No. 24-855

IN THE

Supreme Court of the United States

SHEN ZHEN NEW WORLD I LLC,
Petitioner,

v.

UNITED STATES,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

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INTRODUCTION

Federal bribery law recognizes a fundamental distinction between *buttering up* and *buying off*, between giving *with an expectation* of official action and *in exchange* for one. That is why lobbyists are not locked up for treating politicians to fancy dinners, even when the meals do not spring from the pleasure of their company. Instead, to cross the line between ingratiation and corruption, "there must be a *quid pro quo*—a specific intent to give … something of value *in exchange* for an official act." *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404-05 (1999).

The Ninth Circuit nevertheless swapped that critical "distinguishing feature" for a toothless mens rea requirement, *id.* at 404, reasoning that jurors could separate unseemly ingratiation from unlawful bribery based on whether or not the gift was given "'corruptly,'" Pet.App.17a n.3. In doing so, it not only created a conflict among the federal appellate courts, but declared open season on every lobbyist, donor, and enterprising constituent in the Nation's largest circuit.

To its credit, the government appears to agree that the adoption of that "outsized view of bribery" would cry out for this Court's consideration. BIO 13. But it pretends that the Ninth Circuit never embraced it, claiming that there is "ample evidence" here of "an actual agreement to exchange things of value for one or more official acts." BIO 12. Yet the only proof it can muster for that assertion is that a Los Angeles councilman pledged his "support" for a popular hotel redevelopment in his district after a developer had "lavished" him with gifts. *Id.* If that is bribery, then lobbyists had better steer clear of the West Coast.

With no defense on the merits, the government conjures up vehicle objections predicated on the fact that SZNW's ultimate owner, Huang Wei (often called "the Chairman"), is a Chinese national who returned home years before he and his company were indicted. But SZNW—the only petitioner here—is a California LLC that is currently complying with the terms of its conviction. "'Equity,'" to say nothing of hornbook corporate law, does not justify denying that company the benefit of this Court's review. BIO 15.

ARGUMENT

I. THE GOVERNMENT CANNOT REWRITE THE DECISION BELOW.

A. The Ninth Circuit held that "all that the law requires to establish bribery is a defendant's specific intent to receive future official acts on a specific matter at the time the defendant pays or offers something of value in return." Pet.App.17a. As the government notes, that ambiguous statement could be read as a correct summary of the law—*i.e.*, "the donor must intend to enter into an *exchange*'" to commit bribery. BIO 11. But as the government never denies, it also could be read to define bribery as merely giving with the *expectation* that the generosity will generate a "return" in the form of "future official acts," something lobbyists do every day. Pet.App.17a; *see* Pet. 20.

The government at least appears to accept that the latter holding would be both wrong and worthy of this Court's review. After all, such a ruling from the Ninth Circuit would clash with "this Court's precedents" and "those of its sister circuits." BIO 13. It would also have a major "chilling" effect on "legitimate campaign activities and other political activity." BIO 15.

Much therefore turns on what the Ninth Circuit actually meant in that cryptic statement. And the best evidence of that is what it actually did, which is affirm a bribery conviction without any evidence of an exchange for official action. Pet. 20-24.

The government never fills this glaring gap in the decision below. Instead, it emphasizes that the Chairman "lavished" Jose Huizar with over "a million dollars" in gifts, BIO 12, knowing full well that the councilman's "power as the big boss of downtown" meant that he "could essentially make or break a development project," BIO 10 (cleaned up). But "the giving of gifts by reason of the recipient's mere tenure in office" is textbook ingratiation, not criminal bribery. *Sun-Diamond*, 526 U.S. at 408. And that remains true even when the sum total of the giver's largesse is staggering. *See, e.g.*, *McDonnell v. United States*, 579 U.S. 550, 555 (2016) (reversing conviction based on "$175,000 in loans, gifts, and other benefits").

The government therefore seizes on the fact that *after* ingratiating himself, Huang asked Huizar for "'support'" on the redevelopment of the L.A. Grand Hotel. BIO 10. But such requests are a lobbyist's stock-in-trade, and usually preceded by a steak dinner (or ten). That is why the government later admits that to move from persistent ingratiation to corrupt bargain, there must be an "exchange" "'at the time of the gift.'" BIO 11. But it can identify no evidence that in making the "'big ask,'" the Chairman ever suggested that Huizar should grant his generic request for support in exchange for any past or future generosity. BIO 10. And that was because the Ninth Circuit held that "Huang did not need to." Pet.App.17a. It was enough that he had "provided … benefits" before. *Id.*

By the same token, the fact that *Huizar* "pledged his full support" for the redevelopment does not suggest that *Huang* intended to bribe him. BIO 12. "Simply expressing support" is not even "an 'official act,'" let alone evidence of an exchange for one. *McDonnell*, 579 U.S. at 573. And that is especially true here, as Huizar unlikely would have held his position much longer had he turned down a universally popular multi-million dollar investment into a depressed area of his district. Pet. 5. In any event, Huizar's receptiveness to the request at most suggests that he was sufficiently buttered up, not that he was bought off. By way of analogy, the fact that a lobbyist's golf outings with a politician eventually yield results does not mean he is guilty of bribery. It means he gets to keep his job.

