No. 24-___

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does providing a gift to a public official in the hope or expectation that he will be receptive to a later request for official action constitute federal bribery?

PARTIES TO THE PROCEEDING

Petitioner, Shen Zhen New World I, LLC was the defendant-appellant in the Ninth Circuit.

Respondent United States was the appellee in the Ninth Circuit.

RULE 29.6 STATEMENT

Petitioner Shen Zhen New World I, LLC is a California limited liability corporation that is wholly owned by Shen Zhen New World Holding LLC, which is wholly owned by Shen Zhen New World Investment (USA) Co., Ltd., which is wholly owned by Shen Zhen New World Investment (HK) Co., Ltd., which is wholly owned by Shen Zhen New World Investment Co., Ltd., which is majority owned by Shen Zhen New World Group Co., Ltd., a non-public Chinese corporation. No publicly held company owns 10% or more of Shen Zhen New World Group Co., Ltd.'s stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *United States of America v. Shen Zhen New World I, LLC*, No. 23-972 (9th Cir.), judgment entered on September 11, 2024.
- *United States of America v. Huizar, et al.*, No. 20-cr-326 (C.D. Cal.), judgment as to petitioner entered on May 12, 2023.

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INTRODUCTION

Under this Court's cases, the essence of bribery is an *exchange*—a trade of something of value on the one hand for official action on the other. That bedrock requirement is as old as the crime itself, as confirmed by the familiar Latin *quid pro quo*: this for that. Bribery therefore requires an intent to enter into a corrupt agreement, either explicit or implicit, whereby each party will carry out his end of the deal.

That is what separates a bribe from a goodwill gift. The latter is designed to cultivate a relationship with an official, but it is not given in exchange for any promise from him. Of course, it is likely (if not certain) the giver anticipates wanting the official's help down the road; why else build goodwill? But buttering up is not buying off. That is why a defense contractor who hosts members of the Armed Services Committee at a cocktail party does not land in the dock—even if he expects his generosity will lead to a favorable earmark in the annual year-end defense bill. Steak dinners, box seats, complimentary travel—none of that is bribery unless the lobbyist, donor, or constituent offers or gives it in *exchange* for a promise of official action.

Federal public integrity prosecutors have yet to get the message. Here, the government built a bribery case on the fact that Huang Wei, a Chinese developer known as "the Chairman," spent years lavishing gifts on Jose Huizar, a Los Angeles councilman, because of the latter's power over real-estate developments. As the prosecutors put it, Huang made an "investment" in Huizar; his plan was to "give, give, give" so that the councilman would be receptive to a future "big ask"—the redevelopment of Huang's L.A. Grand Hotel.

But that was it. There was no evidence Huang ever asked Huizar for an official act *in exchange for* his gifts, past or present, or suggested any future gifts would be *contingent* on such. In fact, the councilman never even took official action to further the hotel's redevelopment. This case was all *quid* and no *pro quo*.

The Ninth Circuit nevertheless affirmed a set of convictions against Huang's company—petitioner Shen Zhen New World I, LLC (SZNW)—for a host of federal bribery offenses. In doing so, the court never explained why the Chairman's conduct was any different from what lobbyists and donors do every day. In fact, it acknowledged (in a footnote) the "concern" that "ingratiation may be misconstrued as bribery in retrospect" under its test, but brushed it aside on the theory that the "mens rea requirement" of "'corruptly'" would protect "goodwill gift-givers" from later being carted off to federal prison. Pet.App.17a n.3.

"That is not how federal criminal law works." *Snyder v. United States*, 603 U.S. 1, 16 (2024). Time and again—including just last Term—this Court has intervened to prevent prosecutors from hijacking federal bribery laws to criminalize unseemliness in politics, even when they promise that a mens rea requirement will shield the innocent. *Id.* It should do so again here. Under the decision below, the only thing separating a gift from a bribe is a jury's finding that the giver's "corrupt" intent "to influence official action" crossed some ill-defined line. Pet.App.17a n.3. That is not the law. Rather, this Court has been quite clear: To be a bribe, a gift must in that moment form part of an *exchange*—actual or intended—for official action. And whatever else might be said of the Chairman's conduct, there was no evidence of that.

In blurring the line between ingratiation and corruption, the court below not only defied this Court's precedents, but made itself an outlier among the circuits, which recognize that bribery requires an intent to enter into an *exchange* with a public official, not merely to make an *investment* in him. As Judge Sutton put it for the Sixth Circuit, a "donor who gives money in the hope" of an official's support down the line "does not agree to exchange payments for actions," and it is only that sort of "agreement" which "marks the difference between a run-of-the-mine contribution and a bribe." *United States v. Terry*, 707 F.3d 607, 613 (6th Cir. 2013). Not so on the West Coast.

And that poses a real problem. Despite its moniker, the City of Angels remains governed by men, as do the many other localities within the Ninth Circuit. *Cf.* THE FEDERALIST No. 51, at 349 (J. Cooke ed. 1961). And as long as that is true, lobbyists, donors, and others will seek to make "investment[s]" in officials through gifts, with the hope or expectation that they will one day "receive official action supporting" their goals. Pet.App.16a. However unseemly that may be to some, it is part of everyday politics—often grist for state and local ethics codes, but not a federal felony. This Court should grant review and make clear (yet again) that the federal bribery laws cannot be used to construct a common-law good-government code.

OPINIONS BELOW

The Ninth Circuit's decision affirming the petitioner's judgment of conviction (Pet.App.1a-39a) is reported at 115 F.4th 1167. The district court's opinion denying petitioner's motion for an acquittal or a new trial (Pet.App.54a-67a) is not reported.

JURISDICTION

The Ninth Circuit issued its opinion and entered judgment on September 11, 2024. Pet.App.1a. On November 21, 2024, Justice Kagan extended the time to file this petition until February 7, 2025. No. 24A505. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The relevant statutory provisions (18 U.S.C. §§ 666, 1341, 1343, 1346, 1952(a)(3)) are reproduced in the appendix. Pet.App.68a-74a.

