

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM FRENCH ANDERSON AND
KATHRYN D. ANDERSON,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Tenth Circuit**

PETITION FOR WRIT OF CERTIORARI

Charles D. Harrison
Eagleton, Eagleton & Harrison, Inc.
320 S. Boston Avenue, Suite 1700
Tulsa, OK 74103-4706
Tel.: (918) 584-0462
Fax: (918) 584-3724
charrison@eehlaw.com
Counsel for Petitioners

QUESTION PRESENTED

American intellectual property and inventions are being stolen and taken to foreign countries at catastrophic rates, an estimated \$600 billion each year. Petitioner William French Anderson (“Anderson”) is a pioneer geneticist who created the field of gene therapy. He invented and patented a revolutionary cancer drug that treats the damaging side effects of radiation and chemotherapy, which greatly improves the cure rates for all types of cancer. His invention has been valued at \$9 billion. It was stolen and taken to China using a false criminal claim as the vehicle to do it. Anderson exercised his Sixth Amendment right to counsel, and the Tenth Circuit Court of Appeals became the first court in the country to rule that Anderson’s attorney fees associated with the theft of his invention were not deductible business expenses.

The question presented is:

Whether Anderson’s attorney fees incurred in defense of a false criminal claim that was brought by his former business partner turned competitor and false accuser as the vehicle to steal his invention, trade secrets and intellectual property on a \$9 billion cancer drug; to remove him (and silence him) from the business competition to bring this cancer drug to market; and to take his invention, trade secrets and intellectual property to China in violation of the Economic Espionage Act, are deductible business expenses under 26 U.S.C. § 162(a) and Commissioner v. Tellier, 383 U.S. 687 (1966).

**PARTIES TO THE PROCEEDING
AND RULE 29.6 STATEMENT**

Petitioners William French Anderson and Kathryn D. Anderson were petitioners in the U.S. Tax Court proceeding and the appellants in the court of appeals proceedings.

Respondent Commissioner of Internal Revenue was the respondent in the U.S. Tax Court proceeding and the appellee in the court of appeals proceedings.

Because no petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

Statement of Related Proceedings

This case is directly related to the following proceedings:

Anderson v. Commissioner, United States Tax Court proceeding, No. 23789-16, Judgment entered on June 29, 2023.

Petition to Vacate the Conviction of William French Anderson based on new scientific evidence in the Superior Court of California, County of Los Angeles County, Case No. BA255257, January 29, 2024. (People of the State of California v. Anderson)

Anderson v. Commissioner, Tenth Circuit Court of Appeals proceeding, No. 23-9002, Judgment entered on May 17, 2024.

Anderson v. Commissioner, Tenth Circuit Court of Appeals, No. 23-9002, Order entered July 1, 2024.

TABLE OF CONTENTS

	Page
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT	4
A. Factual and Legal Background	6
B. Procedural History	8
REASONS FOR GRANTING THE PETITION	11
I. The Tenth Circuit’s Holding on Legal Fees Conflicts With This Court’s Precedents	12
II. The Tenth Circuit’s Holding Clashes With the Sixth Amendment and 26 U.S.C. § 162(a)	15
III. The Question of Congress’s Power to Stop the Theft of American Inventions and Trade Secrets is Exceptionally Important and Warrants Review.....	16
CONCLUSION.....	18

TABLE OF APPENDICES

Appendix A: Order and Judgment, United States Court of Appeals for the Tenth Circuit, William French Anderson et al. v. Commissioner of Internal Revenue, No. 23-9002 (May 17, 2024)	App. 1
Appendix B: Order and Decision, United States Tax Court, William French Anderson et al. v. Commissioner of Internal Revenue, No. 23789-16 (June 29, 2023)	App. 12
Appendix C: Order, United States Court of Appeals for the Tenth Circuit, William French Anderson et al. v. Commissioner of Internal Revenue, No. 23-9002 (July 1, 2024).....	App. 14
Appendix D: Petition to Set Aside Conviction (Penal Code section 1473.7), Superior Court of California, County of Los Angeles, People et al. v. William French Anderson et al., No. BA255257 (January 29, 2024)	App. 16

TABLE OF AUTHORITIES

CASES

<i>Chandler v. Fretag</i> , 348 U.S. 3 (1954)	12, 16
<i>Commissioner v. Heininger</i> , 320 U.S. 467 (1943).....	14
<i>Commissioner v. Tellier</i> , 383 U.S. 687 (1966)	i, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17
<i>Deputy v. du Pont</i> , 308 U.S. 488 (1940)	14
<i>Gideon v. Wainright</i> , 372 U.S. 335 (1963)	12, 16
<i>Kornhauser v. United States</i> , 276 U.S. 145 (1928)	4, 11, 14
<i>United States v. Gilmore</i> , 372 U.S. 39 (1963).....	12
<i>Welch v. Helvering</i> , 290 U.S. 111 (1933).....	13

CONSTITUTIONAL AND STATUTORY AUTHORITIES

U.S. Const., Amend VI.....	i, 1, 5, 8, 10, 11, 15, 16
18 U.S.C. § 1831(a).....	2, 4, 5, 7, 8, 9, 10, 11, 12, 15, 16, 17, 18
26 U.S.C. § 162(a)	i, 2, 4, 5, 7, 8, 10, 11, 12, 13, 14, 15, 18

OTHER AUTHORITIES

National Bureau of Asian Research (2013). <i>Commission on the Theft of American Intellectual Property (IP Commission) Report 2017. The Commission on the Theft of American Intellectual Property</i>	4
Christopher Wray. “The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States.” China’s Attempt to Influence United States Institutions. Hudson Institute, July 7, 2020, Washington, DC	9, 18

PETITION FOR WRIT OF CERTIORARI

William French Anderson and Kathryn D. Anderson respectfully petition for a writ of certiorari to review the judgment of the Tenth Circuit in this case.

OPINIONS BELOW

The Tenth Circuit's Opinion is reported at 2024 U.S. App. LEXIS 11966 (10th Cir., May 17, 2024), No. 23-9002, and reproduced at App. A.

The opinion of the United States Tax Court is reported at T.C. Memo 2023-42, No. 23789-16 and reproduced at App. B.

JURISDICTION

On May 17, 2024, the 10th Circuit Court of Appeals entered Judgment. App. A. A timely petition for rehearing was denied on July 1, 2024. App. C. Judges: Tymkovich, Bacharach and Carson. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have

been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The first federal statute involved for review in this case is 26 U.S.C. § 162(a), which provides:

- (a) “In general. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, ...”

The second federal statute involved for review in this case is the Economic Espionage Act, 18 U.S.C. § 1831(a), which provides:

- (a) In general. Whoever, intending or knowing that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, knowingly-
 - (1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret;
 - (2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;
 - (3) receives, buys, or possesses a trade secret, knowing the same to have been stolen or

appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in any of paragraphs (1) through (3); or

(5) conspires with one or more other persons to commit any offense described in any of paragraphs (1) through (3), and one or more of such persons do any act to effect the object of the conspiracy, shall, except as provided in subsection (b), be fined not more than \$5,000,000 or imprisoned not more than 15 years, or both.

STATEMENT

This case presents a question of exceptional importance concerning Congressional mandates in response to the epic theft of American trade secrets, intellectual property and inventions which are being stolen and taken to foreign countries at catastrophic and debilitating rates, an estimated \$600 billion in such theft losses to American businesses each year and the loss of millions of jobs. Source: National Bureau of Asian Research (2013). *Commission on the Theft of American Intellectual Property (IP Commission) Report* 2017. Such epic thefts violate the Economic Espionage Act, 18 U.S.C. § 1831(a). American businesses are authorized by Congress to protect themselves from such theft through deductible business expenses under 26 U.S.C. § 162(a), which includes attorney fees. This Court has consistently upheld the deduction of such attorney fee business expenses under 26 U.S.C. § 162(a) in Commissioner v. Tellier, 383 U.S. 687 (1966), which represents 96 years of judicial precedent by the Court going back to Kornhauser v. United States, 276 U.S. 145 (1928). The Tenth Circuit's decision shatters that judicial consensus. The Tenth Circuit (App. A) has held for the first time ever that attorney fees paid by pioneer geneticist and inventor Anderson in carrying on his gene therapy business to defend a false criminal claim brought by a former business partner turned competitor and false accuser as the "vehicle" to steal Anderson's cancer drug invention, trade secrets and intellectual property on a \$9 billion cancer drug; to remove him from the business competition to bring this drug to market; and to illegally take them to China for

development there, are not deductible business expenses under 26 U.S.C. § 162(a). The Tenth Circuit ignored forensic and scientific evidence in precluding American inventors and businesses from protecting their inventions, trade secrets and intellectual property and condones the theft thereof, contrary to the Congressional Mandates of 26 U.S.C. § 162(a) and the Economic Espionage Act, 18 U.S.C. § 1831(a); the Sixth Amendment; and this Court's Precedent in Commissioner v. Tellier, 383 U.S. 687 (1966).

This case provides a clean and timely vehicle for the Court to solidify the long-established norm of federal income taxation that expenses that arise in carrying on a trade or business are deductible business expenses in the context of the epic theft of American inventions, trade secrets and intellectual property that is threatening the viability of American businesses and the American economy, and the quality of life of the general public.

The time to do so is now, to provide certainty to families and businesses arranging their financial and business futures and to deal with the constitutional clash presented here by the Tenth Circuit's decision, with the Sixth Amendment and the epic theft of inventions, trade secrets and intellectual property that represents the greatest wealth transfer in human history, according to the FBI. The petition should be granted.

A. Factual and Legal Background

Petitioner William French Anderson (“Anderson”) is a pioneer geneticist, and creator of the field of gene therapy to cure disease, one of the most important developments in medicine in this century. He is known as the father of gene therapy, so recognized because he performed the world’s first gene therapy successful treatment on a four-year-old girl, saving her life from imminent death. He has been in the gene therapy business his entire professional life, has written over 400 professional articles on the subject, and holds 35 patents related to gene therapy. He has been a renowned scientist at the National Institutes of Health, owned biomedical companies introducing gene therapy products, and was a Professor of Medicine and Director of the Gene Therapy Laboratories at the University of Southern California Keck School of Medicine. Anderson invented, patented, and had the exclusive right to bring to market a revolutionary cancer drug that treats the damaging side effects of radiation and chemotherapy in cancer patient treatments. Anderson’s invention allows much greater dosages of each treatment to be used, without side effects, greatly increasing the cure rates for all types of cancer. It is the only known drug that can do this. Anderson’s drug has been valued at \$9 billion, but the side effects and suffering it can relieve for millions of cancer patients is beyond measurable value. During the years relevant to this case, Petitioner Kathryn D. Anderson was a renowned pediatric surgeon with Childrens Medical Center and Professor of Surgery at the University of Southern California Keck School of Medicine. She

assisted her husband Anderson in his work. They have devoted their lives to medicine.

