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Appendix A

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

JUN 9 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RONALD GERARD BOYAJIAN, AKA
Ronald G. Boyajian, AKA Ronald Geral
Boyajian, AKA Ronald Gerald Boyajian,
AKA John,

Defendant-Appellant.

No. 16-50327

D.C. No.

2:09-cr-00933-CAS-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Argued and Submitted May 10, 2023
Pasadena, California

Before: HURWITZ and R. NELSON, Circuit Judges.**

Ronald Boyajian was convicted of traveling with intent to engage in illicit sexual conduct with a minor in violation of 18 U.S.C. § 2423(b) (Count One),

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

** This case was decided by quorum of the panel. *See* 28 U.S.C. § 46(d); Ninth Circuit General Order 3.2(h).

Appendix A

engaging in illicit sexual conduct with a minor in foreign places in violation of 18 U.S.C. § 2423(c) (Count Two), and commission of these offenses while required to register as a sex offender in violation of 18 U.S.C. § 2260A (Count Three). We have jurisdiction over this appeal under 18 U.S.C. § 3742 and 28 U.S.C. § 1291 and affirm.

1. The jury instruction on Count Two was erroneous because it would allow conviction even if Boyajian had stopped traveling at the time of the offense. *See United States v. Pepe*, 895 F.3d 679, 691 (9th Cir. 2018). But the error was harmless. *See United States v. Conti*, 804 F.3d 977, 980–81 (9th Cir. 2015). The evidence that Boyajian was traveling in Cambodia when he committed the offense was overwhelming. In the nine years before the offense, he had traveled to Asia thirty-five times, each time returning to California. He traveled on a United States passport, had a California driver's license, described his travels to custom officials as for "vacation" or "business," told those officials that he lived in California, and stayed in various guesthouses in Cambodia. He described Cambodia as a "dirty" "third-world country" and had booked a return flight to the United States for the day after he was arrested in Cambodia. *See United States v. Johnson*, 823 F. App'x 485, 488–89 (9th Cir. 2020) (upholding a § 2423(c) conviction and noting that "during the nine-year period in which Johnson avers he resided in Cambodia, he maintained a permanent residence in Oregon, held an Oregon driver's license, and took other

actions consistent with that of a citizen of the United States traveling temporarily overseas. On U.S. passport forms, for example, Johnson would describe his ‘trips abroad’ as ‘temporary.’”).

2. We rejected the claim that § 2423(c) regulates activity outside of Congress’s foreign commerce powers in *United States v. Pepe*, 895 F.3d 679, 689–90 (9th Cir. 2018).

3. Contrary to Boyajian’s argument, § 2423(b), which prohibits “travel[] in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person,” does not require that the illicit conduct be a but-for purpose of the travel. *See United States v. Flucas*, 22 F.4th 1149, 1156–57, 1164 (9th Cir. 2022).

4. Boyajian’s argument that his convictions violate the doctrines of dual criminality and specialty also fails. These doctrines apply to transfers occurring through extradition treaties. *See Ker v. Illinois*, 119 U.S. 436, 443 (1886). The United States and Cambodia have no such treaty, and the Cambodian Supreme Court expressly determined that Boyajian’s transfer to this country was not an extradition.

5. In sentencing, the district court invoked U.S.S.G. § 2G1.3(d)(1), which provides that “[i]f the offense involved more than one minor,” grouping rules “shall be applied as if . . . each victim had been contained in a separate count of conviction.” Boyajian argues that his abuse against children other than the named victim was not within “the offense” of conviction because “it fell well outside the

temporal scope of the conduct charged in the indictment.” *See United States v. Schock*, 862 F.3d 563, 567 (6th Cir. 2017).

However, any error in applying the Guideline enhancement was harmless. The district court imposed the statutory maximum sentences on Counts One and Two and explained why those sentences were necessary. *United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 n.5 (9th Cir. 2011) (per curiam).

6. The district court did not err in denying Boyajian’s motion to suppress evidence seized in his room at a Cambodian guesthouse during a joint raid by United States and Cambodian officials. The Cambodian Supreme Court found the search illegal under Cambodian law, and “compliance with foreign law alone determines whether the search violated the Fourth Amendment.” *United States v. Barona*, 56 F.3d 1087, 1092 n.1 (9th Cir. 1995). But United States law “governs whether illegally obtained evidence should be excluded, and the essence of our inquiry is whether exclusion serves the rationale of deterring federal officers from unlawful conduct.” *United States v. Peterson*, 812 F.2d 486, 491 (9th Cir. 1987).

The Fourth Amendment exclusionary rule does not apply when “law enforcement officers have acted in objective good faith.” *United States v. Leon*, 468 U.S. 897, 908 (1984). The search of Boyajian’s room was found illegal under Cambodian law because it was conducted without the guesthouse owner’s written consent—a rule with no counterpart in our jurisprudence. Moreover, the United

States officials conducting the search reasonably relied on representations by their foreign counterparts that the prosecutor's verbal submission sufficed, and the government presented testimony from multiple Cambodian officials and legal experts who believed that this advice was accurate when given. *See Peterson*, 812 F.2d at 492.

7. We review a district court's finding that a defendant has knowingly and voluntarily waived his Sixth Amendment right to counsel de novo and a finding that the waiver was unequivocal for clear error. *See United States v. Mendez-Sanchez*, 563 F.3d 935, 944 (9th Cir. 2009). We find no error.

Boyajian did not condition his request to proceed pro se below on an alleged decision by the district court denying him new counsel. Rather, Boyajian stated that "I am simply asking to go pro se and nothing else," and that "the only thing I want is pro se. I don't want anything else. . . . Hundred percent." He thereafter complained that standby counsel was overstepping his role; filed a "Standing Objection to the Court Advancing Standby Counsel George Buehler to Trial Counsel"; and stated during sentencing that "I do not want under *Faretta* [standby counsel] to speak at all in this courtroom, at all, and I'd like to make that record very clear." He repeatedly confirmed that he did not want his pro se status revoked.

8. Boyajian also argues that he was denied the right to counsel during a hearing concerning a fee dispute between Boyajian and former counsel. The district

court, however, merely required that the lawyers who sought to argue about “ethics issues” become counsel of record. Their refusal to do so did not violate Boyajian’s constitutional rights.

9. “[A] federal court properly may exercise ancillary jurisdiction over attorney fee disputes collateral to the underlying litigation.” *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 968 (9th Cir. 2014) (cleaned up). However, the exercise of that jurisdiction is discretionary. *See id.* at 971. The district court did not abuse its discretion in declining to exercise ancillary jurisdiction over the fee dispute. The court noted that adjudicating that dispute would cause further delay in the already extended criminal proceedings, Boyajian provided “no reason why he cannot resolve his fee dispute in state court as a state law claim for breach of contract,” and he failed to show how resolving this dispute would “facilitate the resolution of his criminal trial.”

AFFIRMED.

Appendix B

No. 16-50327

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,) C.A. No. 16-50327
	) D.C. No. CR 09-933-CAS
	) (Central Dist. Cal.)
)
Plaintiff-Appellee,	) APPELLANT RONALD BOYAJIAN'S
	) OBJECTION TO ORAL ARGUMENT
v.	) BEFORE A BROKEN PANEL
	) THAT EXCLUDED JUDGE
RONALD GERARD BOYAJIAN,	) KLEINFELD DEPRIVES DUE
	) PROCESS, EQUAL PROTECTION
Defendant-Appellant.	) AND SEVERELY PREJUDICES
	) HIS APPEAL
)
)

Ronald Boyajian, defendant-appellant in the above captioned case, appearing pro se, who is constructively unrepresented¹ objects to violations of Fifth Amendment right to Due Process of law and the Equal Protection Clause of the Constitution. He objects to the Court forcing him to proceed without notice and without consent at the May 10 oral argument proceedings before an incorrectly constituted tribunal excluding panelist Judge Kleinfeld resulting in severe prejudice to his appeal.

¹ See concurrently filed Pro Se Motion For Pro Se Oral Argument. Counsel continues to refuse to communicate with Mr. Boyajian or file matters on his behalf.

In particular, Mr. Boyajian, whose appeal concerns a 70-year *de facto* life sentence, objects to: a) a broken merits panel; consisting of only a two-judge residuum at hearing, and b) the exclusion of assigned panelist, Judge Kleinfeld, majority judge in *Pepe* which decision controls this panel in requiring relief in the form of unconditional vacatur of Count Two (30 years):

Mr. Boyajian objects to the Court depriving him its long established procedures operating under a particular rationale in constituting a quorum of a three-judge merits panel for oral argument, and objects to the three-judge merits panel depriving him its set processes. Consequently, he objects to absence of notice and the opportunity to object that the procedures of the Court and the processes of the panel set by Rule and precedent, and implicit to an orderly administration of justice, that have long framed expectations on which all litigants rely would in this case be abrogated and were, in fact, abrogated on May 10.

Here, the facts appear to be that Judge Kleinfeld and the Court knew no less than 48 hours in advance² of the May 10 argument that Judge Kleinfeld would not be getting on a plane and contributing to argument as other judges who fulfill their obligations do and did. As a result of the Court's exclusion of panelist Judge

² Inspection of the Court website archive of oral argument calendar and videos shows that two full days before Mr. Boyajian's oral argument, on May 8, Judge Kleinfeld failed to attend oral arguments which were likewise left to be heard by the broken panel.