STATEMENT

Huang Wei, a Chinese developer known as "the Chairman," bought a hotel in Los Angeles in 2010 and later hoped to transform it into what would have been the tallest building west of the Mississippi. In 2013, Huang was introduced to Jose Huizar, the Los Angeles councilman for the hotel's district. Over the next five years, the Chairman showered Huizar with gifts and benefits—elaborate dinners, private flights to and from Las Vegas, casino chips for gambling, and more. But over the same period, Huang never asked Huizar to take official action to advance his potential project.

The government nevertheless charged Huang's company, SZNW, with three sets of federal bribery-related crimes, on the theory that the Chairman's gifts were really bribes all along. The jury convicted SZNW on all counts. And the Ninth Circuit affirmed, pointing to evidence that Huang sought to make an "investment" in Huizar so that the councilman would be amenable to a possible future request for support for the hotel's redevelopment.

A. Huang buys the L.A. Grand Hotel.

Huang grew up in the rice paddies of China, and worked his way to become a billionaire developer. C.A.App.1201. Following his paddies-to-penthouses rise, delegations from the United States—including on behalf of Los Angeles County—flew to China to urge Huang to invest in this country. C.A.App.2288-89. In 2010, he took up the offer. Huang created SZNW, of which he is President and ultimate owner, and bought the L.A. Grand Hotel in downtown Los Angeles for $63 million. Pet.App.5a-6a; C.A.App.301-11, 552, 2468.

SZNW then invested $25 million over several years in renovating the hotel. C.A.App.553. As that project drew to a close, Huang began to consider transforming the 13-story hotel into a 77-story mixed-used skyscraper. C.A.App.314, 1795. Redeveloping the L.A. Grand—and injecting millions of dollars into a depressed region of Los Angeles—was universally popular. C.A.App.915. As one government witness put it, this was a project that "sells itself." C.A.App.96.

B. Huang meets and lavishes Huizar.

In 2013, Raymond Chan—a friend of Huang's and member of the city's Department of Building and Safety—introduced Huang to Councilman Huizar over dinner. Pet.App.7a. Also present at the meal were Ricky Zheng (Huang's right-hand man) and George Esparza (Huizar's aide). *Id.*; C.A.App.989-91.

Chan told the Chairman that Huizar was the mover-and-shaker for development projects in the city. Pet.App.7a. Among other things, Huizar chaired the Planning and Land Use Management (PLUM) Committee, which oversaw all major development projects. Pet.App.6a.

Huizar also was the councilman for District 14, which encompassed the L.A. Grand Hotel, and it was the norm for the Council to defer to a councilman's preferences as to a real-estate project in his district. *Id.* Chan therefore described Huizar as the "big boss" of downtown. Pet.App.7a. Huang, who did not speak much English, gave a thumbs up and replied: "very, very good." *Id.* Going forward, Esparza would repeatedly tell Zheng that Huizar "could essentially make or break" a development project. *Id.*

The dinner—complete with "rolling" food, "very expensive wine," and luxury gifts—was emblematic of many interactions between Huang and Huizar to come. C.A.App.991. Over the roughly five years that followed, Huang lavished the councilman with gifts, including taking Huizar to Las Vegas nearly 20 times. Pet.App.8a. The Chairman was no stranger to Sin City; he had frequented it dozens of times since 2006, years before creating SZNW. C.A.App.509. And when in Vegas, the Chairman gambled prolifically, to the tune of millions of dollars each visit. C.A.App.2219-20. Because of his high-rolling, the casinos were quick to "comp" Huang's trips, to incentivize him to pull up his chair at their tables. Indeed, the lion's share of his extravagant Las Vegas trips—except the gambling—was free, from the private jets to and from Nevada, to palatial hotel suites, to all-expense-paid spa treatments, to tee times, to fancy dinners, and more. C.A.App.1753-56.

And that was true not only for Huang personally, but also for his entourage. The casinos treated the Chairman's guests like him, offering them all the free perks afforded to high-end rollers. C.A.App.1201.

After their dinner in 2013, Huang included Huizar in his regular group of Las Vegas travel companions. Pet.App.8a. The Chairman did not always bring the councilman along, but when he did, he treated Huizar as "the VIP within the group." *Id.* And Huizar was eager to receive an invitation—always willing to head to Las Vegas at a moment's notice, and more than willing to avail himself of the casinos' comps: private jet flights, room service, spa trips, dinners, and the like. *Id.*; C.A.App.1022-32.

Another benefit enjoyed by the Chairman's Vegas crew was that while Huang loved to gamble, he did not love to gamble alone. He therefore regularly gave chips to friends around him—up to $25,000 at a time—so they could play alongside him. *See* C.A.App.1029, 1845, 1892. When Huizar came along, he received chips too—almost always as much as anyone, if not more. C.A.App.1012-13, 1763. Over the span of about five years, Huizar received roughly $260,000 in chips. Pet.App.8a. In addition, Huang and his companions—Huizar included—would often patronize prostitutes on the Chairman's dime. *Id.*

Perhaps in light of all this, Huizar tried to ensure his trips to Vegas would stay in Vegas, and for his lavish escapades with a Chinese national to stay private. Pet.App.9a. For instance, Huizar sometimes used a fake name on flight manifests and had Esparza cash out chips for him in inconspicuous amounts and then give him the cash in the bathroom. *Id.* And when casino staff recognized Huizar as a politician during one 2015 trip, he refused to sign a form attesting that he was not gambling with public funds, but instead left the casino floor. *Id.*

Huang was aware of some of these efforts, and respected Huizar's understandable attempts to keep a low profile. After the 2015 incident, for instance, the Chairman stopped bringing Huizar to Vegas for a "cooling-off period" because they wanted to "be careful." *Id.*

The jaunts to Vegas were not the only benefits that Huang bestowed on the councilman. Huizar also joined Huang and his friends on other all-expense-paid trips, such as "a gambling junket to Australia and a golf outing to Pebble Beach." Pet.App.8a. And when a former staffer sued Huizar for sexual harassment in late 2013, he asked the Chairman to put up collateral for a bank loan to settle the case and thereby save his reelection (and political career). Pet.App.9a. Huang agreed, in the amount of $600,000. *Id.* Although the Chairman wanted to just give Huizar the money—wholly out in the open—the councilman wished to keep things quiet. *Id.*; C.A.App.1256. So Huizar, with the help of Huang's aides and a disbarred attorney, created a convoluted corporate structure to obscure the connection. Pet.App.9a-10a; *see* C.A.App.1255-59, 1398-1403, 1902-05, 2100. The loan was secured; the suit was settled; and Huizar won reelection. Pet.App.10a.

