APPENDICES

APPENDIX A	Verdict of the United States District Court for the Northern District of California (June 30, 2016).
APPENDIX B	Order of the United States District Court for the Northern District of California acquitting Petitioner of Count 2 but affirming Count 1 after a Rule 29 Motion (September 20, 2016).
APPENDIX C	Order of the United States Court of Appeals for the Ninth Circuit denying appeal (June 6, 2018).
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APPENDIX A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JOHN CHING EN LEE, Defendant.	CASE NO. CR 15-00541 SI VERDICT FORM

We, the members of the Jury in this action, have reached the following unanimous verdict with respect to each Count of the Indictment:

Count One: (False Statement to Government Agency on or about August 26, 2009, in violation of 18 U.S.C. § 1001)

We find the defendant, John Ching En Lee:

Not Guilty _____ Guilty ✓

Count Two: (False Statement to Government Agency on or about October 10, 2013, in violation of 18 U.S.C. § 1001)

We find the defendant, John Ching En Lee:

Not Guilty _____ Guilty ✓

DATED: June 30, 2016

Paul Lee
JURY FOREPERSON

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN CHING EN LEE,

Defendant.

Case No. 15-cr-00541-SI-1

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL

Re: Dkt. No. 136

Defendant John Ching En Lee moves for a judgment of acquittal or new trial on two charges of providing false statements to a government agency. Docket No. 136. Argument on the matter was heard on September 16, 2016. Having considered the arguments of the parties and the papers submitted, the Court hereby GRANTS IN PART and DENIES IN PART defendant's motion.

BACKGROUND

Defendant was charged with two counts of making false statements to the government in violation of 18 U.S.C. § 1001(a), based upon statements he made in interviews with government agents on August 26, 2009, and October 10, 2013. Docket No. 14. The first count of the indictment charged defendant with "making false statements to representatives of the Department of Homeland Security about his involvement in providing funding to the owner of Crystal Massage Parlor, who was arrested for prostitution in relation to the Crystal Massage Parlor. The statements and representations were false because JOHN CHING EN LEE then and there knew that he had provided $30,000 to the owner to fund the Crystal Massage Parlor." *Id.* at 1-2. The second count charged defendant with "making false statements to representatives of the

Department of Homeland Security about his use of Treasury Enforcement Communications System (TECS) for personal reasons. The statements and representations were false because JOHN CHING EN LEE then and there knew that he had queried his own name, as well as the name of the owner of the Crystal Massage Parlor, using multiple spellings of the owner's name and using the owner's birthdate." *Id.* at 2.

On June 30, 2016, a jury found defendant guilty of both counts. Docket No. 123. Defendant now moves for a judgment of acquittal under Federal Rule of Criminal Procedure 29 or for a new trial under Rule 33. Docket No. 136. In the alternative, defendant "requests an evidentiary hearing to determine whether the government committed discovery violations, violated the Jencks Act, . . . or otherwise committed constitutional error with respect to the October 10, 2013 interview of Mr. Lee." *Id.* at v.

LEGAL STANDARD

I. Rule 29

Rule 29 of the Federal Rules of Criminal Procedure requires the Court, on a defendant's motion, to "enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a).

The Court's review of the constitutional sufficiency of evidence to support a criminal conviction is governed by *Jackson v. Virginia*, 443 U.S. 307 (1979), which requires a court to determine "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* at 319; *see also McDaniel v. Brown*, 558 U.S. 120, 133 (2010). This rule establishes a two-step inquiry:

> First, a . . . court must consider the evidence presented at trial in the light most favorable to the prosecution. . . . [And s]econd, after viewing the evidence in the light most favorable to the prosecution, the . . . court must determine whether this evidence, so viewed, is adequate to allow "*any* rational trier of fact [to find] the essential elements of the crime beyond a reasonable doubt."

United States v. Nevils, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc) (quoting *Jackson*, 443 U.S. at 319) (final alteration in *Nevils*).

II. Rule 33

"Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). The Ninth Circuit described the standard for granting a new trial in *United States. v. A. Lanoy Alston, D.M.D., P.C.*, 974 F.2d 1206 (9th Cir. 1992), which it reaffirmed in *United States v. Kellington*, 217 F.3d 1084 (9th Cir. 2000):

> [A] district court's power to grant a motion for a new trial is much broader than its power to grant a motion for judgment of acquittal. The court is not obliged to view the evidence in the light most favorable to the verdict, and it is free to weigh the evidence and evaluate for itself the credibility of the witnesses. . . . If the court concludes that, despite the abstract sufficiency of the evidence to sustain the verdict, the evidence preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred, it may set aside the verdict, grant a new trial, and submit the issues for determination by another jury.

Kellington, 217 F.3d at 1097 (internal quotation marks and citations omitted).

DISCUSSION

Defendant urges the Court to grant his motion based on the following: as to Count One, he argues that the evidence was insufficient to sustain a conviction as to the elements of falsity, intent, and materiality; as to Count Two, he argues that the evidence was insufficient to sustain a conviction as to the elements of intent and materiality. He also argues that the government's case was weak, that the government improperly and prejudicially focused its case on prostitution, that the government committed discovery and Jencks Act violations, that the government's closing argument was misleading, and that the Court erred by not giving the defendant's proposed jury instruction on falsity.

I. Count One

Defendant argues, in part, that his conviction on Count One cannot stand because the government "did not offer sufficient evidence to prove beyond a reasonable doubt the exchange that was false, *i.e.*, the precise question asked and the answer that was false." Mot. at 12. The Court is troubled by the fact that the August 26, 2009 interview was not recorded and that the agents' notes do not detail the exact question asked. Nevertheless, "viewing the evidence in the

light most favorable to the prosecution," it finds that a "rational trier of fact could have found" the element of falsity beyond a reasonable doubt. *See Nevils*, 598 F.3d at 1164.

