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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

11	LYUBOMIR MIHAILOV YORDANOV)	Case No. CV17-2034-CAS
)	
12	Petitioner,)	
)	
13	v.)	
)	ORDER
14	WARDEN L.J. MILUSNIC)	
)	
15)	
16	Respondent.)	
)	

19 On January 18, 2017, Magistrate Judge Charles F. Eick entered an order certifying
20 that Petitioner Lyubomir Mihailov Yordanov could be extradited to Bulgaria to face trial
21 on charges of deceit. Case No. 2:16-cv-00170-CAS-E (Doc. 54) (hereinafter,
22 “Extradition Order”). On March 14, 2017, Yordanov filed a petition for habeas relief
23 under 28 U.S.C. § 2241. Doc. 1. The next day, he filed an ex parte application to stay
24 extradition proceedings pending resolution of the habeas petition, and a memorandum in
25 support of the habeas petition. Docs. 3, 4. The Court granted Yordanov’s petition to
26 stay. Doc. 8. The government filed an opposition to Yordanov’s habeas petition (Doc.
27 6); Yordanov elected not to reply. For the reasons that follow, the Court denies the
28 habeas petition and vacates the stay.

1 **I. BACKGROUND**

2 **A. Governing Law**

3 Upon the filing of a sworn complaint by a U.S. attorney, a magistrate judge may
4 hold an extradition hearing with respect to any person within his jurisdiction who is
5 charged by a foreign government of having committed a crime that is extraditable under a
6 treaty or convention. 18 U.S.C. § 3184; *see Santos v. Thomas*, 830 F.3d 987, 991 (9th
7 Cir. 2016). Such a hearing is akin to a grand jury investigation; its purpose is not to
8 determine guilt, but merely to determine “whether there is evidence sufficient to sustain
9 the charge under the provisions of the proper treaty or convention, or, in other words,
10 whether there is probable cause.” *Santos*, 830 F.3d at 991 (quoting *Vo v. Benov*, 447 F.3d
11 1235, 1237 (9th Cir. 2006). “Given the limited nature of extradition proceedings, neither
12 the Federal Rules of Evidence nor the Federal Rules of Criminal Procedure apply.” *Id.* at
13 992. Rather, documents “shall be received and admitted as evidence” if they are
14 “properly and legally authenticated so as to entitle them to be received for similar
15 purposes by the tribunals of the foreign country from which the accused party shall have
16 escaped.” 18 U.S.C. § 3190. The fugitive generally is not permitted to present evidence,
17 unless such evidence “explains away or completely obliterates probable cause.” *Santos*,
18 830 F.3d at 992 (citation omitted). If, after considering the evidence presented, the
19 magistrate judge finds probable cause to extradite, he *must* issue a certification of
20 extraditability. 18 U.S.C. § 3184.

21 The relevant treaty in this case is the Extradition Treaty Between the Government
22 of the United States of America and the Government of the Republic of Bulgaria, Case
23 No. 2:16-cv-00170-CAS-E (Doc. 10 at 26–46) (“Extradition Treaty”). It provides
24 generally for the extradition of an individual charged with an offense that is “punishable
25 under the laws in both States by deprivation of liberty for a maximum period of more
26 than one year or by a more severe penalty.” *Id.* at Art. 2(2).

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1 **B. Extradition Proceedings**

2 Yordanov, an individual residing in the United States, faces charges of criminal
3 deceit in the town of Plovdiv, Bulgaria. Case No. 2:16-cv-00170-CAS-E (Doc. 10-1 at
4 6). Bulgaria has requested that the U.S. Government extradite Yordanov pursuant to the
5 Extradition Treaty between the two countries. On December 15, 2015, the Government
6 filed a sealed “Complaint for Arrest Warrant and Extradition” against Yordanov.
7 Yordanov was arrested three days later. On January 8, 2016, the United States filed a
8 complaint seeking Yordanov’s extradition on behalf of the Government of Bulgaria.
9 Yordanov opposed and filed a motion to dismiss the complaint. On November 10, 2016,
10 Judge Eick held a hearing. On January 18, 2017, Judge Eick denied the motion to
11 dismiss and certified that Yordanov was subject to extradition.