C. Huang relies on Huizar as his Los Angeles consigliere.

Huang's gifts earned him access to Huizar and his office; when the Chairman called, Huizar answered. *See* Pet.App.8a. But over their half-decade together, Huang never asked the councilman to take any official action on his behalf.

Rather, Huang relied on Huizar as, in effect, his Los Angeles consigliere. For example, he asked Huizar to arrange business meetings for him: one to deal with a parking lot dispute involving the L.A. Grand, and another to smooth over a dispute with a local union. *See id.*; C.A.App.754-55, 758. The government (rightly) did not claim any of this was official action.

For his part, Huizar moved and voted for a non-binding, commendatory city resolution in 2014 that honored Huang's economic contributions to the city. Pet.App.9a. But the Chairman never asked for—or even knew about—this resolution; rather, as Esparza explained, Huizar would often secure these resolutions to show off for "friends of the office." C.A.App.1242.

In 2016, Huizar's office also organized a meeting with city officials and Huang's team to discuss possible redevelopment of the L.A. Grand. Pet.App.10a-11a. But while all the attendees expressed support for the project, no votes, approvals, or official actions were taken. *Id.*; C.A.App.2563-64. Afterwards, Huizar took no official action on to the L.A. Grand or potential redevelopment for the rest of his term.*

Nor did Huang ever ask him to. To be sure, the Chairman sought Huizar's generalized "support" for the hotel's redevelopment in 2016, since the L.A. Grand was his "dream." Pet.App.10a; C.A.App.1114-15, 1817. And Huizar pledged "100 percent support" for this popular multimillion-dollar investment into a depressed part of his district. Pet.App.10a.

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* While the Ninth Circuit noted that Huizar provided Huang "an official letter" to help finance the redevelopment, it admitted that this was not an "official act[]." Pet.App.11a, 18a n.4.

But it is undisputed that Huang never asked Huizar to take any official act to advance the project. Even the lead FBI agent testified that it was "unclear" whether Huizar had ever done *anything* meaningful for SZNW. C.A.App.612-17; *see* C.A.App.1926 (Zheng admitting same).

Indeed, given his term limits, it was unlikely Huizar ever would have been in a position to help SZNW advance the project. Huang did not ask Huizar for support until 2016, after the councilman had been reelected for a third full term—the most he could serve. Pet.App.10a. And while Huang met with architects, consultants, and a real-estate firm in 2016, SZNW did not even submit its initial redevelopment application to the City until June 2018. *Id.*; C.A.App.1576. It was therefore obvious for years that the project would not reach PLUM, to say nothing of being done, until well after 2020—the year Huizar was required to leave office due to term limits. *See* C.A.App.596-98, 944-49, 1566, 1618-19, 1635.

D. Huizar and his associates are indicted.

Term limits, though, were not why Huizar ultimately left office. Unbeknownst to Huang, the councilman was at the center of a series of pay-to-play schemes involving other developers. Pet.App.7a. And those schemes were not characterized by subtlety. When Huizar wanted a bribe, he made no secret about it. He had Esparza make clear that Huizar would not do things "for free," and the two were not shy about setting their price. C.A.App.3038. For instance, Huizar quoted his support for voting on one matter at $1.2 million, and then had Esparza negotiate the bribe amount before taking any action. C.A.App.3039-40.

These were not winks-and-nods; Huizar was in the business of selling specific action. That included telling a developer that he would "vote against the labor union" only if the company would "make it worthwhile" via a $50,000 contribution, C.A.App.3079; having a company pay fake $11,000 monthly retainer in exchange for the councilman taking specific actions in PLUM, C.A.App.3049-50, 3053; and agreeing to offer a resolution for $25,000, C.A.App.3086.

The councilman's efforts eventually gained the attention of law enforcement. Huang caught wind in 2017 that the FBI was investigating Huizar, though he did not know for what. Pet.App.11a; C.A.App.1177. The Chairman decided to stop inviting Huizar to Las Vegas, and (unsuccessfully) tried to recover the collateral on the loan he had backed. Pet.App.10a-11a & n.1. But Huang pressed forward with the redevelopment; he saw no reason why Huizar's possible legal troubles would affect the L.A. Grand. *See* Pet.App.11a; C.A.App.1823.

In November 2018, the FBI raided Huizar's house and City Hall office. Pet.App.11a. Soon thereafter, agents went to talk to Huang about Huizar, and then raided Zheng's home. *Id.* The Chairman soon left the country and returned to his home in China, where he remains today. Pet.App.12a.

In November 2020, the government filed a sprawling superseding indictment against Huizar and others. *Id.* Huang and SZNW were charged with honest-services fraud under 18 U.S.C. §§ 1341, 1343, and 1346; federal-programs bribery under 18 U.S.C. § 666; and violating the Travel Act, 18 U.S.C. § 1952(a)(3).

E. SZNW is tried and convicted of bribery.

The government first sought to try everyone together, but the district court held that it failed to proffer evidence showing Huizar's pay-to-play operation was a single scheme, creating a risk of prejudicial spillover that warranted severance. Pet.App.12a. As the court later observed, SZNW was "quite different" from the other matters shoehorned into the indictment, and was "the most difficult" prosecution for the government since it lacked an "obvious" official act or identifiable exchange. C.A.App.2703-07, 2711-12.

With Huang in China, SZNW was tried alone. The facts about the Chairman's conduct were largely undisputed: Huang gave Huizar significant benefits over five years, including while the L.A. Grand project was a possible future matter before the City Council. In the government's telling, this was all part of a corrupt "investment" by Huang: His plan was to "give, give, give" and then make the "big ask." Pet.App.8a.

