

14 APPEARANCES ON NEXT PAGE.

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6 For the Mandarin  
7 Interpreter: Simon Wong

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1                   FRESNO, CALIFORNIA, WEDNESDAY, JULY 17, 2024, 2:02 P.M.

2                   THE CLERK: Please remain seated. Court is back in  
3 session. The Court calls Item Number 19 on the calendar,  
4 1:23-CR-00219, United States versus Jia Bei Zhu, set for a  
5 Motion For Bail Review Appeal of Detention Order.

6                   THE COURT: The Banda case, by the way, is going to  
7 go last. I don't know whether I can sentence that case today  
8 or not. Well find out, but it's going last no matter what.

9                   Please state your appearances beginning with Counsel  
10 for the Government.

11                  MR. BARTON: Good afternoon again, Your Honor.

12                  Joe Barton for the Government.

13                  MR. CAPOZZI: Your Honor, Tony Capozzi for the  
14 Defendant David He, who is present in court in custody.

15                  THE COURT: And, Mr. Interpreter, your appearance,  
16 please.

17                  THE INTERPRETER: My name is Simon Wong, W-O-N-G.  
18 I'm a court interpreter in the Mandarin (indiscernible), Your  
19 Honor.

20                  THE COURT: Thank you.

21                  THE INTERPRETER: Thank you.

22                  THE COURT: All right. This is the case where the  
23 few of the cases that are left over from this very long  
24 calendar. I will be candid when I say I have read the Appeal  
25 from the Detention Order, the Government's Opposition,

1 skimmed the Pretrial Services Report, read the Reply of the  
2 Defense that was filed yesterday, have not read any  
3 transcripts, haven't had time, too many cases, too much to  
4 read.

5 MR. CAPOZZI: I agree with the Court. It's a short  
6 period of time. I have no objection to another date.

7 THE COURT: No.

8 MR. CAPOZZI: Okay.

9 THE COURT: I just want to tell you what I've  
10 focused on and what I haven't.

11 MR. CAPOZZI: Okay.

12 THE COURT: So based upon what I understand of the  
13 situation, how -- this case was indicted in 2023. How much  
14 time has the Defendant been in custody so far?

15 MR. CAPOZZI: Since that date. Prior to that date,  
16 October of 2023.

17 MR. BARTON: About eight months, Your Honor.

18 THE COURT: Okay.

19 MR. BARTON: Eight months, eight, nine months.

20 MR. CAPOZZI: Eight to nine months.

21 THE COURT: Okay. Is there a trial date set?

22 MR. CAPOZZI: No.

23 MR. BARTON: No, Your Honor. But that's been at  
24 Defense's request to continue.

25 MR. CAPOZZI: And we're more than happy to set a

1 trial date. He wanted to have this hearing first before a  
2 trial date was set.

3 THE COURT: Of course, the question of whether the  
4 Court has a Judge that can preside over that trial is another  
5 question.

6 MR. CAPOZZI: And I'm in trial throughout the rest  
7 of the year.

8 THE COURT: I'll ask you both, but Judge Grosjean  
9 heard the last Motion For Bail Review, and that was when  
10 Pretrial Services Officer Beckwith recommended release on a  
11 very large bond. Judge Grosjean denied the Motion apparently  
12 because of flight-risk concerns, as I understand it, having  
13 to do with claims of non-disclosure of assets, perhaps some  
14 questions regarding the collateral that was being offered to  
15 be posted, the various names associated with the Defendant.

16 I don't know whether the fact of his partner and  
17 their newborn from the country played a role in the  
18 determination or not. Was there anything else that  
19 Magistrate Judge Grosjean was concerned about?

20 MR. BARTON: I believe, yes, the Defendant's, the  
21 fact that his newborn son and wife, they did not disclose  
22 those to Pretrial Services played a role in it. Then, Judge  
23 Grosjean was also concerned that he lacks any real tie to the  
24 community. His family is in China or New Zealand. His  
25 proposed custodians were attorneys or business contacts that

1 he had known for not all that long. He didn't seem to have a  
2 personal relationship with them. I believe they're both in  
3 L.A.

4 So essentially, he'd have third-party custodians  
5 that, I believe her concern was that that wouldn't really be  
6 able to watch him or have any meaningful type of supervision.  
7 So I think that was the last bucket that Judge Grosjean was  
8 concerned about.