Nor is it probative that Huizar mentioned the official acts he "could" take in support of the L.A. Grand Hotel's redevelopment, such as "changing any necessary ordinances, rezoning the project, and granting entitlements." BIO 12. One will search the government's opposition in vain for any example of Huizar actually doing any of those things, much less of Huang even asking for them.

The government therefore resorts to pointing out that Huizar took various "nonofficial" acts in support of the hotel's redevelopment, BIO 12, such as signing a "letter" and organizing a "meeting," BIO 5. But such basic "constituent services" are evidence only of local government in action, not a federal bribery scheme. Pet.App.18a n.4; *see McDonnell*, 579 U.S. at 575. And again, there is not one instance of the Chairman asking for even such concededly unofficial acts in *exchange* for a benefit.

The only *official* action the government claims Huizar ever took in relation to the Chairman was a non-binding resolution from 2014 honoring him alongside other local luminaries such as "'renters and landlords.'" Pet. 22; *see* BIO 12. But the government never explains how this symbolic gesture could qualify as "a formal exercise of governmental power," let alone why Huang would want to purchase it. *McDonnell*, 579 U.S. at 574. At most, the government suggests that Huizar used the resolution to boost Huang's "'reputation'" in service of the "'redevelopment,'" but the timing does not line up. BIO 7. By the government's own account, the Chairman's "'big ask'" for support on the L.A. Grand came "[i]n 2016"—two years after Huizar secured the resolution in 2014. BIO 5; *see* Pet.App.9a. Indeed, the government implicitly concedes that Huang never even *knew about* the resolution, much less bought it. *See* Pet. 22. Instead, the resolution was merely an attempt by Huizar to show off to the Chairman, as he regularly provided these plaudits for "'friends of the office.'" *Id.*

B. Perhaps aware of how little its own account of the evidence sounds like a bribe, the government ultimately claims that even if the decision below was "incorrect," it is a "factbound" error unworthy of this Court's time. BIO 12-13. That misses the point. SZNW is not complaining "that a concededly correct view of the law was incorrectly applied to the facts," but that the facts reveal a concededly incorrect view of the law. *Kyles v. Whitley*, 514 U.S. 419, 456 (1995) (Scalia, J., dissenting). Put differently, the facts here are relevant to determining whether the court of appeals actually "followed" this Court's decisions or merely "cited" them. BIO 13.

It is therefore necessary to consider not only what the Ninth Circuit *said*—which is ambiguous at best—but also what it *did*. And on that front, every piece of evidence cobbled together by the government fails to "distinguish between" legitimate gifts designed to secure "influence or access" and those that are "part of an illicit *quid pro quo*." *FEC v. Cruz*, 596 U.S. 289, 308-09 (2022). Its case here would therefore not even support a prophylactic campaign-finance regulation. *Id.* Yet the Ninth Circuit deemed the evidence "more than sufficient to support conviction for honest-services fraud." Pet.App.16a. The only way that conclusion makes sense is if the court of appeals understood the line between "ingratiation" and "bribery" to turn not on whether a giver intended to enter into an exchange, but on whether he "'corruptly'" meant his generosity "to influence official action" at some point down the road. Pet.App.17a n.3. On that view of the law, *every* gift to *every* official is fodder for federal bribery charges. This Court should grant review and make clear (again) that is not the law.

II. THE GOVERNMENT CANNOT IGNORE THE CIRCUIT CONFLICT CREATED BY THE DECISION BELOW.

The government trots out the same strategy when it comes to the circuit split created by the decision below. In the government's telling, there is no conflict here because the lower courts all "recognize[]" a distinction between "'ingratiation'" and an "'exchange.'" BIO 14. But again, the question is not whether the circuits *mention* that dichotomy; it is whether they *adhere to* it. And on that score, the government has no way around the fact that other circuits would have reversed SZNW's bribery convictions on the evidence here. Pet. 24-27.

For instance, the decision below is irreconcilable with *United States v. Silver*, 948 F.3d 538 (2d Cir. 2020). There, as here, an individual gave an official "benefits … amounting to over one million dollars" over the course of multiple years. BIO 3; *see Silver*, 948 F.3d at 561 (official "received roughly $3 million"). There, as here, the official secured a "resolution honoring" the giver. BIO 12; *see Silver*, 948 F.3d at 564 (discussing the "resolution honoring Taub"). But there, unlike here, the Second Circuit reversed the bribery conviction because there was "no evidence … from which a jury could conclude" that those benefits "were in exchange for" the official's efforts "to pass the resolution." 948 F.3d at 570; *see also United States v. Dean*, 629 F.3d 257, 261 (D.C. Cir. 2011) (reversing bribery conviction because "there were no words or actions … from which a rational juror could infer" an intent to enter an "exchange"). Yet as the government emphasizes, the same fact pattern would be "ample evidence" of a bribe in the Ninth Circuit. BIO 12.

