Case No. 24-

IN THE

Supreme Court of the United States

SCUDERIA DEVELOPMENT, LLC, *et al.,*

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the district court's refusal to ask defense-requested *voir dire* questions intended to identify existing anti-Asian and Chinese political, ethnic, and racial bias of members of the jury venire panel, and the Ninth Circuit's affirmance of that refusal, denied Petitioners a fair trial.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceeding are:

Petitioners, SCUDERIA DEVELOPMENT, LLC, 1001 DOUBLEDAY, LLC, VON-KARMAN-MAINSTREET, LLC, 10681 PRODUCTION AVENUE, LLC, PERFECTUS ALUMINIUM, INC., and PERFECTUS ALUMINIUM ACQUISITIONS, LLC; and Respondent, UNITED STATES OF AMERICA.

Pursuant to the United States Supreme Court, Rule 29-6, Petitioners certify that they are the real parties in interest. Petitioners Scuderia Development, LLC, 1001 Doubleday, LLC, Von-Karman-Mainstreet, LLC, and 10681 Production Avenue, LLC state that the membership interest in the companies are owned by Scuderia Capital Partners, Inc. Petitioners Perfectus Aluminium, Inc. and Perfectus Aluminium Acquisitions, LLC state that, while Perfectus Aluminium, Inc. is the parent company of Perfectus Aluminium Acquisitions, LLC, there are otherwise no parent companies or publicly held corporations that own 10% or more of the Perfectus Petitioners' stock.

STATEMENT OF RELATED PROCEEDINGS

This petition arises from the following proceedings in the United States District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit:

UNITED STATES OF AMERICA v. ZHONGTIAN LIU; CHINA ZHONGWANG HOLDINGS; ZHAOHUA CHEN; XIANG CHUN SHAO; PERFECTUS ALUMINIUM INC.; PERFECTUS ALUMINIUM ACQUISITIONS, LLC; SCUDERIA DEVELOPMENT, LLC; 1001 DOUBLEDAY, LLC; VON-KARMAN - MAIN STREET, LLC; and 10681 PRODUCTION AVENUE, LLC, United States District Court, Central District of California, Case No. 2:19-cr-00282-RGK-5-10; Judgments entered on April 13, 2022; Amended Judgments entered on April 29, 2022 as to Perfectus Aluminium Inc. and Perfectus Aluminium Acquisitions, LLC;

UNITED STATES OF AMERICA v. SCUDERIA DEVELOPMENT, LLC; 1001 DOUBLEDAY, LLC; VON-KARMAN - MAIN STREET, LLC; 10681 PRODUCTION AVENUE, LLC, United States Court of Appeals for the Ninth Circuit, Case No. 22-50080; Memorandum issued on July 31, 2024, Order denying rehearing *en banc* entered on September 6, 2024;

UNITED STATES OF AMERICA v. PERFECTUS ALUMINIUM INC, aka Perfectus Aluminium Inc., United States Court of Appeals for the Ninth Circuit, Case No. 22-50081; Memorandum issued on July 31,

2024, Order denying rehearing *en banc* entered on September 6, 2024;

UNITED STATES OF AMERICA v. PERFECTUS ALUMINIUM ACQUISITIONS, LLC, United States Court of Appeals for the Ninth Circuit, Case No. 22-50082; Memorandum issued on July 31, 2024, Order denying rehearing *en banc* entered on September 6, 2024; and

UNITED STATES OF AMERICA v. PERFECTUS ALUMINIUM INC; PERFECTUS ALUMINIUM ACQUISITIONS, LLC; SCUDERIA DEVELOPMENT, LLC; 1001 DOUBLEDAY, LLC; VON-KARMAN - MAIN STREET, LLC; and 10681 PRODUCTION AVENUE, LLC, United States Court of Appeals for the Ninth Circuit, Case No. 22-50103; Memorandum issued on July 31, 2024, Order denying rehearing *en banc* entered on September 6, 2024.

The following are related civil forfeiture actions:

UNITED STATES OF AMERICA v. REAL PROPERTY LOCATED AT 14600 INNOVATION DRIVE, RIVERSIDE, CALIFORNIA, pending in United States District Court for the Central District of California, Case No. 5:17-CV-01875-DMG (SPx);

UNITED STATES OF AMERICA v. REAL PROPERTY LOCATED AT 2323 MAIN STREET, IRVINE, CALIFORNIA, pending in United States District Court for the Central District of California, Case No. 8:17-CV-01592-DMG (SPx);

UNITED STATES OF AMERICA v. REAL PROPERTY LOCATED AT 10681 PRODUCTION AVENUE, FONTANA, CALIFORNIA, pending in United States District Court for the Central District of California, Case No. 5:17-CV-01872-DMG (SPx);

UNITED STATES OF AMERICA v. REAL PROPERTY LOCATED AT 1001 S. DOUBLEDAY AVENUE, ONTARIO, CALIFORNIA, pending in United States District Court for the Central District of California, Case No. 5:17-CV-01873-DMG (SPx); and

UNITED STATES OF AMERICA v. APPROXIMATELY 279,808 ALUMINUM STRUCTURES IN THE SHAPE OF PALLETS, pending in United States District Court for the Central District of California, Case No. 5:18-CV-01023-DMG (SPx).

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT ii

STATEMENT OF RELATED PROCEEDINGS iii

TABLE OF CONTENTS vi

TABLE OF CITED AUTHORITIES ix

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 4

JURISDICTION 5

CONSTITUTIONAL PROVISIONS INVOLVED 5

STATEMENT OF THE CASE 5

A. Jury *Voir Dire* is Critical to Assuring the Fifth and Sixth Amendments' Rights of Due Process and Fair Trials 5

B. Procedural and Factual Background 11

REASONS FOR GRANTING THE PETITION 17

A. The Ninth Circuit's Decision Affirming the Refusal of Racial Prejudice *Voir Dire* Erodes the Perception of Fairness in the

Federal Courts and Hinders the Administration of Justice 17

B. The Ninth Circuit's Decision Gives District Courts Unbridled Discretion to Refuse Racial Prejudice *Voir Dire* Questioning 19

CONCLUSION 23

TABLE OF APPENDICES i

Appendix A -

Memorandum, United States Court of Appeals for the Ninth Circuit, *United States of America v. Scuderia Development, LLC, et al.*, Case Nos. 22-50080, 22-50081, 22-50082, and 22-50103 (July 31, 2024) App-1

Appendix B -

Order, United States District Court, Central District of California, *United States of America v. Zhongtian Liu, et. al.*, Case No. 2:19-cr-00282-RGK (November 22, 2021) App-9

Appendix C -

Transcript of Proceedings, Trial – Day 1, United States District Court, Central District of California, *United States of America v. Zhongtian Liu, et. al.*, Case No. 2:19-cr-00282-RGK (August 10, 2021) App-32

Appendix D -
Order denying Petition for Rehearing En Banc, United States Court of Appeals for the Ninth Circuit, *United States of America v. Scuderia Development, LLC, et. al.,* Case Nos. 22-50080, 22-50081, 22-50082, and 2-50103
(September 6, 2024).....App-34

TABLE OF CITED AUTHORITIES

Page(s)

Federal Cases

Ham v. South Carolina,
409 U.S. 524 (1973)..... 6, 7, 8, 9

Pena-Rodriguez v. Colorado,
580 U.S. 206 (2017).....1, 6, 17, 18, 19

Ristaino v. Ross,
424 U.S. 589 (1976) 1, 3, 6, 8, 10, 19, 20, 22

Rosales-Lopez v. United States,
451 U.S. 182 (1981) 6, 9, 10, 11, 18, 19, 20, 22

Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rts. & Fight for Equal. By Any Means Necessary (BAMN),
572 U.S. 291 (2014)..... 1, 2

Turner v. Murray,
476 U.S. 28 (1986)..... 11

United States v. Anekwu,
695 F.3d 967 (9th Cir. 2012)..... 20

United States v. Cazares,
788 F.3d 956 (9th Cir. 2015)..... 4

United States v. Medina Casteneda,
511 F.3d 1246 (9th Cir. 2008)..... 16

Federal Statutes

28 U.S.C. § 1254(1)..... 5

COVID–19 Hate Crimes Act, P.L. 117-13,
May 20, 2021, 135 Stat. 265..... 3, 22

Constitutional Provisions

U.S. Const. amend. V..... 5

U.S. Const. amend. VI 5

PETITION FOR WRIT OF CERTIORARI

This Petition brings to the Court important questions concerning when a district court is compelled by the Constitution to conduct or to permit specific *voir dire* questioning designed to identify racial or ethnic bias held by jury venire members.

The lower courts' application of this Court's jurisprudence has effectively precluded meaningful review of an issue this Court has identified as a "familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 209 (2017). District courts cannot be afforded unchecked discretion to preclude even modest inquiry on the topic. The monumental challenge of ferreting out impermissible racial or ethnic bias becomes an insurmountable hurdle when district courts refuse to allow *any* inquiry on the topic during *voir dire*, particularly where the circumstances raise concerns of bias.

While the Court has addressed the issue of impermissible racial or ethnic bias before, including in *Ristaino v. Ross*, 424 U.S. 589, 598 (1976), in the intervening 48 years, district courts have consistently relied on *Ristaino* to disregard challenges based on a trial court's refusal to even *inquire* about racial bias. In this regard, district courts that refuse to inquire about racial and ethnic bias have made the protections of the Fifth and Sixth Amendments illusory by depriving criminal defendants of the critical information necessary to bring a successful

challenge to trials infected by racial prejudice. As Justice Sotomayor astutely counseled, "The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination." *Schuette v. Coal. to Defend Affirmative Action, Integration & Immigrant Rts. & Fight for Equal. By Any Means Necessary (BAMN)*, 572 U.S. 291, 381 (2014) (dissent). Rather than avoid the question, when the circumstances of a case present concerns of racial bias, district courts cannot be permitted to foreclose inquiry that could expose such impermissible bias.