9 THE COURT: Now, Mr. Capozzi in his Reply Brief, the  
10 Government in their Opposition talks about -- and to me, this  
11 is relevant. The Government talks about an eight-year term  
12 of imprisonment. I assume that's based upon statutory  
13 maximums.

14 MR. BARTON: Correct, Your Honor.

15 THE COURT: So that's unlikely to --

16 MR. BARTON: Well, if I may qualify that, Your  
17 Honor. It is statutory maximums, yes, but also the loss  
18 amount. Well, the individual accounts for the misbranding  
19 can have three years. The guideline here, the Government has  
20 got the loss approximately today at about 2.5 million. So if  
21 you -- you'd have -- to get a guideline sentence, you'd have  
22 to stack a couple of the misbranding counts and then you have  
23 the 1001 count.

24 So the Government -- in the Government's estimate,  
25 eight years is a realistic sentence.

1                   THE COURT: So you disagree with Mr. Capozzi's  
2 guideline proposal that, at the worst, this is a -- even if  
3 the Defendant were convicted of all charges, this is a Level  
4 16 offense with a lack of criminal history, resulting in a  
5 guideline range under the Advisory Sentencing Guidelines at  
6 the worst of 21 to 27 months. The Government disagrees?

7                   MR. BARTON: Yes, Your Honor. The Government  
8 strongly disagrees. The loss, this is -- we've traced the  
9 loss based on financial records, assuming the Government were  
10 to prevail at trial, of companies that purchased COVID test  
11 kits, \$2.5 million went into the coffers of Mr. Zhu's  
12 companies based on those sales, which the Government is  
13 alleging were illegal and unauthorized.

14                  That would put a significant loss amount and  
15 significantly raise the offense level, as the Court well  
16 knows, to quite a degree. And, plus, you have a ten-or-more  
17 victim enhancement. There are, I believe, well over 10 if  
18 not 20 to 30 victims who bought the test kits. So with those  
19 enhancements, the Government believes an eight-year sentence  
20 is quite realistic for the Defendant.

21                  THE COURT: I am concerned, obviously, if the  
22 Detention Orders were to arguably result in someone remaining  
23 in custody longer than the sentence that they would be likely  
24 to receive even if they went to trial and were convicted. I  
25 mean, that is a legitimate concern.

1           It's hard for me to assess in a vacuum. I mean, you  
2 two have very different views about what the realistic  
3 exposure in this case are.

4           MR. CAPOZZI: If I may?

5           THE COURT: Sure.

6           MR. CAPOZZI: Are there conditions that would  
7 reasonably assure his appearance? He's applied for asylum in  
8 the United States. He doesn't want to go back to China. If  
9 he did, I think he'd be in deep trouble. He has a Chinese  
10 passport. He has a driver's license from Las Vegas. And the  
11 collateral is in Las Vegas. He would live in Las Vegas. His  
12 third-party custodians are in Las Vegas. One is his  
13 longstanding attorney because his family is gone, and the  
14 other is his property manager of the properties his wife owns  
15 in Nevada.

16           I think there's substantial collateral, a million  
17 and something. I forgot what the number was.

18           THE COURT: The Government just told me that the  
19 third -- the proffered third-party custodians are in Los  
20 Angeles --

21           MR. CAPOZZI: They're not.

22           THE COURT: -- not in Las Vegas.

23           MR. CAPOZZI: They're in Las Vegas.

24           MR. BARTON: He's proposed multiple custodians, Your  
25 Honor.

1 MR. CAPOZZI: I'm sorry?

2 MR. BARTON: He's proposed -- I believe he's  
3 proposed three different custodians since he's been --

4 MR. CAPOZZI: No, there's two. It's Mr. Lynn  
5 (phonetic), his attorney, and Ari Solomon (phonetic), both in  
6 Las Vegas.

7 MR. BARTON: I believe there was another

8 MR. CAPOZZI: (Indiscernible attorney).

9 MR. BARTON: I believe there was another custodian  
10 that he initially proposed.

11 MR. CAPOZZI: That was the first time. He lived in  
12 Southern California, so.

13 MR. BARTON: There was a --

14 MR. CAPOZZI: We'll use him too, if we could. But  
15 because he lives in Las Vegas, we just went to Las Vegas.  
16 And there's no reason for him to run.

17 THE COURT: Well --

18 MR. CAPOZZI: The Government talks about eight years  
19 but, Judge, the Indictment, and what I set out is what the  
20 Indictment says, that there's two sales of kits that the  
21 Government alleges were not finalized. One was for 200,000;  
22 one was for 36. And I did the Guidelines on it. It's a  
23 \$236,000 loss. And I set out the Guidelines. That's exactly  
24 what it is.