Kleinfeld, Mr. Boyajian was deprived a correctly constituted tribunal, denied Due Process and Equal Protection and severely prejudiced in his appeal.

Mr. Boyajian further objects to Judge Kleinfeld, the greater panel and the Court all mutually agreeing to proceed without Judge Kleinfeld present and contributing at oral argument *and* at that day's post-argument disposition (left to a two-judge panel residuum) of the case decision, including whether the decision will be published and confirming assignment of the judge who will write the decision.

A. The Court's exclusion of Judge Kleinfeld severely prejudiced Mr. Boyajian's appeal and thus further violated his fundamental rights

The Court, the panel and Judge Kleinfeld all knew in advance that Judge Kleinfeld as the majority judge in *Pepe* is pivotal to Mr. Boyajian's appeal in a unique and extraordinary fashion. All knew in advance that were Judge Kleinfeld present contributing at argument, he would be obligated—while livestreamed on the internet-- to sternly admonish his fellow panelists that their foray into harmless error review violates and contravenes *Pepe's* binding precedent. Judge Kleinfeld would point out *Pepe* never cites *Neder v. United States*, 527 U.S. 1 (1999).

Judge Kleinfeld would then educate his fellow panelists how they are proceeding on the wrong legal footing. Judge Kleinfeld would then further advise how the Supreme Court in *Neder* explicates harmless error review is inapplicable

to error that affects the framework of the trial.

In *Pepe*, as in the instant case on appeal, the instructional element omitted is jurisdictional but it's not error generating de novo from an individual trial court rather it was a circuit misunderstanding created by then extant *Clark* failing to appreciate the reach of the statute § 2423(c) did not extend to Americans residing temporarily or permanently abroad.³ Judge Kleinfeld would emphasize this misreading of the statute created framework issues in all extraterritorial originated § 2423(c) trials, including necessarily issues of [absence of] Notice, deprivation of due process in grand jury proceedings, and then in the trial court blocking development of the record -- as *Pepe* explained -- due to the absence of a then viable legal theory under which to proceed to develop and present a jurisdictional defense of foreign residency. Consequently, as Judge Kleinfeld would further explain, a reviewing court certainly would not have all the facts or evidence that would or could be presented to a future jury on this element impelling the panel in *Pepe* to resolve the problem through vacatur not conditioned on overcoming some threshold standard of harmless error review.

With respect to the instant case, Judge Kleinfeld would encourage the panel to appreciate that Mr. Boyajian is better situated to benefit from *Pepe* than Mr.

³ Years after the indictments in *Pepe* and in the instant case, in 2013, Congress amended § 2423(c) to expand jurisdiction by extending the statute's reach to include Americans residing temporarily or permanently abroad.

Pepe himself. Mr. Boyajian *did* object below and *did* contest the foreign residency jurisdictional exclusions in motions to dismiss the indictment as defective on foreign residency grounds and then sought to develop and present residency evidence through witnesses that the trial court blocked on grounds that the evidence and this whole line of inquiry was simply irrelevant under *Clark*. Judge Kleinfeld would explain that a review of the record provides indicia sufficient to form a concrete assurance that a future jury could and would be presented evidence the district court blocked on foreign residency and Menlo Park non-residency.

Judge Kleinfeld, being himself now bound by *Pepe* and thus having no reason to examine the record pertaining to residency since *Pepe* unconditionally requires vacatur, would underscore *Pepe* appreciated litigants being blocked to litigate the jurisdictional issue due to circuit-wide misunderstanding do not need to raise or preserve this claim. Judge Kleinfeld would inform that, accordingly, *Pepe* binds all subsequent panels to unconditionally vacate convictions for all similarly situated appellant's who might raise a colorable claim to residing abroad regardless whether the claim is asserted as in *Boyajian* or not asserted as in *Pepe*.

B. Claim to foreign residency and Menlo Park non-residency is undisputed

- Motion to dismiss based on foreign residency [Dkts. __, __]
- Objections statute § 2423(c) does not reach foreign residents [RT __, Dkts. __]

- PSR—the government did not dispute and the Court agreed that Mr. Boyajian was not residing at Menlo Park address at the time of the conduct in Court Two (arrest in February 2009) [GER __]
- Cambodia Permanent Resident Visa — E-type business resident visa, same as *Jackson* (the same visa to which the government cites in *Jackson* is the proper vehicle under which to accrue time towards citizenship) ER 195
- Banking records -- Exhibit 500A. 2-ER-198.
- Objections to jury instruction--Already briefed are objections to jury instruction showing the residency abroad is asserted. Importantly, the government endorsed that assertion—the government itself affirmatively asserted *Mr. Boyajian had moved to Cambodia by the September 2008 departure from Los Angeles* [Dkt. 932], which government representation the Court accepted see Minute order Dkt. 1105.

The fact that the element is contested and in dispute and residency witnesses are blocked necessarily means the record is undeveloped relative to what a future jury could and would be presented. Per *Neder* this situation precludes application of harmless error review. Areas of the record pointing to the existence and nature of additional facts and evidence bearing on residency that a future jury would here:

//

//

C. Citations about Residency

1. When Defense proffered its foreign residency witnesses, the government argued:

Gov't This entire line of foreign residency is not relevant.

And district court agreed:

D/C It is not for the jury to decide.

RT 2/18/16 pm (120) see colloquy/proffer attached at Exhibit A.

2. Court aware there is Evidence Mr. Boyajian had moved to Cambodia:

D/C It is government position that Mr. Boyajian had failed to notify Menlo Park authorities when he departed September 2008 to Cambodia. Dkt 932. Assuming Mr. Boyajian failed to notify Menlo Park authorities of any move ...

Minute Order 12/17/15 Dkt 1105

3. Defense Proffer for Menlo Park Police Department Detective Kaufman:

RB Detective in charge of registrants [] Ronald Boyajian did not live in Menlo Park, California [] September 2008 [] I would like a jury to decide.

D/C The jury is not going to hear a sergeant from Menlo Park.

RT 2/19/16 pm (11-14)

//

4. Post Trial Information About Residency (reviewing court looks at “whole record”):

RB Your Honor blocked me from presenting a residency defense because I could not [] bring them and many unable to travel. [] Well, in fact the Warrant for my arrest by California [authorities] proves that I had moved out of the country after August 2, 2008. [] You would not allow Detective Kaufman to testify [] would have heard testimony a warrant in California because he moved without notifying them subsequent to his August 2, 2008 registration. Getting on a plane act and alleged sex act all happened after I had moved. Certainly was not maintaining a residence in Menlo Park based on the warrant.

RT 7/11/16 (20-22)

5. Proffer Residency Witnesses:

RB Proffered Neath, Paul, Sok Nang who testified in Cambodian courts regarding residency.

RT 11/7/14 (in camera) (21)

RB Ninth Circuit would want to know how come he has all these critical witnesses and nobody showed up [at the depositions].

D/C I can't compel their attendance if they don't voluntarily show up.

RT 7/31/14 (30)

D/C Let's assume by some magic act we could bring all these people to testify. They would testify about [] your intention to reside there.

RT 1/11/16 (9-11)

The record also supports Mr. Boyajian proffered witnesses testifying to facts bearing on acculturation and intent to remain including Cambodian travel agency staff Ratana that she issued locally purchased round-trip tickets with itineraries departing Phnom Penh returning to Phnom Penh including all visits to united states were always with intent to return to and to continue to reside in Cambodia and could verify the permanent residency visa which said round trip ticket issuances require; banking witnesses; local transport witnesses include renewals of long-term leasing for motorcycle, driver/personal security; landlords including International Guesthouse management and staff; business clients along with additional witnesses including relevant to the factors dispositive of residency (e.g., physical presence, intention to remain, maintaining residence through lease/rental, carrying on business) see Black's Law Dictionary ___ Edition, *Lew v. Moss*, 797 F.2d 747 (9th Cir. 1986), *Park v. Barr*, 946 F.3d 1096 (9th Cir. 2020). see Exhibit A attached RT 2/18/15 PM pp. 117-26. Exemplar of the plenitude of witnesses bearing on foreign residency evidence precluded from trial and thus facts not in record but could be presented before a future jury.

For example, at trial the court disallowed Cambodian official His Excellency

Ya Socheath to testify before the jury but took testimony outside the presence of the jury [RT ____] which content provides evidence of significant acculturation and intent to remain including Mr. Boyajian's attending weddings of High Officials of the Royal Cambodian government including the wedding of H.E. Ya Socheath and the wedding of Cambodian Prime Minister Hun Sen's eldest son, H.E. General Hun Manet who is the long-time designated successor to the Prime Minister.

