NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. HALIM KHAN, Defendant - Appellant.	No. 23-480 D.C. No. 1:20-cr-00007-RVM-2 MEMORANDUM*

Appeal from the United States District Court
for the District of the Northern Mariana Islands
Ramona V. Manglona, Chief District Judge, Presiding

Argued and Submitted June 12, 2024
Honolulu, Hawai‘i

Before: CALLAHAN, HURWITZ, and H.A. THOMAS, Circuit Judges.

Halim Khan appeals his conviction for conspiracy to defraud the United States in violation of 18 U.S.C. § 371. We presume the parties' familiarity with the facts and discuss them here only to the extent necessary to provide context and resolve the issues raised on appeal. We have jurisdiction under 28 U.S.C. § 1291, *see* 48 U.S.C. § 1824(b), and we affirm.

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

1. The district court did not err in admitting Faroque Hosen's testimony about statements made by Servillana Soriano as a co-conspirator. *See United States v. Moran*, 493 F.3d 1002, 1010 (9th Cir. 2007) (reviewing decision to admit co-conspirator statements for abuse of discretion and underlying factual determinations for clear error).

"When a district court evaluates whether a particular statement qualifies as non-hearsay under Rule 801(d)(2)(E) . . . the Government 'must produce some independent evidence which, viewed in light of the coconspirator statements, establishes the requisite connection between the accused and the conspiracy.'" *United States v. Saelee*, 51 F.4th 327, 342 (9th Cir. 2022) (quoting *United States v. Castaneda*, 16 F.3d 1504, 1507 (9th Cir. 1994)); *see also United States v. Bowman*, 215 F.3d 951, 960–61 (9th Cir. 2000) ("Under Rule 801(d)(2)(E), the statement of a co-conspirator is admissible against the defendant if the government shows by a preponderance of the evidence that a conspiracy existed at the time the statement was made; the defendant had knowledge of, and participated in, the conspiracy; and the statement was made in furtherance of the conspiracy."). Here, the government produced a purported contract signed by Khan on behalf of Kanoa Resort (the "Kanoa Resort Agreement"), along with testimony from a United States Citizenship and Immigration Services ("USCIS") officer that USCIS relies on such documents in evaluating CW-1 petitions. The government also provided

testimony establishing that Khan was not authorized to sign the purported contract, and that he did so "to help his brothers." Finally, the government introduced evidence showing that (1) Khan approached Soriano to help his relatives, (2) Soriano requested compensation from each relative in return for her help, and (3) Khan knew that Soriano could not guarantee employment to his relatives, as is required under the CW-1 visa program. This "independent evidence" sufficiently established Khan's connection to, and knowledge of, the conspiracy.

2. The district court's limitation of defense counsel's cross-examination of the USCIS officer did not violate the Sixth Amendment. Confrontation Clause challenges regarding the limitation of cross-examination are reviewed de novo. *United States v. Singh*, 995 F.3d 1069, 1080 (9th Cir. 2021). "[A] limitation on cross-examination does not violate the Confrontation Clause unless it limits relevant testimony and prejudices the defendant." *United States v. Rodriguez-Rodriguez*, 393 F.3d 849, 856 (9th Cir. 2005).

The district court properly limited defense counsel's cross-examination of the USCIS officer about the validity of the Kanoa Resort Agreement because it was irrelevant whether the officer understood the legal requirements to form a contract. Instead, what was relevant was whether the Kanoa Resort Agreement impacted USCIS's decision to grant the CW-1 petition. The Kanoa Resort Agreement purported on its face to be a "contract," and as the USCIS officer

explained, the CW-1 petition includes a declaration representing under penalty of perjury that all of the information contained therein, and submitted therewith, is "complete, true, and correct." USCIS therefore reasonably relied on the Kanoa Resort Agreement to grant the CW-1 visa regardless of whether it was technically a valid contract.

3. Admission of Special Agent Jonas' testimony regarding Khan's translated statements did not violate the Sixth Amendment. "In *United States v. Nazemian* we held that, under appropriate circumstances, a person may testify regarding statements made by the defendant through an interpreter without raising either hearsay or Confrontation Clause issues because the statements are properly viewed as the defendant's own, and the defendant cannot claim that he was denied the opportunity to confront himself." *United States v. Orm Hieng*, 679 F.3d 1131, 1139 (9th Cir. 2012). "A defendant and an interpreter are treated as identical for testimonial purposes if the interpreter acted as a 'mere language conduit' or agent of the defendant." *Id.* (quoting *United States v. Nazemian*, 948 F.2d 522, 528 (9th Cir. 1991)). To make this determination, the district court "must consider all relevant factors." *Id.*

Here, although the government provided the interpreter for Khan's interview with Jonas, Khan "points to no specific evidence of bias on the part of the interpreter" to establish that the interpreter had motive to mislead or distort.

Nazemian, 948 F.2d at 527; *see also Bourjaily v. United States*, 483 U.S. 171, 180 (1987) ("The party opposing admission has an adequate incentive to point out the shortcomings in such evidence before the trial court finds the preliminary facts."). Jonas also testified that he went through a statement of rights form with Khan during the interview, reading it "line-by-line" before Khan acknowledged that he understood it and did not have any questions. *See United States v. Aifang Ye*, 808 F.3d 395, 402 (9th Cir. 2015). Further, Jonas testified that Khan did not dispute any of the translations made by the interpreter during the interview, and evidence adduced at trial established that Khan spoke English fluently. The district court therefore correctly determined that "the interpreter had no role other than translating statements between [Jonas] and [Khan]," *Nazemian*, 948 F.2d at 528, and was acting as a "language conduit" for Khan's interview.

4. Finally, Khan argues that there was insufficient evidence to support his conviction, a claim which we review de novo. *United States v. Bennett*, 621 F.3d 1131, 1135 (9th Cir. 2010). There was enough evidence for the jury to conclude that Khan conspired to defraud USCIS. The jury heard how Khan approached Soriano for assistance with getting his relatives a CW-1 visa, that Soriano agreed to help if each relative paid $900, and that Khan thereafter referred his relatives to Soriano. The jury also saw the Kanoa Resort Agreement and heard testimony from Khan's supervisor that he did not have authority to execute the

purported contract.

AFFIRMED.