25 Now the Government gives this pie in the sky about

1 all these other things. Show some proof. They don't have  
2 it, and there's no need for him to run. He's filed a civil  
3 rights lawsuit from getting beat up when he was arrested.  
4 They went and took his warehouse and destroyed everything in  
5 it, and there's a lawsuit for that. Why leave?

6 THE COURT: Well, the fact that he's got a lawsuit,  
7 the civil rights lawsuit pending doesn't impress me too much  
8 as far as establishing ties to the community.

9 MR. CAPOZZI: Understand.

10 THE COURT: He's now been charged with a criminal  
11 offense.

12 MR. CAPOZZI: Yeah. But it's --

13 THE COURT: A serious federal criminal offense.  
14 He's obviously got ties to China. His partner and their  
15 child are now there.

16 MR. CAPOZZI: Right.

17 THE COURT: What about this bond that's being  
18 proposed? Who's posting it?

19 MR. CAPOZZI: It would be his company.

20 THE COURT: And what is their relationship to him?

21 MR. CAPOZZI: And that's, again, that's his partner,  
22 his wife, owns this. David Destiny (phonetic), Dizzy David  
23 Destina (phonetic). And they own the properties in Las  
24 Vegas. There's one property here in Clovis. It's a rental  
25 property. I think the value is 750 to 850 thousand. The

1 ones in Las Vegas, the one in Las Vegas is worth about the  
2 same. I think it's a million-two.

3 Now there's another property in Las Vegas. We could  
4 put that up, too. We were trying to get a loan on that, but  
5 we will hold off getting a loan and put that up as  
6 collateral, and that will add up to two million.

7 THE COURT: Who owns that?

8 MR. CAPOZZI: The same as this, his partner, his  
9 wife.

10 MR. BARTON: What property is this?

11 MR. CAPOZZI: They're not married.

12 MR. BARTON: What property is that, Tony?

13 MR. CAPOZZI: They're right next to each other.

14 MR. BARTON: What's the address?

15 MR. CAPOZZI: I don't know the address off the top  
16 of my head.

17 MR. BARTON: The Government is -- I mean, to  
18 Mr. Capozzi's point, two of the properties that the Defendant  
19 and his wife and his company owns just went for sale. One  
20 has closed and one is in escrow, total about \$900,000 for  
21 those two properties.

22 MR. CAPOZZI: And we'll pull the sale on the extra  
23 one and put that up or post that money. That is substantial  
24 collateral.

25 MR. BARTON: And, Your Honor, if I know the Court's

1 got a lot going on it, the Government does want to address  
2 this asylum story. As set forth in the Government -- in  
3 Mr. Zhu's Bail Review, Bail Appeal Motion, the Government --  
4 there is strong proof he's not telling the truth. This  
5 asylum application is false. It's got false -- demonstrably  
6 true falsehoods.

7 The Government has the application. We're happy to  
8 file it. We can file it under seal. Defense Counsel was  
9 asked to sign a waiver allowing the Government to show it in  
10 open court. Defense wouldn't sign that waiver. That asylum  
11 application has numerous falsehoods about Mr. Zhu, about  
12 prior names used, about family connections, about his prior  
13 travels to the United States, all lies.

14 He is an incredible flight risk.

15 MR. CAPOZZI: I submitted that to my Motion first  
16 time up, his asylum application. I just don't think it  
17 should be out to the public. It's fine for the Court. I  
18 have no problem with the Court looking at it. It's signed  
19 under the name David He, Qiang He, where he legally changed  
20 his name.

21 The question is whether or not he's going to show  
22 up.

23 MR. BARTON: And, Your Honor, on that point, if I  
24 may, the last biggest point the Government wants to emphasize  
25 is that Mr. Zhu, as his story would have it, is that at some

1 point, he changed his name from Jia Bei Zhu or Jesse Zhu to  
2 Quiang He while in China, and that he came to the United  
3 States or came to Canada for the first time in 2020 just to  
4 go into the United States. And then when he got into the  
5 United States, he applied for asylum. That's not true.