Anderson's revolutionary cancer drug, trade secrets and intellectual property were stolen by a former business partner turned competitor and false accuser who used the "vehicle" of a false criminal claim to steal his \$9 billion cancer drug, trade secrets, and intellectual property thereon, to remove Anderson (and silence him) from the business competition to bring this cancer drug to market, and take them to China for development there in violation of the Economic Espionage Act, 18 U.S.C. § 1831(a). In the course of bringing this cancer drug to market, Anderson defended this false claim and deducted his attorney fees on his joint federal income tax returns for 2013 and 2014 pursuant to 26 U.S.C. § 162(a); 18 U.S.C. § 1831(a) and Commissioner v. Tellier, 383 U.S. 687 (1966).

Anderson pioneered the discovery and invention of this cancer drug (known as IL-12) for the relief of pain and suffering from the damaging side effects of radiation and chemotherapy, and to increase the cure rates in all cancer treatments, but it also has enormous military applications. It is the only known drug that can save a large animal after lethal radiation exposure. Thus, in addition to its role in medicine in relieving pain and suffering and increasing the cure rates in all types of cancer, it could be used as a treatment to save soldiers and civilians after radiation exposure in a nuclear attack.

B. Procedural History

The Internal Revenue Service (“IRS”) disallowed the Andersons’ 2013 and 2014 attorney fee business expense deductions and sent the Andersons a tax bill, which they appealed to the Tax Court by filing this action. The Tax Court upheld the IRS’ disallowance of their business expense deductions. The Andersons appealed the Tax Court decision to the Tenth Circuit. The Tenth Circuit Court of Appeals then affirmed the ruling by the United States Tax Court that the attorney fees paid by geneticist and inventor Anderson, to defend the false criminal claim brought by a former business partner turned competitor and false accuser, as the vehicle to steal his cancer drug invention, trade secrets and intellectual property thereon; to remove him (and silence him) from the business competition to bring this drug to market; and to take them to China in violation of the Economic Espionage Act; were not deductible business expenses, even though the false claim arose in and was defended in the course of carrying on his gene therapy business and the drug’s development. The Tenth Circuit’s ruling is erroneous and contrary to 26 U.S.C. § 162(a); the Economic Espionage Act, 18 U.S.C. § 1831(a); the Sixth Amendment; and Commissioner v. Tellier, 383 U.S. 687 (1966), holding such expenses are deductible business expenses. Tellier, Id. has been cited approximately 1000 times and is a bedrock of American jurisprudence. The attorney fees in this case were paid in defense of a false claim brought by Anderson’s former business partner turned competitor and false accuser as the vehicle: to steal Anderson’s cancer drug invention, trade secrets and intellectual

property on the \$9 billion cancer treatment drug that he invented; to remove Anderson (and silence him) from the global business competition to bring that cancer drug to market in America; and to unlawfully take his cancer drug, trade secrets and intellectual property to China for development there in violation of the Economic Espionage Act, 18 U.S.C. § 1831(a). These same facts are also involved in the related case in the Superior Court of California, App. D, the Petition to Vacate the Conviction of William French Anderson based on new scientific evidence. Scientific and forensic evidence was also ignored by the Tax Court and the Tenth Circuit. The origin of the false criminal claim is Anderson's gene therapy business and his development of the revolutionary cancer treatment drug IL-12 and the theft of that drug and its illegal taking to China.

The U.S. Commission on the Theft of American Intellectual Property ("Commission") has determined that American businesses such as Anderson's lose up to \$600 billion each year in intellectual property, trade secret and invention theft, and that such epic theft is crippling the innovation and viability of American businesses, to the detriment of the American economy and public. The Commission has further determined: that such theft has cost American businesses millions of jobs and that the scale of such theft is so breathtaking that it threatens the very economy of the United States. Cite: Update to the IP Commission Report (February 2017). FBI Director Christopher Wray has further stated publicly that such theft represents the greatest wealth transfer in human history. The Tenth Circuit's decision denying the business expense deduction to

Anderson for his attorney fees in this case to defend a false claim that arose in his gene therapy business, defending against the theft of his invention and trade secrets, while he was actively carrying on that business was wrong. The claim was brought by a former business partner turned competitor and false accuser as the “vehicle” to steal his revolutionary cancer drug invention, trade secrets and intellectual property; to remove him from the business competition to bring this drug to market; and to illegally take them to China. The Tenth Circuit ruling is contrary to Commissioner v. Tellier, 383 U.S. 687 (1966); the Sixth Amendment; 26 U.S.C. § 162(a); and the Economic Espionage Act, 18 U.S.C. § 1831(a). This case is the first court anywhere to erroneously condone the epic theft of American inventions, trade secrets, and intellectual property by erroneously condoning the theft of Anderson’s cancer drug invention, trade secrets and intellectual property. The Tenth Circuit’s decision further improperly prohibits American inventors and businesses from defending themselves, as Anderson did here, against such epic theft.

The basis for federal jurisdiction in the court of first instance is 26 U.S.C. § 6213(a).

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because the Tenth Circuit Court of Appeals erroneously decided an important question of federal law that is of imperative public importance and one that is contrary to this Court's precedent in Commissioner v. Tellier, 383 U.S. 687 (1966); the Sixth Amendment; 26 U.S.C. § 162(a), and the Economic Espionage Act, 18 U.S.C. § 1831(a). American inventions, trade secrets and intellectual property are being stolen at catastrophic and debilitating rates from American businesses, an estimated \$600 billion each year. This epic theft is illegally crippling the viability of American businesses, the American economy, and eroding America's innovative and competitive edge in the global economy, to the detriment of all citizens. Congress has enacted laws that provide for the protection of American businesses, their inventions, their trade secrets, and their intellectual property from theft so that they can be brought to market for the benefit of the general public. However, the Tenth Circuit in this case, is the first court in the country to shatter 96 years of judicial consensus of this Court dating back to Kornhauser v. United States, 276 U.S. 145, 153 (1928), and sweeps away the foregoing Congressional and constitutional mandates. It prohibits American businesses from protecting themselves from such epic theft, and erroneously condones it. This case accordingly presents federal and constitutional questions of the first order, one that warrants the Court's review.

**I. The Tenth Circuit's Holding on Legal Fees
Conflicts With This Court's Precedents**

In Commissioner v. Tellier, 383 U.S. 687 (1966), this Court held that attorney fees incurred in defending a criminal claim that was connected to the defendant's trade or business were deductible business expenses under 26 U.S.C. § 162(a). Anderson's attorney fees in defense of a false criminal claim that was brought by his former business partner turned competitor and false accuser that was the vehicle used to steal his cancer drug invention, trade secrets and intellectual property thereon; to remove him (and silence him) from the business competition to bring his cancer drug invention to market; and to illegally take them to China in violation of the Economic Espionage Act, 18 U.S.C. § 1831(a) are directly related to and incurred while actively carrying on his gene therapy business to bring his cancer drug invention to market.

The Tenth Circuit failed to consider the supporting scientific and forensic evidence and has taken a public policy approach to the denial of Anderson's attorney fee deductions under 26 U.S.C. § 162(a) that is contrary to the judicial precedents of this Court. "No public policy is offended when a man faced with serious criminal charges employs a lawyer to help in his defense." That is not "proscribed conduct." It is his constitutional right. Tellier, 383 U.S. at 695 citing Chandler v. Fretag, 348 U.S. 3, United States v. Gilmore, 372 U.S. 39 (1963) and Gideon v. Wainright, 372 U.S. 335 (1963).

There is no question that the attorney fee expenses deducted by Anderson were expenses of his lifelong gene therapy business that were incurred in bringing to market his revolutionary and patented cancer treatment drug invention. The fact that the false criminal claim was brought against him by his former business partner turned competitor and false accuser who stole his cancer treatment drug using the false claim as the vehicle to steal it clearly qualifies Anderson's legal fees paid in defense of that false claim as "expenses paid or incurred ... in carrying on a trade or business" under § 162(a). Tellier, 383 U.S. at 689.

Similarly, there can be no question that Anderson's legal expenses in this case were ordinary and necessary business expenses within the meaning of § 162(a), which only imposes the minimal requirement that the expenses be appropriate and helpful to Anderson's gene therapy business. This Court's precedents have established that since Anderson's legal fees were incurred in the defense of the false criminal claim as the vehicle to steal his invention, they are ordinary and necessary business expenses. Tellier, 383 U.S. at 690. This is true even though such a criminal action may happen only once in a lifetime. Tellier, 383 U.S. at 690 citing Welch v. Helvering, 290 U.S. 111, 114 (1933).

In Commissioner v. Tellier, 383 U.S. 687 (1966), this Court went on to expressly hold that Congress neither expressly nor implicitly denies a deduction under § 162(a) for legal expenses incurred in the unsuccessful defense of a criminal prosecution. In upholding the deduction of attorney fees identical to those in this case,

this Court stated that to deny such a deduction under § 162(a) would be a distortion of the income tax laws to serve a purpose that was neither intended nor designed by Congress. Tellier, 383 U.S. at 695.

Similarly, in Commissioner v. Heininger, 320 U.S. 467 (1943), this Court upheld deductions claimed by a dentist for legal fees incurred in unsuccessfully defending against an administrative fraud order by the Postmaster General. The case before this Court involving Anderson, a geneticist, is no different.

In Kornhauser v. United States, 276 U.S. 145, 153 (1928), this Court held that where the origin of the claim against an individual found its source in his business activities, the legal expense is business related and is a deductible business expense under § 215(a) of the Revenue Act of 1918 (a predecessor to § 162(a) before this Court). See also Deputy v. du Pont, 308 U.S. 488, 494, 496 (1940). The false criminal claim against Anderson was the vehicle used to steal his cancer drug invention from his gene therapy business that originated in that business. Accordingly, Anderson's legal fees in defense of that false claim are deductible business expenses under § 162(a). Tellier, 383 U.S. at 695.

**II. The Tenth Circuit's Holding Clashes With
the Sixth Amendment and 26 U.S.C.
§ 162(a)**

Not only does the decision below break with governing precedent, but it is also indefensible as a matter of statutory and constitutional interpretation.

Certiorari should be granted because Anderson's attorney fees were incurred in carrying on his lifelong gene therapy business in bringing his cancer drug invention (IL-12) to market. It is a Congressionally mandated deduction under § 162(a), which plainly states that there "shall" be allowed a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business. This includes expenses to protect his business, his invention, his trade secrets and his intellectual property from theft, through attorney fees. As discussed in Commissioner v. Tellier, 383 U.S. 687 (1966), the attorney fees Anderson incurred in defending the false criminal claim brought against him by a former business partner turned competitor and false accuser as the vehicle to steal his cancer drug invention, trade secrets and his intellectual property; to remove him (and silence him) from the global business competition to bring this revolutionary cancer drug to market; and to illegally take them to China for development there in violation of the Economic Espionage Act, 18 U.S.C. § 1831(a), are clearly deductible expenses under § 162(a) in carrying on Anderson's gene therapy business.