There was much testimony at trial from the agent who conducted the August 2009 interview regarding precisely what he asked. DHS Agent Ricardo Fuentes testified as follows:

- Q. And what questions did you ask?
  A. Based on that answer, I was actually thinking now at this point well, how did she fund this business. So I had asked him, I said, "Well, did you loan her or give her any money to start this business?"
  . . .
  Q. And what did you ask him?
  A. I asked him if he had actually funded or assisted with that business.

  Tr. 236:20-237:9 (Fuentes Direct).

- Q. And so you asked him exactly "what about funding the business" during that interview?
  A. I asked him if he had ever given money to his wife to fund this business, to start it up.
  Q. Your precise question was, "If you ever -- Mr. Lee, have you ever given Ms. Liu any money to start up the business?"
  A. To fund the business, yes.
  ...
  Q. The same question over and over again, "Did you give" –
  A. Right.
  Q. – "your wife any money to fund the Crystal Massage Parlor?"
  A. Correct. If he had provided any funds to her.
  Q. Is it, "Did you provide any funds to her," or "Did you give her any money to fund" --
  A. I think I probably asked it around three different ways.
  Q. What three different ways did you ask him?
  A. Probably, "Have you ever funded this" -- "have you ever provided money to fund this business," and then he denied doing that. And then later on I would ask him something similar and he would deny it.

  Tr. 260:7-261:5 (Fuentes Cross).

- Q. You asked him that question, "Did you give your wife any money to fund the business." He said no?
  A. He denied that.

  Tr. 261:17-19 (Fuentes Cross).

- Q. You asked -- you testified that you asked Mr. Lee several times throughout the interview about funding of the massage parlor; is that right?
  A. Correct.
  Q. And that question was, "Did you give your wife any money to fund her business"; correct?

A. Correct.
Tr. 276:7-13 (Fuentes Recross).

- Q. And to the best of your recollection, the precise terminology of that question was, "Did you give your wife any money to fund the business"?
A. "Did you assist her with funding," yes.
Q. "Did you assist her with funding" or "Did you give her any money to fund"?
A. "Give her any money."
Q. Which one is it?
A. "Give her any money."
Q. "Did you give her any money to fund the business"?
A. Right.

Tr. 277:11-21 (Fuentes Recross).

- Q. Now, without reading your notes, do you recall what specific thing the defendant said?
A. I asked him specifically if he had given money to fund this business, and he specifically said, "I have never funded this business."

Tr. 278:11-15 (Fuentes Further Redirect).

DHS Agent John Henderson, who also participated in the August 2009 interview, testified that he did not recall what question Agent Fuentes asked defendant during the interview. Tr. 304:17-20; 306:19-307:16.

Although the testimony varies as to the exact wording of the question asked, it shares a common thread: the use of the word "fund" or "funding," which defendant attacks as ambiguous. Although this word may be susceptible to the interpretation that defendant put forward at closing argument—that it could be asking whether Mr. Lee funded his wife's business with money out of his own pocket rather than with a loan he obtained from a bank—a rational trier of fact could have found that the term "fund" included obtaining a loan. Moreover, upon further questioning from both defense counsel and government counsel, Agent Fuentes settled on the phrasing of his question as follows: "Did you give her any money to fund the business"? or ". . . specifically if he had given money to fund this business . . . ."[1] *See* Tr. 277:11-21; 278:11-15. In this scenario, the operative term is not "fund" but is rather "give." A rational trier of fact could have found the element of falsity by concluding that whether Mr. Lee *gave* money to his wife for her business

[1] This is also the phrasing the parties agreed to in the jury instructions: "The statement charged in Count One is that Mr. Lee stated: 'No' to the question whether he gave his wife any money to fund her business." *See* Docket No. 121 at 36.

included giving her money he borrowed from a bank.

Defendant cites to two Ninth Circuit cases that, though analogous, do not justify overturning the jury's verdict here. The first, *United States v. Sainz*, 772 F.2d 559 (9th Cir. 1985), involved a perjury conviction where the grand jury transcript clearly documented the exchange at issue. In that case, the question asked was a compound question containing an imprecise term, to which the defendant gave a literally true answer. *See* 772 F.3d at 563-64. The second case, *United States v. Jiang*, 476 F.3d 1026 (9th Cir. 2007), involved a bench trial for a charge involving false statements to the government under 18 U.S.C. § 1001(a). The appeals court overturned the conviction in part based on factors that are not present here: that the agent's notes "were recorded some time after the day of the interview" rather than contemporaneously, as here, *see* Tr. 242:11-18, 250:1-3, 283:9-11, 299:2-10; that the agent requested that Jiang bring documents to the interview regarding the specific topics at issue, unlike here, where the agents did not tell Mr. Lee the interview topic in advance, *see* Tr. 194:21-195:4; and that Jiang's English was "broken" and "poor."

Defendant argues that his case is also analogous because, when questioned directly in August 2013 about whether he obtained a loan for his wife, he was forthcoming, as were the defendants in *Sainz* and *Jiang*. However, those cases involved much shorter lapses in time between the challenged question and the follow-up question that elicited the truthful response. *See Jiang*, 476 F.3d at 1028-29 (follow-up question asked one week after original interview); *Sainz*, 772 F.2d at 561 (follow-up question asked during the same interview). Here, defendant gave his truthful answer four years after the alleged false statement, after his wife had revealed to agents that her husband had gotten a bank loan for her to purchase the massage parlor. Viewing the evidence here in the light most favorable to the prosecution, as it must, the Court cannot say that the evidence is insufficient as to the element of falsity in Count One.