6 He has the Chinese passport for Qiang He was issued  
7 in 2011. The Defendant, Jia Bei Zhu, has a Canadian passport  
8 and a Canadian driver's license -- the driver's license was  
9 found at the search warrant -- that were issued in 2013, 2014  
10 under the identity of Jia Bei Zhu. Since 1997, the Defendant  
11 has crossed the Canadian border into the U.S. under the name  
12 Jia Bei Zhu 40 times, and he's been stopped at least two  
13 times with what I could generally describe as stuff related  
14 to the healthcare pharmaceutical industry. At times, he was  
15 illegally in the country and asked to leave saying he needed  
16 a work visa. Other times, he's able to obtain or at least  
17 apply for a work visa and stay here for a little bit.

18 So this story that the Defendant changed his name  
19 from Zhu to He in China and then came to Canada in 2020 just  
20 to make his way to the United States and apply for asylum,  
21 absolutely not true. He's been operating under two  
22 identities for over a decade. And to the Government, there  
23 is -- that's an incredible flight risk.

24 MR. CAPOZZI: He has legal documents that I  
25 submitted to the Court changing his name from Qiang Lee to

1 David Lee -- He, not Lee. And then it was changed in China.  
2 I can't get those papers. People who knew him as Jia Bei  
3 still call him that. There aren't that many people here that  
4 know him by that name. They know him as David He.

5 Now he's come back over the border because he has  
6 business here. He had a business in Fresno. When that lease  
7 ran out, they moved the business down to Reedley just for a  
8 warehouse. They were building a new building here, a  
9 multi-million-dollar building that was being built here for  
10 his warehouse. He had a -- prior to coming to Fresno, they  
11 were in Tulare County.

12 So he's got businesses here. They were doing very  
13 well. The warehouse in Reedley was found to be not meeting  
14 up to code, and that's when they were searched and that's  
15 where all of his equipment and all of the animals were  
16 destroyed. No reason to run, especially when he's done as  
17 much time as he has.

18 MR. BARTON: Your Honor, I mean, Mr. Zhu contends  
19 that he legally changed his name from Zhu to Qiang He in  
20 China, but he can't produce the documentation. All the stuff  
21 the Government just proffered to the Court, we have the  
22 documents here. We can show them to the Court. He had dual  
23 identities for over a decade that he's using legal documents  
24 authorized by Canada and the United States.

25 And then he files for asylum and he lies about it

1 all. When he applied for asylum, he disclosed nothing about  
2 his Canadian passport, his time in Canada, none of that.

3 MR. CAPOZZI: Because they're all expired. The only  
4 passport that's good is the Chinese passport in the name of  
5 Qiang He and the driver's license is David He.

6 MR. BARTON: That's not true. The Canadian passport  
7 expired September 2023.

8 MR. CAPOZZI: Are there conditions to reasonably  
9 assure his appearance? I submit there are --

10 THE COURT: And I'm not convinced of that as of yet.

11 MR. CAPOZZI: I'm sorry, Judge?

12 THE COURT: I am not convinced of that as of yet. I  
13 am obviously concerned. It sounds as if the judges who have  
14 heard this matter before came up to me, I'm obviously  
15 concerned about the use of multiple names.

16 The Government has also said, oh, we want to talk  
17 about that Order that the Defense submitted and you signed.  
18 I signed that Order only for purposes of allowing money to be  
19 placed on the Defendant's books where he's being retained.

20 MR. BARTON: Understood.

21 THE COURT: If all the names need to be listed in  
22 one way or another, the only basis that -- I mean, that Order  
23 was routed to me by well-meaning courtroom deputies thinking  
24 that it was merely a ministerial task. If you didn't have a  
25 chance to oppose it, that's why. It got submitted. It was

1 immediately forwarded to me. I get hundreds of orders a  
2 week.

3 It didn't appear to me to be significant. I signed  
4 off on it. I signed off on it only to allow what Mr. Capozzi  
5 represented was, look, this is causing a problem with him  
6 getting anything put on the books at his place of confinement  
7 under that name. If we need to modify that in some way that  
8 satisfies everybody, happy to modify it.

9 In terms of detention, I'm obviously concerned with  
10 the use of multiple names. And I'm not going to be able to  
11 figure out here listening to the two of you playing ping pong  
12 over what's expired, not expired, what's this, what's that.  
13 No, I'm not going to -- I can't. I can't resolve that today  
14 --

15 MR. CAPOZZI: I'll be glad to submit that.

16 THE COURT: -- and I'm not going to.

17 Number two, what is the real exposure in this case?  
18 Is it the Government's statutory maximum, because the  
19 Guidelines are going to exceed the statutory maximum? It  
20 sounds to me like they're arguing based upon relevant  
21 conduct, not based upon charged conduct. Or is it going to  
22 be limited to the charges?