12 **C. Evidence**

13 In the extradition proceeding, Bulgaria offered the following evidence: a criminal
14 information prepared by S. Pencheva, Public Prosecutor for the City of Plovid; a witness
15 statement of the victim, Yordanov Vasilev Angelov; and two witness statements of
16 Angelov’s associate, Atanas Ivanov Bubarov. Yordanov offered his own evidence.

17 1. *Pencheva Statement*

18 The criminal information prepared by Pencheva contains the following allegations:

- 19 • Angelov was the owner and manager of “SMM” PLCC, a company that
20 imported and sold cars in Bulgaria.
- 21 • Angelov met Yordanov in February 2008. Yordanov represented that he
22 was in the business of importing cars to Bulgaria from the United States,
23 and expressed a desire to go into business with Angelov. The two men
24 entered an oral agreement to collaborate on this project.
- 25 • Initially, Yordanov performed his obligations under the oral agreement.
26 Yordanov would send invoices to Angelov describing a vehicle, Angelov
27 would transfer the purchase price to Yordanov in the United States, and
28 Yordanov would ship the purchased vehicle by container to Bulgaria.

- 1 • In May 2008, Yordanov decided “that he [was] going to send to the
2 witness Angelov data about vehicles, which actually he was not going to
3 buy, thus motivating the witness to transfer money for the purchase.”
4 Yordanov’s intent was to use the transferred money “for his own
5 necessities.”
- 6 • Between May 2008 and August 29, 2008, Yordanov sent Angelov
7 invoices for nine vehicles that he intended to purchase for sale to
8 Angelov. During this same time period, Angelov transferred
9 \$870,439.43 to Yordanov’s bank to cover the purchase price and
10 Yordanov’s commission.
- 11 • When the vehicles did not arrive in Bulgaria, Angelov repeatedly called
12 Yordanov to inquire as to why the deliveries were late. Yordanov
13 attempted to explain away the delay, and later sent Angelov container
14 numbers in which the vehicles were allegedly going to ship. Angelov
15 determined that the container numbers existed but that the containers
16 were not going to ship. Angelov made further attempts to call Yordanov
17 but Yordanov either refused to answer or offered an excuse and quickly
18 ended the conversation.
- 19 • Angelov then flew to the United States, accompanied by Atanas Ivanov
20 Bubarov—Angelov’s best man and the godfather of his children—to
21 determine why the delivery had been delayed. Yordanov assured
22 Angelov that the vehicles were set to sail from New York at any moment.
- 23 • Angelov and Bubarov returned to Bulgaria to await the shipment. They
24 soon discovered that the vehicles had not shipped and that Yordanov had
25 never purchased them at all.
- 26 • At this point, Bubarov returned to the United States to meet with
27 Yordanov. At the meeting, Yordanov confessed that he had never
28 purchased the vehicles he invoiced to Angelov and never had any
intention of doing so. He further admitted that he had kept the
transferred money for himself and spent it on his personal needs.

Case No. 2:16-cv-00170-CAS-E (Doc. 10-1 at 6–8).