The Court also disagrees with defendant that the evidence was insufficient to sustain a conviction on the elements of materiality and intent. A statement is material if it "is *capable* of influencing or affecting a federal agency," although the false statement "need not have actually influenced the agency." *United States v. Service Deli, Inc.*, 151 F.3d 938, 941 (9th Cir. 1998); *see*

also United States v. De Rosa, 783 F.2d 1401, 1408 (9th Cir. 1986) (statement is material if it "(1) could affect or influence the exercise of governmental functions; or (2) has a natural tendency to influence or is capable of influencing agency decision"). Even adopting the stated purposes for the investigation that defendant puts forth in his motion, a rational juror could have concluded that the false statement in Count One was material to DHS's actions. *See* Mot. at 16. Further, a rational juror could have concluded that defendant had the requisite intent[2] because, as the government notes, he had a law degree, he had worked as a federal employee since 2001, and at the beginning of the interview he signed a *Garrity* form warning him that "[a]nything you say may be used against you as evidence both in an administrative proceeding or any future criminal proceeding." *See* Oppo. at 8-9.

For these reasons, the Court DENIES defendant's motion for a judgment of acquittal as to Count One. Likewise, finding that the evidence does not "preponderate[]sufficiently heavily against the verdict," the Court DENIES defendant's motion for a new trial on Count One. *See Kellington*, 217 F.3d at 1097.

II. Count Two

Defendant also moves for acquittal as to Count Two. The Court agrees with defendant that the evidence, even viewed in the light most favorable to the prosecution, is insufficient to sustain a conviction on Count Two because no rational trier of fact could find the essential element of materiality beyond a reasonable doubt.

At trial, the government introduced evidence that on March 19, 2009, defendant ran three queries of his wife's name in TECS, to which he had access as an Immigration Services officer. Tr. 378:2-379:10. Four and a half years later, on October 10, 2013, DHS Office of Inspector General Special Agent Lamont Scott interviewed defendant regarding his TECS usage, "to find out why he ran his wife in the TECS system . . . ." *See* Tr. 317:14-318:8; 386:10-387:4.

The jury found defendant guilty based on the following instruction:

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[2] Defendant's motion here focuses on whether there was sufficient evidence that he "knew his conduct was unlawful." *See* Mot. at 15.

> Mr. Lee is charged in Count Two with knowingly and willfully making a false statement on or about October 10, 2013, in a matter within the jurisdiction of a governmental agency or department, the United States Department of Homeland Security, in violation of Section 1001 of Title 18 of the United States Code. In order for Mr. Lee to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:
>
> First, Mr. Lee made a false statement in a matter within the jurisdiction of the Department of Homeland Security;
>
> Second, Mr. Lee acted willfully; that is, Mr. Lee acted deliberately and with knowledge both that the statement was untrue and that his conduct was unlawful; and
>
> **Third, the statement was material to the activities or decisions of the Department of Homeland Security; that is, it had a natural tendency to influence, or was capable of influencing, the agency's decisions or activities.**
>
> The statement charged in Count Two is that Mr. Lee stated: "No" to the question whether he ever made any unauthorized queries of his wife in TECS for personal use.

Docket No. 121 at 37 (emphasis added).

Defendant argues first that the statement in question could not have been material because "Agent Scott told the grand jury that the purpose [of his investigation] was to 'determine if Mr. Lee was associated with the brothel operating as a massage parlor'" and the massage parlor closed five years before the interview regarding the TECS search. Mot. at 17 (citing Tr. 424). The government counters that the March 2009 search date was "significant to [Special Agent Scott] because it raised the specter that Defendant had impermissibly run the queries to obtain restricted information about [his wife's] judicial proceedings or immigration status, or both." Oppo. at 15. But what the government fails to state, and what it failed to present at trial, was what activities or decisions of DHS were or could have been influenced by defendant's October 2013 denial.

The government's arguments that there was sufficient evidence as to materiality read rather like after-the-fact justifications. For instance, the government argues that defendant's August 2013 admission that he had obtained a bank loan for his wife "called Defendant's overall credibility into question" and so Special Agent Scott "then expanded his investigation to include Defendant's use of the TECS system . . . ." Oppo. at 14. That Special Agent Scott decided, years into the investigation of defendant, to explore the possibility of TECS misuse years before does not mean that a false statement regarding that misuse was material. Nor is there materiality in the

government's assertion that the TECS question "was certainly an important part of the investigation regarding [defendant's] connection with Crystal Massage Therapy" when the business had been closed for several years by the time of the October 2013 interview. *See id.* at 15.

It is also not persuasive that if defendant had been forthcoming in October 2013 this would have saved the agency "further investigative steps" into his TECS queries. Special Agent Scott testified that in February 2014 and April 2014 he requested further documentation about defendant's queries and TECS history from Customs and Border Protection. Tr. 327:10-14, 399:2-25, 406:6-17. Special Agent Scott's reasons for wanting these documents were broad,[3] but several of the documents (a copy of the TECS exam, defendant's training records) appear to be related to TECS training, and Special Agent Scott testified that he had an opportunity to question defendant about TECS training during the October 2013 interview. *See id.* 393:1-9, 399:12-16.

Critically, Special Agent Scott testified that he knew defendant was lying at the October 2013 interview. Prior to the October 2013 interview, Special Agent Scott obtained a print-out from TECS showing defendant's March 2009 queries of his wife's name. Tr. 395:25-396:11. Therefore, before defendant made the false statement, the agency had internal proof that defendant had run such a search, and Special Agent Scott testified that he confronted defendant with this information at the interview.[4] Tr. 395:25-396:17. Special Agent Scott further testified that "the answers that he was giving me in my opinion were not true" and that after Special Agent Scott confronted defendant with the document he "asked [defendant] a series of questions over again." Tr. 396:12-24. Where the agency knew that defendant's statement was false at the time it was

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[3] Special Agent Scott testified that he wanted the information "[t]o gain more information into who Mr. Lee was and how he had authority, what his training was, all to basically let me know that he had -- he knew about TECS training, he knew about the rules and the regulations, he was a TECS user, to provide me more backup documentation." Tr. 399:17-22.

[4] Defendant states that the first time he learned of the allegation regarding the TECS print-out was upon hearing Special Agent Scott's testimony at trial. Mot. at 10. No mention of the TECS printout is made in the Scott's notes or report, or those of his assistant, Special Agent Lee, nor is a copy of it appended to any of those documents. These allegations form the basis of defendant's argument regarding discovery violations and his request for an evidentiary hearing.

made, the government's evidence does not suffice to show materiality.

