No. 23A112

IN THE SUPREME COURT OF THE UNITED STATES

Ronald Boyajian,
Applicant
v.
United States Court of Appeals for the Ninth Circuit,
Respondent

EMERGENCY APPLICATION FOR STAY

IN NINTH CIRCUIT APPEAL CASE NO. 16-50327

Court action needed before: July 24, 2023

Ronald Boyajian

Ronald Gerard Boyajian
Register no. 33900-112
United States Penitentiary
USP Terre Haute
P.O. Box 33
Terre Haute, Indiana 47808

Applicant, Pro Se

Application for Emergency Stay

Ronald Boyajian, Applicant, requests the Court issue a Stay Order before July 24, pending submission of a Petition for Writ of Mandamus seeking to vacate the an improperly constituted quorum's Memorandum Disposition (affirmance) and ordering the a statutory properly constituted panel to hear his only appeal of right. see Memorandum Disposition, unpublished, Dkt. 222-1, attached at Appendix A.

Mr. Boyajian needs a stay by July 24 to preclude the expiration of his rights to seek rehearing (being notified on July 10 that counsel will not pursue and thus waives over Mr. Boyajian's objection), and to preclude issuance of the mandate July 30, pending his submission of a Petition for Writ of Mandamus which the Court now on summer recess would not entertain until the Fall.

The need for the Extraordinary Writ turns on an unlawfully constituted quorum of two judges who excluded the third member of their panel a judge whose vote is "known", being the excluded judge's vote is bound by law, requiring vacating Mr. Boyajian's judgment. Having removed the impeding judge, the quorum affirmed judgment with 70-year sentence in a June 9 Memorandum Disposition.

An appellant in Mr. Boyajian's position would as a rule seek rehearing / hearing *en banc* as a cure to the an improperly constituted quorum, with prospect that more than two judge's would review the claims. But on July 10, two days ago, counsel notified Mr. Boyajian she will not seek rehearing (time to petition for rehearing expires July 24). Consequently, Mr. Boyajian is left to solicit the Court via Petition for Writ of Mandamus to cure an unlawful quorum by vacating the Memorandum Disposition and ordering a properly constituted panel.

Appearance of Impropriety

On May 10, 2023, at oral argument and, again, on June 9 a quorum of two judges deprived Mr. Boyajian the participation of the third panel member, Judge Andrew Kleinfeld (Fairbanks, Alaska). Judge Kleinfeld being the majority judge in the precedent requiring unconditionally vacating judgment and controlling Mr. Boyajian's case is therefore a judge whose vote may be considered as "known" as he is bound as a matter of law to follow himself.

By engineering an unlawfully invoked quorum excluding Judge Kleinfeld and his "known" vote requiring vacating judgment, the two judges removed a powerful if not insurmountable impediment to affirmance. And to further insulate that result, the invalid quorum buried its decision in an unpublished sparely worded Memorandum lacking the kind of cogent reasoning and factual recitation useful and even necessary to obtain review. Although its somewhat tedious to follow, Mr. Boyajian next walks through the essentials of the artifice deployed to invoke the

quorum which in its process and resulting affirmance violated Mr. Boyajian's Fifth Amendment right to Due Process of Law and his Constitutional right to Equal Protection of the laws. The appearance of impropriety arises from the court's manipulation of the electoral composition of the panel in a manner impacting the outcome, as accomplished here by excluding a known vote.

A scant four years ago, the Court forbad the Ninth Circuit from electoral manipulations impactful of decisions. See *Yovino v. Rizo*, 139 S. Ct. 706 (2019) (e.g., see p. __ "This justification is inconsistent with well-established judicial practice, federal statutory law; and judicial precedent", p. __" what the Ninth Circuit did here was unlawful").

