeal is an application of the law of the case doctrine. See United States v. Jingles, 702 F.3d 494, 498 (9th Cir. 2012) ("A collateral attack is the 'same case' as the direct appeal proceedings for purposes of the law of the case doctrine"). A court may depart from the law of the case if, (1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced in a subsequent proceeding. Gonzalez v. Arizona, 677 F.3d 383, 390 n.4 (9th Cir.2012) (en banc) (internal quotation marks and citation omitted).

In this case, the District Court and the Ninth Circuit erred in denying the 2255 motion and a certificate of appealability.

The District Court erroneously argued **2 points in FOOTNOTE 3 of its decision. First**, the court argues that Petitioner is now raising the argument, that is, agents never asked the funding question, that was arguably not raised on direct appeal, hence, he cannot raise it now in a 2255 motion. This argument is erroneous. Petitioner **did raise the insufficient evidence argument** on direct appeal. The point of citing testimony to show that the agents never asked the funding question is to **PROVIDE FACTUAL PROOF IN SUPPORT** of the insufficient evidence argument, argument which was raised on direct appeal. It is well settled that a motion under 2255 is properly denied where it states "only bald legal conclusions with no supporting factual allegations." Sanders v. United States, 373 U.S. 1, 1963. Therefore, Petitioner is **not raising any new argument** at all, but merely **citing facts as required by case law**.

Second, the District Court argues that Petitioner's argument that "the agents never asked the funding question" cannot be squared with the 9th Circuit's finding that there was considerable evidence presented at trial to support the parties' stipulation regarding the false statement petitioner allegedly made. The 9th Circuit **was apparently misled by both Agents' pre-impeached testimonies**, that is, the Agents claimed they asked Petitioner the funding question multiple times and Petitioner gave false answers multiple times, when in fact, this was not

the case. The 9th Circuit must have **overlooked record evidence** that Petitioner is citing now.

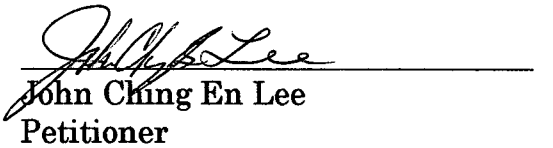
Petitioner has shown that his conviction is not supported by evidence, is clearly erroneous, and will work a manifest injustice if it is enforced. Gonzalez v. Arizona, 677 F.3d 383, 390 n.4 (9th Cir.2012) (en banc) cited above. And his claim deserves "encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 337 (2003),

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests a Certificate of Appealability be granted.

DATED this 8th Day of March, 2021.

Respectfully submitted,



John Ching En Lee
Petitioner