Accordingly, the Court GRANTS defendant's motion for judgment of acquittal on Count Two. Where a court "enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed." Fed. R. Crim. P. 29(d)(1). For the same reasons stated above that the Court finds a judgment of acquittal should be granted, and because the evidence regarding the element of materiality in Count Two "preponderates sufficiently heavily against the verdict that a serious miscarriage of justice may have occurred," the Court conditionally finds that a new trial should be granted if this judgment of acquittal is later vacated or reversed. *See Kellington*, 217 F.3d at 1097. Should that occur, the Court further finds that an evidentiary hearing in advance of the new trial is necessary for the reasons stated in defendant's motion. *See* Mot. at 26-27.

III. Other Matters

Having granted defendant's motion for acquittal on Count Two, the Court need not rule on defendant's allegations regarding potential discovery and Jencks Act violations, defendant's concerns with the government's closing argument,[5] and defendant's request for an evidentiary hearing.[6] The Court is not persuaded by defendant's argument that "the government's case was weak at best," *see* Mot. at 19, as the Court is granting defendant's motion for a judgment of acquittal as to the weakest part of the government's case—materiality under Count Two. This leaves defendant's arguments that the Court erred in failing to give his proposed instruction on falsity and that the trial was improperly prejudiced by references to prostitution.

The Court does not find that it was error to fail to give defendant's proposed instruction on

[5] These concerns pertain primarily to the timing of defendant's TECS query.

[6] This request is largely made to gather evidence in support of the defense's attack on Count Two.

falsity.[7] First, the Court does not find that the agent's question in this case was ambiguous to the same extent as the questions in *Jiang* and *Sainz*, which defendant cites in support. Second, the Court heard extensive argument on this point from both sides prior to the close of trial. *See* Tr. 563:17-568:11. The Court permitted defense counsel to make the argument contained in the proposed instruction during closing, and defense counsel did so. *See* Tr. 568:6-11, 622:1-5 ("If you all can decide on the exact question that Agent Fuentes asked, that question still has to be clear. If that question is ambiguous and there is a reasonable response to that ambiguous question, it is not a false statement. That is not a knowing and deliberate false statement.") The jury heard this argument and still convicted defendant on Count One.

The Court also finds that references to prostitution did not unfairly prejudice the jury, as defendant argues. The Court discussed this with the parties during the pretrial conference and again during the first day of trial. *See* Docket No. 105 at 2; Tr. 5:1-13:20. The Court limited the government to one witness on the topic of the alleged prostitution activities and ordered "that the testimony shall be for the purpose of showing how the massage parlor's allegedly illegal activities triggered DHS's investigation and how defendant's statements were material to that investigation." Docket No. 105 at 2. The Court does not agree with defendant that the government exceeded those bounds at trial.

Defendant mainly takes issue with two pieces of testimony: (1) that government witness Leslie Severe testified that "undercover agents 'were solicited for some type of sexual activity'" at the massage parlor, and (2) that "Agent Fuentes testified that he read a portion of the police report to Mr. Lee during the August 2009 interview stating that Ms. Liu solicited sex from an undercover agent . . . ." *See* Mot. at 21-22. As to Ms. Severe's testimony, the government asked Ms. Severe on direct examination to respond "based on your personal observations." Tr. 157:18-22. When Ms. Severe stepped beyond those boundaries, defense counsel made a hearsay objection that the Court sustained. Tr. 157:23-158:6. Nor does the Court find that it was impermissible hearsay for

[7] Defendant sought the following instruction: "If you find that a particular question asked of Mr. Lee was ambiguous and that Mr. Lee truthfully answered one reasonable interpretation of the question under the circumstances presented, then his answer would not be false. It is the burden of the government agents to clarify any ambiguous statements." Docket No. 119 at 2.

Ms. Severe to testify as to the direction she gave her officers regarding when to use a "bust signal." *See* Tr. 160:23-162:2. As to Agent Fuentes's testimony that he read a police report regarding defendant's wife's alleged solicitations, the Court gave a limiting instruction to the jury. Tr. 198:24-199:22. The references to defendant's wife's actions constituted only a brief portion of Agent Fuentes's lengthy testimony, and was drawn out to show the effect on the listener as well as to explain why Agent Fuentes still remembered the interview conducted nearly seven years earlier. *See* Tr. 199:24-200:17. Overall, these limited references to sexual activity at the massage parlor did not "impermissibly taint[] the verdict," as defendant argues. *See* Mot. at v.

CONCLUSION

For the foregoing reasons and for good cause shown, the Court hereby DENIES defendant's motion for judgment of acquittal or a new trial on Count One. The Court GRANTS defendant's motion for judgment of acquittal on Count Two.

IT IS SO ORDERED.

Dated: September 20, 2016

Susan Illston

SUSAN ILLSTON
United States District Judge

United States District Court
Northern District of California

APPENDIX C

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOHN CHING EN LEE, Defendant-Appellant.	No. 16-10448 D.C. No. 3:15-cr-00541-SI MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Argued and Submitted April 12, 2018
San Francisco, California

Before: WARDLAW and NGUYEN, Circuit Judges, and OLIVER,** District Judge.