Two decades earlier, as it recalled in *Yovino*, the Court had admonished Ninth Circuit commission of irregularities reminiscent of Mr. Boyajian's present predicament, requiring the vacating of appellate decisions reached by an improperly constituted panel which though it appeared to provide a 'quorum' nonetheless violated principles fundamental to operation and organization of the judiciary. See *Nguyen v. United States*, 539 U.S. 69, __ (2003)(footnote omitted): that was disapproved

> Second, the statutory authority for courts of appeals to sit in panels, 28 U. S. C. § 46(b), requires the inclusion of at least three judges in the first instance. Fn. 16 As the Second Circuit has noted, Congress apparently enacted § 46(b) in part "to curtail the prior practice under which some circuits were routinely assigning some cases to two-judge panels." *Murray* v. *National Broadcasting Co.*, 35 F. 3d 45, 47 (1994). It is "clear that the statute was not intended to preclude disposition by a panel of two judges in the event that one member of a three-judge panel to which the appeal is assigned becomes unable to participate," *ibid.*, but it is less clear whether the quorum statute offers postjudgment absolution for the participation of a judge who was not otherwise competent to be part of the panel under § 292(a).
>
> Thus, although the two Article III judges who took part in the decision of petitioners' appeals would have constituted a quorum if the original panel had been properly created, it is at least highly doubtful whether they had any authority to serve by themselves as a panel. In light of that doubt, it is appropriate to return these cases to the Ninth Circuit for fresh consideration of petitioners' appeals by a properly constituted panel organized "comformably to the requirements of the statute."
>
> Fn. 16. Title 28 U. S. C. § 46(b) provides, in pertinent part: "In each circuit the court may authorize the hearing and determination of cases and controversies by separate panels, each consisting of three judges,

at least a majority of whom shall be judges of that court, unless such judges cannot sit because recused or disqualified . . . ."

The impropriety and irregularities with Mr. Boyajian's quorum can be examined beginning from the Memorandum Disposition itself, which on its title page alleges via invocation of Ninth Circuit General Order 3.2(h) that fellow panelist (Judge Andrew Kleinfeld) became deceased, disabled, recused, or retired *after* the case was submitted at conclusion of oral argument on May 10, 2023. These are not the facts. The facts do not support a quorum:

A. FACT -- Judge Kleinfeld is not deceased, disabled, recused, or retired.

Records archived on the Ninth Circuit public website show Judge Kleinfeld signing several Memorandum Dispositions throughout May, June and July of 2023.

B. FACT -- Judge Kleinfeld became unavailable *before* case was submitted.

Records archived on the Ninth Circuit website show Judge Kleinfeld was absent from all hearings (oral arguments) on May 8, fully two days *preceding* his absence from Applicant's May 10 oral argument.

When, as here, *prior* to the submission of a case, an assigned merits panel judge cannot fulfill their obligations, the court substitutes another judge to reconstitute the three-judge panel. The court did not provide a substitute judge.

By all measures, this two-judge quorum was unlawfully constituted.

The quorum excluded Judge Kleinfeld with his precedential holding in *Pepe*, and thus excluded a 'known' vote bound by law to vacate Mr. Boyajian's judgment

First, the appearance is the quorum *excluded* Judge Kleinfeld. The quorum judges elected not to schedule oral argument on a date when Judge Kleinfeld located in Fairbanks, Alaska, would be present and influencing the proceedings. Hearing could have been scheduled in May, June, or July when Ninth Circuit website public records show Judge Kleinfeld is active signing case dispositions.[1]

[1] As an illustrative example of Judge Kleinfeld's possible availability for his rescheduled participation, even on the same three-judge panel, on May 16 (six days after he missed the May 10 oral argument before the quorum in Mr. Boyajian's case) Judge Kleinfeld signed a Memorandum Disposition with the two 'quorum' judges, see *United States v. Cota* Ninth Circuit Case No. 21-50094. Notably, in the *Cota* case, Judge Kleinfeld again on July 12 joined Mr. Boyajian's same two 'quorum' judges in signing an Amendment to their above referenced May 16 three-judge panel Memorandum Disposition.