Even the government conceded, however, that Huang never made *any* ask—big or small—for official action. Instead, the government's theory was that "[t]here didn't have to be the big ask" because "[t]heir entire relationship was the big ask." C.A.App.2569.

The jury convicted SZNW on all charges. Pet.App.12a. The jury identified the "official acts" it believed SZNW intended to receive for Huang's gifts. All were generic actions Huizar was empowered to take as a feature of his position, and the only one he actually took was the ceremonial 2014 resolution. C.A.App.15-21; *see* Pet.App.18a.

F. The Ninth Circuit affirms.

The Ninth Circuit affirmed the convictions. Pet.App.1a-39a. The court below stated that a bribery conviction for a "*bribe-giver*"—unlike a "*bribe-taker*"—"does not require an agreement to enter into a quid pro quo." Pet.App.14a-15a. Instead, "all that the law requires … 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.

The court thought there was "more than sufficient" evidence of that. Pet.App.16a. Specifically, the Ninth Circuit emphasized that "Huang's intent was to 'give, give, give' before making the 'big ask,'" and that "Huizar agreed to '100 percent support'" the L.A. Grand redevelopment. Pet.App.17a. Given this evidence, the court reasoned, "Huang did not need to voice his requests for official action explicitly at the same moment he paid for Huizar's trips to Las Vegas or provided other benefits." *Id.*

The Ninth Circuit then pointed to other pieces of evidence to "support[]" the verdict. *Id.* For instance, it described Huizar's 2014 commendatory resolution as an "official act prior to Huang's 'big ask'" that proved the Chairman "had provided financial benefits to Huizar with the specific intent of receiving an 'official act.'" Pet.App.17a-18a. The court also deemed Huizar's "constituent services"—such as convening "meetings," holding a "press conference," and "signing a letter"—to be "probative," although "not 'official acts'" themselves. Pet.App.18a n.4. And it added that Huizar's "concealment efforts" were proof of Huang's "corrupt intent." Pet.App.19a.

In a footnote, the Ninth Circuit acknowledged the "concern[] that ingratiation may be misconstrued as bribery in retrospect" under its approach. Pet.App.17a n.3. But it thought that fear "misplaced" because "a bribe must be 'corruptly' given or offered with the specific intent to influence official action." *Id.* In its view, that "mens rea requirement protects against the possibility that goodwill gift-givers, harboring no intent to receive official action in exchange for their gifts, will later be deemed to have given a bribe." *Id.*

REASONS FOR GRANTING THE WRIT

In recent years, this Court has repeatedly rejected attempts by the government to fuzz "the 'line between *quid pro quo* corruption and general influence'" when it comes to gifts to public officials. *FEC v. Cruz*, 596 U.S. 289, 308 (2022) (quoting *McCutcheon v. FEC*, 572 U.S. 185, 209 (2014)). But at least those efforts were in the service of *campaign-finance regulation*. In this case, the Ninth Circuit blessed the government's strategy of conflating ingratiation and bribery in the context of a *criminal prosecution*. It is now enough for a jury (on the West Coast, at least) to infer an illicit *quid pro quo* if it finds that the gift-giver expected to want something from the politician later. But the same could be said of virtually every gift to every public official, such that the decision below threatens to extend the federal bribery laws over much of day-to-day politics.

This Court should grant certiorari and reverse. The Ninth Circuit's theory—that *priming* an official for a later ask is the same as *purchasing* an official act—is irreconcilable with this Court's precedents, which may explain why no other circuit has adopted it.

Beyond the conflicts it creates, the decision below warrants this Court's review simply for the abuse it invites. Other than a passing nod to a vague mens rea requirement, the Ninth Circuit never explained how any half-decent lobbyist, campaign donor, or other "goodwill gift-giver[]" could escape a federal bribery conviction under its test. Pet.App.17a n.3. So while the tawdry tales here may have led to the first conviction under this boundless theory of bribery, it is unlikely to be the last.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS.

Precedent by precedent, this Court has built a high wall separating bribery from ingratiation, one ultimately founded on the idea of an *exchange*. Bribery is when benefits are provided in return for official action, whereas ingratiation is when benefits are provided with the goal of cultivating general goodwill to use later. The former is a crime; the latter is lobbying. In upholding SZNW's bribery convictions, the Ninth Circuit replaced this clear barrier with a Maginot Line easily evaded by federal prosecutors.

A. The essence of bribery under this Court's cases is an exchange for official action.

Bribery is an illicit bargain—an exchange where a benefit is traded for an official action, on understood terms. Gifts to curry political favor, by contrast, amount to mere ingratiation, despite the giver's hope or expectation of reaping some benefit down the line. *Quids* are the daily bread of politics; it is the *pro quo* that transforms them into a federal crime. To qualify as a bribe, a gift thus must be given with the intent to enter into an agreement to buy official action.

1. This Court has been clear about the definition of a bribe: It is something of value given "in return for" an official's agreement "to perform specific official acts." *Evans v. United States*, 504 U.S. 255, 268 (1992). When an official takes a bribe, his actions are "controlled by the terms of [a] promise or undertaking" that is defined with "sufficient clarity." *McCormick v. United States*, 500 U.S. 257, 273 (1991). Federal bribery law thus "prohibits *quid pro quo* corruption—the exchange of a thing of value for an 'official act.'" *McDonnell v. United States*, 579 U.S. 550, 574 (2016). That explains why last Term, every Member of this Court agreed that "for a payment to constitute a bribe, there must be an upfront agreement to exchange the payment for taking an official action," even as they parted ways over gratuities. *Snyder*, 603 U.S. at 24 (Jackson, J., dissenting); *see id.* at 18 (majority) (separating bribes from gratuities based on whether gift was given "pursuant to an agreement").