In conclusion, it is for good reason that *Pepe* does not cite to or otherwise invoke *Neder*. Mr. Boyajian has satisfied all the criteria in *Neder* that exclude a reviewing court apply harmless error review—contested omitted element, brought forth facts controverting element, shown through the record that he could and would bring facts not in the record before a future jury, etc.:

[...] the constitutional violations we have found to defy harmless-error review. **Those cases, we have explained, contain a "defect affecting the framework within which the trial proceeds,** rather than simply an error in the trial process itself." *Fulminante* , *supra* , at 310. Such errors "infect the entire trial process," *Brecht v. Abrahamson*, 507 U. S. 619, 630 (1993), and "necessarily render a trial fundamentally unfair," *Rose* , 478 U. S., at 577 . Put another way, these errors deprive defendants of "basic protections" without which "a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence ... and no criminal punishment may be regarded as fundamentally fair." *Id.* , at 577-578.

[...]

In *Sullivan*, the trial court gave the jury a defective "reasonable doubt" instruction in violation of the defendant's Fifth and Sixth Amendment rights to have the charged offense proved beyond a

reasonable doubt. See *Cage v. Louisiana*, 498 U. S. 39 (1990) (*per curiam*). Applying our traditional mode of analysis, the Court concluded that the error was not subject to harmless-error analysis because it "**vitiates all the jury's findings**," 508 U. S., at 281, and produces "consequences that are necessarily unquantifiable and indeterminate," *id.*, at 282.

[...]

In a case such as this one, **where a defendant did not, and apparently could not, bring forth facts contesting the omitted element**, answering the question whether the jury verdict would have been the same absent the error does not fundamentally undermine the purposes of the jury trial guarantee.

[...]

The omitted element was materiality. Petitioner underreported \$5 million on his tax returns, and **did not contest the element of materiality at trial. Petitioner does not suggest that he would introduce any evidence bearing upon the issue of materiality if so allowed.**

[...]

The evidence supporting materiality was so overwhelming, in fact, that **Neder did not argue to the jury--and does not argue here--**that his false statements of income could be found immaterial.

[...]

We believe that where **an omitted element is supported by uncontroverted evidence**, this approach reaches an appropriate balance between "society's interest in punishing the guilty [and] the method by which decisions of guilt are made." *Connecticut v. Johnson*, 460 U. S., at 86 (plurality opinion).

[...]

In a case such as this one, **where a defendant did not, and apparently could not, bring forth facts contesting the omitted element**, answering the question whether the jury verdict would have been the same absent the error does not

fundamentally undermine the purposes of the jury trial guarantee.

[...]

Of course, safeguarding the jury guarantee will often require that a reviewing court conduct a thorough examination of the record. If, at the end of that examination, the court cannot conclude beyond a reasonable doubt that the jury verdict would have been the same absent the error--**for example, where the defendant contested the omitted element and raised evidence sufficient to support a contrary finding**--it should not find the error harmless.

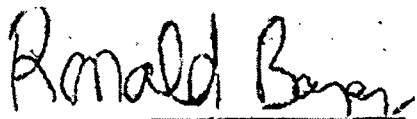
Neder, Id.

D. Invocation of Autonomy Rights for Standing to Object

Finally, Mr. Boyajian has standing to make the foregoing objections under his autonomy rights. The locus of control and decision-making authority to cede or waive the right to appear before a correctly constituted tribunal in criminal proceedings resides solely with the client. Autonomy as matter of law supercedes, and here voids, the lawyer's waiver executed with the Court in secret behind the client's back agreeing to the Court's exclusion of Judge Kleinfeld from Mr. Boyajian's proceedings in clear violation of his rights to due process of law and equal protection of the laws.

Dated: June 9, 2023

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Ronald Boyajian", written over a horizontal line.

Ronald Boyajian
Defendant-Appellant

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Adapted from Form 25. Certificate of Service for Paper Filing

9th Cir. Case Number(s): 16-50327

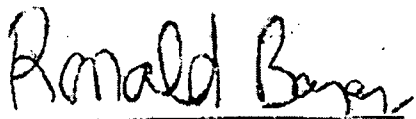
Case Name: United States v. Ronald Boyajian

I certify that I served on the person(s) listed below, either by mail or hand delivery, a copy of the **Appellant Ronald Boyajian's Objection To Oral Argument Before A Broken Panel That Excluded Judge Kleinfeld Deprives Due Process, Equal Protection And Severely Prejudices His Appeal**, and any attachments:

Molly Dwyer, Clerk of the Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

I understand that should there be any parties requiring service, any such parties are registered with this court's electronic filing service such that any service requirements that might pertain are met thereby.

Date: June 9, 2023

A handwritten signature in black ink that reads "Ronald Boyajian". The signature is written in a cursive style and is positioned above a horizontal line.

Ronald G. Boyajian
Appellant

1 APPEARANCES OF COUNSEL:

2 ON BEHALF OF PLAINTIFF:

3 BY: DAVID HERZOG
4 VANESSA BAEHR-JONES
5 ASSISTANT UNITED STATES ATTORNEY

6 1100 UNITED STATES COURTHOUSE
7 312 NORTH SPRING STREET
8 LOS ANGELES, CA 90012

9 ON BEHALF OF DEFENDANT:

10 RONALD BOYAJIAN, PRO SE

11 ALSO PRESENT:

12 GEORGE BUEHLER, ESQ.
13 (STANDBY COUNSEL)

14 CHRISTINA GITS, PARALEGAL

15 JOEL WYENN, INVESTIGATOR
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EXHIBITS

RECEIVED

(NONE OFFERED)

1 THE COURT: When in the history of world has the
2 government permitted the defense to take its original
3 evidence?

4 MR. BOYAJIAN: Well, apparently, they're doing it
5 at these labs like FBI labs. They're taking --

6 MR. HERZOG: That's government computers and
7 government devices after a search.

8 THE COURT: They do not turn these things over to
9 defendants. We tried to give you an alternative means of
10 doing this, it was declined, and we are where we are.

11 MR. BOYAJIAN: Your Honor, if the government has
12 something in their possession, and their laboratory, their
13 FBI labs could deal with the thing, that was something we
14 asked for before. But if Your Honor could just put it in
15 writing or we'll submit a motion on it. All I want you to do
16 is to be aware of it.

17 THE COURT: Mr. Boyajian, I have put enough in
18 writing.

19 MR. BOYAJIAN: Okay.

20 THE COURT: If there is a time and place and a
21 legitimate reason to do it, I will.

22 MR. BOYAJIAN: Okay. Now, another topic is our
23 other witnesses.

24 Now, first of all, I don't know, but maybe Joel, is
25 there something going on with the clerks that we don't know?

1 I mean, is there something more?

2 And second of all, the name Ming Sopheap, I'm
3 sorry, maybe I'm not pronouncing his name right, but on that
4 thing, I was trying to authenticate the actual in-take clerk,
5 and Your Honor said if we could bring that person. So we
6 have some witnesses we do need to bring here. And you
7 approved three. Two of them apparently are being blocked.
8 They're saying they don't have -- wait. All the witnesses
9 have been approved except for -- yeah, but none of them have
10 been approved by the Court.

11 Maybe you can explain that to the Court. It's
12 easier than reading it to me.

13 MR. WYENN: Your Honor, what I'm reading from is a
14 text from Chris Filipiak. For your information, all the
15 witness's visas have been approved for travel except two
16 court clerks, Tin Sotheamony and Ouk Vira. And that's the
17 end of the text, ma'am.

18 THE COURT: Well, as we know, I authorized funds to
19 bring them here. That order has gone out. So if the
20 Department of State doesn't want to give them a visa or if
21 the Cambodian government will not permit them to travel, I
22 guess they won't be here because I can't compel their
23 attendance.

24 ~~MR. BOYAJIAN: Well, you know, there's other~~
25 witnesses on our list, also. For example, we need to have

1 people from proving my residency. We need to have someone
2 who can --

3 THE COURT: Didn't I authorize the bank person that
4 was going to come?

5 MR. BOYAJIAN: Is it authorized? There was a point
6 at which they were all cancelled. Just everything.

7 THE COURT: I didn't cancel that one. I authorized
8 that one, I think.

9 MR. BOYAJIAN: Well, what we'll do is we'll find
10 out which ones have been authorized, and tomorrow we'll bring
11 it.

12 THE COURT: Why don't you know what you're talking
13 about before we do this.

14 MR. BOYAJIAN: And there are number of other
15 witnesses that are going to be relevant to residency, and if
16 these two people can't come --

17 THE COURT: It sounds like it's going to be
18 cumulative once we get the one person here.

19 MR. BOYAJIAN: Well, one person is the bank.
20 That's bank records and those kind of things. Another person
21 would be for where you live. Another one --

22 MR. HERZOG: Well, wait a minute, Your Honor. If
23 the point of the bank clerk is to get the records in, that is
24 doable without bring a witness here. If the point is to -- --
25 prove residency, other witnesses are cumulative. The Court

1 is correct about that.

2 MR. BOYAJIAN: Proving residency requires showing
3 that you are living somewhere. That's important in the case.
4 Not just that you had a --

5 MS. BAEHR-JONES: There is another issue here which
6 is that the government submitted jury instructions in which
7 the California law is clear. If you live in multiple
8 jurisdictions, you still are required to register under
9 California law. And the government has established now that
10 defendant maintained a residence in the State of California.