Petitioners are six entities owned and controlled by Chinese nationals. Following a retroactive change in the U.S. Department of Commerce's Antidumping and Countervailing Duties on imported aluminum extrusion from the People's Republic of China, the government conjured a sprawling multi-object conspiracy that alleged Petitioners "defrauded" customs by intentionally importing or "smuggling" fake aluminum pallets into the United States.

By the time of Petitioners' trial in August of 2021, the COVID-19 Pandemic had raged in the United States and Los Angeles area for over one year. The Pandemic ushered in an extremely challenging—and dangerous—time for Asians in the United States. Many blamed the Chinese for the spread of the coronavirus and its devastating consequences. More than 600,000 Americans had lost their lives to it, and

millions more had suffered serious illness. Nearly everyone in the United States was personally affected by this once in a century scourge. Further, many believed that the "coronavirus leaked from a laboratory in China"[1] and that China was "a competitor or enemy"[2] to the United States. The discrimination against Asians was so prevalent that Congress enacted the COVID-19 Hate Crimes Act, acknowledging "*a dramatic increase in hate crimes and violence against Asian-Americans*." P.L. 117-13, May 20, 2021, 135 Stat. 265.

In the face of such intense and widespread bias, a district court cannot be allowed to refuse a criminal defendant's request to *voir dire* the venire panel in an effort to ferret out anti-Chinese animus. *Ristaino*, 424 U.S. at 598. Here, the district court chose to ignore reality, refusing to ask any questions intended to root out ethnic, racial, or political bias against China, and affirmatively aggravated the issue by allowing the government to stroke fear and animosity against Petitioners because of their ethnicity throughout the trial. Consequently, Petitioners were denied the opportunity to exercise their "right to be tried by a jury free from ethnic, racial, or political prejudice,"

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[1] Alice Miranda Ollstein, *POLITICO-Harvard Poll: Most Americans believe Covid leaked from lab*, POLITICO (July 9, 2021), https://www.politico.com/news/2021/07/09/poll-covid-wuhan-lab-leak-498847.

[2] Laura Silver, Kat Devlin, and Christine Huang, *Most Americans Support Tough Stance Toward China on Human Rights, Economic Issues*, PEW RESEARCH CENTER (March 4, 2021).

warranting reversal. *United States v. Cazares*, 788 F.3d 956, 968 (9th Cir. 2015).

There is no reasonable explanation for the court's refusal to inquire as to racial prejudice, except for the district court's view, affirmed by the Ninth Circuit, that it has virtually unbridled discretion to question or not to question jury venire on racial prejudice. Yet the rights guaranteed by the Fifth and Sixth Amendments are meaningless if a district court refuses a criminal defendant's request for *voir dire* on the topic of racial and ethnic bias in circumstances warranting such an inquiry. The consequences of such willful ignorance are too dangerous to indulge. Absent more definitive guidance by this Court requiring *voir dire* at least in the extreme circumstances represented by this case, it is unclear when, if ever, the Fifth and Sixth Amendments require the federal courts to inquire as to racial prejudice.

OPINIONS BELOW

The Ninth Circuit's opinion affirming Petitioners' convictions is unreported but available at *United States v. Scuderia Dev., LLC*, No. 22-50080, 2024 WL 3594382 (9th Cir. July 31, 2024) and is reproduced at App-1. The Ninth Circuit's order denying Petitioners' petition for rehearing en banc is unreported but is reproduced at App-34.

The district court's order denying Petitioners' request for a new trial is unreported but reproduced at App-9. The district court's denial of Petitioners'

requests for *voir dire* questioning is unreported but is reproduced at App-9 and App-32.

JURISDICTION

The Ninth Circuit issued its opinion on July 31, 2024. That judgment became final on September 6, 2024, when the court denied Petitioners' petition for rehearing en banc. This Court has jurisdiction under 28 U.S.C. section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides, in relevant part: "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, ..." U.S. Const. amend. VI.

Further, the Due Process Clause of the Fifth Amendment provides: "No person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

STATEMENT OF THE CASE

A. Jury *Voir Dire* is Critical to Assuring the Fifth and Sixth Amendments' Rights of Due Process and Fair Trials

Ignoring racial bias does not make the problem go away. Jury *voir dire* plays a critical function in assuring criminal defendants that "their Sixth

Amendment right to an impartial jury will be honored." *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981). Indeed, this Court has explained that, though imperfect, "*Voir dire* at the outset of trial" is "an important mechanism[] for discovering bias." *Pena-Rodriguez*, 580 U.S. at 209.

Without adequate *voir dire*, "the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." *Rosales-Lopez*, 451 U.S. at 188. Even more compromising, the "lack of adequate *voir dire* impairs the defendant's right to exercise peremptory challenges where provided by statute or rule, as it is in the federal courts." *Id.*

To that end, this Court has held that district courts must ask *voir dire* questions designed to identify racial or ethnic bias held by jury venire members where the circumstances "suggest a significant likelihood that racial prejudice might infect [] trial." *Ristaino*, 424 U.S. at 598. That significant likelihood existed at the time of trial in this case.

The Court first addressed whether the Constitution requires the courts to examine jurors during *voir dire* as to possible racial prejudice in *Ham v. South Carolina*, 409 U.S. 524 (1973). In *Ham*, a young black man who was "well known locally for his work in such civil rights activities" was arrested for possession of marijuana in violation of state law. *Id.* at 524–25. He had never previously been convicted of

any crime. *Id.* at 525. His defense at trial was that "law enforcement officers were 'out to get him' because of his civil rights activities, and that he had been framed on the drug charge." *Id.*

Before *voir dire*, defendant asked the court to "ask jurors four questions relating to possible prejudice against petitioner," the first two of which "sought to elicit any possible racial prejudice." *Id.* at 525–26. The court declined to ask any of the questions, and instead inquired as to three general questions concerning bias and prejudice. *Id.* at 526.

This Court found the trial court's refusal to specifically inquire about racial prejudice was reversible error. *Id.* at 526–27. As the Court explained, "Since one of the purposes of the Due Process Clause of the Fourteenth Amendment is to insure these 'essential demands of fairness,' . . . we think that the Fourteenth Amendment required the judge in this case to interrogate the jurors upon the subject of racial prejudice." *Id.* The Court further reasoned that, under these facts, "essential fairness required by the Due Process Clause of the Fourteenth Amendment requires . . . the petitioner be permitted to have the jurors interrogated on the issue of racial bias," and reversed the Supreme Court of South Carolina. *Id.* at 527–29.

Following *Ham*, the Court addressed the broader issue of whether the Constitution requires examination of racial prejudice at *voir dire* "whenever there may be a confrontation in a criminal trial between persons of different races or different ethnic

origins" in *Ristaino v. Ross*, 424 U.S. 589, 590 (1976). It answered that question in the negative.

Ristaino concerned three black men that were convicted in a state court of violent crimes against a white security guard. *Id.* at 589. At trial, defendants' counsel made written motions requesting that the court question prospective jurors specifically about racial prejudice. *Id.* at 590. After tentatively indicating that he "(felt) that no purpose would be accomplished by asking such questions in this instance," the judge inquired whether there was anything "peculiar" about the circumstances of the case. *Id.* at 590–91. In response, defendants' counsel stated, "No, just the fact that the victim is white, and the defendants are black." *Id.* at 592. The trial judge then "adhered to his decision not to pose a question directed specifically to racial prejudice." *Id.* at 593. The jury convicted each defendant on all counts. *Id.*

After granting certiorari, the Court affirmed the trial court's refusal to pose specific *voir dire* questioning on racial prejudice. The Court explained that "*Ham* did not announce a requirement of universal applicability," but rather "reflected an assessment of whether under all of the circumstances presented there was a constitutionally significant likelihood that, absent questioning about racial prejudice, the jurors would not be as 'indifferent as (they stand) unsworne.'" *Id.* As such, "[t]he Constitution does not always entitle a defendant to have questions posed during [v]oir dire specifically directed to matters that conceivably might prejudice veniremen against him." *Id.* at 594.

However, the Court recognized that some cases may present circumstances in which an "impermissible threat to the fair trial guaranteed by due process is posed by a trial court's refusal to question prospective jurors specifically about racial prejudice during [v]oir dire." *Id.* at 594–95. In those cases, district courts *mus*t ask *voir dire* questions designed to identify racial or ethnic bias held by jury venire members where the circumstances "suggest a significant likelihood that racial prejudice might infect [] trial." *Id.* at 598.

Five years later, this Court again addressed when the failure to ask *voir dire* questions directed to discovering racial prejudice will constitute reversible error in *Rosales-Lopez v. United States*, 451 U.S. 182 (1981). In *Rosales-Lopez*, a defendant of Mexican descent was tried in the United States District Court for the Southern District of California for his alleged participation in a plan to illegally bring three Mexican noncitizens into the country. *Id.* at 182. At the trial's outset, defense counsel requested that the judge specifically ask questions during *voir dire* directed towards discovering racial prejudice, arguing at side-bar that "a federal court 'must explore all racial antagonism against my client because he happens to be of Mexican descent.'" *Id.* at 186. After the trial court declined, the jury convicted, and the defendant appealed. *Id.* at 187.