Appellant John Ching En Lee ("Lee") appeals the district court's denial of his motion for judgment of acquittal following his jury trial conviction for making a false

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

** The Honorable Solomon Oliver, Jr., United States District Judge for the Northern District of Ohio, sitting by designation.

statement to federal agents on the grounds that there was insufficient evidence of the false statement made to satisfy the elements of 18 U.S.C. § 1001(a)(2), and that the district court erred by failing to specifically instruct the jury on unanimity relative to which false statement Lee made. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. We review whether there was sufficient evidence to support a jury conviction *de novo*. *U.S. v. Vazquez-Hernandez*, 849 F.3d 1219, 1229 (9th Cir. 2017). There was ample evidence before the jury from which it could conclude that the questions the investigators asked Lee, numerous times in numerous iterations, about funding his wife's business were not misleading. Despite their clarity, Lee did not admit that he had provided her a bank loan. *See U.S. v. Jiang*, 476 F.3d 1026, 1028–30 (9th Cir. 2007). Lee's argument that these questions cannot support a conviction under § 1001(a)(2) has no merit, because a statement does not need to be recorded or transcribed in order to support a conviction. *Id.* Moreover, the false statement was material because the agents' testimony demonstrated it changed the scope of their investigation. *See U.S. v. De Rosa*, 783 F.2d 1401, 1408 (9th Cir. 1986). Thus, there was sufficient evidence to satisfy the elements of falsity, specific intent, and materiality under 18 U.S.C. § 1001(a)(2) given the lack of ambiguity in the possible versions of the question posed as recalled by the agents during their

testimony at trial; the context of the interview and Lee's background and experience; the agents' testimony as to the scope and course of their investigation; and the absence of other extrinsic factors weighing against conviction. *See Jiang*, 476 F.3d at 1029–30; *U.S. v. Serv. Deli Inc.*, 151 F.3d 938, 941 (9th Cir. 1998).

2. Because 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, we review the district court's failure to instruct the jury on specific unanimity for plain error. *See U.S. v. Campbell*, 42 F.3d 1199, 1204 (9th Cir. 1994); Fed. R. Crim. P. 30. Plain error is "error that is clear under the law and affects substantial rights." *Campbell*, 42 F.3d at 1204. The district court did not plainly err because a specific unanimity instruction was not required in this case. The general unanimity instruction was sufficient to charge the jury on the relevant law as there was considerable evidence presented at trial to support the parties' stipulation regarding the false statement Lee allegedly made. *See* 9th Cir. Model Crim. Jury Instructions §§ 7.9, 8.73.

AFFIRMED.

APPENDIX D

Search documents in this case: Search

No. 18-597

Title:	**John Ching En Lee, Petitioner** **v.** **United States**
Docketed:	November 6, 2018
Linked with 18A203	
Lower Ct:	United States Court of Appeals for the Ninth Circuit
Case Numbers:	(16-10448)
Decision Date:	June 6, 2018

DATE	PROCEEDINGS AND ORDERS
Aug 21 2018	Application (18A203) to extend the time to file a petition for a writ of certiorari from September 4, 2018 to November 3, 2018, submitted to The Chief Justice. **Main Document** **Lower Court Orders/Opinions** **Lower Court Orders/Opinions** **Proof of Service**
Aug 24 2018	Application (18A203) granted by The Chief Justice extending the time to file until November 2, 2018.
Nov 02 2018	Petition for a writ of certiorari filed. (Response due December 6, 2018) **Certificate of Word Count** **Proof of Service** **Petition**
Dec 04 2018	Motion to extend the time to file a response from December 6, 2018 to January 7, 2019, submitted to The Clerk. **Main Document**
Dec 06 2018	Motion to extend the time to file a response is granted and the time is extended to and including January 7, 2019.

Jan 07 2019	Brief of respondent United States in opposition filed. **Main Document** **Proof of Service**
Jan 22 2019	Reply of petitioner John Lee filed. **Main Document** **Certificate of Word Count** **Proof of Service**
Jan 23 2019	DISTRIBUTED for Conference of 2/15/2019.
Feb 19 2019	Petition DENIED.

NAME	**ADDRESS**	**PHONE**
Attorneys for Petitioner		
Kari Elisabeth Hong Counsel of Record	Boston College Law School 885 Centre Street Newton, MA 02459 kari.hong@bc.edu	(617) 552-4390
Party name: John Lee		
Attorneys for Respondent		
Noel J. Francisco Counsel of Record	Solicitor General United States Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 SupremeCtBriefs@USDOJ.gov	202-514-2217
Party name: United States		

APPENDIX E

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN CHING EN LEE,

Defendant.

Case Nos. 15-cr-00541-SI-1
18-cv-06223-SI

ORDER DENYING DEFENDANT'S MOTION UNDER 28 U.S.C. § 2255; DENYING DEFENDANT'S MOTION TO AMEND § 2255 MOTION; AND GRANTING DEFENDANT'S MOTION TO FILE REPLY BRIEF

Re: Dkt. Nos. 164, 165, 183, 188

Now before the Court are several motions filed by defendant John Ching En Lee, who was serving a term of federal probation and who is currently representing himself *pro se*. For the reasons set forth below, the Court DENIES Lee's motion for relief under 28 U.S.C. § 2255 (Dkt. Nos. 164, 165); DENIES Lee's motion to amend his § 2255 motion (Dkt. No. 183); and GRANTS Lee's motion for leave to file a reply brief (Dkt. 188). A certificate of appealability will not issue.

PROCEDURAL BACKGROUND

In an indictment filed in November 2015, Lee was charged with two counts of making false statements to the government in violation of 18 U.S.C. § 1001(a), based upon statements he made in interviews with government agents on August 26, 2009, and October 10, 2013. Dkt. No. 42. On June 30, 2016, a jury found defendant guilty of both counts. Dkt. No. 123. Lee then moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29 or a for a new trial under Rule 33. On September 20, 2016, the Court denied Lee's motion for judgment of acquittal or a new trial on Count One but granted his motion for judgment of acquittal on Count Two. Dkt. No. 144. On October 14, 2016, the Court sentenced Lee to two years of probation, with a special assessment of

$100 and a fine of $500. Dkt. No. 154.

Lee then filed a direct appeal with the United States Court of Appeals for the Ninth Circuit. On June 6, 2018, in an unpublished memorandum, the Ninth Circuit affirmed this Court's denial of defendant's motion for judgment of acquittal on Count One. Dkt. No. 163; *see also United States v. Lee*, 726 Fed. App'x 589 (9th Cir. 2018).