11 Even if we assume that there was some other
12 residence that was maintained in another country, California
13 law is still clear that he was required to register in this
14 jurisdiction and, in fact, did register in this jurisdiction
15 for 12 years. So honestly, this entire line of defense is
16 not relevant.

17 MR. BOYAJIAN: Well, that's for the jury to decide.

18 THE COURT: No, it's not for the jury to decide.
19 It's for yours truly to decide.

20 MR. BOYAJIAN: Boyajian did not reside in
21 California during this time period, and there is proof of it.
22 Boyajian had no bank account in the U.S. Boyajian had a bank
23 account there. Boyajian didn't sleep there, he slept there.
24 Boyajian was there. And the case law is very clear on
25 residency, and what's defined as residency is where you live.

1 It's where you sleep. It's where --

2 THE COURT: You're reading very different case law,
3 and I'm not gonna have this discussion. Look, here is --

4 MR. BOYAJIAN: Your Honor already ruled on this
5 issue, and we have a duty to prove to the jury these things,
6 and we can't do it if we don't have witnesses.

7 So all we're asking is that, Your Honor, for the
8 other witnesses that can't come here, for whatever reason,
9 Your Honor could decide whether you approve of them or not,
10 48 hours before they're called, whatever it is, but if we
11 can't get people physically here, we'd like to have some kind
12 of Skype at a hotel set up so we can bring people in or the
13 U.S. Embassy, something, where we could do some video, some
14 live video.

15 And that's exactly what the public defender would
16 like to do. We'd just like to give some notice on that
17 because it may be better that we start getting people aligned
18 that travel here is not working so let's --

19 MR. HERZOG: The defendant has the right to
20 confront the witnesses against him. Trial testimony, live
21 trial testimony as the Court well knows is the point. And
22 that's the reason for trial is that you put on live witnesses
23 whom the jury can test the credibility of live in front of
24 them. This is a failing argument. It has failed before, and
25 it will fail again.

1 MR. BOYAJIAN: Well, we did some depositions in this
2 case.

3 MR. HERZOG: It is one thing to use depositions,
4 Your Honor.

5 THE COURT: Here's the point, Mr. Boyajian. We are
6 in the middle of this trial. These are contingencies which
7 you should have planned for earlier, and you did not. We
8 have been at this for a year-and-a-half of you representing
9 yourself, and you have -- we just cannot have a shifting set
10 of requests based on what the Cambodian government decides or
11 what the Department of State decides. We're gonna -- if you
12 have -- I really thought you had submitted all the witnesses
13 that you wanted to bring, and I don't know why we're adding
14 more at this stage.

15 MR. BOYAJIAN: At one point, we gave a list of
16 witnesses and then some other witnesses, and then they were
17 just universally cancelled.

18 Mr. Joel, why don't you -- maybe you can speak on
19 that. What happened. It's easier.

20 MR. HERZOG: Your Honor?

21 Is this the time for this, Your Honor?

22 MR. BOYAJIAN: They're blocking us. We're trying
23 to talk about my right to a defense. I mean --

24 THE COURT: I think --

25 MR. BOYAJIAN: Your Honor has cancelled our --

1 witnesses, and then you said give proffers. We tried to get
2 together to give proffers on those clerks. Two of them have
3 been denied, two of our important witnesses. We're asking if
4 there could be some other arrangements given that situation
5 that they want to come. There are people in the prison we
6 need to have --

7 THE COURT: I think you'd better check the facts.
8 There is no one in a prison that I'm going to get out of
9 prison.

10 MR. BOYAJIAN: We don't want them to get out. We
11 just wanted to have some kind of deposition or video
12 testimony.

13 THE COURT: No. It's too late for depositions.
14 It's just too late. I've made it clear for I don't know how
15 long that I cannot get people out of prison. I cannot tell
16 the Cambodian government what to do.

17 MR. BOYAJIAN: Well, there's other witnesses. You
18 know, the point is that there should be some arrangement.
19 The Public Defender's Office had made an arrangement. There
20 were gonna have somebody live on the ground during the trial
21 to have live video testimony. Now, I don't understand --

22 THE COURT: I don't care what they did. The
23 problem --

24 MR. BOYAJIAN: They were planning on that.

25 Now you're saying that they were completely wrong? --

1 THE COURT: I'm saying that you terminated their
2 services, and you undertook the representation yourself, and
3 now you're stuck with your own representation.

4 MR. BOYAJIAN: Oh, but they were on the eve of
5 trial when their representation was terminated. They were
6 having -- going to send Mr. Goff on the ground and have many
7 witnesses, live video.

8 THE COURT: Well, that may have been what they were
9 going to do, but that doesn't mean that we would have heard
10 that testimony that way in trial because no one ever advised
11 this Court that they were going to do that. So I'm fearful
12 that even if they had that plan, and you did not execute that
13 plan, they could not have testified.

14 MR. HERZOG: Either way, Your Honor, we are where
15 we are. The defendant terminated representation with the
16 PD's office. This is where we are which is a couple of days
17 away from the government resting.

18 Your Honor, on that point, after the government
19 rests, are we going to have some type of hearing over
20 subpoenas to the extent to which the defense is going to be
21 allowed to call people here? Because I think given the
22 breadth of the defendant's view of the subpoena power, there
23 are an awful lot of people that I think if the Court will
24 have a hearing on that, we can limit what the proper scope of
25 the defense case should be.

1 THE COURT: I think we're going to have to with
2 certain people who have been subpoenaed from the prior case
3 and things like that.

4 MR. HERZOG: Exactly, Your Honor.

5 THE COURT: Because I do not think -- if the
6 government presents the evidence as it indicated it would,
7 there's no reason for them to come.

8 MR. HERZOG: That's our position, Your Honor.

9 And we just want to be clear that with the Court in
10 terms of scheduling that if the government anticipates at
11 this point resting next witness or Thursday like we
12 anticipate, then the next thing I think that has to happen is
13 to address those outstanding issues.

14 THE COURT: I agree with that.

15 MR. HERZOG: Thank you, Your Honor. We'll see you
16 at 9:30.

17 THE COURT: Thank you.

18 MR. BOYAJIAN: Your Honor, one thing of where this
19 is going, I think that it's important. Even Mr. Buehler
20 believed that we had a list of thirteen witnesses, and we're
21 trying to find that right now.

22 THE COURT: Mr. Wyenn is gonna come back and tell
23 us where we are. I believe you are correct that I denied
24 funding for witnesses on CJA grounds, and then I learned that
25 I was incorrect, that the marshals had the funds, and I have

1 reauthorized several of the witnesses. And so if they can
2 get here, there's money to bring them here. If they can't
3 get here, I'm afraid you're out of luck.

4 MR. BOYAJIAN: But are they -- are they
5 reauthorized? Because my understanding and on my defense
6 team, their understanding is nobody's been authorized after
7 the cancellation.

8 THE COURT: Mr. Boyajian, why don't you work with
9 your defense team and come back tomorrow and tell us.

10 MR. BOYAJIAN: Okay, okay. Will you find out about
11 that?

12 MR. HERZOG: Thank you, Your Honor. Good night.

13 THE COURT: Thank you. Good night.

14 THE CLERK: Court is adjourned.

15 MR. BOYAJIAN: Thank you, Your Honor.

16 (Proceedings were concluded at 5:28 p.m.)
17
18
19
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21
22
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24
25

CERTIFICATE OF REPORTER

COUNTY OF LOS ANGELES)
) SS.
STATE OF CALIFORNIA)

I, LAURA ELIAS, OFFICIAL REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT I REPORTED, STENOGRAPHICALLY, THE FOREGOING PROCEEDINGS AT THE TIME AND PLACE HEREINBEFORE SET FORTH; THAT THE SAME WAS THEREAFTER REDUCED TO TYPEWRITTEN FORM BY MEANS OF COMPUTER-AIDED TRANSCRIPTION; AND I DO FURTHER CERTIFY THAT THIS IS A TRUE AND CORRECT TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

DATE: FEBRUARY 18, 2016

/s/ LAURA MILLER ELIAS

LAURA MILLER ELIAS, CSR 10019
FEDERAL OFFICIAL COURT REPORTER

Appendix C

Ronald G. Boyajian
Register # 33900-112
United States Penitentiary
USP Terre Haute
P.O. Box 33
Terre Haute, IN 47808

June 15, 2023

RECEIVED
MOLLY C. SWYER, CLERK
U.S. COURT OF APPEALS

JUN 21 2023

Mary H. Murguia
Chief Judge
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

FILED
DOCKETED
JUN 21 2023

cc Circuit Executive Susan Yoong

Subject: request for investigation of removal of Judge Kleinfeld and apparent violation of
General order 3.2(h) in case 16-50327

Dear Chief Judge Murguia:

I am the appellant in case 16-50327 a direct appeal in a federal prosecution case. Although the court has appointed counsel, I am constructively unrepresented (Dkts. 223, 224). Therefore it is left to me, particularly given the urgency, to initiate this request that the Court investigate and report its findings of the basis of the Court's removal and/or exclusion of Judge Kleinfeld from my merits panel.