Anderson's employment of counsel to help him defend against the false claims brought by his former business partner turned competitor and false accuser is his constitutional right under the Sixth Amendment, which he exercised, and it is a distortion of the income tax laws by the Tenth Circuit to disallow his deductions, as this Court held in Tellier 383 U.S. at 695 citing Chandler v. Fretag, 348 U.S. 3 (1954) and Gideon v. Wainwright, 372 U.S. 335 (1963).

III. The Question of the Congress's Power to Stop the Theft of American Inventions and Trade Secrets is Exceptionally Important and Warrants Review

The importance of the question presented cannot be overstated.

The Congressional mandate of 18 U.S.C. § 1831(a) that protects American businesses such as Anderson's and their inventions, trade secrets, and intellectual property that they have developed over decades of hard work and research is of exceptional importance and timely.

Anderson and his wife have devoted their lives to developments in medicine. Anderson's revolutionary cancer drug treatment invention would benefit millions. Such dedication and hard work ethic have long been the backbone of this country and have driven its economic growth. Congress enacted the Economic Espionage Act, 18 U.S.C. § 1831(a) to protect American businesses such as Anderson's from the epic theft of

their trade secrets, inventions and intellectual property evidenced in this case. It is a crime to steal the trade secrets, intellectual property, and Anderson's revolutionary cancer drug invention. The Economic Espionage Act was erroneously disregarded by the Tenth Circuit, as was the scientific and forensic evidence in support of the Act's violation. The theft of Anderson's invention, trade secrets and intellectual property was condoned by the court. Its disregard of the mandate of Congress in this case makes the Tenth Circuit the first court in the country to condone the theft of American intellectual property, trade secrets and inventions. Globalization of the economic system and the increased demand for American inventions and innovations have made them less secure, requiring businesses such as Anderson's to incur legal expenses, to protect their businesses and inventions from theft. To deny a deduction for legal expenses incurred in defense of a false claim that was the vehicle utilized by a former business partner turned competitor and false accuser to steal Anderson's invention and his right to develop it in his business and bring it to market is a distortion of the income tax laws that was neither intended nor designed by Congress. Tellier, 383 U.S. at 695; 18 U.S.C. § 1831(a). Certiorari should be granted to give effect to the important mandate of Congress in the Economic Espionage Act and to protect American businesses that incur legal expenses in such epic theft. The Court is unlikely to ever see a cleaner or more straight forward vehicle to address this fundamental question.

If Certiorari is not granted, American businesses will continue to lose their inventions, trade secrets and intellectual property to such epic theft at such catastrophic and “breathtaking” rates that they will no longer be viable. The impact on the American economy and the general public is crushing, and millions of jobs have been lost. FBI Director Christopher Wray has stated that such illegal theft represents the greatest wealth transfer in human history. Congress has enacted laws such as 26 U.S.C. § 162(a) and the Economic Espionage Act, 18 U.S.C. § 1831(a) that protect and facilitate business development such as Anderson’s, for the benefit of the public.

In this case, the Tenth Circuit did not enforce the law and became the first court in this country to condone the theft of American inventions, trade secrets and intellectual property contrary to Congressional mandates. Millions of cancer patients have and will continue to suffer pain and death from the side effects of cancer treatments, because Anderson’s invention, trade secrets, and intellectual property were stolen and taken to China.

This case presents matters of exceptional importance that warrant this Court’s review.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

s/Charles D. Harrison
Charles D. Harrison
Eagleton, Eagleton & Harrison, Inc.
320 S. Boston Avenue, Suite 1700
Tulsa, Oklahoma 74103-4706
charrison@eehlaw.com
(918) 582-0462
(918) 582-3724 fax
Counsel for Petitioners

SEPTEMBER 11, 2024

APPENDIX

TABLE OF APPENDICES

Appendix A: Order and Judgment, United States Court of Appeals for the Tenth Circuit, William French Anderson et al. v. Commissioner of Internal Revenue, No. 23-9002 (May 17, 2024) App. 1

Appendix B: Order and Decision, United States Tax Court, William French Anderson et al. v. Commissioner of Internal Revenue, No. 23789-16 (June 29, 2023) App. 12

Appendix C: Order, United States Court of Appeals for the Tenth Circuit, William French Anderson et al. v. Commissioner of Internal Revenue, No. 23-9002 (July 1, 2024) App. 14

Appendix D: Petition to Set Aside Conviction (Penal Code section 1473.7), Superior Court of California, County of Los Angeles, People et al., v. William French Anderson et al., No. BA255257 (January 29, 2024) App. 16

App. 1

APPENDIX A

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

No. 23-9002
(CIR No. 23789-16)
(U.S. Tax Court)

WILLIAM FRENCH ANDERSON;
KATHRYN D. ANDERSON,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent - Appellee.

Filed: May 17, 2024

ORDER AND JUDGMENT*

**Before: TYMKOVICH, BACHARACH, and
CARSON, Circuit Judges.**

App. 2

Petitioners William French Anderson and Kathryn D. Anderson appeal a decision of the United States Tax Court. Exercising jurisdiction pursuant to 26 U.S.C. § 7482(a)(1), we affirm.

I. Background

Dr. William French Anderson is a pediatric geneticist who worked at the University of Southern California (USC) in the medical school.

He holds gene therapy patents including patents related to the use of molecule interleukin-12 (IL-12). Dr. Anderson tried to develop IL-12 and bring it to market as a cancer treatment. While at USC, Dr. Anderson had a research assistant who contributed to the research on IL-12 and was named a co-inventor on the patent.

*After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

App. 3

In 2004, Dr. Anderson was arrested on allegations of sexually abusing the minor daughter of his research assistant. In 2006, he was convicted in California state court of three counts of lewd acts on a minor and one count of continuous sexual abuse of a child under the age of 14 and was sentenced to fourteen years in prison. He appealed, and the California Court of Appeals affirmed his convictions and sentence. The California Supreme Court then denied his petition for review. In 2011, he filed a state habeas corpus petition that was denied, and in 2014, he filed a federal habeas corpus petition that was also denied.

The Internal Revenue Service determined deficiencies in Petitioners' federal income taxes after disallowing deductions for legal fees of \$292,175 on their 2013 tax return and \$68,120 on their 2014 return. Petitioners petitioned the Tax Court for a redetermination of the tax deficiencies asserted against them, arguing the legal fees were deductible as business expenses.

The Tax Court held a trial on the petition, and then ordered the parties to file seriatim post-trial briefs. In their opening brief, Petitioners argued that the 2013 and 2014 legal fees were deductible as business expenses because the origin of the claim for which the legal fees were incurred (the criminal charges against Dr. Anderson) arose from Dr. Anderson's gene therapy business and his discovery and development of IL-12. Petitioners

App. 4

asserted that Dr. Anderson's former colleague caused false accusations of molestation to be filed against him as the vehicle to steal his intellectual property.

In its Memorandum Findings of Fact and Opinion, the Tax Court noted it had granted the government's motion in limine to preclude any evidence or arguments that Dr. Anderson was framed on false charges but, in contravention of that order, Petitioners continued to make that argument in their opening brief. The court reiterated that Dr. Anderson was convicted after a jury trial of the criminal charges brought against him and that his conviction was upheld on appeal. The court therefore stated it would not address the argument further.

The court explained that "[26 U.S.C. §] 162(a) allows a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Aplt. App., vol. I at 121. But "[t]he taxpayer must show that a reported business expense was incurred primarily for business rather than personal reasons and that there was a proximate relationship between the expense and the business." *Id.* at 122. The court further explained it must look to the origin and character of the claim for which the legal fees were incurred because "[i]f the claim arose in connection with the taxpayer's profit-seeking activities, the fees are deductible." *Id.* (internal quotation marks omitted).

App. 5

The Tax Court concluded that the legal fees arose out of Dr. Anderson's personal activities because they related to the criminal charges against him for sexual abuse of a minor. The court explained the criminal acts were alleged to have occurred at Dr. Anderson's home where he tutored the minor and provided her with martial arts training, he did not receive payment for these activities, and he was not in the business of providing either service. The court further explained "[t]he charges did not involve Dr. Anderson's gene therapy business or any other trade or business activity engaged in for the production or collection of income." *Id.* at 123.

The court next addressed Petitioners' "narrow[er]," *id.*, argument in their post-trial reply brief that the 2013 and 2014 legal fees were "investigatory attorney fees" that were incurred to investigate the conduct of Dr. Anderson's former colleague for "corporate sabotage" and "intellectual property theft." *Id.*, vol. XVII at 4253. The court "recognize[d] that, when appropriate, litigation costs must be apportioned between business and personal claims," and it "agree[d] that and combatting potential security threats, such as sabotage and intellectual property theft, are ordinary and necessary business expenses." *Id.*, vol. I at 124 (internal quotation marks omitted). The court explained that "[a]lthough the criminal charges against Dr. Anderson generally relate to his personal conduct and relationship with the minor, petitioners' investigation into and analysis

App. 6

of the alleged malfeasance by the former colleague directly pertain to Dr. Anderson's gene therapy business, and legal fees expended specifically to those ends are deductible business expenses." *Id.* But the court determined that "Petitioners' framing of the facts... is inconsistent with the evidence." *Id.*

Petitioners asserted that the legal fees they paid to Attorney Douglas Otto¹ in 2013 and 2014 were entirely for investigatory purposes and that Mr. Otto employed Daniel Haste to investigate the corporate sabotage and intellectual property theft. The Tax Court explained, however, that "[i]n 2013 petitioners paid \$292,175 to Mr. Otto" and "Mr. Otto's records reflect that a portion of these funds was paid to various attorneys, audio experts, and investigators, but Mr. Haste was not among those payees." *Id.* The court further explained that "[n]o invoices or other documentation for 2013 reference Mr. Haste or his investigation, and there is no evidence that any of the 2013 legal expenses went toward researching, investigating, or analyzing

¹It is undisputed that Mr. Otto represented Dr. Anderson in his state habeas case. After the state court denied habeas relief in June 2013, Dr. Anderson petitioned for rehearing, and the court granted it. Although the court vacated its earlier opinion and issued a new opinion in September 2013, the result was the same. Dr. Anderson then petitioned for review in the California Supreme Court, but that court denied review in December 2013.

