

MAR 26 2013

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>EZRI NAMVAR, AKA Ezri Namvar Moghadam,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 11-50447

D.C. No. 2:10-cr-01055-PA-1
Central District of California,
Los Angeles

ORDER

Before: BRIGHT, * GRABER, and IKUTA, Circuit Judges.

The memorandum disposition filed in this case on November 20, 2012 is amended by deleting the following text immediately after the word “fraud,” on page 3, line 14 of the text of the memorandum:

“because so long as “a scheme is devised with the intent to defraud,” it is immaterial that “there is no misrepresentation of a single existing fact.” *United States v. Woods*, 335 F.3d 993, 998 (9th Cir. 2003) (emphasis omitted) (quoting *Lustiger v. United States*, 386 F.2d 132, 138 (9th Cir. 1967)).”

* The Honorable Myron H. Bright, Senior Circuit Judge for the Eighth Circuit, sitting by designation.

Additionally, the following text, beginning on page 3, line 14 of the memorandum after the word “fraud,” is added:

“even though the court did not instruct that the jury had to find that a specific false statement was made. “[T]he government is not required to prove any particular false statement was made” so long as there is “proof of a scheme or artifice to defraud, which may or may not involve any specific false statements.” *United States v. Woods*, 335 F.3d 993, 999 (9th Cir. 2003) (quoting *United States v. Munoz*, 233 F.3d 1117, 1131 (9th Cir. 2000), *superseded by statute on other grounds*, 18 U.S.C. § 1341 (emphasis omitted)); *see also United States v. Omer*, 395 F.3d 1087, 1089 (9th Cir. 2005).”

With the above amendments, the panel has voted to deny Appellant’s Petition for Rehearing. Judge Bright has recommended denying Appellant’s Petition for Rehearing En Banc, and Judges Graber and Ikuta have so voted.

The full court has been advised of the Petition for Rehearing En Banc and no Judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The Petition for Rehearing and the Petition for Rehearing En Banc are DENIED. No further petitions for rehearing and rehearing en banc will be entertained.