The Court granted certiorari to resolve a split in the Court of Appeals as to when the failure to ask racial prejudice questions during *voir dire* will constitute reversible error." *Id.* At the time, some

Circuits had adopted a "*per se* rule, requiring reversal whenever the trial judge fails to ask a question on racial or ethnic prejudice requested by a defendant who is a member of a minority group." *Id.* at 187–88. Other Circuits, including the Ninth Circuit, "rejected such a *per se* rule" and held that "a trial judge is required to pose such a question only where there is some indication that the particular case is likely to have racial overtones or involve racial prejudice." *Id.* at 187–88.

Resolving the different approaches adopted by the Court of Appeals, this Court held that "[a]s *Ristaino* demonstrates, there is no *per se* constitutional rule in such circumstances requiring inquiry as to racial prejudice." *Id.* at 190. As such, "[o]nly when there are more substantial indications of the likelihood of racial or ethnic prejudice affecting the jurors in a particular case does the trial court's denial of a defendant's request to examine the jurors' ability to deal impartially with this subject amount to an unconstitutional abuse of discretion." *Id.*

The Court further explained that the "[d]etermination of an appropriate . . . standard for the federal courts does not depend upon a comparison of the concrete costs and benefits that its application is likely to entail" because "[t]hese are likely to be slight: some delay in the trial versus the occasional discovery of an unqualified juror who would not otherwise be discovered." *Id.* While the Court reasoned that "[i]n our judgment, it is usually best to allow the defendant to resolve this conflict by making

the determination of whether or not he would prefer to have the inquiry into racial or ethnic prejudice pursued," it held the "[f]ailure to honor his request, however, will be reversible error only where the circumstances of the case indicate that there is a reasonable possibility that racial or ethnic prejudice might have influenced the jury." *Id.* at 191. Under this framework, the Court affirmed the district court's refusal of defendant's requested *voir dire*. *Id.* at 192–94.

Following *Rosales-Lopez*, this Court held in *Turner v. Murray*, 476 U.S. 28, 36–37 (1986) that "a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias."

B. Procedural and Factual Background

This case arose after the government conjured a sprawling multi-object conspiracy alleging that a Chinese company, China Zhongwang ("CZW"), used its importations of aluminum pallets to evade Antidumping/Countervailing Duties Orders on aluminum extrusions.

The 2019 Indictment alleged customs fraud, wire fraud, money laundering, aiding and abetting, and conspiracy claims. *See* 6-ER-1337. But the lynchpin of the case—upon which all other counts relied—was the allegation that the Petitioners "defrauded" customs by intentionally importing or

"smuggling" fake pallets into the U.S.–aluminum extrusions that were temporarily tack welded in the *shape* of pallets for later disassembly, by claiming on the Form 7501s that the pallets were exempt from the AD/CVD under their "finished merchandise" exception. 6-ER-1344-1345, 1350-1352, 1357-1359, 1373.

CZW, one of the world's largest aluminum manufacturers, formerly run by its prior chairman Zhongtian Liu, is based in China. 9-ER-2145:20-2146:3.

Between 2004 and 2010, seven aluminum corporations were formed in California and imported and sold aluminum from CZW in the United States. 7-ER-1682:23-1684:5; 13-ER-3182. In 2014, these corporations were merged into Perfectus Aluminium Acquisitions, LLC, which is a subsidiary of Perfectus Aluminium, Inc. 13-ER-3273.

In 2011, Petitioners began importing finished aluminum pallets into the United States after the U.S. Department of Commerce ("DOC") enacted AD/CVD Duties on imported aluminum extrusion from China, believing that the pallets were "finished merchandise" expressly exempt from such higher duties on aluminum extrusions as unfinished parts. 8-ER-1844:13-1845:1. This belief was reinforced by over 400 importations presented for inspection to the U.S. Customs and Border Protection from 2011 through 2014 at standard duty rates, without government challenge or comment, and a post-importation government audit in 2015 that confirmed

in writing that the AD/CVD Duties did not apply to these pallets. 9-ER-2218:17-20; 10-ER-2313:3-2315:18, 2364:22-2365:13; 11-ER-2602:8-2607:12, 2623:5-2624:10, 2659:4-18:14; 19-ER-4936.

However, years after Petitioners' importations ended, a 2017 scope order by DOC reversed course and ruled that the pallets were not exempt on grounds never before raised or applied to any imported aluminum finished products. 17-ER-4521. Following the DOC's about-face, the government attempted to collect millions in purportedly applicable AD/CVD Duties from Petitioners that it waived its right to nearly a decade before based on the DOC's scope order.

Trial on the charges began after Petitioners unsuccessfully moved to dismiss the customs fraud and wire fraud charges on the grounds that neither count was adequately charged. Due to the anti-Asian sentiment raging through America as a result of the COVID-19 pandemic, Petitioners submitted a number of *voir dire* questions intended to ferret out anti-Chinese bias among the prospective jurors.[3] For instance, Petitioners proposed that the court ask prospective jurors: "Are there any stereotypes you have heard about people of Chinese descent that you believe are correct or have a grain of truth to them?"; "Do you believe that Chinese people are more likely to

[3] The court explained that it would "conduct[] the entire voir dire itself" and would "incorporate any questions that [the parties] have asked . . . to the extent [the court] feel[s] it is appropriate." 7-ER-1399.

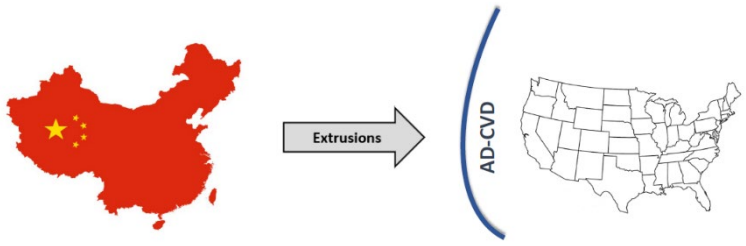
commit crimes?"; "Do you have strong feelings about immigration and/or immigrants from China?"; and "Do you believe that China poses a threat to the United States?" 5-ER-995:4-8, 997:22-26, 998:3-4, 998:6-7.[4] However, the court, conducting its own voir dire, refused to ask Appellants' proposed questions—or any questions about racial prejudice or bias whatsoever—and averred that the questions had been "covered [] if appropriate." 7-ER-1462:4-8; *see also* 7-ER-1417:19-1498:4.

After the district court's refusal to inquire as to racial prejudice, the government's trial presentation capitalized on Petitioners' Chinese ethnicities. Repeatedly during trial, the government described Mr. Liu as an "emperor" who was treated like "royalty" and would travel with "an entourage." *See, e.g.*, 7-ER-1513:2-3, 1626:9-10; 8-ER-1697:18, 23-24; 12-ER-3020:10-14.

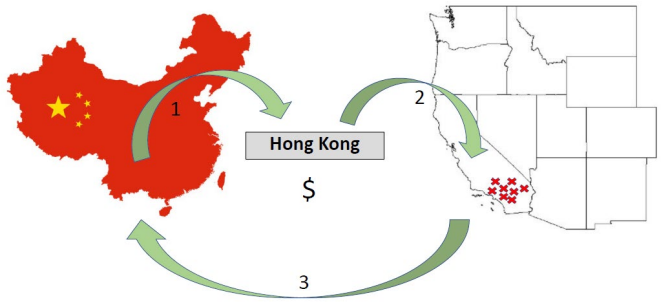
Despite the fact that the defendants on trial were all U.S. incorporated companies owned by various Chinese citizens, the country of China was portrayed as the "defendant." The government bookended the trial with demonstrative slides depicting China—color-blocked in bright red and emblazoned with the PRC flag design—physically

[4] Additional questions that were requested included: "Do you believe that the Chinese government is responsible for the Covid-19 pandemic or otherwise blame China for the Covid-19 pandemic?" and "Do you blame China and/or its citizens for the lockdowns that took place in response to the Covid-19 pandemic?" 5-ER-995:4-8.

opposite from the United States—depicted in white and guarded with a protective barrier:



2-ER-220.



2-ER-225.

After the close of evidence, the jury returned guilty verdicts against all six Chinese-owned defendants on all counts. 12-ER-3151:9-3175:17.

Petitioners moved for a new trial based in part on the district court's refusal to ask prospective jurors about racial prejudice, but the district court denied Petitioners' motion, holding that "[a]lthough the Court, in its broad discretion, did not ask prospective

jurors specific questions about anti-Chinese bias, voir dire was adequate because the Court asked jurors 'more general question[s] regarding the juror[s'] ability to follow the law in accordance with the judge's instruction.'" App-30 (quoting *United States v. Medina Casteneda*, 511 F.3d 1246, 1250 (9th Cir. 2008)). The district court further reasoned that its refusal to inquire about racial prejudice was appropriate because "a district court has considerable discretion to accept or reject proposed voir dire questions and, as long as it conducts an adequate voir dire, its rejection of specific questions is not error." App-30. Absent from the district court's order was any analysis of this Court's precedent requiring *voir dire* on racial prejudice when there is a significant likelihood racial prejudice might influence the jury.

Petitioners appealed the district court's ruling. The Ninth Circuit held that "[t]he district court did not abuse its discretion in conducting voir dire" because "Defendants' claim that the district court was required to inquire about anti-Asian and anti-Chinese bias rests on speculation about the COVID-19 pandemic and general animosity toward China . . . ." App-5. According to the Ninth Circuit, a "trial court may refuse questions which are tied to prejudice only speculatively," and the district court exercised its "'considerable discretion' by declining to ask proposed questions that concerned the COVID-19 pandemic and were only speculatively linked to any concerns about juror bias." App-5.