And this Court has been equally clear about what bribery is *not*. "Ingratiation and access," in particular, "are not corruption." *Citizens United v. FEC*, 558 U.S. 310, 360 (2010). Rather, they are mainstays of modern politics. In *McConnell v. FEC*, 540 U.S. 93 (2003), for instance, the Court described how "national party committees actually furnish[ed] their own menus of opportunities for access," where "increased prices reflect[ed] an increased level of access" to legislators. *Id.* at 151. It highlighted an example of "courtesies extended" to an individual whose donations were "motivated by his interest in gaining the Federal Government's support for an oil-line project." *Id.* at 130. That was viewed as a matter for campaign finance regulation, not criminal prosecution.

In fact, "'[i]ngratiation and access'" reflect "a central feature of democracy—that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns." *McCutcheon*, 572 U.S. at 192. It is thus not bribery for individuals to shower elected officials with gifts to "build a reservoir of goodwill that might ultimately affect one or more of a multitude of unspecified acts, now and in the future." *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 405 (1999).

This Court has therefore recognized a dichotomy between a "bribe" on the one hand, and a permissible "'gift … motivated, at least in part, by the recipient's capacity to exercise governmental power or influence in the donor's favor,'" on the other. *Id.* (emphasis omitted). Under this framework, the patron's hope or expectation that goodwill may translate into favorable action in the future does not make his gift a bribe. After all, a lobbyist who regularly treats politicians to steak dinners with nothing to show for it will soon be out of a job. And a donor who lets the Governor use his beach house is not doing it for the Airbnb rating. Rather, the critical "distinguishing feature"—what separates *buttering up* from *buying off*—is that "for bribery there must be a *quid pro quo*—a specific intent to give or receive something of value *in exchange* for an official act." *Id.* at 404-05. Only then does ingratiation cross the line to corruption. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 28 (1976) (federal bribery law proscribes "specific attempts" to control particular "governmental action"). Even commentators critical of this line have accepted it as the law. *See, e.g.*, Z. Teachout, CORRUPTION IN AMERICA 7 (2014).

2. To "distinguish between" official acts "traceable to legitimate donor influence or access," and those that are "part of an illicit *quid pro quo*," this Court has insisted that prosecutors prove a variety of elements. *Cruz*, 596 U.S. at 308-09. For example, the bribe must be in exchange for an "official act"—that is, "a formal exercise of governmental power" on a "focused and concrete" matter that falls "within the specific duties of an official's position." *McDonnell*, 579 U.S. at 569-71. Given that "relatively circumscribed" definition, the government cannot prove bribery by showing an "exchange" of gifts for routine political courtesies or "support"—the agreement must link to a specific and concrete exercise of sovereign power. *Id.* at 570, 573.

Moreover, bribery does not capture amorphous arrangements where an official's side of the deal is too remote to specify; the *quo* cannot be filled in later, or remain so capacious as to be a placeholder. *Sun-Diamond*, 526 U.S. at 406. Federal "bribery" instead requires a clear "connection" between a person's gift, on one side of the ledger, and a "specific official act," on the other. *Id.* at 405. The fact that a defendant merely provided "gifts by reason of the recipient's tenure in office" will not do. *Id.* at 408.

Most relevant here, a gift is a bribe (or not) "at the time" it is given. *McDonnell*, 579 U.S. at 572. A gift cannot *become* a bribe retrospectively, nor can the government recast it as such. *See McCormick*, 500 U.S. at 283 (Stevens, J., dissenting) ("When petitioner took the money, he was either guilty or not guilty."). Rather, a gift is a bribe only if there is a specific exchange at the moment it changes hands; otherwise, it is ingratiation—filling a "reservoir of goodwill" to be tapped later. *Sun-Diamond*, 526 U.S. at 405.

That means an exchange cannot be inferred merely from chronology viewed in retrospect, or merely because the gift-giver has some project on the horizon, or merely because the official's generic powers might prove useful in the future. None of that establishes that, *at the time* of the gift, the parties had reached a genuine agreement that embraced official action. None of it differentiates archetypal examples of lobbying, such as a contractor who takes the mayor out to a ballgame, knowing full well that his annual profits will turn on whether the latter approves his bid. Again, even *purposeful* ingratiation is not an exchange for official action. And only the latter is bribery.

McDonnell is a perfect illustration. There, a donor plied the Governor with tens of thousands of dollars in gifts and benefits (*e.g.*, rides on his private jet, multiple loans, fancy dinners). He did so while seeking state support for his company's nutritional supplement. But the donor never requested—or received—any "official act" in return, only those services politicians do for constituents "all the time," like "arrang[ing] meetings" or "contact[ing] other[s] … on their behalf." 579 U.S. at 575. This Court unanimously vacated the bribery convictions. It reaffirmed that federal bribery reaches only "quid pro quo corruption." *Id.* at 574. It therefore did not matter that the Governor *could* have done things to help his benefactor (*e.g.*, sign bills, issue vetoes, or order studies). If that sufficed, every gift would be fodder for a federal charge. Rather, federal bribery requires an *exchange*—the *purchase* of official action. *Sun-Diamond*, 526 U.S. at 404-05. Anything less renders this Court's corruption precedents a paper barrier to prosecutorial ambition.

Of course, no *actual* agreement is necessary. If an official responds to a donor's offer of a bribe by immediately calling the police, the would-be briber is still guilty. In that sense, no "'meeting of the minds'" is necessary. Pet.App.15a; *see, e.g.*, *United States v. Jacobs*, 431 F.2d 754, 759-60 (2d Cir. 1970). But the giver must at least *intend* the gifts to be part of an agreement; there must be "a specific intent to give … something of value *in exchange* for an official act." *Sun-Diamond*, 526 U.S. at 404-05. What is therefore required is an intent to effectuate an exchange at the time of the gift, rather than merely an intent to grease the wheels for the possibility of future favors.

B. The essence of bribery under the decision below is an expectation of official action.

The Ninth Circuit cast this framework aside. In response to the point that this Court requires a "clear" *quid pro quo* "to distinguish bribery from goodwill gift-giving," the court below remarked 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.

