

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

INDICTMENT

- v. -

12 Cr.

MARK HENRY,

a/k/a "Weida Zheng,"
a/k/a "Scott Russel,"
a/k/a "Bob Wilson,"
a/k/a "Joanna Zhong,"

12 CRIM 902

Defendant.

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BACKGROUND

Background on the Arms Export Control Act and the International
Emergency Economic Powers Act

1. At all time relevant to this Indictment, the Arms Export Control Act ("AECA") has authorized the President to control the export of "defense articles" deemed critical to the national security and foreign policy interests of the United States. Among other things, the AECA authorizes the President to designate items as "defense articles" by listing them on the United States Munitions List ("USML"). In addition, the AECA authorizes the President to require licenses for the export of defense articles and to promulgate regulations for the export of defense articles. Section 2778(c) of the AECA established criminal penalties for any violation of Section 2778 or any rule or regulation promulgated thereunder.

2. The United States Department of State ("State

Department") implemented the statutory provisions of the AECA by adopting the International Traffic in Arms Regulations ("ITAR"), Title 22, Code of Federal Regulations, Sections 120 to 130. These regulations, promulgated pursuant to Title 22, United States Code, Section 2778, require that an export license be obtained for the export of any item on the USML.

3. The USML is set forth at Title 22, Code of Federal Regulations, Section 121.1. Category IV of the USML, titled "Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines" includes, inter alia, "(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles."

4. The International Emergency Economic Powers Act ("IEEPA"), codified at Title 50, United States Code, Sections 1701-1706, confers upon the President authority to deal with unusual and extraordinary threats to the national security and foreign policy of the United States. Section 1705 provides, in part, that "[i]t shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this title." 50 U.S.C. § 1705(a).

5. The Export Administration Act ("EAA"), 50 App. U.S.C. §§ 2401-2420, regulates the export of goods, technology, and software from the United States. Pursuant to the provisions of the EAA, the Department of Commerce ("DOC") promulgated the Export Administration Regulations, 15 C.F.R. §§ 730-744 (the "EAR"), which contain additional restrictions on the export of goods outside of the United States, consistent with the policies and provisions of the EAA. See 15 C.F.R. § 730.02. Although the EAA lapsed on August 17, 2001, pursuant to the authority provided to the President under IEEPA, the President issued Executive Order 13222. In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the EAA. Accordingly, pursuant to IEEPA, the President ordered that the EAR's provisions remain in full force and effect despite the expiration of the EAA. Presidents have repeatedly signed renewals of the national emergency with respect to the EAA's expiration, the most recent being on August 16, 2011. See 76 Fed. Reg. 50,661 (Aug. 16, 2011).

6. Generally speaking, the EAR applies to goods, technology, and software that are "dual use" in nature, meaning that they have military and non-military uses. Among other things, the EAR prohibits the export of certain goods and

commodities to specific countries, absent permission from the DOC issued in the form of an export license. Specifically, the DOC has devised the "Commerce Control List" ("CCL"), see 15 C.F.R. § 774, which consists of general categories of goods that are controlled for export and are so designated by an "Export Control Classification Number" ("ECCN"). The DOC also has devised the "Commerce Country Chart," see 15 C.F.R. § 738. In the event that a commodity or good is on the CCL, then an exporter must consult the Commerce Country Chart to determine whether an export license from the DOC is required to export the CCL item to a given country.

7. Microwave amplifiers (the "Amplifiers") are listed on the CCL under Export Control Classification Number ("ECCN") 3A001 because they have military applications, and require a license from the DOC prior to exportation to, as relevant here, the People's Republic of China ("PRC").

The Defendant and Dahua Electronics Corporation

8. From at least in or about April 2009 up to and including in or about May 2012, and at all other times relevant to this Indictment, in the Eastern District of New York, MARK HENRY, a/k/a "Weida Zheng," a/k/a Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, operated an export company known as Dahua Electronics Corporation a/k/a Bao An Corporation (the "Export Company").

9. The Export Company's business was the purchase and export of various items, including tools, machine parts, materials used in machinery, and industrial chemicals, from companies located in the United States to end users or customers located in Asia, including Taiwan and the PRC. In connection with that business, MARK HENRY, a/k/a "Weida Zheng," a/k/a Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, received requests for products from customers located overseas and then solicited orders for those products from suppliers and manufacturers located in the United States.