Following the Ninth Circuit's denial of Petitioners' petition for rehearing en banc, Petitioners timely filed this petition for writ of certiorari.

REASONS FOR GRANTING THE PETITION

A. The Ninth Circuit's Decision Affirming the Refusal of Racial Prejudice *Voir Dire* Erodes the Perception of Fairness in the Federal Courts and Hinders the Administration of Justice

This Court has warned that "racial bias" is a "familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." *Pena-Rodriguez*, 580 U.S. at 209. In *Pena-Rodriguez*, the Court explained because "racial bias implicates unique historical, constitutional, and institutional concerns," "[a]n effort to address the most grave and serious statements of racial bias is not an effort to perfect the jury but to ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law . . . ." *Id.* For that reason, "there is a sound basis to treat racial bias with added precaution . . . ." *Id.*

However, in *Pena-Rodriguez,* in observance of the no-impeachment rule, the Court constrained the scope of inquiry and review of allegations of bias affecting jury deliberations. One of the factors identified by the Court in *Pena-Rodriguez* was the belief that "*voir dire* provides an opportunity for the court and counsel to examine members of the venire

for impartiality." *Id.* at 220. Thus, when one of the primary protections against jury bias is unreasonably curtailed by a trial court, it creates an intolerable risk of damage to "'both the fact and the perception' of the jury's role as 'a vital check against the wrongful exercise of power by the State." *Id.* at 223. The limits on the backend of a trial—articulated in *Pena-Rodriguez*—are ineffective without real inquiry as to racial prejudice on the front end of a trial during *voir dire*. The restraint of the rule articulated in *Pena-Rodriguez* was based, in part, on the protections afforded by "careful *voir dire*." *Id.* at 228.

Similarly, *Rosales-Lopez* explained that racial prejudice presents "a more significant conflict . . . one involving the appearance of justice in the federal courts." *Rosales-Lopez*, 451 U.S. at 190. On the one hand, "requiring an inquiry in every case is likely to create the impression 'that justice in a court of law may turn upon the pigmentation of skin [or] the accident of birth,'" while on the other, "is the criminal defendant's perception that avoiding the inquiry does not eliminate the problem, and that his trial is not the place in which to elevate appearance over reality." *Id.*

The Ninth Circuit's decision affirming the district court's refusal to inquire about racial prejudice under the unique circumstances presented in this case erodes the perception of fairness in the federal courts and hinders the administration of justice. The Ninth Circuit's ruling dispensed with Petitioners' legitimate concerns over racial prejudice based on little more than "considerable discretion" and by labeling Petitioners' concerns as "speculative."

App-5. But in so doing, the Ninth Circuit failed to exercise the "added caution" this Court has counseled is critical to prevent the "systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right." *Pena-Rodriguez*, 580 U.S. at 209. If left to stand, criminal defendants within the Ninth Circuit, and the public at large, are left to wonder when, if ever, the circumstances may arise resembling a "significant likelihood that racial prejudice might infect [the] trial," if not here.

B. The Ninth Circuit's Decision Gives District Courts Unbridled Discretion to Refuse Racial Prejudice *Voir Dire* Questioning

Jury *voir dire* "plays a critical function in assuring the criminal defendant that [their] Sixth Amendment right to an impartial jury will be honored." *Rosales-Lopez*, 451 U.S. at 188. The lack of an adequate *voir dire* not only impairs the district court's ability to remove prospective jurors for cause, but it substantially limits the defendant's right to fairly exercise peremptory challenges. *Id.*

This Court has held that *voir dire* concerning the racial or ethnic prejudice of prospective jurors is constitutionally required where the circumstances of a case "suggest a significant likelihood that racial prejudice might infect [the defendant's] trial." *Ristaino*, 424 U.S. at 598. The failure to inquire into racial or ethnic prejudice is reversible error where there are "substantial indications of the likelihood of

racial or ethnic prejudice affecting the jurors in a particular case." *Rosales-Lopez*, 451 U.S. at 190.

By denying Petitioners' requested *voir dire* on Anti-Chinese bias, the decisions in the courts below fail to properly apply this Court's precedent and effectively provide district courts within the Ninth Circuit with unbridled discretion to deprive criminal defendants of their right to a fair trial. Under the Ninth Circuit's view of *voir dire*, district courts may unconditionally reject criminal defendants' requests for *voir dire* directed towards discovering racial prejudice in extraordinary circumstances, including those presented in this case, where the risks of racial prejudice amongst the public and any jury venire made up from that public are at the extreme end of a "significant" and "substantial" likelihood, on the basis of "discretion." That interpretation should not prevail in observing a criminal defendant's constitutional rights to a fair trial.

To be sure, the circumstances and facts of this case carried racial overtones and suggested a "significant likelihood that racial prejudice might infect the jury." *Ristaino,* 424 U.S. at 598; *see also United States v. Anekwu*, 695 F.3d 967, 978 (9th Cir. 2012) (trial courts have a "constitutional obligation to inquire into racial or ethnic prejudice" when "racial or ethnic issues are inextricably bound up with the conduct of the trial"). The criminal defendants and Petitioners here are six Chinese-owned, U.S. companies accused of violating AD/CVD orders by importing products into the United States and fraudulently identifying them as exempt from U.S.

Customs laws to allegedly undercut the American aluminum industry. The trial almost exclusively featured Chinese-Americans, Chinese nationals, and Chinese-owned companies as witnesses and participants.

Moreover, trial took place against a backdrop of historic anti-Chinese sentiment in the United States. By the time the case was tried in August of 2021, the COVID-19 Pandemic had raged in the United States for approximately 18 months. The Pandemic presented one of the most challenging—and dangerous—times for Asian-Americans. The most widespread coronavirus was discovered in Wuhan, China. Consequently, many Americans believed that China bore responsibility for the Pandemic and its devastating effects. Many Americans believed that the "coronavirus leaked from a laboratory in China,"[5] and by the time of trial, a majority of Americans considered China "a competitor or enemy" and expressed having "cold feelings toward China."[6] Because of this, the United States experienced a substantial rise in hate crimes against Asian-Americans. 4-ER-840. Congress acknowledged the causal relationship between the sharp rise in anti-

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[5] Alice Miranda Ollstein, *POLITICO-Harvard Poll: Most Americans believe Covid leaked from lab*, POLITICO (July 9, 2021), https://www.politico.com/news/2021/07/09/poll-covid-wuhan-lab-leak-498847.

[6] Laura Silver, Kat Devlin, and Christine Huang, *Most Americans Support Tough Stance Toward China on Human Rights, Economic Issues*, PEW RESEARCH CENTER (March 4, 2021).

Asian sentiment and the beginning of the COVID-19 pandemic when it passed the COVID-19 Hate Crimes Act a mere three months before the trial in this case, which acknowledged "*a dramatic increase in hate crimes and violence against Asian-Americans*." P.L. 117-13, May 20, 2021, 135 Stat. 265 ("[f]ollowing the spread of COVID-19 in 2020, there has been a dramatic increase in hate crimes and violence against Asian-Americans" and "[d]uring this time frame, race has been cited as the primary reason for discrimination, making up over 90 percent of incidents."). Similarly, the district court acknowledged "the COVID problem that we have right now." 10-ER 2509:25-2510:1.

These circumstances are fundamentally different than those this Court has found did not warrant specific questioning as to racial prejudice at *voir dire*, where the only circumstances suggesting racial prejudice might infect the jury's perception were "just the fact that the victim is white, and the defendants are black," *Ristaino*, 424 U.S. at 591, or that the defendants "happen[] to be" ethnic minorities. *Rosales-Lopez*, 451 U.S. at 186.

To refuse to inquire of the venire to uncover such biases among them under these circumstances was reversable error and sows uncertainty. Indeed, there is no reasonable explanation for this failure, except for the district court's view, affirmed by the Ninth Circuit, that it has virtually unbridled discretion to question prospective jurors absent more definitive guidance by this Court requiring *voir dire*

at least in such circumstances as represented by this case.

CONCLUSION

For these reasons, Petitioners respectfully request that the Court grant certiorari.

Respectfully submitted,

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December 5, 2024

APPENDIX

TABLE OF APPENDICES

Appendix A -
Memorandum, United States Court of Appeals for the Ninth Circuit, *United States of America v. Scuderia Development, LLC, et al.*, Case Nos. 22-50080, 22-50081, 22-50082, and 22-50103 (July 31, 2024) App-1

Appendix B -
Order, United States District Court, Central District of California, *United States of America v. Zhongtian Liu, , et al.*, Case No. 2:19-cr-00282-RGK (November 22, 2021) App-9

Appendix C -
Transcript of Proceedings, Trial – Day 1, United States District Court, Central District of California*, United States of America v. Zhongtian Liu, et al.*, Case No. 2:19-cr-00282-RGK (August 10, 2021) App-32

Appendix D -
Order denying Petition for Rehearing En Banc, United States Court of Appeals for the Ninth Circuit, *United States of America v. Scuderia Development, LLC, et al.*, Case Nos. 22-50080, 22-50081, 22-50082, and 22-50103 (September 6, 2024).....App-34

Appendix A - Memorandum, United States Court of Appeals for the Ninth Circuit, *United States of America v. Scuderia Development, LLC, 1001 Doubleday, LLC, Von-Karman-Main Street, LLC, 10681 Production Avenue, LLC*, Case No. 22-50080; *United States of America v. Perfectus Aluminium Inc, aka Perfectus Aluminium Inc.*, Case No. 22-50081; *United States of America v. Perfectus Aluminium Acquisitions, LLC*, Case No. 22-50082; and *United States of America v. Perfectus Aluminium Inc, Perfectus Aluminium Acquisitions, LLC, Scuderia Development, LLC, 1001 Doubleday, LLC, Von-Karman - Main Street, LLC, 10681 Production Avenue, LLC*, Case No. 22-50103 (July 31, 2024)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 22-50080

United States District Court,
Central District of California

D.C. Nos.