The government tries to sweep this conflict under the rug by noting that "several of" the circuit decisions discussed in the petition involved prosecutions of "gift recipients" rather than "gift-givers." BIO 14. But that is beside the point. The distinction the government alludes to is undisputed—a "bribe-giver," unlike a "*bribe-taker*," can be guilty even if the official refuses the exchange and "'immediately turns him in to law enforcement.'" Pet.App.14a-16a; *see* Pet. 20. It is also irrelevant. Whether an official *accepts* a gift or not, the giver must *intend to exchange* it for an official act, rather than just to curry favor. That is why *Silver*, for example, does not suggest its analysis would change whether the official or the giver was in the dock.

The upshot is that if Huang had showered a *New York* official with benefits, any resulting bribery conviction would have been set aside. Unfortunately for the Chairman, he buttered up a *Los Angeles* councilman, and that made all the difference. That is not the sort of split that can safely be left alone.

III. THE GOVERNMENT CANNOT DENY THE RISKS POSED BY THE RULING BELOW.

The government makes no effort to downplay the fair notice, First Amendment, and federalism threats from the Ninth Circuit's redefinition of bribery. Pet. 28-32. Indeed, it acknowledges the "concerns about chilling legitimate campaign contributions and other political activity," but claims this case is a poor vehicle to address them. BIO 15. But the government's inability to identify any evidence supporting a reasonable inference of an exchange only confirms that the question here is cleanly presented. Pet. 32. The government is therefore left to manufacture two vehicle objections, both insubstantial.

First, the government contends that there were no "campaign contributions" at issue in this case. BIO 15. But the risks from fuzzing the line between ingratiation and corruption reach far beyond the realm of electioneering, covering everything from lobbying to daily interactions between officials and their constituents. Pet. 28-32. In any event, this Court has reviewed sweeping constructions of federal criminal laws when it is "abundantly clear" that the "case does not" involve "campaign contributions." *Snyder v. United States*, 603 U.S. 1, 39 n.10 (2024) (Jackson, J., dissenting); *see also, e.g.*, *McDonnell*, 579 U.S. at 575. It is therefore irrelevant whether SZNW,

a California LLC, lacks the right "to participate in 'our national political community'" merely because it is ultimately owned by "a Chinese national." BIO 15 (quoting *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.), *aff'd*, 565 U.S. 1104 (2012)); *but see Bluman*, 800 F. Supp. 2d at 292 n.4 ("[W]e have no occasion to analyze the circumstances under which a corporation may be considered a *foreign* corporation for purposes of First Amendment analysis.").

Second, the government invokes (BIO 15) the "equitable principle that a fugitive from justice is 'disentitled' to call upon this Court for a review of his conviction." *United States v. Sharpe*, 470 U.S. 675, 681 n.2 (1985). But SZNW has done nothing to "escape[] from the restraints placed upon [it] pursuant to the conviction." *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970). The government does not claim, for instance, that the company has failed to comply with the terms of its "probation" or refused "to pay a $4 million fine." BIO 7. To the contrary, SZNW has submitted to those sanctions while exercising its right to challenge them at every turn. The fugitive-disentitlement doctrine therefore has no role to play here.

The government nevertheless insists *SZNW* should be denied its day in this Court because *Huang*, its ultimate "owner," went home to China in 2018 before being indicted in 2020. BIO 15; *see* Pet.App.11a-12a. But that theory runs headlong into the "basic tenet of American corporate law" that a "corporation and its shareholders are distinct entities." *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003). Because the government does not "ask this Court to pierce the corporate veil" or "invoke any other relevant exception

to that fundamental corporate law principle," its bid to extend the fugitive-disentitlement doctrine goes nowhere. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 591 U.S. 430, 435-36 (2020). Indeed, it would be profoundly "[in]equitable" to deny SZNW—a California corporation in undisputed compliance with its sentence—the chance to challenge its conviction merely because its foreign owner has not returned to face another country's system of justice. BIO 15. Having already razed the wall between bribery and ingratiation, the government should not be allowed to bulldoze bedrock principles of corporate law as well.*

* At the risk of gilding the lily, the government also forfeited its fugitive-disentitlement argument by failing to raise it below. Any "appellate court may dismiss the appeal of a defendant who is a fugitive from justice," yet the government never invoked this doctrine in the Ninth Circuit. *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993); *see, e.g.*, *United States v. Terabelian*, 105 F.4th 1207, 1219 (9th Cir. 2024) (dismissing appeal under fugitive-disentitlement doctrine). Having slept on its supposed rights, the government cannot claim the mantle of equity now.

CONCLUSION

This Court should grant the petition.

May 2025

Respectfully submitted,

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