10. From in or about April 2009 up to and including in or about September 2012, MARK HENRY, a/k/a "Weida Zheng," a/k/a Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, sought to purchase ablative materials from a company located in Colorado ("U.S. Company 1") and caused those materials to be shipped from the United States to a Taiwanese company (the "Taiwanese Company").

11. The ablative materials referenced in paragraph 10 are used for, among other things, a protective coating for rocket nozzles. According to the Department of State, Directorate of Defense Trade Controls (DDTC), the ablative materials are controlled under the USML and cannot be exported without a license from the Department of State.

12. From in or about January 2012 up to and including

in or about April 2012, MARK HENRY, a/k/a "Weida Zheng," a/k/a Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, purchased two Amplifiers from a manufacturer located in Pennsylvania ("U.S. Company 2") and attempted to ship them to an end user located in the PRC. HENRY falsely informed U.S. Company 2 that the end user was an educational institution located in New York and that the educational institution intended to use the Amplifiers for research purposes. Prior to the sale, U.S. Company 2 provided HENRY with a document entitled, "Advisement of Export-Controlled Item," which informed HENRY that the amplifier required a license from the Commerce Department prior to export to the PRC. HENRY signed and provided the document to U.S. Company 2, falsely certifying that the amplifier would not be exported in violation of United States law.

13. According to the Department of Commerce, the Amplifiers are categorized under ECCN 3A001 of the CCL, for national security and anti-terrorism reasons, because the Amplifiers could significantly contribute to the military potential of another country. As such, the Amplifiers cannot be exported to the PRC without a license from the Commerce Department.

14. During the period of time relevant to this Indictment, MARK HENRY, a/k/a "Weida Zheng," a/k/a Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, never

applied for or received an export license from the Department of State or the Department of Commerce.

COUNT ONE

(Conspiracy to Violate Arms Export Control Act)

The Grand Jury charges:

15. From at least in or about April 2009, up to and including in or about February 2012, in the Eastern District of New York, MARK HENRY, a/k/a "Weida Zheng," a/k/a "Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, to violate Title 22, United States Code, Section 2778.

16. It was a part and an object of the conspiracy that MARK HENRY, a/k/a "Weida Zheng," a/k/a "Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, and others known and unknown, willfully and knowingly would and did export, and cause to be exported, from the United States to co-conspirators not named as defendants herein located in Taiwan, defense articles listed on the United States Munitions List ("USML"), to wit, ablative materials for, among other things, use as a protective coating for rocket nozzles, without having first obtained from the United States Department of State, Directorate of Defense Trade Controls ("DDTC"), a license, or other written

authorization, for such export, in violation of Title 22, United States Code, Sections 2778(b)(2) and 2778(c), and regulations promulgated thereunder.

Overt Acts

17. In furtherance of the conspiracy and to effect the illegal object thereof, MARK HENRY, a/k/a "Weida Zheng," a/k/a "Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, and others committed the following overt acts:

a. On or about April 15, 2009, a co-conspirator not named herein ("CC-1"), affiliated with the Taiwanese Company in Taiwan, communicated HENRY by making a request to purchase ablative material on behalf of CC-1.

b. On or about April 15, 2009, HENRY replied to CC-1, provided certain pricing and shipping information and advised, in part, "THIS PRODUCT NEED LICENSE OBTAINED FROM UNITED STATES DEPT OF DEFENSE."

c. On or about October 29, 2009, HENRY placed a purchase order for approximately 12 drums of ablative material from U.S. Company 1.

d. On or about December 11, 2009, HENRY caused approximately 10 drums of ablative material purchased from U.S. Company 1 to be shipped from the Logistics Company to the Taiwanese Company in Taipei, Taiwan.

e. In or about September 2010, HENRY placed

another order for ablative material with U.S. Company 1, causing U.S. Company 1 to ship approximately 294 kilograms of ablative material to the Logistics Company in or about November 2010.

g. In or about February 2012, HENRY placed another order for ablative material with U.S. Company 1.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Arms Export Control Act)

The Grand Jury further charges:

18. From at least in or about April 2009, up to and including in or about February 2012, in the Eastern District of New York and elsewhere, MARK HENRY, a/k/a "Weida Zheng," a/k/a "Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, willfully and knowingly did export and cause to be exported and attempt to export from the United States to Taiwan defense articles listed on the USML, to wit, ablative materials for, among other things, use as a protective coating for rocket nozzles, without having first obtained a license or other written authorization for such export from the DDTC.