On its face, that statement is ambiguous. On the one hand, it could be read to hold (correctly) that the donor must intend to enter into an *exchange* with the public official to get an official act "in return" for his gift—*i.e.*, bribery. *Id.* On the other, it could simply mean that the donor must intend to give with the *expectation* that his investment will generate "return[s]" in the form of "future official acts on a specific matter"—*i.e.*, lobbying. *Id.*

The evidence the Ninth Circuit identified to uphold the verdict confirms that it meant the latter. Pet.App.16a-19a. None of it differentiates (lawful) ingratiation from (illicit) bribery. None of it shows the Chairman intended to trade his gifts for Huizar's official acts, as opposed to merely buttering up the councilman to make it more likely he would accede to a future request. Because the court below could point to no proof that Huang gave the gifts "as part of an illicit *quid pro quo*," as opposed to secure "legitimate donor influence or access," the only way it could affirm the convictions was by impermissibly extending the bribery laws to cover ingratiation. *Cruz*, 596 U.S. at 308-09. Consider each category of evidence in turn.

1. The Ninth Circuit principally emphasized that "Huang's intent was to 'give, give, give' before making the 'big ask'"—"support from Huizar on the redevelopment of the L.A. Grand Hotel." Pet.App.16a-17a. But the court below could point to nothing that indicated Huang ever suggested his past gifts were in exchange for Huizar's vote or that future gifts would be contingent on it. Instead, it claimed it did not need to. In the court's view, "Huang did not need to voice his requests for official action explicitly at the same moment" he provided Huizar with "benefits." *Id.*

That two-step—where (1) the Chairman would "give, give, give," as part of "an investment" in a relationship, and (2) "later make a 'big ask'" after the politician was sufficiently primed—essentially defines modern lobbying. Pet.App.5a, 16a. Nobody on K Street ingratiates public officials just for fun; there is always a later ask in mind. It is only bribery, however, when the ingratiator *collapses* the two steps, making the gift half of an *exchange* for an official act.

By the same token, *Huizar's* response to "the 'big ask'"—a promise "to '100 percent support' the redevelopment project through official acts" that never came—in no way establishes *Huang's* "intent" to enter into a bribe. Pet.App.17a. It would have been political malpractice for Huizar to have spurned this universally popular multimillion-dollar investment into a depressed part of his district; more importantly, a buttered-up official's receptiveness to a donor's request by itself does not show that it is "part of an illicit *quid pro quo*" rather than lawfully "traceable to legitimate donor influence or access." *Cruz*, 596 U.S. at 308-09. Plus, "expressing support" for something is not an "official act." *McDonnell*, 579 U.S. at 574.

2. The Ninth Circuit also claimed that Huizar's purported "official act prior to Huang's 'big ask'" justified the verdict. Pet.App.17a. Specifically, the court seized on the 2014 "resolution" praising the Chairman, *id.*, which was part of a package of similar commendations "recognizing and honoring" groups like "renters and landlords" and the "Motorcycle Safety Organization," C.A.App.330. That the Ninth Circuit would rest a bribery conviction on this nothingburger only shows how far it departed from this Court's cases. A symbolic resolution lauding a generous supporter is not an "official act," as it is not a "formal exercise of governmental power," but merely an "express[ion] [of] support." *McDonnell*, 579 U.S. at 573-74. Regardless, there is no evidence that Huang intended any gifts to be in exchange for this empty gesture. Huang did not even *know about* resolutions like this, let alone try to purchase one. Instead, Huizar did this of his own accord—as he regularly did to show off for "friends of the office." C.A.App.1242.

Venturing farther afield, the court below noted that Huizar had "convened multiple meetings," "held a press conference," and signed "a letter" to help the Chairman. Pet.App.18a n.4. Yet while admitting such "constituent services are not 'official acts,'" the Ninth Circuit still found them "probative of" Huang's "intent to influence an official act." *Id.* But it never explained why, confirming that it incorrectly thought a federal bribery conviction could rest on an intent to *influence* rather than an intent to *exchange*. *See* A. Alschuler, *Criminal Corruption: Why Broad Definitions of Bribery Make Things Worse*, 84 FORDHAM L. REV. 463, 474 (2015) ("'Intent to influence' and 'exchange' are not different words for the same thing.").

3. With no real evidence of the central element of the offense, the Ninth Circuit resorted to a sideshow: Huizar's "concealment efforts." Pet.App.19a. But Huang was generally happy to have his relationship with the councilman in the open. *Supra* at 7-8. He obliged *Huizar's* requests to keep a low profile—requests any politician would make given the optics, even in the absence of any legal misgivings. *Id.*

Indeed, even if *Huizar's* concealment were relevant evidence of *Huang's* intent, the former shows at most that the councilman saw some reason to stay under the radar—a lavish relationship with a Chinese national was politically toxic, in violation of ethics rules, or perhaps a campaign-finance faux-pas. Evidence that a defendant "knew *something* was amiss" or even against the "law" is not a panacea, however, to sustain a conviction; the evidence must support an inference that he "specifically" committed the particular offense. *United States v. Lovern*, 590 F.3d 1095, 1106-07 (10th Cir. 2009) (Gorsuch, J.).

* * *

In short, all the evidence the Ninth Circuit invoked was equally consistent with both legal ingratiation and illicit bribery. Such evidence cannot sustain even prophylactic campaign-finance regulations, much less criminal convictions. *See Cruz*, 596 U.S. at 308-09. The court below affirmed anyway. The only way to square that circle is to realize the Ninth Circuit held that *investing* in an *official* is the same as *purchasing* an *official act*. If that is true, then a lot of campaign donors need to call a lawyer.

II. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF OTHER CIRCUITS.

Given the clarity of this Court's holdings, it should come as no surprise that the Ninth Circuit's choice to break rank made it a pariah among the circuits. As far as SZNW is aware, no other court of appeals permits federal bribery laws to sweep in ingratiation.

Instead, the other circuits take this Court at its word. For instance, as then-Judge Sotomayor put it for the Second Circuit, providing a gift with the intent "to buy favor or generalized goodwill from a public official who either has been, is, or may be at some unknown, unspecified later time … in a position to act favorably [to] the giver's interests" is "*not* bribery" but "'legal lobbying.'" *United States v. Ganim*, 510 F.3d 134, 149 (2d Cir. 2007). Or as Judge Sutton explained for the Sixth Circuit, because a "donor who gives money in the hope" of future official actions "does not agree to exchange payments for actions," there is "[n]o bribe," even "if the elected official later does something that benefits" him. *Terry*, 707 F.3d at 613.