On October 10, 2018, Lee filed in this Court a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Dkt. Nos. 164, 165. The government moved to dismiss Lee's motion, arguing that the motion was not ripe because Lee was seeking review of the Ninth Circuit's decision before the United States Supreme Court. Dkt. No. 171. This Court denied the government's motion to dismiss but stayed briefing on the § 2255 motion pending the Supreme Court's review of Lee's petition for a writ of certiorari. Dkt. No. 173.

After the Supreme Court denied Lee's petition on February 19, 2019, *see* Dkt. No. 174, briefing on Lee's § 2255 motion resumed. The government filed an opposition brief, attaching Lee's opening brief in his direct appeal before the Ninth Circuit. Dkt. No. 179. Lee requested and received an extension of time to file his reply brief, making his reply due on May 29, 2019. Dkt. Nos. 181, 182. On May 16, 2019, Lee filed a motion to amend his § 2255 motion, which the government opposed. Dkt. Nos. 183, 186. On May 24, 2019, Lee filed a request for extension of time to file his reply brief on the § 2255 motion. Dkt. No. 184. The Court vacated the reply deadline pending its ruling on the motion to amend. Dkt. No. 185. However, on June 20, 2019, Lee filed a motion requesting the Court's leave to accept his reply brief to the § 2255 motion and attaching the proposed reply brief. Dkt. No. 188.[1]

LEGAL STANDARD

A prisoner in custody under sentence of a federal court who wishes to attack collaterally the validity of his conviction or sentence must do so by filing a motion to vacate, set aside or correct

[1] The Court GRANTS Lee's request that the Court accept his reply brief to the § 2255 motion and deems as FILED the reply brief attached to Lee's motion for leave to file a reply brief. *See* Dkt. No. 188. The Court has considered the reply brief in ruling on the pending motions decided in this Order.

the sentence pursuant to 28 U.S.C. § 2255 in the court which imposed the sentence. 28 U.S.C. § 2255(a). Under 28 U.S.C. § 2255, the federal sentencing court is authorized to grant relief if it concludes 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." *See Tripati v. Henman*, 843 F.2d 1160, 1162 (9th Cir. 1988). If the court finds that relief is warranted under § 2255, it must "vacate and set the judgment aside" and then do one of four things: "discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate." 28 U.S.C. § 2255(b); *United States v. Barron*, 172 F.3d 1153, 1157 (9th Cir. 1999).

Section 2255 requires that an evidentiary hearing be held unless the record conclusively reveals that the petitioner is not entitled to relief. *See United States v. Mejia-Mesa*, 153 F.3d 925, 929 (9th Cir. 1998). "The petitioner need not detail his evidence, but must only make specific factual allegations which, if true, would entitle him to relief." *Id.* (internal alteration and citations omitted). An evidentiary hearing need not be held where the petition, files, and record of the case conclusively show the petitioner is entitled to no relief. *Id.*; *see also United States v. Howard*, 381 F.3d 873, 877-79 (9th Cir. 2004) (a claim for ineffectiveness based on counsel's failure to address defendant's incompetence to plead guilty required an evidentiary hearing where specific, credible evidence existed that defendant was under the influence of powerful narcotic drugs). The district court may deny a § 2255 motion without an evidentiary hearing only if the movant's allegations, viewed against the record, either do not state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal. *See Mejia-Mesa*, 153 F.3d at 931 (district court did not abuse discretion in denying evidentiary hearing on claims that failed to state a claim for relief under § 2255 as a matter of law).

DISCUSSION

Lee currently stands convicted of Count One of the indictment, for a violation of 18 U.S.C. § 1001(a). That count charged Lee with "making false statements to representatives of the Department of Homeland Security about his involvement in providing funding to the owner of

Crystal Massage Parlor [i.e., Lee's wife], who was arrested for prostitution in relation to the Crystal Massage Parlor. The statements and representations were false because JOHN CHING EN LEE then and there knew that he had provided $30,000 to the owner to fund the Crystal Massage Parlor." Dkt. No. 42 at 1-2.

Prior to the start of trial, Lee's counsel had proposed that the Court instruct the jury on "specific unanimity," in the form of the following proposed instruction:

> In order for Mr. Lee to be found guilty on Count One, you all must agree that one or more of the following statements was materially false and made with Mr. Lee's knowledge that both the statement was untrue and that his conduct was unlawful, with all of you unanimously agreeing as to which statement or statements so qualify. In other words, even if you all agree that Mr. Lee made at least one false statement, but all of you do not agree on which specific statement was false, the crime of Making a False Statement has not been proven beyond a reasonable doubt.
>
> [LIST STATEMENTS INTRODUCED AT TRIAL]

Dkt. No. 106 at 43-44. The Court indicated in a subsequent Order that "[i]f the government charges more than one false statement in . . . Count One . . ., the Court will give a specific unanimity instruction. If the government charges one statement in each count, the Court finds that no separate unanimity instruction will be required." Dkt. No. 113 at 6.

During the course of trial, the parties reached an agreement on how to describe the false statements in the instructions. *See* Dkt. No. 137, Tr. at 501:2-15, 562:23-563:1. The parties submitted their agreement to the Court's clerk and the final jury instruction on Count One read, in relevant part, "The statement charged in Count One is that Mr. Lee stated: 'No' to the question whether he gave his wife any money to fund her business." Dkt. No. 121 at 36 (Jury Instr. No. 28).

I. Section 2255 Motion

In his § 2255 motion, Lee makes two interrelated arguments. First, he argues that his trial counsel provided ineffective assistance in violation of the Sixth Amendment "by stipulating in jury instructions the exact question asked by the agent and exact answer given by defendant." Dkt. No. 164 at 2.[2] Second, Lee argues that the trial court violated his Sixth Amendment rights when it gave

[2] Because some of Lee's briefs lack page numbers, citations in this Order to page numbers in his briefs refer to the page numbers provided by the Court's Electronic Case Filing (ECF) system.

the above jury instruction that contained the stipulation his lawyer entered.

A. Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees not only assistance, but effective assistance, of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). The purpose of the right is to ensure a fair trial, and the benchmark for judging any claim of ineffectiveness is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* To prevail on an ineffective assistance claim, a habeas petitioner must show that (1) counsel's performance was "deficient," i.e., his "representation fell below an objective standard of reasonableness" under prevailing professional norms, *id.* at 687-88, and (2) prejudice flowed from counsel's performance, i.e., that there is a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *See id.* at 691-94. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

"Judicial scrutiny of counsel's performance must be highly deferential." *Id.* at 689. "[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Id.* (quoting *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). A difference of opinion as to trial tactics does not constitute denial of effective assistance, *United States v. Mayo*, 646 F.2d 369, 375 (9th Cir. 1981), and tactical decisions are not ineffective assistance simply because in retrospect better tactics are known to have been available. *Bashor v. Risley*, 730 F.2d 1228, 1241 (9th Cir. 1984). Tactical decisions of trial counsel deserve deference when: (1) counsel in fact bases trial conduct on strategic considerations; (2) counsel makes an informed decision based upon investigation; and (3) the decision appears reasonable under the circumstances. *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994).

The Court finds that Lee's claim for ineffective assistance of counsel fails because he cannot meet the first prong of the *Strickland* test; that is, he cannot show that his trial counsel's stipulation

to the statement contained in Jury Instruction No. 28 was deficient. Although Lee did not raise an ineffective assistance of counsel claim on direct appeal, he did litigate the issue at the heart of the claim, which is whether it was error for the Court to fail to give a specific unanimity instruction. The Ninth Circuit found that "a specific unanimity instruction was not required in this case. The general unanimity instruction was sufficient to charge the jury on the relevant case law as there was considerable evidence presented at trial to support the parties' stipulation regarding the false statement Lee allegedly made." *Lee*, 726 Fed. App'x at 590. Under these circumstances, where the Ninth Circuit has squarely ruled that the evidence at trial supported the stipulation, this Court simply cannot find that trial counsel's decision to enter the stipulation was "deficient" under the definition in *Strickland* rather than simply a matter of trial tactics.

Because Lee cannot meet the first prong of *Strickland*, the Court need not analyze whether Lee is able to meet the second prong regarding prejudice. Nevertheless, the Court notes that Lee's argument on the prejudice prong amounts to little more than speculation that if the jury had received a specific unanimity instruction, then it would not have convicted him on Count One. *See* Dkt. No. 164 at 3 (arguing that "[t]he error was prejudicial because uncertainty defeats an 18 USC 1001 conviction. US v. Jiang, 476 F.3d 1026, 1029 (9th Cir. 2007)"); Dkt. No. 188 at 12 ("Defendant suffered prejudice[] because he was wrongfully convicted as a result of the faulty jury instruction.").

B. Jury Instruction

Lee also argues that this Court "violated defendant's 6th Amendment rights by agreeing with an erroneous jury instruction" based upon the stipulation entered by his attorney. Dkt. No. 164 at 3. Lee argues that this was error because, by accepting an instruction with the stipulation, the Court "wrongfully resolved the 8 different versions of that question [asked by the agent] into 1 clear statement." *Id.* In opposition, the government argues that the Ninth Circuit rejected Lee's contention on his direct appeal, and that "it is improper to use a petition under Section 2255 to re-litigate that same issue, in the guise of an ineffective assistance claim or a claim of other error." Dkt. No. 179 at 10.

Section 2255 may not be used as a chance at a second appeal. *United States v. Berry*, 624

F.3d 1031, 1038 (9th Cir. 2010) (citing *United States v. Addonizio*, 442 U.S. 178, 184 (1979)). Claims presented and rejected on direct appeal may not be litigated again in a § 2255 motion. *See United States v. Scrivner*, 189 F.3d 825, 828 (9th Cir. 1999). Moreover, "[u]nder the law of the case doctrine, a court will generally refuse to reconsider an issue that has already been decided by the same court or a higher court in the same case." *Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012) (en banc) (citing *Jeffries v. Wood*, 114 F.3d 1484, 1488-89 (9th Cir. 1997) (en banc)).

In *Scrivner*, after the defendant was convicted in a jury trial, he filed a direct appeal, arguing that the district court violated his Fifth Amendment rights when it admitted an affidavit into evidence in which he asserted his ownership over a gun that the government had seized during a search of his home. The Ninth Circuit rejected this argument, finding he had waived his right to invoke the Fifth Amendment in the civil proceeding over forfeiture of the gun. *Scrivner*, 189 F.3d at 827. The defendant then filed a petition for relief under 28 U.S.C. § 2255 with the district court, arguing that there had been a change in the law. The district court rejected his § 2255 motion, and the Ninth Circuit affirmed. The Ninth Circuit explained that the defendant had presented his Fifth Amendment claim in his direct appeal and that it had been denied on the merits. As such, "[t]hat decision is binding on our resolution of the case. *See Odom v. United States*, 455 F.2d 159, 160 (9th Cir. 1972) ('The law in this circuit is clear that when a matter has been decided adversely on appeal from a conviction, it cannot be litigated again on a 2255 motion.')." *Id.* at 828.