23 I don't know. I've never even opened this docket  
24 before. I had no knowledge of this case until I showed up  
25 here this morning.

1           Three, what's the collateral that's being proposed?  
2 Who actually controls it? Is it the Defendant himself  
3 essentially so that all this is, is, well, he profited by  
4 millions of dollars in fraud and, therefore, this is just the  
5 cost of doing business to put up property that he's managed  
6 to acquire as a result of his allegedly fraudulent activities  
7 and, therefore, it really does not tie him at all?

8           Normally, of course, what the Court is looking for  
9 is somebody very close to a criminal defendant who says, I  
10 believe them so much I'm willing to put up the roof over my  
11 head. I'm absolutely confident they're not going to flee  
12 and, therefore, I'll put my home on the line where I live.  
13 Does that -- I mean, the Court usually presumes, A, that  
14 that's a very serious matter for people to expose themselves  
15 like that and I should take it very seriously and, two, that  
16 most somewhat rational human beings would say to themselves,  
17 gee, I would love to have run but I can't because somebody  
18 really close to me has their home on the line and I just  
19 can't do that to them.

20           Now, of course, not everyone's rational. And some  
21 people are more selfish than others and, therefore, sometimes  
22 people do despicable things. But generally, the Court is  
23 impressed by property to be even put by others that are close  
24 to the individual. As opposed to, oh, my life partner who  
25 just gave birth to our child and then exited for China and

1 isn't planning on returning, yeah, that's their property that  
2 they posted. Well, that doesn't sound all that solid to me,  
3 no matter how much it's worth. Less impressive than my  
4 mother's putting up her home that she lives in and I wouldn't  
5 possibly do that to my mother.

6 Now, anyway, I'm just giving you guidelines. I'll  
7 hear this again and I'm not saying that I can conceive of no  
8 possible conditions. I mean, yeah, it would have to entail  
9 electronic monitoring. It would have to include a  
10 significant bond.

11 It would have to include third-party custodians who  
12 have a close enough relationship to the Defendant who sign  
13 declarations saying I understand what my obligations as a  
14 third-party custodian would be, I will check on the Defendant  
15 on a daily basis. We have a close enough relationship  
16 already that I do that anyway, and I understand that if I  
17 become aware of the Defendant violating any condition of his  
18 pretrial release, I must immediately notify Pretrial  
19 Services. I would want that buttoned up.

20 All of those things are relevant to me. Right now,  
21 this is a hodgepodge. I can't really tell what I've got in  
22 front of me. Of course, the other -- I mean, I would hear it  
23 again. I at least have some knowledge now. The problem is  
24 I'm about to start a trial in Sacramento, and I doubt I'm  
25 going to be here for a while. I don't know whether a Motion

1 For Bail Review is something that we can be allowed to do  
2 remotely.

3 I think we might be able to under the Federal Rules  
4 of Criminal Procedure. If so, I would certainly conduct a  
5 further hearing if the Defense said, okay, Judge, we heard  
6 you at the hearing, here's our proposal and here's full  
7 support for it. But because I'm not satisfied with respect  
8 to all of those things as of yet, I am going to deny the  
9 Motion For Bail or Appeal of the Detention Order, Review of  
10 the Detention Order, but it is denied without prejudice to  
11 renewal if you think you can address some of the concerns I  
12 have.

13 MR. CAPOZZI: I feel very confident about that. And  
14 I don't have any problem coming to Sacramento. I have other  
15 cases in state court in Sacramento I could coordinate with  
16 the Court.

17 THE COURT: Okay.

18 MR. CAPOZZI: And --

19 THE COURT: Anything, Mr. Barton, you wanted to add?  
20 I've commented about the name situation. I didn't mean to do  
21 anything that the Government --

22 MR. BARTON: No.

23 THE COURT: I didn't know the Government opposed.

24 MR. CAPOZZI: Nor did I. Nor did I.

25 MR. BARTON: No, Your Honor. That clarification by

1 the Court is perfect.

2 THE COURT: All right.

3 MR. BARTON: Thank you.

4 MR. CAPOZZI: Okay, good.

5 THE COURT: All right. Denied without prejudice.

6 MR. CAPOZZI: Yeah. Thank you, Judge.

7 (Whereupon, at 2:28 p.m., the hearing was adjourned.)

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C E R T I F I C A T I O N

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