Crucially, the quorum in excluding Judge Kleinfeld removed the majority judge who decided *United States v. Michael Pepe, 895 F.3d 679 (9th Cir. 2018). Pepe* is a precedential decision holding that relief for *Pepe* error is the unconditional vacating of judgment, that is, relief is *not* subject to harmless error review. Mr. Boyajian presents a claim informed and controlled by *Pepe's* holding. Therefore, Judge Kleinfeld's participation and influence on the panel is of paramount importance to the rendering of justice for Mr. Boyajian. Judge Kleinfeld must stand for, as a matter of law that precedent including his own be followed, unconditionally vacating the conviction on Mr. Boyajian's principal charge which would unravel the entire judgment.

For the reasons stated, Judge Kleinfeld presents an obvious impediment to affirmance. The improperly constituted quorum appear to have used scheduling conflict or some other means to push away the one judge of vital importance to the appeal and whose participating, influencing, and vote would powerfully impact any resulting decision does not lend the appearance of a fair and impartial judiciary.

Mr. Boyajian tried to obtain a remedy. He asked counsel --to no avail-- to take the necessary steps to remedy the broken panel. He submitted requests to Ninth Circuit Chief Judge Murgia and Circuit Executive Yoong, respectively, for an investigation into exclusion of Judge Kleinfeld from his panel. Dkt. __, attached at Appendix B. He filed a pro se "Objection To Oral Argument Before A Broken Panel That Excluded Judge Kleinfeld Deprives Due Process, Equal Protection And Severely Prejudices His Appeal." Dkt. 224, attached at Appendix C (see p.1-5, and p. 12 (autonomy rights confer standing to object pro per while represented by counsel) pertinent to this Application).

Mr. Boyajian proffers this Application and his work product on this subject in Appendices B. and C. for the scope and direction of the Petition for Writ of Mandamus he would prepare and submit under the requested Stay Order.

Mr. Boyajian has no other available remedy

Mr. Boyajian is pressed to ask the Court to intervene because counsel has foreclosed and blocked a petition for rehearing. But Mr. Boyajian's counsel on July 10 notified she will not seek rehearing of his case.[2] But neither does counsel

[2] This is not a situation where Applicant could persuade or negotiate with counsel to seek rehearing. Already, counsel's decision to waive rehearing has baked into that decision counsel's refusal to correct her own and government's critical errors of fact and misapplications of law and to object to and resolve the broken two-judge panel on May 10. On May 26 and May 27 Applicant TO NO AVAIL requested, in writing, counsel correct counsel's factual and legal errors and the Government's errors,

withdraw indicating rather that certiorari should be filed by September 7. As always, counsel refuses to speak with Mr. Boyajian.[3]

Mr. Boyajian is *not* in a situation where he has the benefit of representation by a Federal Defender Office or Community Defender Organization which would straightaway seek relief form the improperly constituted nonstatutory quorum and its fruits through at least petition for rehearing, likely seeking hearing *en banc*, possibly even pressing *Nguyen* as precedential. Defender Organizations would certainly also pursue rehearing for its quintessential preparation of the record to obtain a factually correct, well-reasoned Opinion ahead of seeking certiorari review.

Conclusion

The Stay should be granted before July 24 pending filing of the Petition for Writ of Mandamus, as the Court is likely to find under *Nguyen* that the Ninth Circuit was obliged to accommodate Judge Kleinfeld's participation, or provide a properly constituted statutory three-judge panel. The Court could act to preserve the fairness, integrity, and public reputation of judiciary, as here it's indisputable the proceedings having been impaired by irregularities in the decomposition of the panel. Upon the filing of a Petition, the Court could, like in Nguyen, vacate the improperly constituted quorum's Memorandum Disposition and order a properly constituted statutory three-judge panel to hear Mr. Boyajian's appeal.

Dated: July 12, 2023

Respectfully Submitted,

Ronald Boyajian,
Register no. 33900-112
USP Terre Haute
P.O. Box 33
Terre Haute, Indiana 47808

Applicant, Pro Se

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requesting she correct the record *and act to redeem the broken panel* explaining the vital importance of Judge Kleinfeld to his appeal.

[3] Counsel's blockade is prejudicial, harmful, effectively barricades Applicant. Whereas USP Terre Haute permits access to email and phones including legal calls and attorney client conferences conducted in-person as well as virtually over Zoom videoconferencing, counsel restricts all contact to postal mail which has a four-week letter cycle. Counsel's failure to pick up legal mail prompted the Postal Service on several occasions to return Applicant's letters to counsel as nondeliverable.