App. 7

the corporate sabotage or espionage allegations." *Id.* at 125. Instead, the descriptions of work "primarily focus[] on Dr. Anderson's ineffective assistance of counsel argument, analysis of the audio recording used against [him] during his criminal trial, and attempts to contact [his] now-adult accuser." *Id.* at 124-25. The court therefore found that the legal fees "all expressly pertain to the state habeas appeal, [in] which Dr. Anderson raised claims of ineffective assistance of counsel, challenged the integrity of [an audio] recording [used against him], and alleged other misconduct by government officials." *Id.* at 125.

In 2014 Petitioners paid \$68,120 to Mr. Otto, with \$60,000 going to Mr. Otto and the remainder going to others, including \$3,000 to Mr. Haste. But the court determined "Petitioners did not introduce invoices or other documentation describing the work Mr. Otto performed or whether any portion of it relates to Dr. Anderson's business." *Id.* The court concluded, however, that the \$3,000 paid to Mr. Haste, as well as two additional payments to Mr. Haste of \$5,000 each that were not included in the original deduction amount, related to Dr. Anderson's gene therapy business.

The Tax Court sustained the disallowance of Petitioners' deduction of legal fees for their 2013 tax return. For their 2014 tax return, the court sustained \$65,120 out of the \$68,120 disallowance, subtracting the \$3,000 paid to Mr. Haste, and it

App. 8

separately allowed an additional \$10,000 business deduction for legal fees for additional payments to Mr. Haste.

Petitioners now seek review of the Tax Court's decision.²

II. Discussion

"We review decisions of the Tax Court in the same manner as civil actions tried without a jury. That is, we review legal conclusions de novo and factual determinations only for clear error. And we review the evidence in the light most favorable to the Tax Court's ruling." *Rsrv. Mech. Corp. v. Comm 'r of Internal Revenue*, 34 F.4th 881, 910 (10th Cir. 2022) (internal quotation marks, citations, and parentheticals omitted).

Petitioners argue the Tax Court erred as a matter of law in applying § 162(a), the Supreme Court's decision in *Commissioner v. Tellier*, 383 U.S. 687 (1966), and the origin-of-the-claim doctrine. They contend Petitioners' 2013 and 2014 legal fees "were spent to investigate and reveal suspected security breaches and [intellectual property] theft" and are therefore "deductible

² The parties stipulated to review in the Tenth Circuit. *See* 26 U.S.C. § 7482(b)(2) ("Notwithstanding the provisions of [§ 7482(b)(1)], [Tax Court] decisions may be reviewed by any United States Court of Appeals which may be designated by the Secretary and the taxpayer by stipulation in writing.").

App. 9

business expenses" under"§ 162(a), and [*Tellier*]." Aplt. Opening Br. at 28. We are not persuaded by Petitioners' arguments. First, Petitioners have not shown the Tax Court misapplied *Tellier*. In that case, the petitioner was in the securities business, and he was found guilty of securities fraud. *See Tellier*, 383 U.S. at 688. He sought to deduct his legal fees as a business expense, *see id.*, but the Commissioner disallowed the deduction "on the ground of public policy," *id.* at 690. In *Tellier*, there was no dispute the legal fees were business expenses within the meaning of § 162(a)-the Commissioner "concede[d]" they were. *Id.* at 689. Rather, the question was whether there should be a public policy exception to the plain language of § 162(a), which the Supreme Court answered in the negative. *See id.* at 690-91.

Although Petitioners frequently cite *Tellier* to support their argument that Dr. Anderson's 2013 and 2014 legal fees are deductible as business expenses, they fail to adequately explain how the Tax Court misapplied that case, which did not involve a dispute over whether the legal fees were business expenses as is the case here. The Tax Court here acknowledged the *Tellier* holding, recognizing "Petitioners are correct that public policy does not prohibit the deduction of legal fees relating to criminal activity so long as the legal fees are an ordinary and necessary expense of a trade or business." Aplt. App., vol. I at 123. The court then went on to explain why the legal fees Petitioners incurred were related to personal

activities arising out of the criminal charges against him for sexually molesting a minor and not to any business activities. We see no error in the Tax Court's application of *Tellier*.

While Petitioners focus much of their appellate briefing on the Tax Court's alleged legal errors, they fail to adequately address the Tax Court's factual findings. The Tax Court found there was no evidence that the 2013 legal fees were incurred to investigate Dr. Anderson's former colleague's potential sabotage and intellectual property theft. Likewise, with the exception of \$3,000 (and an additional \$10,000 not originally claimed as a deduction), the Tax Court found there was no evidence that the remaining \$65,000 in 2014 legal fees were incurred for such investigative purposes. In their appellate briefing, Petitioners do not show the Tax Court erred in making these factual findings-they point to no evidence the Tax Court overlooked or misinterpreted. Instead, they simply make conclusory assertions that the fees paid to Mr. Otto in 2013 and 2014 were for business expenses without any record support. *See, e.g.*, Aplt. Opening Br. at 21 ("Anderson's attorney in 2013 and 2014, Douglas Otto, further confirmed that the attorney fees paid to him at issue in this case by Anderson were for claims that arose from the business relationship between Anderson and [his research assistant]."); *id.* at 28 ("Dr. Anderson's attorney fees at issue in this case ...were spent to investigate and reveal suspected security breaches and [intellectual property]

theft."); *id.* at 30 ("Attorney Douglas Otto ...stat[ed] that his fees arose as a result of the business relationship between Anderson and [his research assistant]."). Based on the lack of evidence supporting Petitioners' conclusory assertions, we see no error, let alone clear error, in the Tax Court's factual findings on this issue.

As to Petitioners' remaining arguments, we agree with the Tax Court's well-reasoned decision, and we affirm for substantially the same reasons stated in the Tax Court's "Memorandum Findings of Fact and Opinion" dated March 28, 2023.³

III. Conclusion

The judgment of the Tax Court is affirmed.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

³ We do not consider the California state court pleading attached to Petitioners' reply brief because it was not before the Tax Court and is not part of the record on appeal. *See United States v. Kennedy*, 225 F.3d 1187, 1191(10th Cir. 2000) ("This court will not consider material outside the record before the district court."); Fed. R. App. P. 10(a)(1) (stating that the record on appeal is comprised of "the original papers and exhibits filed in the district court" and any transcripts of proceedings and a certified copy of the district court docket entries); Fed. R. App. P. 13(a)(4)(A) (stating that the record on appeal from the Tax Court is governed by Fed. R. App. P 10).

App. 12

APPENDIX B

UNITED STATES TAX COURT
Washington, DC 20217

DOCKET NO. 23789-16

WILLIAM FRENCHCH ANDERSON
& KATHRYN D. ANDERSON,
Petitioners,

v.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent

Entered and Served 06/29/23

ORDER AND DECISION

On March 28, 2023, docket entry 199, the Court issued a Memorandum Opinion (T.C. Memo. 2023-42), which states that a decision will be entered under Rule 155.

The parties each filed a Computation for Entry of Decision; petitioners filed a Computation for Entry of Decision at docket entry 205, and respondent lodged, and the Court subsequently filed, an Agreed

Computation for Entry of Decision at docket entries 207 and 209, respectively.

The Court recognizes that although each party filed a separate Computation for Entry of Decision, there is no dispute as to respondent's computations and the parties are in agreement with respondent's Agreed Computation for Entry of Decision, filed June 29, 2023, docket entry 209. Finding no error in the computations filed with the Court, we will enter the decision consistent with them.

After due consideration, and for cause, it is

ORDERED AND DECIDED that there are deficiencies in income tax due from petitioners for the taxable years 2013 and 2014 in the amounts of \$97,686.00 and \$24,436.00, respectively.

(Signed) Elizabeth Crewson Paris Judge

App. 14

APPENDIX C

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

No. 23-9002
(CIR No. 23789-16)
(United States Tax Court)

WILLIAM FRENCH ANDERSON, et al.,

Petitioners - Appellants,

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent – Appellee.

Filed: July 1, 2024

ORDER

Before **TYMKOVICH, BACHARACH**, and
CARSON, Circuit Judges.

App. 15

Appellants' petition for panel rehearing is denied.

Entered for the Court

s/Christopher M. Wolpert

CHRISTOPHER M. WOLPERT,
Clerk

App. 16

APPENDIX D

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
FOLTZ CRIMINAL JUSTICE CENTER

Case No.: BA 255257

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

William French Anderson,

Defendant

Filed: January 29, 2024

PETITION TO SET ASIDE CONVICTION
(PENAL CODE SECTION 1473.7)

App. 17

William P. Daley, SBN 53372
Innocence Legal Team
3478 Buskirk Ave., Ste. 150
Pleasant Hill CA 94523
(415) 999 8132
Daley@innocencelegalteam.com
Attorney for Petitioner
W. French Anderson

INTRODUCTION

Pursuant to California Penal Code 1473.7(a)(2), Anderson respectfully moves this Court to vacate his July 19, 2006, conviction in the Los Angeles Superior Court entered on February 2, 2007, No. BA255257 imposing a term of 14 years in state prison. This request for vacation is based on newly discovered evidence establishing actual innocence. Some of the new evidence establishes official misconduct and would also fall under Penal Code section 1473.6.

The factual issues in this motion involve two areas where new advanced techniques of evaluation establish that 1. the recording of the “pretext conversation” between moving party and YH, the complainant, was tempered with by law enforcement, and, 2. Emails cited by the Court of Appeal as supporting the testimony of YH were in fact never drafted or sent by Petitioner Anderson. These findings completely undermine the testimony of YH at trial, the primary evidence on which the conviction was based. The declarations of the five experts that Moving Party Anderson intends to call at the hearing on this matter are submitted in Appendix 1 and 2.

I. Overview

The primary evidence in the trial was the testimony of the complaining witness, YH, and a sting meeting recording between Petitioner Anderson and YH where YH wore a police audio recorder.

Anderson's defense attorney believed that, as the Sheriff's Department maintained, police recordings on their specialized equipment could not be altered. Therefore, he refused to have the recording analyzed, and required Anderson to accept the recording as accurate during his testimony and cross examination.

Using the revolutionary new artificial intelligence (AI)-assisted technology (see below), the sting meeting recording has been shown to have multiple material and probative alterations (see Declarations by Bruce Lebovitz and Professor Yi Xu). These reports establish that the testimony of Det. Ebert and YH at the trial was false.

The prosecution's entire case rested on the testimony of YH and Det. Ebert together with the recording of the sting meeting. There was no pornography, no forensic evidence, no documents, no witnesses, and no other "victims." The only other evidence was 5 emails in one 7-day period (11/20/03 – 11/26/03) which have now been shown to have been fraudulent. (See declarations by Dr. Fred Cohen and Daniel Haste). The motivation for YH making the false allegations of child molestation is now understood to be the theft of intellectual property, a discovery of a cancer treatment drug that counteracts the adverse effects of radiation therapy in cancer treatment.