Thus, outside the Ninth Circuit, "[t]he line between legal lobbying and criminal conduct is crossed" only "by way of a corrupt exchange—i.e., a quid pro quo." *United States v. Ring*, 706 F.3d 460, 464 (D.C. Cir. 2013). Under this framework, plying a public official with "free meals, entertainment, and golf" (or gambling trips to Vegas) is distinct from "*quid pro quo* bribery." *United States v. Woodward*, 149 F.3d 46, 55 (1st Cir. 1998); *see also, e.g.*, *United States v. Kemp*, 500 F.3d 257, 281 (3d Cir. 2007) ("[T]here is a critical difference between bribery and generalized gifts provided in an attempt to build goodwill."); *United States v. Allen*, 10 F.3d 405, 411 (7th Cir. 1993) ("Vague expectations of some future benefit should not be sufficient to make a payment a bribe.").

These circuits not only recognize this dichotomy in principle, but apply it in practice. Take, for instance, the Second Circuit's decision in *United States v. Silver*, 948 F.3d 538 (2d Cir. 2020). There, the prosecution claimed that a doctor (Taub) bribed a legislator (Silver) by securing "an Assembly resolution honoring" him in exchange for "client referrals" to Silver. *Id.* at 559-60. The only problem was there was "no evidence" that "Silver ever promised to pass the resolution or understood Taub's referrals were in exchange for his doing so." *Id.* at 570. It was not enough to show that Taub "paid the official with a vague expectation of some future benefit." *Id.* at 570 n.21 (cleaned up); *see id.* at 575 (directing acquittal). Contrast that with the decision below, which used a similar "resolution" to uphold the verdict without identifying any evidence that Huang even knew of this legislative puff piece, let alone purchased it. Pet.App.17a-18a; *see supra* at 22.

Silver in turn drew on the Fourth Circuit's decision in *United States v. Jennings*, 160 F.3d 1006 (4th Cir. 1998), which likewise applied the dichotomy between "goodwill gifts," which "are given with no more than 'some generalized hope or expectation of ultimate benefit," and "bribes," which are given "with the intent to engage in a 'relatively specific quid pro quo.'" *Id.* at 1020 n.5; *see Silver*, 948 F.3d at 570 n.21. Based on that line, the Fourth Circuit held that it was plain error to give a jury instruction "that left out the requirement of intent to engage in a quid pro quo," as doing so would allow the jury to convict based on "*any* payment made with a generalized desire to influence or reward (such as a goodwill gift)." 160 F.3d at 1020. The decision below, by contrast, upheld the bribery convictions merely because Huang "provided benefits … intending to receive" Huizar's "support" on the hotel's redevelopment someday. Pet.App.16a.

The D.C. Circuit, too, has heeded the command that bribery requires "'a specific intent to give or receive something of value *in exchange* for an official act.'" *United States v. Dean*, 629 F.3d 257, 259 (D.C. Cir. 2011). In *Dean*, it reversed a conviction for bribery based on evidence that an official took a fee for a billiards license but pocketed the money for herself. *Id.* at 261. While the official may have been "guilty of embezzlement," the court explained, she was innocent of "bribery," for she merely "intended to keep" the funds, not enter "an agreement" with "the undercover agent that the money was to go to her personally." *Id.* at 260-61. By contrast, the Ninth Circuit saw no need for proof of Huang's intent to "enter into a quid pro quo." Pet.App.15a. An "intent to influence" apparently was enough. *Id.* (cleaned up).

Even the circuits the court below claimed as allies do not collapse ingratiation and bribery. While the Ninth Circuit invoked *United States v. Rasco*, 853 F.2d 501 (7th Cir. 1988), and *United States v. Suhl*, 885 F.3d 1106 (8th Cir. 2018), as support, those cases just recognize an official does have to *actually* agree to a *quid pro quo* for a bribe-giver's conviction to stand. *See* Pet.App.15a, 17a; *supra* at 20. Thus, if a donor "gives or offers payment in exchange for an official act," he is guilty of bribery even if the official promptly "turns him in to law enforcement." *Suhl*, 885 F.3d at 1113; *see Rasco*, 853 F.2d at 505 (explaining the crime "is completed when a defendant expresses an ability and a desire to pay the bribe"). But that does not mean a politician should call the cops when a lobbyist asks him to lunch, even if he knows the invite does not stem from enjoyment of his company. Even when an "official emphatically refuses to accept," the gift-giver must still have "a specific intent to effect a quid pro quo" for bribery to occur. *Ring*, 706 F.3d at 467.

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In sum, any other circuit reviewing the verdict here would have asked whether there was any evidence that Huang intended to enter into an "exchange" with Huizar in which he would trade a trip to Vegas or some other gift for an official action. *E.g.*, *Silver*, 948 F.3d at 570. Seeing none, the court would have determined that the jury had merely found that Huang gave gifts to Huizar with an "'expectation of some future benefit'" and reversed. *Id.* at 570 n.21. Unfortunately for Huang, he pursued a hotel redevelopment project in Los Angeles rather than New York, D.C., or any other venue outside the Ninth Circuit. This Court should not allow this state of affairs to persist.

III. THE DECISION BELOW SETS A DANGEROUS PRECEDENT.

Conflicts aside, the implications of the Ninth Circuit's ruling alone cry out for this Court's review. To its credit, the court below at least acknowledged the risk that "ingratiation may be misconstrued as bribery in retrospect" under its framework, thereby painting a prosecutorial bullseye on the back of every lobbyist and donor in the Nation's largest circuit. Pet.App.17a n.3. But its cure—trusting jurors to winnow out the sheep from the goats based solely on whether they find the gift was given "corruptly"—is no better than the disease. *Id.* This Court should grant review and make clear that fair notice, the First Amendment, and federalism all demand better.