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1 2. *Angelov Statement*

2 On March 14, 2013, Angelov offered a statement before the Regional Court of
3 Plovdiv. According to the statement:

- 4 • Angelov met Yordanov in 2008. Yordanov said he was the owner of a
5 company called ID Emerson based in California. The two men entered
6 an agreement, pursuant to which Angelov would tell Yordanov which
7 cars he was interested in, Yordanov would buy the cars and transport
8 them to Bulgaria, and Angelov would pay the purchase price and a
9 commission.
- 10 • Angelov began purchasing about 20 to 30 cars per month, ultimately
11 purchasing about 100 cars. Angelov would send Yordanov the
12 specifications for the car, Yordanov would find a car matching the
13 specification and issue an invoice, Angelov would transfer funds, and
14 Yordanov would buy the car.
- 15 • Between May 23, 2008 and August 29, 2008, Yordanov invoiced
16 Angelov for nine cars (seven BMWs and two Mercedes), and Angelov
17 paid the purchase price, about \$640,000. After these cars did not arrive,
18 Angelov called Yordanov to inquire about the status of the shipment.
19 Yordanov “deciev[ed]” Angelov, stating that it would take a month and a
20 half to acquire the appropriate documents for the car.
- 21 • After another month, Yordanov decided to travel to Los Angeles with
22 Bubarov. Yordanov told Angelov that the nine missing cars were in
23 containers in New York. Angelov expressed a desire to see the cars in
24 person, but Yordanov stated that they were already in containers.
25 Angelov then asked for the container numbers. Yordanov provided two
26 numbers. Angelov checked online and found that the containers did
27 exist. However, when he checked the status of the containers a week
28 later, he found that the shipment had been cancelled.
- When Angelov found out that the shipment had been cancelled, he
 contacted Yordanov again. Yordanov said he would check to see what
 had happened. Angelov sent Bubarov back to the United States. “During
 this visit . . . Yordanov said that he did not buy the cars but used the
 money for his own purposes.”

- 1 • Yordanov sent Angelov an email, stating that he would repay Angelov
2 for the nine cars within six to twelve months. Yordanov’s mother, who is
3 also based in the United States, transferred \$2,000 to Angelov. After a
4 year passed with no further payments, Angelov contacted the
Prosecutor’s Office.

5 Case No. 2:16-cv-00170-CAS-E (Doc. 43-3 at 3–4).

6 3. *Bubarov Statements*

7 On April 30, 2010, Bubarov offered a statement before an investigator for the City
8 of Plovdiv’s Ministry of the Interior. According to this statement:

- 9 • Bubarov shares an office with Angelov, and is familiar with everything
10 happening in his office.
- 11 • Bubarov recalls that in 2008, Angelov was introduced to Yordanov.
12 Sometime later, Bubarov was also introduced to Yordanov. Bubarov
13 knew that Angelov and Yordanov were working together to import cars
14 from the United States. He had the impression that the business was
15 going well. As far as Bubarov knew, Yordanov would send an invoice
16 for a certain car with its chassis number and then Angelov would transfer
17 the funds to purchase the specified car.
- 18 • At some point, there was a significant delay in transferring a number of
19 very expensive cars. Bubarov accompanied Angelov to the United States
20 because he had better English skills than Angelov. The two met
21 Yordanov, who told them that there were some technical problems but
22 that the cars would be shipped soon. Yordanov told them that the cars
23 were being held at the New York harbor. Yordanov convinced them not
24 to travel to New York to inspect the vehicles.
- 25 • Angelov and Burbarov returned to Bulgaria, but they never received the
26 cars or a notice of shipment. Angelov asked Burbarov to return to the
27 United States, and he did. Bubarov met Yordanov again and began
28 questioning him about the cars. Yordanov told Bubarov that he never
bought the cars, but gave no explanation for what he had done with the
money. “He started talking evasively, promising to return the money he
owed.”

Case No. 2:16-cv-00170-CAS-E (Doc. 43-1 at 2–4).

1 On March 14, 2013, Bubarov offered a second statement before the Regional Court
2 of Plovdiv. Much of the statement is duplicative of his first statement. However,
3 Bubarov did elaborate on his second meeting with Yordanov in Los Angeles. According
4 to Bubarov, Yordanov admitted in this meeting that he did not acquire the nine vehicles
5 “because he ha[d] some payments to make.” *Id.* (Doc. 43-2 at 4). Yordanov then sent an
6 email stating that he had received the money but not purchased the cars, and that he was
7 going to refund the money by the end of the year. *Id.* The only payment Bubarov is
8 aware of is the \$2,000 transfer made by Yordanov’s mother. *Id.*

9 4. *Yordanov’s Evidence*

10 Yordanov offered an untranslated email and various documents purporting to show
11 completed vehicle purchases and deliveries made pursuant to his oral agreement with
12 Angelov. *Id.* (Doc. 39-1).