The motivation for these false allegations was made clear by subsequent events. YH's mother, Dr. Yi Zhao was employed in Petitioner Anderson's laboratory at the University of Southern California (USC) and used Petitioner's involvement in the defense of the criminal accusation to steal his intellectual property (IP) (See declarations by Daniel Haste and John Elliott). Petitioner Anderson was a world-famous medical research scientist who developed the revolutionary treatment of gene therapy. Petitioner Anderson is still called the Father of Gene Therapy. When Petitioner Anderson discovered a potential billion-dollar cancer treatment drug, Zhao chose to steal it and take it to China. She was unsuccessful until she had her then 17-year-old daughter claim that Petitioner Anderson had sexually molested her when she was 13. That accusation, supported by the altered sting meeting recording, resulted in Anderson's arrest, conviction, and a 14-year prison sentence. Once Petitioner Anderson was imprisoned, Zhao took the cancer treatment and gene therapy discoveries together with trade secrets to China where she has been honored with several national awards for her patriotism. Petitioner Anderson was released from prison after 12 years and finished his 5-year parole term on May 17, 2023.

II. STATEMENT OF FACTS.

A. Background

Petitioner Anderson was born and raised in Tulsa, Oklahoma. He graduated from Harvard College in 1958 with an A.B. *magna cum laude*, from Cambridge University (England) in 1960 with an M.A., and from Harvard Medical School in 1963 with an M.D. *magna cum laude*. After an internship in Pediatric Medicine at Boston's Childrens Hospital (a Harvard affiliate), he spent a year as a post-doctorate fellow at Harvard Medical School where he published a paper on bacterial genetics. He then served two years in the military by working at the National Institutes of Health (NIH) in Bethesda Maryland. He remained at NIH for 27 years where he developed the revolutionary new medical treatment called gene therapy. The treatment involves providing the body with a normal gene (DNA) when there is a defective gene (i.e. a genetic disease like sickle cell anemia, cystic fibrosis, some forms of cancer, and many others). Anderson pioneered gene therapy by curing a 4-year-old girl who was dying of a lethal immune deficiency known in the popular press as Bubble Boy Disease.

In 1992, Anderson and his wife moved to Los Angeles where both became Professors at USC, and she became the Chief of Surgery at Childrens Hospital of Los Angeles. Anderson extended his number of gene therapy patents to 35 and also discovered a

potential billion-dollar cancer treatment drug, called IL-12. Both Andersons, who have been married for 62 years, have received multiple professional prizes and awards, including both in the same year when both were made “Icons” of Los Angeles in 2000. In 2005, his wife became the first female President of the American College of Surgeons in its then nearly 100-year history.

B. Arrest and Conviction

On July 30, 2004, Petitioner Anderson was arrested by the Los Angeles Sheriff’s Department (LASD). He was charged with 1 count of continuous sexual abuse of a child: 13 years old (Penal Code 288.5.a) and 3 counts of committing lewd acts on a child under the age of 14 (Penal Code 288.a). No accusations of force, threats, or penetration were made. From the moment of his arrest, Anderson repeatedly and consistently maintained his total innocence, and refused to even consider a plea bargain that was offered.

The trial lasted 35 days from June 14, 2006, to July 19, 2006. The jury took 2 days to reach a verdict of guilty. The trial judge then sent Anderson to be evaluated for probation. Anderson was examined by the Chino Prison Probation Unit as well as by several psychiatrists and psychologists provided by the Court. All proposed probation. Petitioner’s attorney informed him that the District Attorney wanted an example made of Petitioner Anderson. The trial court agreed

with the prosecution and sentenced Anderson to 14 years in state prison.

C. Appeal and Habeas Process

An Appeal and Petition for Writ of Habeas Corpus followed. An additional Writ was filed on May 3, 2011. An Order to Show Cause was issued on May 12, 2011. The Court denied the petition on September 5, 2013, and the California Supreme Court denied review on December 11, 2013.

Because of the mounting legal expenses, Anderson took over his own case for the federal habeas as a Petitioner *Pro Se* (although his previous habeas attorney always remained available to answer procedural and other questions). Anderson submitted a federal petition, CV-14-9463-R (JEM), on December 8, 2014, and a Memorandum of Points and Authorities on January 2, 2015. The federal Habeas was denied on January 27, 2017.

On May 15, 2020, a further Petition for Habeas Corpus was filed alleging newly discovered evidence of organized activity by Chinese Intelligence agents to present false allegations against Petitioner in order to facilitate the theft and removal of Petitioner's discoveries to China. This argument was supported by the Declaration of John Elliot, the appearance during the investigation and trial of two separate "witnesses" who claimed to be prior victims of Petitioner, but who came forward before the publicity

in the case and were found unreliable by the prosecution. Reference was also made to the previously argued indications of tampering with the recording of the “sting” conversation. The Petition was denied by Judge Lomeli on June 8, 2020. It was subsequently filed in the Court of Appeal August 17, 2020, and Denied without discussion May 27, 2021. The Petition was then filed in the California Supreme Court on Feb. 2, 2022, and Denied without discussion August 10, 2022.

Moving party Anderson was released from prison on May 17, 2018, and completed 5 years on parole on May 17, 2023.

Discussion

Introduction and Statute

This matter is being filed pursuant to California Penal Code section 1473.7. Subsection (a) of 1473.7 provides that the petition may be filed by one who is no longer in criminal custody. Petitioner has completed his parole and is no longer in criminal custody, actual or constructive. The ground for this petition is stated in subsection (a)(2): “newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice.” Pursuant to subsection (d) of 1473.7, all motions are entitled to a hearing, and the burden of proof is “by a preponderance of the evidence.”

Petitioner will present evidence, available for the first time by means of new and improved AI-assisted tools to analyze recordings, which demonstrate that the recording of the “sting” conversation, the primary evidence in this matter, was materially altered prior to its presentation to the jury. (See Declaration of Bruce Lebovitz and Professor Yi Xu). The fact of the alterations necessitates the conclusion that the testimony of both the complaining witness and Detective Ebert, who testified that the recording was accurate, was false, unreliable, and perjurious. The revolutionary nature of the new technology is discussed below.

In addition, petitioner will present new evidence that the emails, cited in the one appellate decision as supporting the guilty verdict, were in fact not drafted by Petitioner, but “hacked” onto YH’s computer. (See Declarations of Fred Cohen and Daniel Haste.) With the modified standard for relief in Habeas matters under the amended Penal Code section 1473, as discussed in *In re Sagin* (2019) 39 Cal.App.5th 570, 579-580, this evidence, together with the previously presented evidence of the involvement of Chinese Intelligence Services in the prosecution (See Declaration of John Elliott), establishes the actual innocence of Petitioner, and mandates that the conviction be set aside.

I. Revolutionary New Forensic Audio Technology

Just as with DNA when PCR (Polymerase Chain Reaction) came into existence which allowed the identification of individual DNA molecules, the technology to analyze digital audio recordings has had a revolutionary advancement in the past year in several factors, including the addition of Artificial Intelligence (AI) to the forensic audio software.

Two technologies with 2022 release dates were used by Bruce Lebovitz to analyze the 2004 sting meeting recording in this case: Steinberg SpectraLayers Pro 9 (SLP9) and Izotope RX10 Advanced. Quoting from the website for each of these technologies:

Steinberg SpectralLayers Pro 9: *“Unmatched selection tools developed over many years are now joined by new artificial intelligence-driven audio extraction. A skilled highly trained AI partner that can sense patterns, perform operations and speed [work]. Use AI speed and precision to split samples into layers ... Automatically unmix tracts into stems, and stems into component parts.”* This new revolutionary technology converts digital audio recordings into individual components just as PCR converts DNA into individual components.

Izotope RX10 Advanced: *“RX10 uses machine learning to find audio ... automatically recognizes*

specific problems.” Using RX10 to locate alterations and SpectraLayers to dissect the alterations, the exact steps taken in 2004 by the LASD to alter the recording and their attempt to hide the alterations have now been revealed.

Magic Wand frequency extraction was introduced in SpectraLayers Pro 6 (SLP6) in 2019 and employs artificial intelligence (AI) to assist in frequency selection, allowing the selection of louder frequencies such as voices or footsteps to be removed from an audio sample, leaving the remaining background ambience, such as city traffic, wind, or rustling leaves, intact for precise analysis.

3-Dimensional spectrographic viewing was available, beginning with SLP6. This monitoring enhancement allows for a more precise viewing of spectrographic data and is used along with other spectrographic data as a corroborative tool.

Adaptively sparse spectrographic display was introduced in Izotope Rx 10 Advanced in 2022 and, using AI, consolidates frequency data into a more easily viewed display. This display is used along with other spectrographic data as a corroborative tool.

Narrow band waveform analysis is a technique that Bruce Lebovitz first employed in 2022. Narrow band waveform analysis combines spectrographic frequency selection followed by audio waveform analysis to clearly show electric alterations to an

audio recording segment. Edits can be impossible to see in a full frequency display but can be revealed in narrow frequency bands by displaying an unnaturally large dynamic level shift in an inordinately short period of time across multiple frequency bands. These shifts cannot occur in nature but can only be created electronically through audio editing. Thus, the material alterations made in the sting recording together with the attempt to cover up the alterations can now be fully exposed.

The increased power of technology in analyzing audio evidence using AI is analogous to the increased technology in analyzing biological evidence that has recently occurred. In the past biological evidence could be investigated using blood typing, blood splatter patterns, hair analysis, and other techniques. But when PCR analysis of DNA became available in recent years, it was revolutionary because it could identify individual suspects. Likewise, audio evidence in the past could be investigated using waveform analysis, multitrack audio technology, and other techniques. But now that AI-assisted analysis can be applied to digital recordings, it is revolutionary in that individual alterations can be identified and studied.

II. Application of the new technology to the recorded “sting” conversation provides findings, not previously available, that prove that the recording presented to the jury was materially altered.

A. Issues raised concerning the recording at the time of the appeal.

At the time of the Appeal in this matter, issues were raised by Habeas Corpus concerning the use of the recording at trial. In the Opinion issued by the Second District Court of Appeal denying Petitioner's petition for writ, the court described the contentions as follows:

Anderson now contends defense counsel rendered ineffective assistance in failing to challenge the admissibility of the recorded conversation on authentication grounds (Evid. Code § § 1400-1402), in failing to protect Anderson's right to testify fully and credibly regarding the library confrontation, and in failing to investigate indicia of alteration of the recording. (Opinion, *In re William French Anderson*, B232746, filed September 5, 2013, page 3).

The evidence presented in support of the ineffective assistance argument was described in the petition to the Court of Appeal as follows:

Curtis Crowe, assertedly an expert in the analysis of digital recordings, found an electronic spike at 45:05 of the recording, approximately two seconds after a female voice says, "Hey," in a low tone. This spike "appears to contain two distinct impulses of differing time characteristics." The sound and shape of the impulse "is consistent with what we may see after a digital edit."