I ask your cooperation to investigate this irregularity involving my appeal case. There is an apparent impropriety manifestly altering the outcome of the appeal (as discussed further below) that stands to jeopardize the public's confidence in the Court.

I attach the June 9, 2023 Not for Publication Memorandum Disposition affirming judgment and 70-year de facto life sentence in my case, see Dkt. 222. As you can see merits panelist Judge Kleinfeld's name is absent from the document. Rather, panel judges Nelson and Hurwitz state they acting as a two-judge quorum decided the case citing Ninth Circuit General Order 3.2(h). General Order 3.2(h) allows two-judge quorum only when a merits panel judge becomes "deceased, disabled, recused, or retired" after the case is submitted, and the remaining two judges agree in all respects of the decision.

But contrary to the Order requirements to allow a quorum, it was known several days before my oral argument on May 10 Judge Kleinfeld would be absent. Instead of seeking a replacement judge, the two judges apparently having already agreed before my oral argument that they would affirm in all respects, proceeded with oral argument without Judge Kleinfeld. This is improper in that I was deprived a fair proceedings before judges with minds open to the information that would be developed during the hearing.

Appendix C

Chief Judge Murgia

June 15, 2023

Page 2

However, it's also concerning that in any event, Judge Kleinfeld is not "deceased, disabled, recused, or retired." In recent weeks and days Judge Kleinfeld has been joining in public filed decisions alongside Judges Nelson and Hurwitz in this *same* panel:

<u>Case no.</u>	<u>Parties</u>	<u>Submitted</u>	<u>Decided</u>
18-71255	Maria Guardado v. Garland	May 8	May 11
20-70469	Elmer Hernandez-Tovar v. Garland	May 8	May 11
20-72055	Pedro Cortez-Arreola v. Garland	May 10	May 15
21-50094	USA v. Robert Cota, Jr.	May 10	May 16

In my particular case, Judge Kleinfeld is of vital importance because he is the majority judge in *United States v. Pepe*, 895 F.3d 679 (9th Cir. 2018). *Pepe*, also an extraterritorial case from Cambodia with the identical statute at issue, and which decision *binds* this panel, requires it vacate my primary conviction (Count Two 2423(c) corresponding to a 30 years sentence). The relief is not subject to harmless error review.

The quorum judges instead affirm Count Two conviction under harmless error review in open contravention of *Pepe*. It's had to imagine the quorum could ethically attain their desired result were Judge Kleinfeld contributing and explicating *Pepe* to them. Furthermore, Count Two if vacated would arguably merit reversal of the entire judgment and sentence which discussion goes beyond the purpose of this request.

Another impossibility were Judge Kleinfeld contributing is the following flawed ruling and misstatement in the Memorandum Decision, "2. We rejected the claim that § 2423(c) regulates activity outside of Congress's foreign commerce powers in *United States v. Pepe*, 895 F.3d 679, 689–90 (9th Cir. 2018)."

Below is the passage Judges Nelson and Hurwitz invoke as rejecting a constitutional claim. But to the contrary, at this very passage *Pepe* plainly invites future litigants to raise the constitutional challenge *because Pepe finds that claim appears meritorious on its face*:

Nor are Pepe's constitutional arguments trivial. "Cases involving the reach of the Foreign Commerce Clause vis-à-vis congressional authority to regulate our citizens' conduct abroad are few and far between." *Clark*, 435 F.3d at 1102. **There is "strong textual, structural, and historical evidence that... Congress has less—not more—power to impose U.S. law inside foreign nations than inside the several states under the Commerce Clause."** Anthony J. Colangelo, *The Foreign Commerce Clause*, 96 Va. L. Rev. 949, 1003 (2010); *see also United States v. Al-Maliki*, 787 F.3d 784, 791 (6th Cir. 2015) ("doubt[ing]" that the Foreign Commerce Clause "include[s] the power to punish a citizen's noncommercial conduct while the citizen resides in a foreign nation"). And the government's argument under the Necessary and Proper

Chief Judge Murgia

June 15, 2023

Page 3

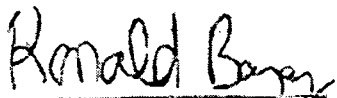
Clause rests on a 1920 case that has been sharply criticized in recent years. **While the current version of § 2423(c) will inevitably force us to grapple with the outer limits of Congress's power to regulate the conduct of U.S. citizens residing abroad, we leave that question for another day.**

Plainly, “leav[ing] that question for another day” especially when in *Pepe* the judgment was wholly vacated on another ground is not “rejected.” And the short shrift the quorum gives the remainder of the claims on appeal leads one to wonder whether Judge Kleinfeld might also look askance at those dispositions.

Given the stakes involved for my particular case, the quorum’s removal and or exclusion of Judge Kleinfeld is problematic and suspect.

Therefore, please conduct an investigation whether there has been mishandling in the composition of my panel and of my rights to a fair proceedings and report findings in my docket.

Respectfully,

A handwritten signature in black ink that reads "Ronald Boyajian". The signature is written in a cursive, slightly slanted style.

Ronald Boyajian

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 9 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RONALD GERARD BOYAJIAN, AKA
Ronald G. Boyajian, AKA Ronald Geral
Boyajian, AKA Ronald Gerald Boyajian,
AKA John,

Defendant-Appellant.

No. 16-50327

D.C. No.
2:09-cr-00933-CAS-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Argued and Submitted May 10, 2023
Pasadena, California

Before: HURWITZ and R. NELSON, Circuit Judges.**

Ronald Boyajian was convicted of traveling with intent to engage in illicit sexual conduct with a minor in violation of 18 U.S.C. § 2423(b) (Count One),

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

** This case was decided by quorum of the panel. See 28 U.S.C. § 46(d); Ninth Circuit General Order 3.2(h).

engaging in illicit sexual conduct with a minor in foreign places in violation of 18 U.S.C. § 2423(c) (Count Two), and commission of these offenses while required to register as a sex offender in violation of 18 U.S.C. § 2260A (Count Three). We have jurisdiction over this appeal under 18 U.S.C. § 3742 and 28 U.S.C. § 1291 and affirm.

1. The jury instruction on Count Two was erroneous because it would allow conviction even if Boyajian had stopped traveling at the time of the offense. *See United States v. Pepe*, 895 F.3d 679, 691 (9th Cir. 2018). But the error was harmless. *See United States v. Conti*, 804 F.3d 977, 980–81 (9th Cir. 2015). The evidence that Boyajian was traveling in Cambodia when he committed the offense was overwhelming. In the nine years before the offense, he had traveled to Asia thirty-five times, each time returning to California. He traveled on a United States passport, had a California driver's license, described his travels to custom officials as for "vacation" or "business," told those officials that he lived in California, and stayed in various guesthouses in Cambodia. He described Cambodia as a "dirty" "third-world country" and had booked a return flight to the United States for the day after he was arrested in Cambodia. *See United States v. Johnson*, 823 F. App'x 485, 488–89 (9th Cir. 2020) (upholding a § 2423(c) conviction and noting that "during the nine-year period in which Johnson avers he resided in Cambodia, he maintained a permanent residence in Oregon, held an Oregon driver's license, and took other

actions consistent with that of a citizen of the United States traveling temporarily overseas. On U.S. passport forms, for example, Johnson would describe his ‘trips abroad’ as ‘temporary.’”).

2. We rejected the claim that § 2423(c) regulates activity outside of Congress’s foreign commerce powers in *United States v. Pepe*, 895 F.3d 679, 689–90 (9th Cir. 2018).

3. Contrary to Boyajian’s argument, § 2423(b), which prohibits “travel[] in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person,” does not require that the illicit conduct be a but-for purpose of the travel. *See United States v. Flucas*, 22 F.4th 1149, 1156–57, 1164 (9th Cir. 2022).

4. Boyajian’s argument that his convictions violate the doctrines of dual criminality and specialty also fails. These doctrines apply to transfers occurring through extradition treaties. *See Ker v. Illinois*, 119 U.S. 436, 443 (1886). The United States and Cambodia have no such treaty, and the Cambodian Supreme Court expressly determined that Boyajian’s transfer to this country was not an extradition.

5. In sentencing, the district court invoked U.S.S.G. § 2G1.3(d)(1), which provides that “[i]f the offense involved more than one minor,” grouping rules “shall be applied as if . . . each victim had been contained in a separate count of conviction.” Boyajian argues that his abuse against children other than the named victim was not within “the offense” of conviction because “it fell well outside the

temporal scope of the conduct charged in the indictment.” *See United States v. Schock*, 862 F.3d 563, 567 (6th Cir. 2017).

However, any error in applying the Guideline enhancement was harmless. The district court imposed the statutory maximum sentences on Counts One and Two and explained why those sentences were necessary. *United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 n.5 (9th Cir. 2011) (per curiam).

6. The district court did not err in denying Boyajian’s motion to suppress evidence seized in his room at a Cambodian guesthouse during a joint raid by United States and Cambodian officials. The Cambodian Supreme Court found the search illegal under Cambodian law, and “compliance with foreign law alone determines whether the search violated the Fourth Amendment.” *United States v. Barona*, 56 F.3d 1087, 1092 n.1 (9th Cir. 1995). But United States law “governs whether illegally obtained evidence should be excluded, and the essence of our inquiry is whether exclusion serves the rationale of deterring federal officers from unlawful conduct.” *United States v. Peterson*, 812 F.2d 486, 491 (9th Cir. 1987).