2:19-cr-00282-RGK-7; 2:19-cr-00282-RGK-8; 2:19-cr-00282-RGK-9; 2:19-cr-00282-RGK-10

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SCUDERIA DEVELOPMENT, LLC; et al.

Defendants-Appellants.

No. 22-50081

D.C. No. 2:19-cr-00282-RGK-5

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PERFECTUS ALUMINIUM INC. aka Perfectus Aluminium Inc.,

Defendant-Appellant.

No. 22-50082

D.C. No. 2:19-cr-00282-RGK-6

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PERFECTUS ALUMINIUM ACQUISITIONS, LLC

No. 22-50103

D.C. Nos.
2:19-cr-00282-RGK-4; 2:19-cr-00282-RGK-5; 2:19-cr-00282-RGK-6; 2:19-cr-00282-RGK-7; 2:19-cr-00282-RGK-8; 2:19-cr-00282-RGK-9; 2:19-cr-00282-RGK-10; 2:19-cr-00282-RGK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PERFECTUS ALUMINIUM INC, et al.,

Defendants-Appellees

Appeal from the United States District Court for the
Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted July 15, 2024
Pasadena, California

MEMORANDUM*

Before: PAEZ and SANCHEZ, Circuit Judges, and LYNN, ** District Judge

Defendants-Appellants appeal their jury convictions on 24 counts for conspiring to commit wire fraud, customs fraud, and promotional money laundering in violation of 18 U.S.C. § 371; wire fraud in violation of 18 U.S.C. § 1343; customs fraud in violation of 18 U.S.C. § 545; and money laundering in violation of 18 U.S.C. § 1956(a)(2)(A). They also appeal the district court's restitution order, while the Government cross-appeals the court's restitution payment schedule. We have jurisdiction under 28 U.S.C. § 1291. We affirm Defendants' convictions and vacate the restitution order in part.

1. The district court did not err in denying Defendants' motion to dismiss. Because U.S. corporate Defendants' wires originated or terminated in the Central District of California, this case concerns domestic applications of the wire fraud statute. See *United States v. Hussain*, 972 F.3d 1138, 1145 (9th Cir. 2020). Further, the indictment adequately alleged the elements of customs fraud. The indictment alleged that Defendants intended to defeat or avoid 2011 antidumping/countervailing duties ("AD/CVD") orders by knowingly submitting

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

** The Honorable Barbara M. G. Lynn, United States District Judge for the Northern District of Texas, sitting by designation.

false documentation to U.S. Customs and Border Protection ("Customs") asserting that their aluminum pallets were "finished merchandise." 18 U.S.C. § 545; see *United States v. Robinson*, 147 F.3d 851, 853 (9th Cir. 1998) (explaining that customs fraud occurs at the time of "the submission of false, forged or fraudulent invoices" at the port of entry). The district court correctly denied Defendants' motion to dismiss the indictment on these grounds.

2. The district court did not abuse its discretion in conducting voir dire. Defendants' claim that the district court was required to inquire about anti-Asian and anti-Chinese bias rests on speculation about the COVID-19 pandemic and general animosity toward China, but a "trial court may refuse questions which are tied to prejudice only speculatively." *United States v. Anekwu*, 695 F.3d 967, 978 (9th Cir. 2012) (cleaned up) (quoting *United States v. Payne*, 944 F.2d 1458, 1474 (9th Cir. 1991)). To the extent Defendants preserved their voir dire objection for appeal, the district court exercised its "considerable discretion" by declining to ask proposed questions that concerned the COVID-19 pandemic and were only speculatively linked to any concerns about juror bias. *United States v. Medina Casteneda*, 511 F.3d 1246, 1250 (9th Cir. 2008).

3. The Government did not commit a constructive amendment or impermissible variance between the indictment and trial. The indictment alleges that Defendants conspired to import aluminum extrusions tack-welded into the shape of pallets and falsely represent to Customs that the

aluminum pallets were "finished merchandise" beyond the ambit of the 2011 AD/CVD orders. The Government presented the same theory of customs fraud at trial. Government witnesses testified that the pallets were not "finished merchandise" because they lacked any "non-extruded aluminum," evidence that is consistent with the indictment's charge that Defendants smuggled extruded aluminum into the United States as "finished merchandise." Nor was the Government's proof at trial an impermissible variance because the proven facts were not "materially different from those alleged in the indictment." *United States v. Hartz*, 458 F.3d 1011, 1020 (9th Cir. 2006) (quoting *United States v. Von Stoll*, 726 F.2d 584, 586 (9th Cir. 1984)).

4. The district court properly admitted co-conspirator statements. At trial, the Government established the existence of a conspiracy to commit wire fraud and customs fraud, and thus needed "only [to] present slight evidence connecting the defendant to the conspiracy." *United States v. Crespo de Llano*, 838 F.2d 1006, 1017 (9th Cir. 1987). Defendants' challenged statements were directly connected to and in furtherance of the proven conspiracy, and the court correctly held them to be admissible under the co-conspirator hearsay exclusion of Federal Rule of Evidence 801(d)(2)(E).

5. The district court correctly instructed the jury. The court properly declined to give "entrapment-by-estoppel" and "mere-presence" defense instructions because Defendants failed to present prima facie evidence such that a jury "could rationally

sustain the defense." *United States v. Kayser*, 488 F.3d 1070, 1076 (9th Cir. 2007) (quoting *United States v. Jackson*, 726 F.2d 1466, 1468 (9th Cir. 1984) (per curiam)). The district court correctly instructed the jury on the law regarding the AD/CVD orders and the Department of Commerce's 2017 scope ruling and did not usurp the jury's fact-finding role. Because each object of the conspiracy was legally sufficient, the district court did not abuse its discretion by using a general verdict form.

6. The Government presented sufficient evidence of customs fraud and wire fraud to support the jury's verdict. The Government provided ample evidence of Defendants' willful acts and intent to engage in customs fraud, as well as evidence of Defendants' deliberate misrepresentations to investors for the wire fraud counts. Viewing the evidence in the light most favorable to the prosecution, any rational juror "could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

7. Finally, the district court properly ordered restitution of $1,836,244,745 to Customs for unpaid duties under the Mandatory Victims Restitution Act ("MVRA") and properly found all Defendants jointly and severally liable. See *United States v. Gagarin*, 950 F.3d 596, 609 (9th Cir. 2020).

The court erred, however, in imposing the restitution payment schedule without resolving the parties' dispute concerning the value of the Warehouse Defendants' assets. The MVRA "requires

both that a district court set forth its reasons in *resolving a dispute* over restitution and that a restitution award . . . be adequately supported by evidence in the record." *United States v. Tsosie*, 639 F.3d 1213, 1222 (9th Cir. 2011) (emphasis added). "By its use of the '*all* property or rights to property' language, Congress has made quite clear that the totality of defendants' assets will be subject to restitution orders." *United States v. Novak*, 476 F.3d 1041, 1046 (9th Cir. 2007) (en banc) (internal citation omitted) (quoting 18 U.S.C. § 3613(a)). The district court did not hold an evidentiary hearing or resolve the parties' dispute over the value of the warehouses before determining that Defendants lacked the ability to pay restitution and ordering a nominal payment schedule. This finding was "without support in inferences that may be drawn from the facts in the record." *United States v. Martinez-Lopez*, 864 F.3d 1034, 1043 (9th Cir. 2017) (en banc) (quoting *United States v. Hinkson*, 585 F.3d 1247, 1263 (9th Cir. 2009) (en banc)).

Defendants' convictions **AFFIRMED.**
Restitution order **VACATED** and **REMANDED**.[1]

[1] Defendants' motion to take judicial notice of polling data on the COVID-19 pandemic and U.S.-China relations, (Dkt. 14), is **DENIED** as "not relevant to the disposition of this appeal." Cuellar v. Joyce, 596 F.3d 505, 512 (9th Cir. 2010).

Appendix B - Order, United States District Court for the Central District of California, *United States of America v. Zhongtian Liu, Perfectus Aluminium, Inc., Perfectus Aluminium Acquisitions, LLC, Scuderia Development, LLC, 1001 Doubleday, LLC, Von-Karman-Main Street, LLC, 10681 Production Avenue, LLC*, Case No. 2:19-cr-00282-RGK (November 22, 2021)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 2:19-cr-00282-RGK

UNITED STALES OF AMERICA,

Plaintiff

v.

ZHONGTIAN LIU, et al.,

Defendants

The Honorable R. Gary Klausner,
United States District Judge

Order Re: Motion for Judgment of Acquittal; Motion for New Trial

I. INTRODUCTION

On May 7, 2019, the United States of America (the "Government") filed an indictment against

Perfectus Aluminium, Inc. and Perfectus Aluminium Acquisitions, LLC (the "Perfectus Defendants"), as well as four other companies: Scuderia Development, LLC; 1001 Doubleday, LLC; Von Karman-Main Street, LLC; and 10681 Production Avenue, LLC (the "Warehouse Defendants"; collectively, "Defendants").[1] *(See* Indictment, ECF No. 1.) Defendants were indicted for conspiracy (count 1), wire fraud (counts 2-10), and passing a false document through a customhouse (counts 11-17). The Perfectus Defendants were also indicted for international promotional money laundering (counts 18-24). After trial, a jury found Defendants guilty of all counts. (Jury Verdict Form, ECF No. 276.)