App. 30

At 46:12.8, a male voice is cut off abruptly in a matter “consistent with a recorder dropout or editing.” A similar abrupt termination occurs at 46:21.6, of the recording.

Finally, Crowe detected a 58.3 Hz signal, which is not normally associated with an outdoor environment. The signal begins prior to the first word of the conversation and stops almost exactly at the end of the conversation. Crowe could find no potential source of this signal at or near where the conversation occurred.

Craig Schick, B.S., an electronics engineer, also detected the 58.3 Hz signal which commenced shortly before the start of the conversation. None of the comparison recordings Schick made outside the library included a 58.3 Hz signal. Schick concluded the recording had been edited in an environment that allowed the introduction of a 58.3 Hz signal, like a laboratory or office, and asserted with certainty the recording had been “adulterated.”

In a second declaration submitted with the traverse, Crowe indicated he analyzed the sound of footfalls at the start of the recording and compared them to the sound of Y.’s footfalls as she walked from the scene of the conversation, at first on grass and then on concrete. Crowe concluded the footfalls at the start of the conversation “appear to be made on a hard or concrete surface,” not on the grassy surface where the conversation occurred. Also, the sound of Y.’s

footfalls as she walked from the conversation are distinctly different and consistent with the grassy surface where the conversation occurred. “These anomalies, taken together, provide a stronger basis for inference that the recording has been altered.”

Catalin Grigoras, Ph.D., found three “counter” anomalies that indicate audio data is missing from the recording. A two second jump occurs at 12:41:57. Four second jumps occur at 13:04:53 and at 13:28:21, the latter occurring during conversation. Grigoras hypothesized the missing data could be caused by recording system malfunction, human intervention to delete data blocks or “an audio signal played back through the microphone input that can be followed by human intervention on the file structure to edit data blocks.” Grigoras declared: “Any intentional alteration that would not be detected as a counter skip anomaly would likely necessitate a two-step process of (a) editing the content of the recording while in WAV format, and then (b) re-recording the edited version onto the recorder initially used....[I]n order to determine the feasibility of an intentional alternation, I need to examine the recorder used to make the recording in this case.”

Finally, in the traverse, habeas counsel notes the recording of the library conversation provided to the defense in December of 2010 bears a time stamp that coincides with the observations of the surveilling deputies. However, a time stamp in the “Properties” file of the same recording indicates the first file was

transferred from the recorder to a computer at 2:23 p.m. However, Detective Jester's case journal indicates he did not deliver the recorder to the Sheriff's Technical Operations Office until 2:55 p.m. (*In re Anderson* (2013) not published B232746 at pp. 14-16.)

B. Findings disclosed in the Declaration from Forensic Instigator Bruce Lebovitz

Bruce Lebovitz, President of Beryl Audio Forensics Laboratory Inc. in Pittsburgh PA., has a long and distinguished Curriculum Vitae. He is recognized internationally as a highly skilled forensic investigator of digital audio recordings. He uncovered 12 separate alternations in the sting meeting recording, 11 of which fall into the material and probative category. As he reports, he used the 2022 release of the two revolutionary forensic software programs – revolutionary because they incorporate Artificial Intelligence (AI): Steinberg SpectraLayers Pro 9 and Izotope RX10 Advanced (see above for details). His findings can be summarized as follows:

Serious Breaches of Chain of Custody

- 1) The metadata certifying the authenticity of the recording that was played to the jury was not present in the recording. That absence by itself indicates that the chain of custody was violated

and the recording should not have been used in a judicial proceeding.

- 2) Also missing were the “time stamps.” These are audible time announcements made at the beginning and at the end of the recording by the law enforcement agent responsible for the recording, which are necessary so that the overall timing can be validated or time alterations can be exposed. Like finding 1), that absence by itself indicates that the recording should not have been used in a judicial proceeding.

Material and Probative Alternation of the
Beginning of the Meeting [45:02 – 5:07]

- 3) The sting meeting was held on a grassy slope outside the South Pasadena Public library. The recording begins with YH saying “Hey.” However, there are footsteps on concrete just before the “Hey” and footsteps on concrete just after the “Hey.” There is no concrete anywhere near the meeting site. The forensic technology demonstrates that the footsteps and the “Hey” were inserted into this position after being taken from elsewhere in the recording (see below).
- 4) The “Hey” was inserted from elsewhere in the recording as revealed by analysis of the ambient backgrounds before, during, and after the speaking of the word “Hey.” Multitrack digital audio editing technology, which was available in 2004, which had become available by the early 1990s, was required to edit the recording in such

a way as to make the alternations difficult or impossible to detect (until the current AI-assisted technology became available last year).

- 5) An artifact, an added sound, that cannot occur naturally was detected at the end of this 5 second insertion of the word “Hey”. The ambient background sound changes in a manner that is not consistent with the properties of sound in an acoustic environment. These simultaneous occurrences are consistent with audio editing (or alternation.)

Individual Sites of Alternations

- 6) [46:21] “Uh I’m Sss” The “s” (presumably, “Uh, I’m sorry) is “upcut”, a technical term meaning that the word was cut off by an audio edit; the rest of the word is never heard. It was caused by a material digital audio edit.
- 7) [48:29] “worse, I go” The “worse” was upcut. It was caused by a digital audio edit. This is the only discrepancy that Anderson had not identified in his early August 2004 document to his attorney.

Material and Probative Alteration at “When I was naked.”

- 8) [50:44] “When I was naked. Huh?” The “Huh” was upcut. The following reply by Anderson was “INAUDIBLE.” That “huh” occurs at 50:37. The upcut “uh” is just before “sorry, sorry too.”

- 9) [50:45] Lebovitz determined that the INAUDIBLE was “Sorry, sorry too I...” But this phrase has a drastically reduced frequency signature compared with the following words. This transition does not occur in a normal speech pattern and indicates an audio edit.

The “You weighed me naked” charge has an extensive history. When Anderson saw it on the prosecutor’s transcription in early August 2004, he wrote that what he had replied was “I didn’t weigh you, you weighed yourself.” Det. Jester challenged Anderson during Anderson’s arrest interrogation on July 30, 2004, with the charge that he had admitted on the recording that he had weighed YH naked. Anderson denied it. On page 50, lines 14-25 and page 51, lines 1-20 of the transcript of Jester’s interrogation is the following: Jester played back where YH is saying: “You check my weight and stuff; when I was naked.” But there was so much static that Anderson’s response in the recording could not be made out. Jester told Anderson that he was weighing her naked and Anderson disagreed.

Jester interview transcript [page 51, lines 17-20]:

***Anderson:** But I wasn’t there. She –she weighed herself. I have no idea. And whether she had clothes on or whether she didn’t, I have no idea.*

Clearly Jester did not believe Anderson. The sting recording has Y saying: “You checked my weight and stuff...when I was naked.” Anderson apologizes according to the transcript, but as he had told Jester, what he had actually replied was “I didn’t weigh you, you weighed yourself.” Anderson’s actual response was deleted from the recording and a statement was moved from elsewhere that makes Anderson appear to confess. At trial, Jester learned that Anderson was again telling the truth. YH testified [RT 2227, lines 11-15; RT 2228, lines 3-8]:

***Berk:** Isn’t it true that you would go in Dr. Anderson’s bathroom and close the door and weigh yourself and then come downstairs and tell Kathy Anderson and French Anderson how much you weighed?*

***YH:** I did weigh myself on his suggestion, not mine. And I did tell him how much I weighed. I don’t remember telling Kathy Anderson.*

Thus, YH testified at trial that Anderson never weighed her, that she weighed herself. Furthermore, she weighed herself at Anderson’s insistence!

Material and Probative Fraudulent
Insertion of “Why did you molest me?”

- 10)[53:06] There are upcuts of “Ah” and a breath. There is no way to produce these types of sounds with the human voice. They are, based on their

location just before “Why did you molest me,” material and probative digital audio edits.

- 11)[53:17] This is a digital audio edit in the middle of “Why did you molest? Why? Why me?” It is definitively material and probative. The edit occurs just before “huh?” and 3 seconds after “why the fuck”.
- 12) [53:19] Spectrographic analysis demonstrates an abrupt change in frequency levels. Instant level changes do not occur naturally and can only be created by digital audio edits.

Conclusion

Mr. Lebovitz’s conclusion is:

“The recording is not an authentic recording of the actual conversation. It has been significantly and materially altered. It has no probative value.”

**C. Declaration from Forensic Investigator
Professor Yi Xu**

Professor Yi Xu is an internationally recognized expert in the area of speech science, i.e., the analysis of human speech to determine what is authentic and what is fraudulent. He is a Professor of Speech Sciences at University College, London England. His 40-year-long distinguished academic career is summarized in his attached Curriculum Vitae.

Professor Xu initiates his report:

“The key question I will address is whether the recording is the original or it has been altered. The conclusion I have reached is that the recording is, without doubt, altered.”

Evidence 1 – The recording is incomplete.

[Key excerpts are reproduced; see the report for full context.]

- #4: Anderson had been led to believe that the meeting would be a happy reunion. The initial communications between Anderson and YH were abnormal for any type of happy reunion.
- #6: *“I performed analysis of the pitch of WFA’s initial utterances. The mean pitch is 108 Hz. This is in the range of sadness (below 116.1 Hz), and well below the level of happiness (mean 159 Hz).”*
- #7: *“Based on the analysis, WFA’s first six utterances at the beginning of the conversation do not show socially appropriate greeting behavior.”*
- #8: *“To the best of my judgement, such a strange start of a conversation can mean only one thing: it is not the true start of the conversation...the real start of the conversation has been removed.”*
- #9: *“It is also questionable that YH’s “Hey” was a greeting to WFA.” “The second of these steps coincides perfectly with “Hey,” indicating that she was speaking while walking toward*

someone.” “In all likelihood, therefore, it was inserted there during an alteration of the recording.”

Evidence 2 – The “incriminating” words are inserted.

- #1: *“...the incriminating utterance by YH, “Why did you molest me”, was inserted during an alteration of the original recording.”*
- #4: *“the incriminating accusation “Why DID you molest me?” was spoken with an emphasis on the word “did”, which is conversationally inappropriate.” “Therefore, “Why DID you molest me?” must have been taken out of its original context and inserted before “Why, why me?”*
- #5: *“Why DID you molest me? was followed too closely by the subsequent sentence “Why, why me?” “The gap between the two sentences is only 189.05 milliseconds.” “The accepted minimum figure...is 228 milliseconds.” “Why DID you molest me?” was likely inserted before “Why, why me?”*
- #6: *“...the original chunk of recording...is likely replaced by YH’s “Why DID you molest me?”*

Professor Xu's CONCLUSIONS begin:

"In my 40 years of experience in research on human speech, it is my opinion that this recording should never have been admitted or used in any legal proceeding, because it is false, has been altered, and is not authentic."