The Fourth Amendment exclusionary rule does not apply when “law enforcement officers have acted in objective good faith.” *United States v. Leon*, 468 U.S. 897, 908 (1984). The search of Boyajian’s room was found illegal under Cambodian law because it was conducted without the guesthouse owner’s written consent—a rule with no counterpart in our jurisprudence. Moreover, the United

States officials conducting the search reasonably relied on representations by their foreign counterparts that the prosecutor's verbal submission sufficed, and the government presented testimony from multiple Cambodian officials and legal experts who believed that this advice was accurate when given. *See Peterson*, 812 F.2d at 492.

7. We review a district court's finding that a defendant has knowingly and voluntarily waived his Sixth Amendment right to counsel de novo and a finding that the waiver was unequivocal for clear error. *See United States v. Mendez-Sanchez*, 563 F.3d 935, 944 (9th Cir. 2009). We find no error.

Boyajian did not condition his request to proceed pro se below on an alleged decision by the district court denying him new counsel. Rather, Boyajian stated that "I am simply asking to go pro se and nothing else," and that "the only thing I want is pro se. I don't want anything else. . . . Hundred percent." He thereafter complained that standby counsel was overstepping his role; filed a "Standing Objection to the Court Advancing Standby Counsel George Buehler to Trial Counsel"; and stated during sentencing that "I do not want under *Faretta* [standby counsel] to speak at all in this courtroom, at all, and I'd like to make that record very clear." He repeatedly confirmed that he did not want his pro se status revoked.

8. Boyajian also argues that he was denied the right to counsel during a hearing concerning a fee dispute between Boyajian and former counsel. The district

court, however, merely required that the lawyers who sought to argue about “ethics issues” become counsel of record. Their refusal to do so did not violate Boyajian’s constitutional rights.

9. “[A] federal court properly may exercise ancillary jurisdiction over attorney fee disputes collateral to the underlying litigation.” *K.C. ex rel. Erica C. v. Torlakson*, 762 F.3d 963, 968 (9th Cir. 2014) (cleaned up). However, the exercise of that jurisdiction is discretionary. *See id.* at 971. The district court did not abuse its discretion in declining to exercise ancillary jurisdiction over the fee dispute. The court noted that adjudicating that dispute would cause further delay in the already extended criminal proceedings, Boyajian provided “no reason why he cannot resolve his fee dispute in state court as a state law claim for breach of contract,” and he failed to show how resolving this dispute would “facilitate the resolution of his criminal trial.”

AFFIRMED.

via U.S. mail (express mail item no. EI 686 259 096 US)

Ronald G. Boyajian
Register # 33900-112
United States Penitentiary
USP Terre Haute
P.O. Box 33
Terre Haute, IN 47808

June 15, 2023

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

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

JUN 21 2023

FILED _____
DOCKETED _____
DATE _____ INITIAL _____


Subject: letters to chief Judge Murgia and Circuit Executive requesting investigation of the propriety of the removal and or exclusion of Judge Kleinfeld from my merits panel, and without replacement, enabling a quorum decision

Dear Ms. Dwyer:

Please forward the enclosed letters addressed to Chief Judge Murgia and to Circuit Executive Susan Yoong, respectively, and file in my docket.

Please send me a conformed copy of the filing.

Cordially,


Ronald Boyajian

Appendix D

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 28 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 22-50002

Plaintiff-Appellee,

D.C. No.

2:20-cr-00498-SB-AB-2

v.

ROBERT EUGENE FOWLER,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Stanley Blumenfeld, Jr., District Judge, Presiding

Argued and Submitted March 10, 2023
Pasadena, California

Before: KLEINFELD, WATFORD, and COLLINS, Circuit Judges.

Robert Fowler appeals from the district court's order denying his motion to suppress evidence of drug trafficking seized from his Toyota Camry. The district court concluded that the good-faith exception to the Fourth Amendment's exclusionary rule applied. Finding no error, we affirm.

The good-faith exception provides an exemption from the exclusionary rule

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

FILED

MAY 11 2023

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELMER E. HERNANDEZ-TOVAR,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-70469

Agency No. A208-896-910

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 8, 2023**
Pasadena, California

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges.

Elmer Hernandez-Tovar petitions for review of the Board of Immigration Appeals's decision affirming the immigration judge's denials of his applications for asylum and withholding of removal. We have jurisdiction pursuant to 8 U.S.C.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

FILED

MAY 11 2023

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIA ADELINA GUARDADO; et al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 18-71255

Agency Nos. A206-700-188
A206-700-189
A206-700-190

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 8, 2023**
Pasadena, California

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges.

Maria Guardado, Jorge Alvarez-Guardado, and Jennifer Alvarez-Guardado
petition for review of the Board of Immigration Appeals's decision affirming an
immigration judge's denials of their applications for asylum, withholding of

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

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

FILED

MAY 15 2023

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEDRO CORTEZ-ARREOLA, AKA
Pedro Cortez,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-72055

Agency No. A205-117-014

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted May 10, 2023**
Pasadena, California

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges.

Pedro Cortez-Arreola petitions for review of the Board of Immigration Appeals's decision affirming the immigration judge's denial of his application for withholding of removal. We dismiss the petition.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

FILED

MAY 31 2023

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON GREEN,

Petitioner-Appellant,

v.

WARREN L. MONTGOMERY, Warden,

Respondent-Appellee.

No. 21-56166

D.C. No.

2:18-cv-06443-JLS-SHK

MEMORANDUM*

LYNETTE PENNINGTON,

Petitioner-Appellant,

v.

JANEL ESPINOZA, Acting Warden of the
Central California Women's Facility;
DERRAL G. ADAMS, Warden,

Respondents-Appellees.

No. 21-56174

D.C. No.

2:17-cv-07004-JLS-SHK

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

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

Argued and Submitted March 8, 2023
Pasadena, California

Before: KLEINFELD, WATFORD, and COLLINS, Circuit Judges.

Jason Green and Lynette Pennington appeal the district court's dismissals of their habeas petitions, in which they argue that certain tactics employed by the prosecution violated their rights to due process.

We have jurisdiction pursuant to 28 U.S.C. § 2253. We review the district court's decisions de novo and decide whether the state court's decision falls afoul of the standards set forth in § 2254(d). *Van Lynn v. Farmon*, 347 F.3d 735, 738 (9th Cir. 2003). We decide it does not, so we affirm.

As a preliminary matter, we reject Green and Pennington's argument that the California Court of Appeal's decision "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(2). The court did not base its decision on a factual determination that "the prosecutor's dismissal and refiling was not motivated by the improper purpose of *forum shopping*" (emphasis added). Rather, it decided as a matter of law that a defendant's right to due process does not prohibit the prosecution from forum shopping, "even if the purpose of the refiling was to avoid an adverse ruling."

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 16 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT COTA, Jr.,

Defendant-Appellant.

No. 21-50094

D.C. Nos.

3:11-cr-04153-WQH-10

3:11-cr-04153-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted May 10, 2023**
Pasadena, California

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges.

Robert Cota, Jr. appeals the district court's denial of his motion for a sentence reduction and subsequent motion for reconsideration. This Court has jurisdiction under 28 U.S.C. § 1291 and reviews for abuse of discretion. *United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021); *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134,

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 12 2023

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT COTA, Jr.,

Defendant-Appellant.

No. 21-50094

D.C. Nos.

3:11-cr-04153-WQH-10

3:11-cr-04153-WQH

Southern District of California,
San Diego

ORDER

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges.

The memorandum disposition filed on May 16, 2023 is amended as follows:

On page 2, after the citation sentence that begins with <See *Chavez-Meza v. United States*>, add <Moreover, Cota expressly referred to Dr. Bonham's declaration in his motion for reconsideration, which the court denied.>.

With this amendment, the panel voted to deny the petition for panel rehearing.

The petition for panel rehearing, Dkt. 58, is **DENIED**. No further petitions for rehearing or rehearing en banc will be entertained.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 12 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT COTA, Jr.,

Defendant-Appellant.

No. 21-50094

D.C. Nos.

3:11-cr-04153-WQH-10

3:11-cr-04153-WQH

AMENDED
MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted May 10, 2023**
Pasadena, California

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges.