Presently before the Court is Defendants' Motion for a Judgment of Acquittal and Motion for a New Trial. (ECF Nos. 287-88.) For the following reasons, the Court **DENIES** Defendants' Motions.

II. FACTUAL BACKGROUND[2]

This case involves a scheme in which the participants defrauded investors in the second largest aluminum extrusion company in the world,

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[1] The indictment also charged Zhongtian Liu, Zhaohua Chen, Xiang Chun ("Johnson") Shao, and China Zhongwang Holdings Limited ("CZW"), but they have failed to make an initial appearance in this case. The Court imposed civil contempt sanctions on CZW for its failure to appear. (*See* Order re Sanctions, ECF No. 177.)

[2] These facts summarize the case that the Government argued at trial.

China Zhongwang Holdings, Ltd. ("CZW"). The mastermind of the fraud scheme was Zhongtian Liu, the chairman, president, and controlling shareholder of CZW. To prepare CZW for an initial public offering ("IPO") in 2009, Liu caused $200 million to be sent to an entity called Scuderia Capital Partners and then to CZW. CZW did not disclose that this $200 million payment originated with Liu, creating the appearance that CZW had independently attracted substantial investment.

After CZW stock began trading, CZW and Liu, along with their co-conspirators, began artificially inflating the company's value. The Perfectus Defendants, which Liu controlled through their CEO, Johnson Shao, began purchasing large quantities of aluminum from CZW using money that CZW sent to the Perfectus Defendants through shell companies in Hong Kong. CZW then reported to investors an enormous growth of its sales and revenue, but failed to disclose that most of its sales were related party transactions.

In 2011, the scheme encountered a hurdle. The Department of Commerce imposed anti-dumping and countervailing ("AD/CV") duties of up to 400% on the aluminum extrusions that the Perfectus Defendants imported into the United States ("AD/CVD Orders"). To avoid paying these duties, CZW disguised its extrusions as aluminum pallets, and the Perfectus Defendants stated on forms submitted to Customs and Border Protection ("CBP") that their imports were not subject to

AD/CV duties. The Perfectus Defendants continued "purchasing" large quantities of aluminum from CZW, in the form of pallets. The Perfectus Defendants used the Warehouse Defendants to stockpile over a billion dollars in aluminum. They never sold a single pallet. Instead, they intended to melt the pallets at a facility in New Jersey that Liu acquired, namely Aluminum Shapes.

CZW continued to report its considerable growth in sales and revenue to investors. In September 2017, federal agents executed several search warrants, and the Government subsequently prosecuted Defendants for their crimes, securing convictions on August 23, 2021.

III. DISCUSSION

Defendants now move for a judgment of acquittal as to each count, arguing that the evidence presented at trial is insufficient to sustain a conviction. Defendants also move for a new trial. The Court addresses each Motion in turn.

A. Motion for Judgment of Acquittal

Federal Rule of Criminal Procedure ("Rule") 29 provides that "the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). "[T]here is sufficient evidence to sustain a conviction if, viewing the evidence in the light most

favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States* v. *Magallon-Jimenez,* 219 F.3d 1109, 1112 (9th Cir. 2000). A court considering the sufficiency of the evidence "must respect the exclusive province of the jury to determine the credibility of the witnesses, resolve evidentiary conflicts, and draw reasonable inferences from proven facts, by assuming that the jury resolved all such matters in a manner which supports the verdict." *United States* v. *Ramos,* 558 F.2d 545, 546 (9th Cir. 1977). Circumstantial evidence and inferences drawn from it are sufficient to sustain a conviction. *See, e.g., United States* v. *Reyes-Alvarado,* 963 F.2d 1184, 1187 (9th Cir. 1992).

Defendants assert that no rational jury could have found that the Government proved each element of each offense beyond a reasonable doubt. The Court disagrees.

1. Counts 2-10: Wire Fraud[3]

The indictment charged Defendants with nine counts of wire fraud (violations of 18 U.S.C. § 1343). It was the Government's burden to prove beyond a reasonable doubt the following:

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[3] The Court addresses Counts 2- 24 first, and Count 1 (Conspiracy) last, because Count 1's analysis relies on an understanding of the other offenses charged in the indictment.

> (1) Defendants knowingly participated in a scheme to defraud or a scheme for obtaining money by means of false representations or omitted facts;
>
> (2) The false representations or omitted facts were material;
>
> (3) Defendants acted with the intent to defraud; and
>
> (4) Defendants used interstate wire communication to carry out an essential part of the scheme.

(Jury Instrs., No. 20, ECF No. 275); *see also* 9th Cir. Model Crim. Jury Instrs., No. 8.124 (2010 ed.).

a. Knowledge and Intent

Defendants argue that the Government failed to prove that they knowingly participated in a scheme or had any intent to defraud. But viewing the evidence in the light most favorable to the Government, the Court finds that there is sufficient evidence to sustain a conviction. For example, the Government offered evidence that Johnson Shao, the CEO of the Perfectus Defendants, facilitated purchases of aluminum from CZW using money that CZW provided.[4]

[4] Defendants argue that the Government failed to prove that CZW funded the aluminum purchases. (Defs.' Mot. J. Acquittal

Circumstantial evidence "can be used to prove any fact" as the "law makes no distinction between the weight to be given to either direct or circumstantial evidence." (Jury Instrs., No. 6.) Shao's coordination of phony aluminum purchases supports a reasonable inference that the Perfectus Defendants knew about the fraud scheme and intended to deceive investors in CZW.

There is also sufficient evidence that the Warehouse Defendants knew about the scheme and acted with intent to defraud. Eric Shen, the CEO of the four Warehouse Defendants until 2013, testified that he facilitated a transfer of $200 million from Liu, through Scuderia Capital Partners (the parent company of one of the warehouses), and back to CZW, which CZW then represented to its investors as a legitimate, third-party loan. Shen also testified that Liu directed him to purchase the warehouses that would then stockpile the aluminum that the Perfectus Defendants obtained from CZW. Defendants argue that Shen's testimony does not provide any proof of scienter because he acted solely to benefit himself, not Defendants, and therefore his knowledge cannot by imputed to the Warehouse Defendants as their agent. (Defs.' Mot. J. Acquittal at 3, ECF No. 287 (asserting the "adverse interest exception").) Because a corporation can only act through its agents, the Government needed to prove

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at 12, ECF No. 287.) But the Government introduced several emails that indicate that CZW wired money to the Perfectus Defendants through Hong Kong. (*See* Gov't Exs. 328, 340, 349A, 371, 384; *see also* Gov't Ex. List, ECF No. 274.)

that the corporations' agents committed the crime, while intending to benefit the corporation, at least in part, and while acting within the scope of their employment. (Jury Instrs., No. 15.) The Government sufficiently proved corporate liability. Even if Shen acted partly for his own benefit by stealing money from Liu, as Defendants assert, the evidence reasonably suggests that Shen also acted with the intent to benefit the Warehouse Defendants – at least in part– by purchasing the warehouses and using them to store aluminum.

b. Materiality

Defendants also argue that the Government failed to prove that the alleged misrepresentations and omissions were material. Defendants' argument, however, discounts the testimony of Dr. Torben Voetmann, who explained to the jury why CZW's claims on its prospectuses that it had no related party transactions between 2009 and 2012, and minimal related party transactions in 2013 and 2014, would be important to investors. That testimony permitted a rational jury to find that those misrepresentations and omissions "had a natural tendency to influence ... a person to part with money." *(See* Jury Instrs., No. 20 (defining "material").) Testimony directly from a CZW investor was not necessary, despite Defendants' assertion that it was.

Defendants also assert that the Government "was required to prove that CZW or Liu breached a fiduciary duty owed to investors under the laws of the [People's Republic of China] or Hong Kong or

violated the reporting requirements of the Hong Kong Stock Exchange to support a conviction for wire fraud." (Defs. Mot. J. Acquittal at 8-9.) This assertion is inaccurate because the Government could have proven that the claims on CZW's prospectuses were misrepresentations, not omissions, which do not require a showing that Defendants had a duty that arose out of a relationship of trust. *(See* Jury Instr. No. 20.) The Government could have also proven that any omission on the prospectuses breached a duty arising out of an "informal" relationship of trust, which need not depend on a formal fiduciary relationship. *(Id.)*

As such, the Court finds that there is sufficient evidence to sustain Defendants' convictions for wire fraud.

2. Counts 11-17: Passing a False Document through a Customhouse

The indictment also charged Defendants with violating 18 U.S.C. § 545, which required proof that (1) Defendants knowingly passed a document through a customhouse of the United States; (2) Defendants knew that it was false; (3) Defendants acted willfully with intent to defraud the United States; and (4) the document was material. (Jury Instrs., No. 22); *see also* 9th Cir. Model Crim. Jury Instrs., No. 8.36 (2010 ed.). Defendants argue that the evidence does not support a finding that they knew that the

document they gave to CBP (Form 7501) was false or that they acted with the intent to defraud the United States. However, the Government's evidence is sufficient to sustain a conviction for this offense. Defendants stated that the aluminum pallets that they imported, as "finished merchandise," were not subject to AD/CV duties.[5] But Shen testified that he never believed that the pallets were "finished merchandise." Also, the Government offered evidence that the pallets were commercially useless because of their significant expense and weight, and that Defendants intended to melt the pallets at one of Liu's melting facilities. Also, Defendants never sold a pallet. Instead, they stockpiled over a billion dollars in aluminum at the warehouses. With this evidence, a rational jury could infer that Defendants knew that their statement that the pallets were not subject to AD/CV duties was false, and that they intended to defraud the United States by disguising their aluminum extrusions as "finished merchandise" to avoid paying duties to the United States.