13 **II. STANDARD OF REVIEW**

14 Because Congress has not created a mechanism for appealing a certification of
15 extraditability, the only way to challenge such a certificate is to bring a habeas petition.
16 *Santos*, 830 F.3d at 1001 (quoting *Vo v. Benov*, 447 F.3d 1235, 1240 (9th Cir. 2006)). In
17 reviewing such a petition, the district court is limited to considering whether:

- 18 (1) the extradition magistrate had jurisdiction over the individual sought,
19 (2) the treaty was in force and the accused’s alleged offense fell within the
20 treaty’s terms, and (3) there is ‘any competent evidence’ supporting the
21 probable cause determination of the magistrate.

22 *Id.* (quoting *Vo*, 447 F.3d at 1240). The extradition court’s conclusions of law are
23 reviewed de novo, while its factual findings are reviewed for clear error. *Id.* Procedural
24 rulings—e.g., whether to allow discovery or to enforce briefing deadlines—are reviewed
25 for abuse of discretion. *Quinn v. Robinson*, 783 F.2d 776, 817 n.41 (9th Cir. 1986).

26 **III. ANALYSIS**

27 Yordanov objects to the Extradition Order on three bases. First, he argues that
28 Bulgaria failed to comply with the Extradition Treaty because it failed to provide a

1 coherent, authenticated translation of the charging statute. Second, he argues that the
2 Government has not established dual criminality. Third, he argues that the Government
3 has not shown probable cause.

4 **A. Translation Issues**

5 Article 8(2)(c) of the Extradition Treaty provides that “[a]ll requests for extradition
6 shall be supported by . . . the text of the law or laws describing the essential elements of
7 the offense for which extradition is requested and the applicable penalty or penalties.”
8 Article 9 provides that documents bearing the certificate or seal of the Bulgarian Ministry
9 of Justice “shall be admissible in extradition proceedings” in the United States “without
10 further certification, authentication, or other legalization.” Article 10 provides that “[t]he
11 request for extradition and all documents submitted by the Requesting State in support of
12 the request shall be accompanied by a translation into the language of the Requested
13 State, unless otherwise agreed.”

14 In its original request for extradition, the Government provided the following
15 translation of Bulgarian Criminal Code § 209(1):

16 Who, with the purpose of obtaining for himself or for somebody else
17 property benefit, arises or maintains aberration in somebody, thus causing
18 him or somebody else property damage shall be punished for fraud by
19 imprisonment from one to six years.

20 Case No. 2:16-cv-00170-CAS-E (Doc. 10-1 at 46). Yordanov argued in his opposition
21 that this translation was unintelligible. The Government then produced a new,
22 unauthenticated translation of the statute. Yordanov sought to dismiss the extradition
23 proceeding on the grounds that the original translation was unintelligible and the new
24 translation was untimely and unauthenticated. Following the November 10, 2016
25 hearing, Judge Eick granted the Government leave to file an authenticated version of the
26 new translation. The Government did so.¹ Judge Eick accepted this translation, ruling

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28 ¹ The new translation provides:

1 that “the timing of the presentation and authentication of the new translation is not fatal
2 to the merits of the Request for Extradition” because “[t]he Treaty does not necessarily
3 require that all documents submitted in support of a request for extradition be submitted
4 at the same time as the request itself.” Extradition Order at 5.