Robert Cota, Jr. appeals the district court's denial of his motion for a sentence reduction and subsequent motion for reconsideration. This Court has jurisdiction under 28 U.S.C. § 1291 and reviews for abuse of discretion. *United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021); *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134,

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix E

NEW LOCATION

Kleinfeld's Wake

Yes, Andy's still with us:

Following the Bar convention,

the **Tanana Valley Bar Association** will host, roast, and toast
Andy Kleinfeld (aka The Hon. Andrew J. Kleinfeld)

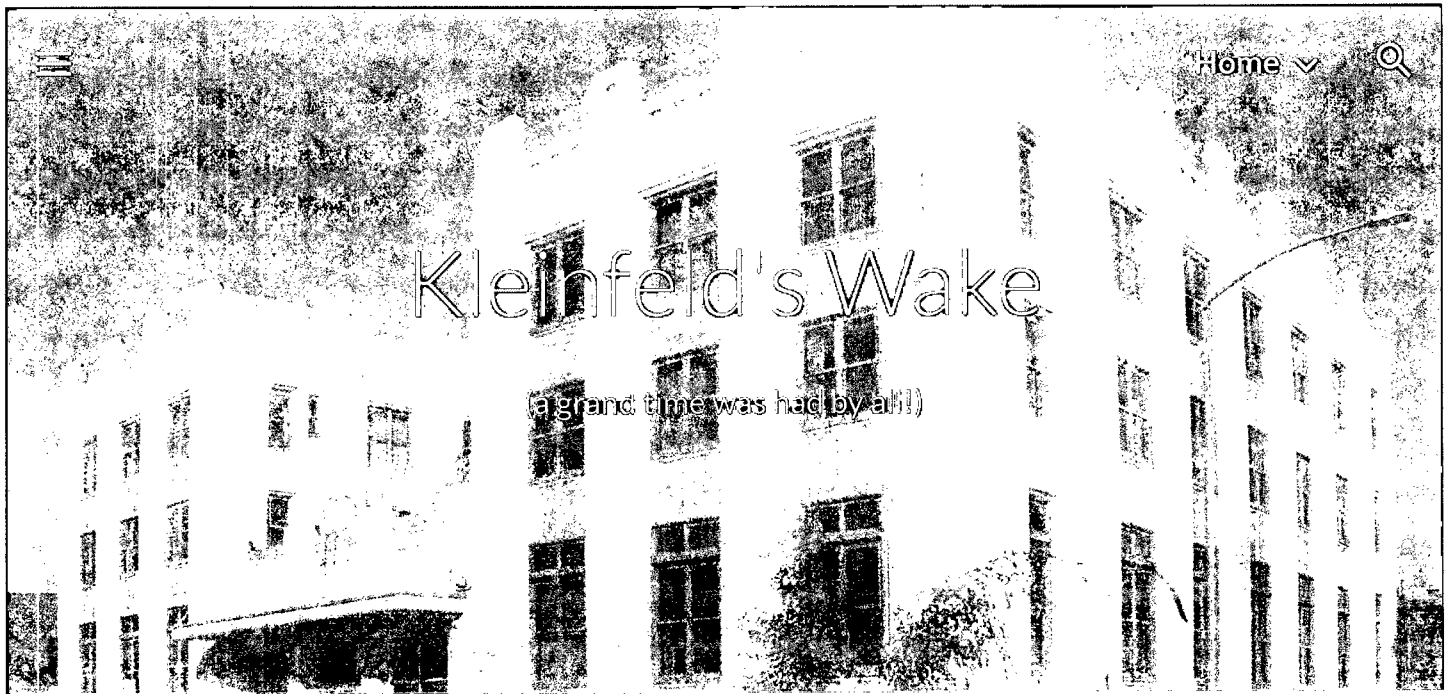
Friday, September 22 | 5:00 PM

**Bobby's Downtown
609 2nd Ave, Fairbanks**



RSVPs requested
at www.kleinfeldswake.com

Appendix E



The Tanana Valley Bar Association hosted, roasted, and toasted

Andy Kleinfeld (aka Hon. Andrew J. Kleinfeld)

Friday September 22, 2023

[Event highlights](#)

Questions?: admin@kleinfeldswake.com



Kleinfeld's Wake

(don't worry, he's still with us and he'll be there!)



The Tanana Valley Bar Association hosts, roasts, and toasts

Andy Kleinfeld (aka Hon. Andrew J. Kleinfeld)

Friday September 22, 2023 (today!)

5:00 p.m. till ? (formal program starts at 5:45 p.m.)

Open-mike session follows formal program - dust off those Kleinfeld stories!

Bobby's Downtown 609 Second Avenue

RSVPs encouraged: ([form at this link](#), or email below)

(please, please RSVP so we can give the venue a head count for food)

Hors d'oeuvres and no-host (cash) bar

Live Zoom feed: [https://alaska.zoom.us](https://alaska.zoom.us/j/87987932976?pwd=eE0zODRubXFoZTA2K2NSSjhoZEJPUT09)

[/j/87987932976?pwd=eE0zODRubXFoZTA2K2NSSjhoZEJPUT09](https://alaska.zoom.us/j/87987932976?pwd=eE0zODRubXFoZTA2K2NSSjhoZEJPUT09)

[Donations welcome.](#)

Questions?: admin@kleinfeldswake.com

Appendix F

United States Court of Appeals for the Ninth Circuit Calendar for Richard H. Chambers US Court of Appeals

May 8-12, 2023

Note: Calendar entries may change up until the hearing date. Please remember to check the docket report for updates. Case synopses are prepared by court staff for the convenience of the reader.

2023-05-08 1:30 pm Courtroom 1, Richard H. Chambers US Court of Appeals, Pasadena

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges

Case No.	Title	Nature	Origin	Time / Side
<u>18-71255</u>	Maria Guardado v. Merrick Garland - Citizens of El Salvador petition for review of the Board of Immigration Appeals' denial of their applications for asylum, withholding of removal, and protection under the Convention Against Torture.	Immigration	BIA	Subm.
<u>20-70469</u>	Elmer Hernandez-Tovar v. Merrick Garland - A citizen of El Salvador petitions for review of the Board of Immigration Appeals' denial of asylum, withholding of removal, and protection under the Convention Against Torture.	Immigration	BIA	Subm.
<u>19-70527</u>	Yan Jin v. Merrick Garland - A citizen of China petitions for review of the Board of Immigration Appeals' denial of asylum and withholding of removal.	Immigration	BIA	15 min
<u>20-50182</u>	USA v. Sylvia Olivas - Two defendants appeal their convictions and sentences for RICO conspiracy and drug-trafficking conspiracy in connection with their participation in the activities of the Santa Ranas Organization. [2:16-cr-00390-DSF-AB-4]	Criminal	C. CA	20 min
<u>21-50270</u>	USA v. Michael Salinas			
<u>22-55614</u>	Roger Parker v. County of Riverside - Appeal from the partial denial of defendants' motion for judgment on the pleadings in an action brought pursuant to 42 U.S.C. 1983 alleging violations of plaintiff's civil rights during his criminal prosecution. [5:21-cv-01280-JGB-KK]	Civil	C. CA	20 min

2023-05-09 9:00 am Courtroom 1, Richard H. Chambers US Court of Appeals, Pasadena

Before: HURWITZ, and R. NELSON, Circuit Judges, and KANE (Pennsylvania Middle), District Judge

Case No.	Title	Nature	Origin	Time / Side
<u>22-50098</u>	USA v. Jose Gonzalez - Appeal from sentence imposed upon revocation of supervised release. [2:09-cr-00466-DSF-9]	Criminal	C. CA	Subm.
<u>22-50207</u>	USA v. Yefei Wen - Appeal from sentence for damaging property owned by a foreign government. [2:21-cr-00339-FLA-1]	Criminal	C. CA	Subm.
<u>22-60007</u>	James Keenan v. Thomas Curtin - James W. Keenan, a chapter 11 debtor, appeals the Bankruptcy Appellate Panel's decision affirming the bankruptcy court's order denying Keenan's motion to enforce the chapter 11 plan discharge against Thomas L. Curtin. [21-1021]	Bankruptcy	S. CA	Subm.
<u>21-70252</u>	Oliva Andrade Olaguiver v. Merrick Garland - A citizen of Mexico challenges an agency decision denying cancellation of removal.	Immigration	BIA	Subm.

2023-05-10 1:30 pm Courtroom 1, Richard H. Chambers US Court of Appeals, Pasadena

Before: KLEINFELD, HURWITZ, and R. NELSON, Circuit Judges

Case No.	Title	Nature	Origin	Time / Side
<u>20-72055</u>	Pedro Cortez-Arreola v. Merrick Garland - A citizen of Mexico petitions for review of the Board of Immigration Appeals' denial of asylum and related relief.	Immigration	BIA	Subm.
<u>21-50094</u>	USA v. Robert Cota, Jr. - Appeal from denial of motion for compassionate release. [3:11-cr-04153-WQH-10]	Criminal	S. CA	Subm.
<u>16-50327</u>	USA v. Ronald Boyajian - Appeal from conviction and sentence for travel with intent to engage in illicit sexual conduct with a minor and related offenses. [2:09-cr-00933-CAS-1]	Criminal	C. CA	20 min
<u>20-50144</u> <u>21-50175</u>	USA v. Yi-Chi Shih - Appeal and government cross-appeal in a case in which a jury convicted a former defense contractor of multiple offenses in connection with exporting semiconductors with military applications to China without the requisite license. [2:18-cr-00050-JAK-1]	Criminal	C. CA	20 min

2023-05-11 9:00 am Courtroom 1, Richard H. Chambers US Court of Appeals, Pasadena

Before: HURWITZ, and R. NELSON, Circuit Judges, and KANE (Pennsylvania Middle), District Judge