The Court therefore denies Defendants' request for a judgment of acquittal of this offense.

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[5] The 2011 Department of Commerce Orders that imposed AD/CV duties on CZW's aluminum extrusion imports exempted "finished merchandise." In 2017, the Department clarified that its 2011 Orders did not exempt CZW's aluminum pallets; they were subject to AD/CV duties.

3. Counts 18-24: Money Laundering

The Perfectus Defendants were charged with seven counts of international promotional money laundering (violations of 18 U.S.C. § 1956(a)(2)(A)). Proof of this offense required evidence that (1) the Perfectus Defendants transported money to a place in the United States from or through a place outside of the United States; and (2) the Perfectus Defendants acted with the intent to promote the carrying on of wire fraud or passing a false document through a customhouse. (Jury Instrs., No. 28); *see also* 9th Cir. Model Crim. Jury Instrs., No. 8.148 (2010 ed.). The Perfectus Defendants argue that because the Government failed to prove that they committed wire fraud or passed a false document through a customhouse, it also failed to prove that the Perfectus Defendants laundered money with the intent to perpetuate those offenses. However, because the Court has found that the Government's evidence is sufficient to sustain a conviction for both underlying offenses, Defendants' argument fails, and the convictions for money laundering accordingly stand.

4. Count 1: Conspiracy

Lastly, the indictment charged Defendants with violating 18 U.S.C. § 371 by conspiring to either (1) defraud CBP or (2) commit at least one of the offenses charged. To secure a conviction for conspiracy, the Government needed to prove the following:

(1) From July 2008 to May 7, 2019, there was an agreement between two or more persons to either "defraud the United States by obstructing the lawful functions of [CBP] by deceitful or dishonest means" or "commit at least one crime as charged in the indictment";

(2) Defendants "became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it"; and

(3) "[O]ne of the members of the conspiracy performed at least one overt act on or after May 7, 2014 for the purpose of carrying out the conspiracy."

(Jury Instrs., No. 17); *see also* 9th Cir. Model Crim. Jury Instrs., Nos. 8.20-21 (2010 ed.).

Defendants argue that the Government failed to prove an agreement because it provided no evidence as to what Defendants "specifically agreed, who agreed to it on the respective entity's behalf, or what any agreement was intended to accomplish." (Defs.' Mot. J. Acquittal at 17-19.) But an agreement to commit a crime "need not be explicit; it is sufficient if the conspirators knew or had reason to know of the scope of the conspiracy and that their own benefits depended on the

success of the venture." *United Stales* v. *Montgomery,* 384 F.3d 1050, 1062 (9th Cir. 2004) (citing *United Stales* v. *Romero,* 282 F.3d 683, 687 (9th Cir. 2002)). It "can be proved by direct or circumstantial evidence, including inferences from circumstantial evidence." *United Stales* v. *Kaplan,* 836 F.3d 1199, 1212 (9th Cir. 2016) (quoting *United Stales* v. *Loveland,* 825 F.3d *555,* 557 (9th Cir. 2016). The Government offered enough evidence for a reasonable jury to find that the Government proved conspiracy beyond a reasonable doubt.

Regarding the Warehouse Defendants, the Government produced evidence that Eric Shen2013 – the CEO of the four Warehouse Defendants until 2013 – helped facilitate a $200 million transfer from Liu to CZW that CZW would represent as a legitimate, third-party loan. The evidence also showed that Shen helped launder money from Hong Kong to purchase three of the warehouses. Shen testified that he knew that the aluminum pallets were not "finished merchandise" and were to be melted down after importation. Also, there is evidence that Zhijie Wang – Liu's wife – became the CEO of the Warehouse Defendants in 2013 and ordered employees to shred documents after federal agents executed search warrants in September 2017. Although Wang's marriage to Liu does not conclusively establish a conspiracy, it is certainly strong, circumstantial evidence of Wang's knowledge, and therefore the Warehouse Defendants' knowledge, of the scope of the

conspiracy and their intent to accomplish at least one of its objects.

Regarding the Perfectus Defendants, the Government produced evidence that CZW directed their CEO, Johnson Shao, to purchase aluminum from CZW and sent the Perfectus Defendants the money to fund these phony purchases. This evidence, among other evidence viewed in the light most favorable to the Government, was sufficient for the jury to find that Defendants conspired to defraud CBP or to commit an offense charged in the indictment.

As such, Defendants' convictions for conspiracy remain.

5. Aiding and Abetting

Defendants also argue that there is insufficient evidence that the Warehouse Defendants aided and abetted the commission of wire fraud and passing of a false document through a customhouse. The Court has already found the evidence sufficient to sustain convictions on theories of direct liability. However, even if a rational jury could not find that the Warehouse Defendants directly committed the offenses charged, it could find that they aided and abetted their commission. "A defendant may be found guilty of a particular crime, even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission." (Jury Instrs., No. 29.) Guilt for

aiding and abetting requires proof that (1) someone else committed the crime, and that the defendant (2) aided that person with respect to at least one element of the crime, (3) acted with the intent to facilitate the crime, and (4) acted before the crime was completed. *(Id.); see also* 9th Cir. Model Crim. Jury Instrs., No. 5.1 (2010 ed.).

The Warehouse Defendants argue that the Government proved merely an association with the person committing the crime, not an intent to facilitate it, because the evidence demonstrated that three of the warehouses were purchased before the 2011 AD/CVD Orders took effect, and that therefore, their acts occurred before any motive for the fraud scheme existed. They ignore, however, the evidence that the fraud scheme began as early as 2009, when the Perfectus Defendants began making phony purchases of aluminum and the need to store aluminum extrusions arose. Also, the Warehouse Defendants' acts continued beyond the initial purchases of the warehouses, as the warehouses continually stockpiled aluminum pallets. Therefore, a rational jury could also find the Warehouse Defendants guilty on an aiding and abetting theory.

6. Venue

Lastly, Defendants argue that the Government failed to establish proper venue – i.e., that the wire fraud and money laundering offenses were committed within the Central District of California ("C.D. Cal."). The parties dispute

whether Defendants forfeited its venue objection by failing to assert it before the jury returned its verdict. However, the Court need not resolve this issue because even if it considers Defendants' venue challenge, the Court finds that any potential defect regarding venue does not warrant a judgment of acquittal here.

Defendants assert that the Government presented insufficient evidence to support a jury's finding on venue. However, the jury never made a finding on venue, which begs the next question: Does the jury's failure to decide whether venue was proper warrant the relief that Defendants seek? The Court finds that it does not.

The Government "must prosecute an offense in a district where the offense was committed." Fed. R. Crim. Proc. 18; *see also* 18 U.S.C. § 3232. "Venue is not an element of the charged crime, but establishment of venue is part of the prosecution's burden" to prove by the preponderance of the evidence. *United States* v. *Casch,* 448 F.3d 1115, 1117 (9th Cir. 2006); *United States* v. *Lukashov,* 694 F.3d 1107, 1120 (9th Cir. 2012). Also, venue "is a jury question." *United States* v. *Moran-Garcia,* 966 F.3d 966, 969 (9th Cir. 2020). As such, "it is error to not give a requested instruction on venue." *Lukashov,* 694 F.3d at 1112.

The Court did not instruct the jury on venue in this case. *(See* Jury Instrs.) However, Defendants never requested an instruction on venue. *(See* Defs.' Proposed Jury Instrs., ECF Nos.

264-65.) An error exists if a court *declines* to give a *requested* instruction on venue. *See, e.g., Lukashov,* 694 F.3d at 1112 ("[I]t is error to not give a *requested* instruction on venue." (emphasis added)); *Casch,* 448 F.3d at 1117 ("[I]t is error for the court to *decline* to give the instruction." (emphasis added)). Here, because Defendants never objected to venue and never requested a jury instruction on venue, venue was not in issue; and the Court did not err by failing to give a venue instruction *sua sponte. See United States* v. *Massa,* 686 F.2d 526,530 (7th Cir. 1982) ("But where venue is not in issue, no court has ever held that a venue instruction must be given."). Also, Defendants did not preserve this claim of error because they failed to "inform the court of the specific objection and grounds for the objection before the jury retires to deliberate."[6] Fed. R. Crim. Proc. 30(d).

Also, even if the Court erred in failing to instruct the jury on venue, any error was harmless because the evidence sufficiently established venue as to each count of wire fraud and money laundering. "[W]hen a court has failed to give a venue instruction to the jury, that error will be viewed as harmless if the evidence viewed rationally by a jury could only support a conclusion that venue existed." *Moran-Garcia,* 966 F.3d at 970 (quoting *Lukashov,* 694 F.3d at 1120). Because wire fraud and money

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[6] Only a "plain error that affects substantial rights may be considered even though it was not brought to the court's attention." Fed. R. Crim. Proc. 52. No court has held that failing to provide an instruction on venue constitutes such an error.

laundering are "continuing offenses," venue is proper if an "'essential conduct element' of the offense begins in, continues into, or is completed in the charging district." *Lukashov,* 694 F.3d at 1120; *see* 18 U.S.C. § 3237(a). For wire fraud, the essential conduct element is using wires in furtherance of the fraud scheme, so "venue is established in those locations where the wire transmission at issue originated, passed through, or was received, or from which it was 'orchestrated.'" *United States* v. *Pace,* 314 F.3d 344, 350-51 (9th Cir. 2002). For money laundering, the essential conduct element is similarly the transmission of money.