5 In his habeas petition, Yordanov argues that the Extradition Order should be
6 overturned because the Government’s failure to provide a timely, coherent translation of
7 the statute violated various requirements of the Extradition Treaty. The Court does not
8 agree. Article 8(2)(c) provides that a request for extradition must be supported by the
9 text of the law, and Article 10 provides that such a request must be accompanied by a
10 translation of the charging statute. The Government satisfied these requirements by
11 including in its initial request the authenticated text of the charging statute and an
12 authenticated translation thereof. Case No. 2:16-cv-00170-CAS-E (Doc. 10-1 at 47).
13 The original translation was admittedly unclear, but the Government addressed this
14 concern by providing a revised translation, which it eventually authenticated. *Id.*
15 (Doc. 50 at 4). Yordanov does not point to anything in the Extradition Treaty prohibiting
16 supplementation. Accordingly, whether to permit such supplementation was a question
17 committed to the sound discretion of the extradition court. Yordanov does not explain
18 why it was an abuse of discretion to permit supplementation here.

19 Yordanov attempts to analogize this case to *In re Extradition of Ferriolo*, 126 F.
20 Supp. 3d 1297 (M.D. Fla. 2015), but that case is distinguishable. In *Ferriolo*, Italy
21 sought to extradite an Italian citizen who had been convicted *in absentia* of two drug
22 trafficking offenses. *Id.* at 1299–1300. The Government provided an incomplete English
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25 A person who for the purpose of acquiring material benefit for
26 himself or another evokes or maintains in somebody a misleading
27 idea, and thereby causes material damage to that person or to another,
28 shall be punished for deceit by imprisonment from one to six years.

Doc. 50-1 at 4.

1 translation of the charging statute in the extradition request. *Id.* at 1301. The
2 Government acknowledged that the relevant extradition treaty required a full translation,
3 and sought to introduce an unauthenticated Google translation of the provisions not
4 included in the original request. *Id.* The Court refused to consider this translation
5 because it was not authenticated by a certificate or seal of the Italian Ministry of Justice,
6 as required by the relevant treaty. *Id.* Here, by contrast, both the original translation and
7 the revised translation bear the seal of the Bulgarian Ministry of Justice. That is
8 sufficient to establish admissibility under the Extradition Treaty.

9 **B. Dual Criminality**

10 The Extradition Treaty incorporates the principle of dual criminality, pursuant to
11 which “no offense is extraditable unless it is criminal in both countries.” *Matter of*
12 *Extradition of Russell*, 789 F.2d 801, 803 (9th Cir. 1986) (citation and quotation marks
13 omitted); *see* Extradition Treaty, Art. 2(2) (to be extraditable, an offense must be
14 “punishable under the laws in both States by deprivation of liberty for a maximum period
15 of more than one year or by a more severe penalty.”).² To determine whether dual
16 criminality exists, courts consider whether the *underlying conduct* is subject to criminal
17 sanction in both countries. *See Manta v. Chertoff*, 518 F.3d 1134, 1141 (9th Cir. 2008)
18 (“Dual criminality exists if the ‘essential character’ of the acts criminalized by the laws
19 are ‘substantially analogous.’”) (citation omitted); *Emami v. U.S. Dist. Court*, 834 F.2d
20 1444, 1450 (9th Cir. 1987) (dual criminality exists if the “substantive conduct each
21 statute punishes is functionally identical”). It is not necessary to show that the elements
22 of the foreign offense are identical to those of the domestic offense. *See Manta*, 518 F.3d
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25 ² Although many extradition treaties—including the one at issue here—require
26 dual criminality, the principle has no freestanding basis in U.S. law. *See Matter of*
27 *Assarsson*, 687 F.2d 1157, 1163–64 (8th Cir. 1982) (“If the extradition treaty so provides,
28 the United States may surrender a fugitive to be prosecuted for acts which are not crimes
within the United States.”) (quoting *Gallina v. Fraser*, 278 F.2d 77, 79 (2d Cir. 1960)).
In all instances, the treaty language controls. *Id.* at 1164.

1 at 1141; Extradition Treaty, Art. 2(3)(a) (“[a]n offense shall be considered an extraditable
2 offense . . . regardless of whether the laws in the Requesting and Requested States place
3 the acts or omissions constituting the offense within the same category of offenses or
4 describe the offense by the same terminology”).