D. The new findings provide convincing evidence that the recording was altered, clearly showing that the primary evidence used against Petitioner at trial was fraudulent, and, in the context of the trial testimony and other evidentiary issues that have arisen since the conviction, demonstrate that Petitioner was not guilty.

The result is that there is now compelling evidence that Detective Ebert made a number of alterations including at least three highly material, and damaging alterations to the sting meeting recording and then disguised those alterations by adding extraneous sound. The three probative alterations were:

- 1) [45:02] Deletion of approximately 2 ½ minutes from the beginning of the conversation (based on notes in Det. Jester's journal), together with the insertion of the word "Hey" (from 30 minutes earlier when YH greeted friends) into the recording to have a beginning of the conversation. In the actual conversation, YH

accused Anderson by stating “Why did you molest me?” followed by Anderson’s denial. YH then went on to strenuously accuse Anderson of pushing her too hard to be a scientist and go to Harvard. When the altered recording picked up the actual conversation, Anderson was emotionally overwhelmed and stated that he might break down.

- 2) [50:44] YH accused Anderson of weighing her naked and Anderson plaintively apologizes. AI-assisted technology demonstrates that Anderson’s response in the altered recording that was played to the jury was a fraudulent insertion. His actual response, as he later told Detective Jester, was: “I didn’t weigh you; you weighed yourself.” YH’s trial testimony acknowledges that Anderson never weighed her naked, that she weighed herself.
- 3) [53:17] YH’s accusation “Why did you molest me?” in line 4 of Anderson’s document to his attorney written in early August 2004 was moved to 53:17 to replace “Why did you push me?” Anderson’s response of “I thought this would help you” was appropriate for replying to the questions “Why did you push me?” but certainly not appropriate for what was fraudulently inserted.

In early August 2004, immediately after Anderson got out on bail and was given the LASD transcript of the sting meeting recording, he wrote out for his attorney all the alterations that he recognized. The opening of the conversation is reproduced below:

A: *Hi, YH!*

Y: *You ruined my life! [Loud] – [As heard by the surrounding deputies]*

A: *YH?*

Y: *Why did you molest me? [Soft]*

A: *Oh, YH not again. You know I didn't.*

Y: *But you did ruin my life.*

A: *YH, we've been through this, and you know I'm sorry. I thought you were better.*

Y: *No, I'm worse. Look at my arm. [shows her fresh "suicide" cuts]*

A: *Oh my heavens.*

Y: *You did this! You kept pushing me and I begged you to stop. I don't want to go to Harvard. I don't want to be a scientist. I don't want to be your protégé. Why didn't you stop when I asked?*

A: *I'm sorry. I'm sorry. I'm sorry. [long pause]*

Alterations made by Detective Ebert to the sting meeting recording which convicted Anderson are highly material, and compelling. The activity by Detective Ebert is consistent with the culture of the Sheriff's office at the time. Federal Judge Percy Anderson, after he had sentenced (in separate trials) Sheriff Lee Baca, Undersheriff Paul Tanaka, as well as over 20 other members of the LASD to prison

terms, stated that the LASD followed a “blind obedience to a corrupt culture” (5/12/17). Testimony previously received in this matter indicates that the standard procedure of Detective Ebert was to make modifiable copies of the recording (contravening the mandated procedure dictated by the manufacturer), and that he stated that he frequently “enhanced” recordings for the prosecution. The findings of material and probative modifications of the recording in this case suggest that material and probative modifications of many other recordings could have been made and may require review of other cases involving Detective Ebert.

The various alterations in the sting recording reported by Anderson’s experts in 2011-2012 were not refuted by the Respondent, but rather were claimed to be “innocent”. The Respondent did not dispute any of the forensic evidence of alterations presented by Anderson in her Attorney General’s Answer to Petition for Rehearing, July 26, 2013, page 4, footnote 1:

*“Likewise, the fact that Respondent filed declarations does not create a factual dispute necessitating an evidentiary hearing, as petitioner seems to suggest. (Petition for Rehearing at page 3). Respondent’s declarations mainly served to fill in minor gaps in the record and clarify some facts. **Respondent’s declarations did not contradict any other evidence, so no evidentiary hearing is necessary.**” [Boldface added]*

The analysis of Bruce Lebovitz, conducted with the new AI technology, far surpasses the analysis that was available prior to 2022. Old suspicions are affirmed and demonstrated to be true. New findings are presented. These findings are amplified by the analysis of Prof. Yi Xu. Newly discovered evidence of actual innocence is present.

E. The new evidence of the altered recording destroys the credibility of YH, the complaining witness.

This case depended on the credibility of YH, buttressed by the recorded “sting” conversation. Both she and Detective Ebert testified that the recording was a true and correct copy of the conversation. Without the recording, YH had little credibility. The only significant witnesses presented by the prosecution during the trial were YH, her mother Yi Zhao, Detective Jester, and Detective Ebert. YH, Yi Zhao, and Detective Ebert committed perjury. Detective Jester did not.

1. The Complaining Witness, YH

a. YH’s Propensity to Lie

In 2023, using new forensic technology just made available in the past year, two international experts in digital audio recordings independently provided overwhelming evidence that the sting meeting recording was fraudulent (see above). Since YH

testified that the recording was complete and accurate, her entire testimony should be dismissed as perjury.

YH admitted her propensity to lie when she told social worker, Leah Smith: “I’m a teenager. Of course I lie.” [Transcript of Leah Smith interview] She then promised to tell the truth during the interview. Just a minute later, she lied about a trivial fact: the positions she played on her high school soccer team.

YH trial testimony [RT 2466, lines 11-14]:

Berk: “*I am a teen-ager. Of course I lie.*” *Did you say that?*

YH: *I could have. I see myself saying that.*

b. YH’s Four Retractions

YH retracted her false allegations on four separate occasions prior to her trial testimony. Her 1st retraction was on 7/25/03 when police came to YH’s home investigating Zhao’s 12:10 AM phone call to police in which she falsely claimed that Anderson had just molested her daughter. Both YH and Zhao said it was all a mistake and nothing happened. Her 2nd retraction was on 7/26/03 when the whole family went to the South Pasadena Police Station to retract the accusation. The 3rd retraction was on 7/27/03 when the family went to the San Marino Police Station to retract the accusation. The 4th retraction was on the phone with Anderson on 2/7/04. YH stated that her

mother pushed her to write the false accusatory emails and she was not going to do it anymore. She related how her life had crashed over the past several months because she was forced to make false accusations: she was flunking her classes, having temper tantrums, was thrown off the soccer team, and generally was miserable. She then sent a follow-up apologetic email to Anderson. That email was ignored by both the defense (over Anderson's strong objections) and the prosecution during the trial. Email no. 87

2. Jester's Testimony

Det. Jester, during his testimony, confirmed YH's propensity to lie. YH gave false emails to Jester [RT 4407, lines 1-3]:

***Jester:** She is giving me things she made up, and so I did it strictly from the search warrant, clean copies through the network.*

3. YH's Father

During the trial, but not in the presence of the jury, YH's father, Jichen He, was interviewed by the Judge. The defense wanted Mr. He as a defense hostile witness. Using Jones Day as attorneys, the father falsely claimed to the Judge that he could not speak English – he was fluent in English. When the Judge provided a translator, the Jones Day attorney said

that he had instructed his client to take the 5th Amendment for every question including his name.

The Judge dismissed the father as a witness and Mr. He did not take the stand. This is not the behavior of an innocent father who has nothing to hide. Mr. He was a Chinese Communist agent as was his wife (see declaration of John Elliott). Mr. He set up false front companies to allow Yi Zhao to communicate directly with the Ministry of State Security (MSS) in China. The MSS is the central organization overseeing all Chinese international agents. He admitted to the Los Angeles Childrens' Services in 1998 that he had physically abused YH.

4. Ebert's Testimony

Detective Ebert falsely testified that the sting meeting recording provided to the court was a true, accurate, unaltered original. However, an analysis of the recording (see above) proves that his testimony was perjury because he had intentionally made a number of very material, and prejudicial alterations.

Detective Ebert acknowledged in his declaration (Exhibit 3, Respondent's Return, in the state habeas process, 8/01/12, 6 years after the trial) that he had enhanced recordings for years in order to assist prosecutors. Ebert wrote: *"I would often enhance a recording for investigators."* He wrote: *In the thousands of recordings that I have worked on, I never altered, manipulated, or edited any file without documenting it."*

Det. Ebert's supervisor, Sergeant Powell, in a declaration to the court on 12/20/10 (4 years after the trial) stated that the Sheriff's Department standard policy for years was to bypass the manufacturer's procedure that would guarantee no editing because it was too time consuming (Habeas Court Ruling, 9/05/13, p. 13]. However, the manufacturer's procedure would have taken no longer than Det. Ebert took in downloading the recording incorrectly (i.e., in a way that allowed editing). Therefore, the LASD policy ensured that audio recordings could be edited. Despite his declaration that he always documented the alterations he made in his files, no documentation of the Anderson recording could be found when he retired.

The stated policy of Sgt. Powell of the LASD is disturbing. Det. Ebert wrote that he had worked on "*thousands of recordings*" and that he "*would often enhance a recording for investigators.*" This activity was clearly carried out as an LASD policy, not the individual misconduct of one detective. Federal Judge Percy Anderson, after he had sentenced (in separate trials) Sheriff Lee Baca, Undersheriff Paul Tanaka, as well as over 20 other members of the LASD to prison terms, that the LASD followed a "*blind obedience to a corrupt culture*" (5/12/17). Detective Ebert was active during this period.

III. Examination of the Petitioner's emails, alleged to have been drafted and sent to the complainant, and cited by the Court of Appeal as supporting guilt, reveals that they were never authored or emailed by Petitioner.

The issue around the emails found on Petitioner's computer has not been raised in prior Appeals or Petitions for Writ, but in light of the reliance of the Court of Appeal on these emails in rejecting Petitioner's Appeal, they are being addressed now for the first time. In the Opinion affirming the conviction on appeal, the court summarized as follows:

The victim's testimony was generic in that she testified generally about a continuing course of misconduct. E-mails Anderson sent her after the abuse ended but before she decided to report him in April of 2004 corroborated her testimony. (*People v. Anderson*, (2012) 208 Cal. App. 4th 851, 855.)

For this reason, Petitioner believes it prudent to present newly obtained evidence that the cited emails were in fact, not drafted or sent by Petitioner, and, in fact, were placed on YH's computer by hacking.