The same is true here. Lee concedes that he raised the argument regarding the allegedly erroneous jury instruction on his direct appeal. *See* Dkt. No. 165 at 5. His opening brief at the Ninth Circuit also shows that he argued on appeal that "the district court erred because there is insufficient evidence to determine what was the exact statement that was uttered[,]" pointing to an alleged eight different versions of the question that the agents asked. *See* Dkt. No. 179-1 at 19. However, he now argues in his reply brief that this claim should not be barred because, according to Lee, "a court may depart from the law of the case if . . . the decision is clearly erroneous and its enforcement would work a manifest injustice." Dkt. No. 188 at 17 (citing *Gonzalez*, 677 F.3d at 390 n.4). Lee provides no argument in support of his assertion that the Ninth Circuit's decision was "clearly erroneous." Rather, in his § 2255 motion and the reply brief, he simply restates the same arguments that the

Ninth Circuit has already considered and rejected. He also raised these arguments in his post-trial motions before this Court, and this Court rejected them. *See* Dkt. No. 144 at 3 ("Defendant argues, in part, that his conviction on Count One cannot stand because the government 'did not offer sufficient evidence to prove beyond a reasonable doubt the exchange that was false, *i.e.*, the precise question asked and the answer that was false.'"). Because these issues were previously litigated and decided in this case, they are not proper grounds for a § 2255 motion. *See Berry*, 624 F.3d at 1038.[3] Nor does the Court find that the decisions already rendered were clearly erroneous such as to warrant departing from the law of the case. Accordingly, the Court DENIES Lee's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.

II. Motion to Amend Section 2255 Motion

In the motion requesting permission to amend his § 2255 motion, Lee states that in addition to the ineffective assistance of counsel claim raised in the original motion, he would like "to add 1 additional claim, that is, insufficient evidence to prove he made a false statement . . . ." Dkt. No. 183 at 1. He argues that the evidence at trial cannot support his conviction because "testimony by Agent John Henderson clearly shows the alleged funding question was never asked, and defendant never made a false denial." *Id.* at 2. Citing to the transcript of the trial, he states that the two agents who testified gave testimony that contradicted each other, that "[t]he so-called funding question was nothing more than Agent John Henderson's **own characterization** of income-sharing question posed by Agent Fuentes[,]" and that "[t]he government's allegation that defendant made [a] false statement was actually Agent Henderson's own **Assumption/Speculation** after hearing defendant's response of not sharing money with [his] wife." *Id.* at 3. Lee concedes that "the issue of false statement was raised and rejected on appeal at the 9th Circuit" but argues that because the evidence

[3] Lee raises one argument here that was arguably not raised on direct appeal, when he takes the position that the agents never asked him the funding question at all. However, this argument cannot be squared with the Ninth Circuit's finding that "there was considerable evidence presented at trial to support the parties' stipulation regarding the false statement Lee allegedly made." *See Lee*, 726 Fed. App'x at 590. Moreover, arguments that should have been raised on direct appeal but that were not, such as this one, may not then form the basis for a § 2255 motion. *See Torres v. United States*, 469 F.2d 651, 652 (9th Cir. 1972) (per curiam) (citing *Evans v. Mitchell*, 458 F.2d 993 (9th Cir. 1972)).

he cites shows that the agents asked no funding question and Lee made no false denial, "the conviction was clearly erroneous and its enforcement will work a manifest injustice." *Id.* at 5.

The Civil Rule governing pleading amendments, Federal Rule of Civil Procedure 15, made applicable to habeas proceedings by 28 U.S.C. § 2242, Federal Rule of Civil Procedure 81(a)(4), and Habeas Corpus Rule 12, allows amendments with leave of court any time during a proceeding. *Mayle v. Felix*, 545 U.S. 644, 654-55 (2005) (citing Fed. R. Civ. P. 15(a)). There are several accepted reasons to deny leave to amend, including the presence of bad faith by the moving party, undue delay, prejudice to the non-moving party, futility of amendment, and previous amendments. *See Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 809-10 (9th Cir. 1988). Leave may be denied if the proposed amendment is futile or would be subject to dismissal. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991). "Futility of amendment can, by itself, justify the denial of a motion for leave to amend." *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).

Here, the Court finds that the amendment to the § 2255 motion that Lee proposes would be futile. It does not substantially differ from the second grounds for error that he raises in his original § 2255 motion, which he argues more fully in his reply brief, and the Court would reject the amendment for the same reasons as stated above, that Lee already raised or could have raised these challenges on direct appeal. Accordingly, the Court DENIES Lee's request to amend his § 2255 motion.

Lee also argues that he is entitled to an evidentiary hearing. A habeas petitioner may be entitled to an evidentiary hearing on a claim "if he alleges facts that, if proven, would entitle him to relief." *Tapia v. Roe*, 189 F.3d 1052, 1056 (9th Cir. 1999) (regarding § 2254 motion); *see also Mejia-Mesa*, 153 F.3d at 929. The district court may deny a § 2255 motion without an evidentiary hearing only if the movant's allegations, viewed against the record, either do not state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal. *See Mejia-Mesa*, 153 F.3d at 931 (district court properly denied evidentiary hearing on claims that failed to state a claim for relief under § 2255 as a matter of law).

The Court finds the claims Lee raises here fail as a matter of law, and thus no hearing is

required to resolve a factual dispute. The request for an evidentiary hearing is DENIED.

CONCLUSION

Lee has not made a substantial showing of the denial of a constitutional right, and accordingly the Court does not issue a certificate of appealability. *See* 28 U.S.C. § 2253(c)(2). Lee's motion under 28 U.S.C. § 2255 is DENIED. Lee's motion to amend his § 2255 motion is DENIED.

IT IS SO ORDERED.

Dated: August 28, 2019

SUSAN ILLSTON
United States District Judge

United States District Court
Northern District of California

APPENDIX F

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 14 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN CHING EN LEE,

Defendant-Appellant.

No. 19-16745

D.C. Nos. 3:18-cv-06223-SI
3:15-cr-00541-SI-1
Northern District of California,
San Francisco

ORDER

Before: BYBEE and HURWITZ, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

DENIED.

APPENDIX G

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 14 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN CHING EN LEE,

Defendant-Appellant.

No. 19-16745

D.C. Nos. 3:18-cv-06223-SI
3:15-cr-00541-SI-1
Northern District of California,
San Francisco

ORDER

Before: THOMAS, Chief Judge, and BRESS, Circuit Judge.

Appellant's motion for reconsideration (Docket Entry No. 4) is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.