5 In the United States, either a state or federal criminal statute may be used to satisfy
6 the dual criminality requirement. Where a federal criminal statute is used, an element of
7 the crime that is purely jurisdictional—i.e., a requirement that the defendant use facilities
8 affecting interstate or foreign commerce—may be disregarded for purposes of the dual
9 criminality analysis. *See Emami*, 834 F.2d at 1450; *see also* Extradition Treaty, Art.
10 2(3)(b) (“an offense shall be considered an extraditable offense . . . regardless of whether
11 the offense is one for which United States federal law requires the showing of such
12 matters as interstate transportation, or use of the mails or of other similar facilities
13 affecting interstate or foreign commerce, such matters being merely for the purpose of
14 establishing jurisdiction in a United States Federal court”).

15 In the extradition proceeding, the Government argued that the requirement of dual
16 criminality was satisfied because the alleged conduct could be charged under California’s
17 grand theft statute, Cal. Penal Code § 487(a), or the federal wire fraud statute, 18 U.S.C.
18 § 1343. Yordanov argued that dual criminality was lacking because neither the grand
19 theft statute nor the wire fraud statute applies extraterritorially. He further argued that
20 Bulgarian Criminal Code § 209(1) could not be used to establish dual criminality because
21 it is too broad and does not contain a falsity or reliance element. Judge Eick rejected
22 these arguments. Yordanov reasserts them on appeal.

23 *1. Extraterritoriality*

24 Article 2(4) of the Extradition Treaty provides:

25 If the offense has been committed outside the territory of the Requesting
26 State, extradition shall be granted, subject to the other applicable
27 requirements for extradition, if the laws of the Requested State provide for
28 the punishment of an offense committed outside its territory in similar

1 circumstances. If the laws of the Requested State do not provide for the
2 punishment of an offense committed outside its territory in similar
3 circumstances, the executive authority of the Requested State, at its
4 discretion, may grant extradition provided that all other applicable
requirements for extradition are met.

5 Yordanov argues that dual criminality does not exist because neither California nor
6 federal law provides for punishment of fraud committed outside its territory. That is not
7 correct. Courts have repeatedly held that the wire fraud statute admits of extraterritorial
8 application. *See United States v. Georgiou*, 777 F.3d 125, 137 (3d Cir. 2015) (“Section
9 1343 applies extraterritorially”); *United States v. Kim*, 246 F.3d 186, 188–90 (2d Cir.
10 2001) (section 1343 prohibits fraudulent use of the U.S. telecommunication system,
11 regardless of where the perpetrator is located). And although there does not appear to be
12 any authority on whether California’s grand theft statute applies extraterritorially, courts
13 have held that the State may apply its criminal laws to a person outside of California who
14 directs fraudulent communications to a person in the State. *See People v. Chapman*, 55
15 Cal. App. 192, 199 (1921) (Massachusetts resident who made obtained money under
16 false pretenses from a person in California was subject to criminal liability in California);
17 *see also Ex parte Hammond*, 59 F.2d 683, 685 (9th Cir. 1932) (“the offense of obtaining
18 money under false pretenses is committed . . . where the victim parts with his money as a
19 result of the false pretenses”). The requirement under the first sentence of Article 2(4)—
20 that “the laws of the Requested State provide for the punishment of an offense committed
21 outside its territory in similar circumstances”—is satisfied here. Even if it were not,
22 Yordanov could be extradited under the second sentence of Article 2(4), which grants the
23 United States discretion to extradite a fugitive even if its laws “do not provide for the
24 punishment of an offense committed outside its territory in similar circumstances.”

25 2. *Bulgarian Criminal Code § 209(1)*

26 Yordanov argues that Bulgarian Criminal Code § 209(1) cannot be used to
27 establish dual criminality because it “appears to cover conduct that would not be covered
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1 under U.S. statute.” Doc. 4 at 30. This argument is without merit. It is not necessary
2 that the foreign and domestic statutes be identical in scope; all that is necessary is that the
3 charged conduct fall within the area of overlap between the two statutes. *See Manta*, 518
4 F.3d at 1141; Extradition Treaty, Art. 2(3)(a).