Daniel Haste is an investigator and computer expert who has been assisting Petitioner Anderson for some time. In his attached declaration, in addition to a summary of business dealings involving YH and her family, he reports that two emails introduced at trial, were located on Petitioner Anderson's computer in a folder labeled "Outlook Express\sent idems.dbx." Petitioner Anderson never used Outlook Express. Furthermore, the items contained only Zhou family email addresses. Non showed that they were sent to or received by Petitioner Anderson. (*See Declaration of Daniel Haste.*)

The declaration of Dr. Fredrick Cohen goes deeper into the incriminating emails and determines that they were not on Petitioner's computer. They could not have been created there or emailed from there. (*See Declaration of Dr. Fredrick Cohen.*) Dr. Cohen was consulted and prepared a report in 2012, that was used in the Petition for Habeas Corpus submitted at that time. That petition was summarily denied.

At trial, a large number of emails were introduced into evidence. The prosecution had provided in Discovery a 3-ring notebook labeled "Yellow Sheets" which contained full copies of 95 emails on Anderson's and on YH's computers that were deemed to be relevant to the case. While not used by the prosecution as the primary evidence against Petitioner, they were cited by the Court of Appeal in denying the direct appeal and the accompanying Habeas Petition. (*Mr. Garrison: Your Honor, we have approximately 60*

pages of motions. I'm sure the court has read them. I will not go over our position. I'm simply going to note that when Mr. Tarlow says that the E-mails were at the heart of our case, the heart of our case is the victim's testimony and the taped confession by the defendant. (Volume 5 of 34, pg. J-34.))

To be thorough in this Petition, Dr. Cohen was asked to again analyze the emails, using current techniques. Dr. Cohen's Report is attached.

He concludes:

- The new evidence provided by consistency analysis indicates that it is more likely than not that the evidence of the Yellow Sheets presented at trial was not reliable and authentic.
- The inconsistencies in the Yellow Sheets revealed by the new evidence provided by consistency could not reasonably be attributed to acts of Defendant.
- The asserted evidence relating to the Yellow Sheets cannot reasonably be relied upon as evidence of acts (i.e., either the writings or other actions) of Defendant.
- The items identified as inconsistent (i.e., marked YES in the last column) are more likely than not to have been incorrectly or improperly identified as to their authorship and transmission at trial and thus to have been inaccurately attributed to acts of Defendant.

App. 52

His report contains a chart with his specific findings and reasoning on pages 5 and 6. Listed by email reference number, the following emails were found to be inconsistent with the representations at trial.

No. 42, asserted as authored by Petitioner, was not drafted by Petitioner.

No. 59, asserted to have been authored by Petitioner, was inconsistent with such origin.

No. 70, asserted to have been authored elsewhere and sent to Petitioner, was never sent to Petitioner.

No. 71, found only on YH's computer in unallocated space, is of unclear authorship.

No. 72, found in unallocated space on YH's computer, is of unclear authorship.

No. 73, found in unallocated space on YH's computer, is of unclear authorship.

No. 74, Asserted to be Petitioner's response to No. 70, had to be authored by YH as No. 70 was never sent.

No. 75, asserted to have been authored by Petitioner, was not on Petitioner's computer, and is inconsistent with his authorship.

No. 76, asserted to have been authored by Petitioner, is not on Petitioner's computer, and is inconsistent with his authorship.

No. 77 and 78, asserted to have been authored by Petitioner, are present only on YH computer, and are inconsistent with Petitioner's authorship.

No. 78 response, asserted to be authored by Petitioner, is not on Petitioner's computer, and inconsistent with his authorship.

No. 79, asserted to be Petitioner's response to No. 78, was not authored by Petitioner as No. 78 was never sent.

No. 80, asserted to have been authored by YH and sent to Petitioner, is not on Petitioner's computer, and was not sent.

No. 83, asserted to have been authored by YH, was never sent to Petitioner.

Whether or not the emails were important to the jury verdict, they were important to the Court of Appeal, in finding any alleged error harmless. In this petition, with the issue of proof of innocence, the lack of foundation and presence of newly discovered evidence showing that the emails, not authored by Petitioner, were used by the Court of Appeal to support the verdict is significant.

IV. The family of YH had a strong financial motivation as well as evident support of the Chinese Intelligence Community to steal the intellectual property of Petitioner Anderson and transport it to mainland China.

The motivation for YH and her family to accuse Petitioner Anderson, and falsely secure his conviction, is clear from the record. YH's mother, apparently with the backing of Chinese Intelligence Services, had been employed in Petitioner Anderson's laboratory and had worked her way up to be the chief assistant of Petitioner Anderson in his genetics laboratory at USC. The history of that relationship is discussed at

length in the Declaration of Daniel Haste. (See Declaration of Daniel Haste.) Petitioner has newspaper articles from China that indicate that after YH's mother returned to China with the research, she received her own laboratory and many awards. John Elliott is a former law enforcement officer who served 7 years with the NCIS (Naval Criminal Investigative Service) and 19 years with the FBI. After examining the circumstances surrounding this case, it is his opinion that both YH's parents were working to bring Petitioner's research and discovery to China, and that YH's father was likely a professional member of the Chinese Intelligence Service. (See Declaration of James Elliott. With support documentation, the declaration is 421 pages.) The argument concerning the involvement of Chinese Intelligence was previously raised in a Petition for Habeas Corpus and denied without hearing.

A. Evidence That IP Was Stolen: Zhao is Praised and Honored in China

Zhao and her Chinese government contacts had planned and conducted a carefully organized blackmail/sabotage/theft (BST) scheme to block development of IL-12 in America, thereby allowing her to steal and take IL-12 to China unnoticed, as well as gene therapy IP, for development in China.

IL-12 is a cancer treatment drug that Anderson discovered while at USC. USC estimated its value in 2003 to be worth \$9 billion. In addition to its cancer treatment benefits, it is the only known drug that can rescue a lethally irradiated animal 24 hours after exposure. It therefore has profound military applications if nuclear warfare were to come to pass. Since radiation is a standard cancer therapy, and its severe side effects limit the amount of radiation that can be given to a patient, a drug like IL-12 that can reduce or eliminate the side effects of radiation therapy means that much higher dosage can be used to treat patients. The result would be to greatly increase the cure rates in cancer patients. China is using IL-12 in its cancer patients now, but not the U.S.

The ability to cure an individual who has receive a lethal amount if irradiation has enormous military applications. Tactical nuclear weapons are not currently used by anyone on a battlefield for two reasons: first, political reasons; but second, if anything were to go wrong (altered weather conditions, etc.) the attackers might themselves be subjected to lethal irradiation and, currently, there is no ready cure. IL-12 is the only drug that might be able to treat an individual who has been exposed to lethal irradiation. China has IL-12; America does not.

In the July 9, 2017, issue of the Chinese publication Quindao Creator in Finance, Zhao as President and Co-Founder of Kang Liantai (KLT)

Pharmaceutical Company, Ltd, in China, talked about their sole product, IL-12. She stated that she learned about this drug when she was at the University of Southern California and that she had always intended to bring it to China. Ironically, for her crimes, she is treated as a national hero in China. Anderson, an actual Time magazine “Hero of Medicine,” acknowledged as one of the most important geneticists of the 20th Century, and once a candidate for the Nobel Prize, was framed and sent to prison. China has made Zhao a national hero and an example of exemplary patriotic action. Based on stories in the Chinese press, she has received several national awards from the Chinese government for “acquiring” Anderson’s powerful cancer treatment drug, IL-12, and bringing it to China for development. The Chinese Communist Party does not consider IP theft from other countries a crime; it is considered as a business opportunity that is to be rewarded. China sends Chinese citizens to the U.S. to steal American IP as part of its government sponsored programs. The U.S. Commission on the Theft of American Intellectual Property has found that up to \$600 billion in American intellectual property is stolen each year and that China and its citizens are the world’s No. 1 perpetrator of such thefts.

Thus, the false charges were brought against Petitioner Anderson by Zhao as the vehicle to steal the cancer treatment drug IL-12 and the gene therapy IP, to remove him (and silence him) from the global competition to bring these multi-billion-dollar

treatments to market in the U.S., and to take the stolen IL-12 and gene therapy IP back to China for use, recognition, and profit there. In July 2004, she succeeded in this goal by getting Petitioner Anderson arrested on false charges and imprisoned. As soon as Anderson realized that Zhao had taken IL-12 to China, he properly reported the sabotage, espionage, and theft of his IP and IL-12 to the FBI as violations of the Economic Espionage Act, 18 U.S.C. 1831 (a). The FBI has his case under investigation.

Soon after KLT Pharmaceuticals was established in 2011, she won the National Major Technology Project for IL-12 under the category of “Major New Drug Creation”. Then in an August 21, 2019, article released from China, it was announced that her company won first prize in the national finals of the “Maker in China Competition” for IL-12. As stated previously, China does not consider IP theft as a crime, but as a business opportunity that is to be rewarded.

B. Serious Misconduct by the LASD

The Chinese intelligence plan was successful, but it only succeeded because of serious misconduct by the Los Angeles Sheriff's Department. The Chinese cleverly used the LADA and LASD to implement their plan. They tricked Los Angeles law enforcement in order to carry out their scheme of getting Anderson convicted on false allegations of child molestation. Putting the picture into the best light for the LADA

and LASD, a 17 year old girl gave testimony that she had been molested by an internationally known USC professor. The Chinese successfully hacked Anderson's email in order to plant several incriminating emails. Then, the LADA and LASD, assuming that the girl's accusations and the several emails on her computer were true, carried out their apparent standard policy: to conduct a sting meeting which is recorded. That recording was then edited to increase its prejudicial effect. It is also of note that in early stages of the investigation, two witness came forward on the east coast, alleging misconduct. In each case the witness stated that they came forward in response to publicity. In each case the publicity did not occur until after they came forward. The prosecution did not call either of the witnesses, but their presence demonstrates that someone or some organization went to great lengths to ensure that Anderson was convicted and sent to prison. The result: China has a multi-billion-dollar cancer treatment drug, and the U.S. does not.

CONCLUSION

Petitioner Anderson requests that the matter be set for hearing, and further gives notice that at this time he intends to call as witnesses Bruce Lebovitz, Prof. Yi Xu, Dr. Fred Cohen, Daniel Haste, and John Elliott. Other witnesses would include Detectives Ronald Jester and Kurt Ebert and possibly others.

App. 59

Dated: December , 2023

/s/William P. Daley
William P. Daley

App. 60

PROOF OF SERVICE

I declare that I am over the age of 18 and not a party to the within action.

My business address is 3478 Buskirk Ave., Ste. 150, Pleasant Hill, CA 94523.

On January 17, 2024. I served the foregoing Petition to set aside Judgement by placing true copies thereof in the U.S. mail, at Oakland California, addressed as follows:

Office of District Attorney
211 West Temple
Los Angeles Ca 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed January 17, at Walnut Creek, CA

/s/William P. Daley
William P. Daley