(Title 18, United States Code, Section 2;
Title 22, United States Code, Section 2778(b)(2), (c);
Title 22, Code of Federal Regulations, Sections 121.1
(Category IV), 123.1, 127.1)

COUNT THREE

(International Emergency Economic Powers Act)

The Grand Jury further charges:

19. On or about April 30, 2012, MARK HENRY, a/k/a "Weida Zheng," a/k/a Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, in the Eastern District of New York, willfully and knowingly did attempt to export, cause to be exported, sell, and supply, directly and indirectly, from the United States, goods and technology, to wit, microwave amplifiers, to the PRC, without having first obtained a license for such export from the Department of Commerce.

(Title 18, United States Code, Section 2;
Title 50, United States Code, Section 1705;
Title 15, Code of Federal Regulations, Section 764.2.)

FORFEITURE ALLEGATION

20. As a result of committing the offenses alleged in Counts One, Two, and Three of this Indictment, MARK HENRY, a/k/a "Weida Zheng," a/k/a "Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong," the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One, Two, and Three of this Indictment, including but not limited to a sum of money representing the amount of proceeds obtained as a result of the offenses.

Substitute Assets Provision

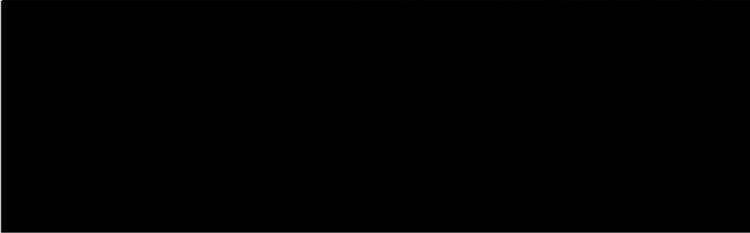
21. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value;
or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any

other property of said defendant up to the value of the above
forfeitable property.

(Title 18, United States Code, Section 981;
Title 28, United States Code, Section 2461.)



Preet Bharara
PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

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18 U.S.C. §§ 371 & 2; 22 U.S.C.
§ 2778(c); 22 C.F.R. §§ 121.1 (Category
IV), 123.1, & 127.1; 50 U.S.C. § 1705

PREET BHARARA,



WARRANT FOR ARREST

United States District Court		DISTRICT SOUTHERN DISTRICT OF NEW YORK	
UNITED STATES OF AMERICA v. MARK HENRY, a/k/a "Weida Zheng," a/k/a "Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong"		DOCKET NO. 12 CRIM 902	MAGISTRATE'S CASE NO.
WARRANT ISSUED ON THE BASIS OF: <input type="checkbox"/> Order of Court <input checked="" type="checkbox"/> Indictment <input type="checkbox"/> Information <input type="checkbox"/> Complaint		NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED MARK HENRY, a/k/a "Weida Zheng," a/k/a "Scott Russel," a/k/a "Bob Wilson," a/k/a "Joanna Zhong"	
TO: ANY AUTHORIZED LAW ENFORCEMENT OFFICER		DISTRICT OF ARREST CITY	
YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the United States District Court to answer to the charge(s) listed below.			
DESCRIPTION OF CHARGES			
Narcotics Conspiracy and Narcotics Distribution			
IN VIOLATION OF	UNITED STATES CODE TITLE 18 22 50	SECTIONS 371, 2 2778(c) 1705	
BAIL	OTHER CONDITIONS OF RELEASE		
ORDERED BY	SIGNATURE (FEDERAL JUDGE/U.S. MAGISTRATE) <i>Frank Mear</i>		DATE ORDERED 12-4-11
CLERK OF COURT	(BY) DEPUTY CLERK		DATE ISSUED
RETURN			
This warrant was received and executed with the arrest of the above-named person.			
DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER	
DATE EXECUTED			

Note: The arresting officer is directed to serve the attached copy of the charge on the defendant at the time this warrant is executed.