To start, the ruling below offers federal prosecutors a roadmap for circumventing the line between *quid pro quo* corruption and general influence. A public official "*always* has before him or in prospect matters that affect" interested parties. *Sun-Diamond*, 526 U.S. at 407. It is therefore *always* possible to hypothesize acts the politician could take to benefit the gift-giver, either now or in the future. And as a result, it is *always* possible for a prosecutor, especially on a long enough time horizon, to link the two as part of some unspoken exchange. It takes no imagination to see how a jury jaundiced by today's politics could look at the coziness of politicians and their donors, and brand its ordinary give-and-take as corruption. *See* C. Robertson *et al.*, *The Appearance and Reality of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. LEGAL ANAL. 375 (2016) (documenting how laypeople often brand ingratiation as "bribery"). The decision below frees juries to do just that.

That "is a very serious real-world problem." *Snyder*, 603 U.S. at 15-16. Due process and fair notice require a clear understanding of "the permissible scope of interactions between state officials and their constituents." *McDonnell*, 579 U.S. at 576. Without it, only "the Government's discretion" shields ordinary politics from prosecution. *Sun-Diamond*, 526 U.S. at 408. And that, in turn, casts "a pall" that chills representative government, incentivizing anyone who had given to an official in the past to "shrink from participating in democratic discourse." *McDonnell*, 579 U.S. at 575. The same is true for the recipient: "If an official were subject to imprisonment whenever a jury could be persuaded that he had acted deliberately to benefit someone who once did a favor for him, only a fool would take the job." Alschuler, *supra*, at 481.

That chill is all the more concerning since many political *quids* (namely, campaign donations) are protected by the First Amendment. *Buckley*, 424 U.S. at 54. While the Ninth Circuit at least recognized this problem, it waved it away because "in the political-contributions context," the government must "prove that a defendant public official received a contribution 'in return for an *explicit* promise or undertaking' to perform or not perform an official act." Pet.App.22a (quoting *McCormick*, 500 U.S. at 273). But that does not apply to the alleged "*bribe-giver*," who remains subject to the vague framework adopted below for his campaign contributions. *Id.* So the First Amendment problem remains. *See McCutcheon*, 572 U.S. at 203 ("When an individual contributes money to a candidate, he exercises" the First Amendment "right to participate in the public debate through political expression and political association.").

Beyond its harm to the Bill of Rights, the Ninth Circuit's theory also trenches "on bedrock federalism principles." *Snyder*, 603 U.S. at 14. States maintain "the prerogative to regulate the permissible scope of interactions between state officials and their constituents," *McDonnell*, 579 U.S. at 576, including through the many "nuanced … policy judgments" regarding when "gifts" to politicians "cross the line from the innocuous to the problematic," *Snyder*, 603 U.S. at 14 (gratuities). California's Political Reform Act, for example, addresses in detail everything from the "gifts" city councilmembers can accept, Cal. Gov't Code §§ 87200, 89503, to the disclosure of "payments to influence legislative or administrative action," *id.* § 86115. Yet the court below replaced that reticulated scheme with a one-size-fits-all federal felony.

The Ninth Circuit dismissed such concerns, promising that "goodwill gift-givers" will be protected from conviction by the "means rea requirement" that "a bribe must be 'corruptly' given or offered with the specific intent to influence official action." Pet.App.17a n.3. But this Court has met such promises without sympathy, including twice in just the last Term alone. In *Fischer v. United States*, 603 U.S. 480 (2024), for instance, it rejected the government's interpretation of a criminal statute that would impose "no apparent obstacle to prosecuting … any lobbying activity that 'influences' an official proceeding and is undertaken 'corruptly.'" *Id.* at 496. And it took the same approach in *Snyder*, 603 U.S. at 16 & n.5, notwithstanding the dissent's claim that "the 'corruptly *means rea* requirement" would allow juries and judges to "sift[] illegal gratuities from inoffensive ones," *id.* at 35-36 (Jackson, J., dissenting).

Understandably so. A "state of mind is 'easy to allege and hard to disprove,'" *Nieves v. Bartlett*, 587 U.S. 391, 403 (2019), yet the decision below allows the jury to distinguish between ingratiation and bribery on that basis alone, with hefty criminal penalties in the balance.

Confirming the point, "corruptly" did nothing to protect SZNW here, despite the lack of any proof that Huang ever intended to enter a *quid pro quo*. In fact, the Ninth Circuit ruled that it was harmless error for the district court to have excluded testimony that Huang thought he and Huizar "were just having fun" and "not doing anything wrong" because he "had not asked Huizar for anything," pointing to other "evidence of Huang's culpable mental state." Pet.App.37a-38a (ellipsis omitted). But none of the court's purported proof of a "corrupt intent" had anything to do with Huang's desire to enter into an exchange for an official act. Pet.App.38a. Rather, it all bore on the Chairman's willingness to oblige *Huizar's* desire to keep their dealings out of the public eye. *Id.*; *see supra* at 23. If that is all it takes to prove a corrupt mens rea, lobbyists better start having their meals with politicians in the middle of the restaurant rather than the private room.

So even with the "corruptly'" requirement on the table, the upshot of the decision below is that "members of the public" will "be forced to guess whether they could even offer (much less actually give)" something of value to public officials, with the threat of "years in federal prison if they happen to guess wrong." *Snyder*, 603 U.S. at 16 & n.5. That is untenable.

* * *

This Court should grant review and make clear (again) that federal criminal law does not permit such traps for the unwary. And this is the perfect case to do so. In securing the conviction, the government identified no evidence that Huang even asked Huizar for official action, as it thought it did not have to do so. And the Ninth Circuit failed to point to any "words or actions … from which a rational juror could infer" that Huang's gifts were "in exchange" for an official act. *Dean*, 629 F.3d at 261. The question here is therefore cleanly presented—is the mere intent to "give, give, give" to a politician as an "investment" enough to sustain a federal bribery conviction? With the Ninth Circuit having answered yes, now is the time for this Court to stop that dangerous theory in its tracks.

CONCLUSION

This Court should grant the petition.

February 2025

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