Case No.	Title	Nature	Origin	Time / Side
<u>20-50351</u>	USA v. Daniela Ledesma-Saldivar - Appeal from conviction for misdemeanor attempted illegal entry. [3:20-mj-20174-WVG-CAB-1]	Criminal	S. CA	Subm.
<u>22-55421</u>	USA v. Glenn Wiersma - Appeal from denial of petition for writ of coram nobis seeking to vacate 1195 conviction for conspiracy to defraud the government by filing false claims. [2:92-cr-00979-JFW-2]	Habeas	C. CA	10 min
<u>20-56246</u> <u>20-56247</u> <u>20-56299</u>	Joseph Haymore v. USA - Three defendants convicted of wire fraud in connection with a real estate investment fraud scheme, appeal the denial of their 28 U.S.C. 2255 motions seeking to set aside their convictions. [8:19-cv-00361-JLS]	Habeas	C. CA	Subm.
<u>21-15044</u>	Brendan Nasby v. State of Nevada - An appeal from the district court's summary judgment for prison officials in an action challenging Nevada's law library restrictions for prisoners housed in lockdown. [3:17-cv-00447-MMD-CLB]	Pr Non- HC	NV	15 min
<u>21-50218</u>	USA v. Raymond Ghaloustian - Appeal from conviction for possession with intent to distribute methamphetamine and possession of a firearm in furtherance of a drug trafficking crime. [2:19-cr-00714-PA-1]	Criminal	C. CA	15 min
<u>21-50254</u>	USA v. Karen Sarkissian - Appeal from conviction and sentence for health care fraud, conspiracy, and money laundering. [2:13-cr-00719-PSG-4]	Criminal	C. CA	15 min
<u>22-55529</u>	Youngsuk Kim v. Benihana, Inc. - Appeal of a district court order denying a motion to certify a class of California consumers in a diversity putative consumer class action against Benihana, Inc. [5:19-cv-02196-JWH-KK]	Civil	C. CA	15 min

2023-05-12 9:00 am Courtroom 1, Richard H. Chambers US Court of Appeals, Pasadena

Before: HURWITZ, and R. NELSON, Circuit Judges, and KANE (Pennsylvania Middle), District Judge

Case No.	Title	Nature	Origin	Time / Side
<u>21-50306</u>	USA v. James Ball - Appeal from conviction for sending a threatening message. [2:21-cr-00094-VAP-1]	Criminal	C. CA	Subm.
<u>22-55454</u>	Aric McGrary v. Kilolo Kijakazi - Appeal of a decision affirming the Commissioner of Social Security's denial of claimant's application for disability insurance benefits under Title II of the Social Security Act. [8:20-cv-01060-JPR]	Social Security	C. CA	Subm.
<u>20-71485</u> <u>20-73580</u>	Braulio Roman Salgado v. Merrick Garland - A citizen of Mexico challenges a Board of Immigration Appeals' decision reversing a grant of cancellation of removal and agency decisions denying his motions to reopen.	Immigration	BIA	Subm.

Location Addresses

U.S. Court of Appeals for the Ninth Circuit
Richard H. Chambers Court of Appeals Building
125 South Grand Avenue
Pasadena CA 91105

Appendix G

16-50327 USA v. Ronald Boyajian

Share

16-50327 USA v. Ronald Boyajian

May 10, 2023
Courtroom 1, 1st Floor
Pasadena, California
Before: KLEINFELD, HURWITZ, R. NELSON



Pause (k)

5:44 / 43:43

YouTube



20-50144 USA v. Yi-Chi Shih



Share



20-50144 USA v. Yi-Chi Shih



May 10, 2023
Courtroom 1, 1st Floor
Pasadena, California
Before: KLEINFELD, HURWITZ, R. NELSON



1:33 / 52:51



YouTube





20-50182 USA v. Sylvia Olivas



Share



20-50182 USA v. Sylvia Olivas



May 8, 2023
Courtroom 1, 1st Floor
Pasadena, California
Before: KLEINFELD, HURWITZ, R. NELSON



8:41 / 56:26



YouTube



19-70527 Yan Jin v. Merrick Garland



Share



19-70527 Yan Jin v. Merrick Garland

May 8, 2023
Courtroom 1, 1st Floor
Pasadena, California
Before: KLEINFELD, HURWITZ, R. NELSON



8:11 / 41:03



22-55614 Roger Parker v. County of Riverside



Share

22-55614 Roger Parker v. County of Riverside

May 8, 2023
Courtroom 1, 1st Floor
Pasadena, California
Before: KLEINFELD, HURWITZ, R. NELSON



3:56 / 42:32



Appendix H

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 21 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SYLVIA OLIVAS, AKA Sylvia Lee
Gavaldon,

Defendant-Appellant.

No. 20-50182

D.C. No.

2:16-cr-00390-DSF-AB-4

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL SALINAS, AKA Beef, AKA
Just, AKA Skinny, AKA Smiley,

Defendant-Appellant.

No. 21-50270

D.C. No.

2:16-cr-00390-DSF-AB-39

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted May 8, 2023
Pasadena, California

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

Before: HURWITZ, and R. NELSON, Circuit Judges.**

Sylvia Olivas and Michael Salinas appeal convictions under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968, stemming from their involvement in criminal activities of the Canta Ranas gang. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We affirm.

1. The district court erred by admitting expert testimony from Officer Robert Rodriguez, Rene Enriquez, and Drug Enforcement Administration Agent Steve Paris without making express reliability findings. *See United States v. Holguin*, 51 F.4th 841, 855 (9th Cir. 2022). However, the error was harmless because the record clearly demonstrates the reliability of these experts. *See United States v. Ruvalcaba-Garcia*, 923 F.3d 1183, 1190 (9th Cir. 2019) (per curiam).

Reliability can be based on experience. *See, e.g., United States v. Rodriguez*, 971 F.3d 1005, 1018 (9th Cir. 2020) (experience reliably supported testimony about gang “structure and operation”); *United States v. Hankey*, 203 F.3d 1160, 1169–70 (9th Cir. 2000) (“street intelligence” from investigations supported testimony about gang “tenets” including “code of silence”). Similarly, “[o]fficers may testify about their interpretations of ‘commonly used drug [or gang] jargon’ based solely on their

** This case was decided by quorum of the panel. *See* 28 U.S.C. § 46(d); Ninth Circuit General Order 3.2(h).

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 7 2023

FOR THE NINTH CIRCUIT

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

YAN JIN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 19-70527

Agency No. A208-064-305

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted May 8, 2023
Pasadena, California

Before: MURGUIA, Chief Judge,** and HURWITZ and R. NELSON, Circuit
Judges. Dissent by Judge R. Nelson.

Yan Jin, a native and citizen of China, petitions for review of a decision of the
Board of Immigration Appeals (“BIA”) dismissing her appeal from an order of an
immigration judge (“IJ”) denying asylum and withholding of removal. Although

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

** Pursuant to Ninth Circuit General Order 3.2.h, Chief Judge Murguia
was drawn by lot to replace Judge Kleinfeld. Chief Judge Murguia has reviewed the
record and briefs in this case and listened to the oral argument before the prior panel.

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

YI-CHI SHIH, AKA Yugi Shi, AKA
Yichi Shih,

Defendant-Appellee.

No. 20-50144

D.C. Nos.
2:18-cr-00050-
JAK-1
2:18-cr-00050-
JAK

OPINION

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

YI-CHI SHIH, AKA Yugi Shi, AKA
Yichi Shih,

Defendant-Appellant.

No. 21-50175

D.C. No.
2:18-cr-00050-
JAK-1

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Argued and Submitted May 10, 2023
Pasadena, California

Filed July 18, 2023

Before: Andrew D. Hurwitz and Ryan D. Nelson, Circuit
Judges.*

Opinion by Judge Hurwitz

SUMMARY**

Criminal Law

In a case in which a jury returned a guilty verdict on all counts in an indictment charging Yi-Chi Shih with various offenses arising out of the export of monolithic microwave integrated circuits (MMICs) to the People's Republic of China, the panel reversed the district court's judgment of acquittal on one count, affirmed Shih's other convictions, and remanded.

The Export Administration Regulations (EARs), administered by the Department of Commerce's Bureau of Industry and Security, impose controls on certain exports to "serve the national security, foreign policy, nonproliferation of weapons of mass destruction, and other interests of the

* This case was decided by quorum of the panel. *See* 28 U.S.C. § 46(d); Ninth Circuit General Order 3.2(h).

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ROGER WAYNE PARKER,

Plaintiff-Appellee,

v.

COUNTY OF RIVERSIDE; PAUL E.
ZELLERBACK; SEAN LAFFERTY;
TRICIA FRANSDAL; JEFFREY
VAN WAGENEN,

Defendants-Appellants.

No. 22-55614

D.C. No.
5:21-cv-01280-
JGB-KK

OPINION

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Argued and Submitted May 8, 2023
Pasadena, California

Filed August 15, 2023

Before: Andrew D. Hurwitz and Ryan D. Nelson, Circuit
Judges.*

* This case was decided by quorum of the panel. See 28 U.S.C. § 46(d);
Ninth Circuit General Order 3.2(h).