United States Supreme Court case no. 23-_____

Motion to Proceed *In Forma Pauperis*

I, Ronald Boyajian, appearing in pro per as the Applicant / Petitioner, move to proceed *in forma pauperis* before this Court.

I am the defendant-appellant in Ninth Circuit Court of Appeals case 16-50327, in which federal criminal appeal case I am *in forma pauperis* and represented by court-appointed CJA panel attorney Karen Landau. See Dkt. Entry Nos. 131-2 court appointment, 133 Criminal Justice Act voucher created for Karen Landau, Esq.

I have been designated *in forma pauperis* with attendant provision of Criminal Justice Act (18 U.S.C. § 3006A) services in the Central District of California, Western District, case 2:09-CR-00933-CAS, from 2013 through 2016 followed in Ninth Circuit Court of Appeals from 2016 to present.

I have been held incarcerated under maximum restrictive federal detention and prison continuously for over 14 years, from February 2009 to present.

Dated: July 12, 2023

Respectfully submitted,

Ronald Boyajian

Proof of Service

I, Ronald Boyajian, declare that the foregoing Emergency Application for Stay and any attachments was placed in U.S. Mail for delivery to:

Associate Justice Elena Kagan
c/o Office Of The Clerk
1 First Street N.E.
Supreme Court Of The United States
Washington, D. C. 20543

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

Elizabeth B. Prelogar
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Martin Estrada, U.S. Attorney
Central District of California
312 North Spring Street
Suite 1200
Los Angeles, California 90012

Karen Landau, Esq.
Law Office of Karen L. Landau P.C.
460 Center St, #6935
Moraga, CA 94570-6935

Dated: July 12, 2023

Ronald Boyajian

APPENDIX

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Appendix A

NOT FOR PUBLICATION

FILED

JUN 9 2023

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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.

Appendix B

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

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

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

June 15, 2023

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

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 Murgia:

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.

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:

Case no.	Parties	Submitted	Decided
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 imaging 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

> 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,

Ronald Boyajian

Ronald G. Boyajian
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United States Penitentiary
USP Terre Haute
P.O. Box 33
Terre Haute, IN 47808

June 15, 2023

Susan Y. Soong, Circuit Executive
Circuit Executive
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Cc: Chief Judge Mary Murgia

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

Dear Circuit Executive Susan Yoong:

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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.

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:

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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 imaging 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

> 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.

Cordially,

Ronald Boyajian

Appendix C

No. 16-50327

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. RONALD GERARD BOYAJIAN, Defendant-Appellant.	C.A. No. 16-50327 D.C. No. CR 09-933-CAS (Central Dist. Cal.) **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**

Ronald Boyajian, defendant-appellant in the above captioned case, appearing pro se, who is constructively unrepresented[1] 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 advance[2] 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. <u>The Court's exclusion of Judge Kleinfeld severely prejudiced Mr. Boyajian's appeal and thus further violated his fundamental rights</u>

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. <u>Invocation of Autonomy Rights for Standing to Object</u>

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,

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

Ronald Boyajian

Ronald G. Boyajian
Appellant

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

- - -

HONORABLE CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

UNITED STATES OF AMERICA, PLAINTIFF, VS. RONALD GERARD BOYAJIAN, DEFENDANT.	CASE NO.: CR 09-933(A)-CAS

REPORTER'S TRANSCRIPT OF PROCEEDINGS
(P.M. SESSION)

THURSDAY, FEBRUARY 18, 2016

LOS ANGELES, CALIFORNIA

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RONALD BOYAJIAN, PRO SE

ALSO PRESENT:

GEORGE BUEHLER, ESQ.
(STANDBY COUNSEL)

CHRISTINA GITS, PARALEGAL

JOEL WYENN, INVESTIGATOR

INDEX

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

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

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

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

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

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

MR. BOYAJIAN: Okay.

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

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

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

I mean, is there something more?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

is correct about that.

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

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

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

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

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

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

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

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

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

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

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

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