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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 28th day of January two thousand nine.

Present: HONORABLE AMALYA L. KEARSE,
HONORABLE ROSEMARY S. POOLER,
Circuit Judges,
HONORABLE DENISE L. COTE,
District Judge*.

USA,

Appellee,

- v. -

ZEDNER,

Defendant-Appellant.

PETITION FOR REHEARING

Per Curiam:

Defendant Jacob Zedner, who remains in Israel, has petitioned through his appellate counsel Edward S. Zas for rehearing in this matter, stating that "the panel majority, based on counsel's misunderstanding at oral argument, misapprehended an important fact." (Petition for Panel Rehearing at 6.) For the following reasons, the petition is denied.

Zedner asserts that this Court erred in stating that he purchased only a one-way ticket to Israel, a statement that was based on the following colloquy at oral argument:

* Honorable Denise Cote, of the United States District Court for the Southern District of New York, sitting by designation.

1 THE COURT: So [Zedner] asked for permission to
2 go to Israel, he was given permission to go for . . .
3 two weeks--

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5 THE COURT: . . . and he bought a one-way
6 ticket.

7 MR. ZAS: That's my understanding, yes.

8 THE COURT: And couldn't afford to buy a ticket
9 back.

10 MR. ZAS: That is what he has told us

11 Given that the district court had authorized Zedner to go to Israel
12 for no more than two weeks, this Court concluded that his remaining
13 in Israel beyond his return deadline constituted a willful absence
14 from the United States, in part because he "traveled [to Israel]
15 without the means to return as required." Majority opinion, slip.
16 op. 5711-12.

17 Zedner now urges us to reconsider the conclusion that his
18 failure to return to the United States was willful, asserting that
19 he did not travel to Israel without the means to return by his
20 September 23, 2007 deadline because he had in fact purchased a
21 round-trip ticket, valid until October 9, 2007. We are unpersuaded.
22 The now-proffered ticket could have been presented in opposition to
23 the government's motion to dismiss the appeal; it was not. Further,
24 acknowledgement by Zedner of his possession of such a ticket would
25 have undermined his principal argument in opposition to that motion.
26 Zedner, who from Israel told his trial counsel in September 2007 that
27 he was having trouble obtaining a United States passport, argued that
28 he had been informed that a passport would be granted if he presented
29 a valid airline ticket for the United States, but he could not afford
30 to purchase such a ticket. Nothing explains why the round-trip
31 ticket that Zedner now proffers to this Court, assuming that it is
32 authentic, was not presented to the passport officials prior to
33 October 9 in order for Zedner to return to the United States. We are
34 unpersuaded that any revision of our conclusion of willfulness is
35 warranted.

36 The petition for rehearing is denied.

37 Judge Pooler dissents.

38 FOR THE COURT:
39 CATHERINE O'HAGAN WOLFE, Clerk of Court
40 by:
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