Here, the evidence established that Defendants operated from C.D. Cal. "[D]irect proof of venue is not necessary where circumstantial evidence in the record as a whole supports the inference that the crime was committed in the district where venue was laid." *United States* v. *Childs,* 314 F.3d 344, 349 (9th Cir. 2002) (internal quotation marks and citation omitted). The evidence established that Johnson Shao sent emails related to the fraud scheme (Counts 2 and 8) and that the Perfectus Defendants transferred money on multiple occasions to and from PCA Account 9191 and Transport Account 2058 (Counts 3-7, 9-10, and 18-24). The bank account and wire records introduced at trial show that these accounts were housed within C.D. Cal. *(See* Gov't Exs. 358-59, 362, 366, 368, 390, 662 at 853-921, 674 at 238-47, 675 at 129-59.) The evidence could only support a conclusion that venue was proper, making any potential error harmless. Also,

"[w]here a rational jury could not fail to conclude that a preponderance of the evidence establishes venue, then a court is justified in determining venue as a matter of law." *Lukashov,* 694 F.3d at 1120. The Court finds that, as a matter of law, venue existed in C.D. Cal.

Therefore, the Court finds that any potential defect regarding venue does not warrant a judgment of acquittal.

B. Motion for a New Trial

Rule 33 provides that upon a "defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a). In exercising its discretion, a court can weigh the evidence and evaluate the credibility of witnesses, and "need not view the evidence from the perspective most favorable to the prevailing party." *Landes Const. Co.* v. *Royal Bank of Can.,* 833 F.2d 1365, 1371 (9th Cir. 1987). A motion for a new trial "should be granted only in exceptional cases in which the evidence preponderates highly against the verdict," or where "a serious miscarriage of justice may have occurred." *United States* v. *Kellington,* 217 F.3d 1084, 1097 (9th Cir. 2000); *United States* v. *Pimentel,* 654 F.2d 538, 545 (9th Cir. 1981).

Defendants argue four distinct reasons for a new trial.

First, Defendant argues that the Court should order a new trial "because there was no unanimity on the object of the conspiracy." (Defs.' Mot. New Trial at 3, ECF No. 288.) However, the Court instructed the jury, "You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy *with all of you agreeing as to the particular crime which the conspirators agreed to commit."* (Jury Instrs., No. 17.) Because the jury received this instruction, this "Court presumes that jurors, conscious of the gravity of their task, attend closely the particular language of the trial court's instructions in a criminal case and strive to understand, make sense of, and follow the instructions given them." *See Francis* v. *Franklin,* 471 U.S. 307, 324 n.9 (1985). Also, despite Defendants' assertion, a special verdict form was not necessary. In fact, "special verdicts in criminal cases are not favored." *United States* v. *O'Looney,* 544 F.2d 385, 392 (9th Cir. 1976).

Next, Defendants argue that the Court should order a new trial because there were constructive amendments of the indictment. Alternatively, they argue that there were prejudicial variances. Both arguments are uncompelling.

"A constructive amendment occurs when the defendant is charged with one crime but, in effect, is tried for another crime." *United States* v. *Pang,* 362 F.3d 1187, 1194 (9th Cir. 2004). A variance "occurs when ... the evidence offered at trial proves

facts materially different from those alleged in the indictment." *United States* v. *Von Stoll,* 726 F.2d 584, 586 (9th Cir. 1984). A constructive amendment requires reversal, but a "variance requires reversal only if it prejudices a defendant's substantial rights." *United States* v. *Olson,* 925 F.2d 1170, 1175 (9th Cir. 1991). Defendants assert that the following statements amount to constructive amendment or variance: (1) the Government's statement that the pallets did not contain a non-extruded aluminum part; (2) the Government's argument that it did not have to prove a source of funds for the fraud scheme; and (3) the Court's instruction to the jury on the AD/CVD Orders, which did not state the year that the Department of Commerce issued a scope ruling. None of these assertions amount to constructive amendment or variance because they do not suggest that Defendants were effectively tried for another crime or faced evidence materially different from the facts alleged in the indictment.

Third, Defendants argue that the Court should order a new trial because the Court failed to instruct the jury on entrapment by estoppel and mere presence, and gave an instruction about the AD/CVD Orders that misled the jury. Because there was an insufficient "foundation in evidence" supporting an entrapment by estoppel defense, Defendants were not entitled to that instruction. *See United States v. Thomas,* 612 F.3d 1107, 1120 (9th Cir. 2010). Furthermore, a "mere presence" instruction was superfluous because the Court's

"other instructions, in their entirety, adequately cover[ed]" Defendants' theories. *United States v. Mason,* 902 F.2d 1434, 1438 (9th Cir. 2010); *see* 9th Cir. Model Crim. Jury Instrs., No. 6.10 (2010 ed.). Last, the Court's instruction on the AD/CVD Orders (No. 23) did not mislead the jury. The Court accurately instructed the jury on the scope of the Orders, and Defendants were able to argue to the jury the facts of the case, including the timing of the 2017 scope ruling. Therefore, there was no error.

Last, Defendants argue that the Court should order a new trial because the Court failed to ask questions during *voir dire* about anti-Chinese bias. Although the Court, in its broad discretion, did not ask prospective jurors specific questions about anti-Chinese bias, *voir dire* was adequate because the Court asked jurors "more general question[s] regarding the juror[s'] ability to follow the law in accordance with the judge's instruction." *United States v. Medina Casteneda,* 511 F.3d 1246, 1250 (9th Cir. 2008). "A district court has considerable discretion to accept or reject proposed *voir dire* questions and, as long as it conducts an adequate *voir dire,* its rejection of specific questions is not error." *Id.*

Therefore, the Court rejects Defendants' request for a new trial.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendants' Motions for a Judgment of Acquittal and a New Trial.

IT IS SO ORDERED.

Appendix C - Transcript of Proceedings, Trial – Day 1, United States District Court for the Central District of California, *United States of America v. Zhongtian Liu, Perfectus Aluminium, Inc., Perfectus Aluminium Acquisitions, LLC, Scuderia Development, LLC, 1001 Doubleday, LLC, Von-Karman - Main Street, LLC, 10681 Production Avenue, LLC*, Case No. 2:19-cr-00282-RGK (August 10, 2021)

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

Honorable R. Gary Klausner,
United States District Judge Presiding

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PERFECTUS ALUMINIUM, INCORPORATED, PERFECTUS, ALUMINIUM ACQUISITIONS, LLC; SCUDERIA DEVELOPMENT, LLC; 1001 DOUBLEDAY, LLC; VON KARMAN-MAIN STREET, LLC; 10681 PRODUCTION AVENUE, LLC,

Defendants.

Case No. CR 19-00282 RGK

TRIAL - DAY 1

REPORTER'S TRANSCRIPT OF PROCEEDINGS

August 10, 2021

MS. POTASHNER: Your Honor, if I may. There were a number of questions that we requested that the Court consider --

THE COURT: To the extent I covered them if appropriate.

Appendix D - Order denying Petition for Rehearing En Banc, United States Court of Appeals for the Ninth Circuit, *United States of America v. Scuderia Development, LLC, 1001 Doubleday, LLC, Von-Karman - Main Street, LLC, 10681 Production Avenue, LLC*, Case No. 22-50080; *United States of America v. Perfectus Aluminium Inc, aka Perfectus Aluminium Inc.*, Case No. 22-50081; *United States of America v. Perfectus Aluminium Acquisitions, LLC*, Case No. 22-50082; and *United States of America v. Perfectus Aluminium Inc, Perfectus Aluminium Acquisitions, LLC, Scuderia Development, LLC, 1001 Doubleday, LLC, Von-Karman - Main Street, LLC, 10681 Production Avenue, LLC*, Case No. 22-50103 (September 6, 2024)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 22-50080

United States District Court,
Central District of California

D.C. Nos.

2:19-cr-00282-RGK-7; 2:19-cr-00282-RGK-8; 2:19-cr-00282-RGK-9; 2:19-cr-00282-RGK-10

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SCUDERIA DEVELOPMENT, LLC; et al.

Defendants-Appellants.

No. 22-50081

D.C. No. 2:19-cr-00282-RGK-5

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PERFECTUS ALUMINIUM INC.

Defendant-Appellant.

No. 22-50082

D.C. No. 2:19-cr-00282-RGK-6

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PERFECTUS ALUMINIUM ACQUISITIONS, LLC

No. 22-50103

D.C. Nos.
2:19-cr-00282-RGK-4; 2:19-cr-00282-RGK-5; 2:19-cr-00282-RGK-6; 2:19-cr-00282-RGK-7; 2:19-cr-00282-RGK-8; 2:19-cr-00282-RGK-9; 2:19-cr-00282-RGK-10; 2:19-cr-00282-RGK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PERFECTUS ALUMINIUM INC, et al.,

Defendants-Appellees

ORDER DENYING PETITION FOR REHEARING EN BANC

Before: PAEZ and SANCHEZ, Circuit Judges, and LYNN,* District Judge.

Judge Sanchez voted to deny the petition for rehearing en banc. Judge Paez and Judge Lynn recommended denying it. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. Accordingly, Appellants' petition for rehearing en banc, filed August 14, 2024 (Dkt. 60), is **DENIED.**

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* The Honorable Barbara M. G. Lynn, United States District Judge for the Northern District of Texas, sitting by designation.