5 Yordanov further argues that § 209(1) cannot be used to establish dual criminality
6 because it lacks a falsity or reliance requirement. This argument fails for two reasons.
7 First, § 209(1) does appear to require falsity and reliance; the offense requires that the
8 defendant “evoke[] . . . in somebody a misleading idea . . . thereby caus[ing] material
9 damage to that person” Second, it is not necessary that the foreign and domestic
10 crime contain the same elements, as long as the underlying conduct is criminal in both
11 countries. *Manta*, 518 F.3d at 1141; Extradition Treaty, Art. 2(3)(a).

12 3. *Wire Fraud Statute*³

13 Yordanov argues that he cannot be liable under the wire fraud statute because there
14 is no evidence that he used the wires. That argument is meritless, for two reasons. First,
15 use of the wires is a jurisdictional element, which need not be present to establish dual
16 criminality. *See Emami*, 834 F.2d at 1450; *see also* Extradition Treaty, Art. 2(3)(b).
17 Second, a defendant need not herself use the wires in order to commit wire fraud: she
18 may be “held liable for a communication transmitted by a victim of her fraud, if the
19 communication furthered the defendant’s fraudulent scheme.” *United States v. Deavers*,
20 617 F. App’x 935, 937 (11th Cir. 2015). There is evidence that Yordanov caused the
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23 ³ Yordanov is subject to extradition if the alleged conduct is chargeable under
24 either California’s grand theft statute or the wire fraud statute. Yordanov’s only
25 argument against finding the alleged conduct chargeable under California’s grand theft
26 statute is that the statute supposedly lacks extraterritorial effect. The Court has already
27 rejected that argument. Because Yordanov is clearly chargeable under California’s grand
28 theft statute, it is not necessary to decide whether Yordanov’s conduct would also be
chargeable under the wire fraud statute. Nonetheless, the Court will reach this question,
as it provides an alternative basis for finding dual criminality.

1 victim in this case to wire money to him in foreign commerce. Such evidence is
2 sufficient to establish use of the wires.

3 Yordanov also argues that the wire fraud statute cannot be used to establish dual
4 criminality because it requires a finding of fraudulent intent, and the evidence does not
5 support such a finding.⁴ Judge Eick found it reasonable to infer that Yordanov acted with
6 fraudulent intent, based on evidence that:

7 (1) Yordanov did not ship nine vehicles for which Angelov had sent
8 Yordanov money; (2) when Angelov assertedly came to this country to
9 discuss the missing shipments, Yordanov, knowing he had not purchased the
10 subject vehicles, allegedly provided continuing, false assurances of
11 performance; and (3) Yordanov later told Bubarov that Yordanov had not
12 purchased the subject vehicles and that Yordanov had used the money
obtained from Angelov for Yordanov's own purposes.

13 Extradition Order at 30–31 (footnote omitted).⁵ The Court has reviewed the evidence in
14 the record and concludes that Judge Eick's finding is supported by competent evidence
15 and is not clearly erroneous. Accordingly, Yordanov's argument that there is no
16 evidence of fraudulent intent must be rejected.

17 **C. Probable Cause**

18 A request for extradition will not be granted unless there is probable cause to
19 believe the fugitive committed the alleged offense. *See Santos*, 830 F.3d at 991;
20 Extradition Treaty, Art. 8(3) (a request for extradition must be supported by "such
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22 ⁴ Yordanov is correct that the wire fraud statute requires a showing of fraudulent
23 intent. *See United States v. Chandler*, 98 F.3d 711, 715 (2d Cir. 1996) (a defendant does
24 not commit wire fraud unless he acts with "intent to deceive and intent to cause actual
harm").

25 ⁵ Judge Eick also correctly concluded that Yordanov's promise to repay the money
26 transferred by Angelov would not preclude a finding of fraudulent intent. *See United*
27 *States v. Treadwell*, 593 F.3d 990, 997 (9th Cir. 2010) (where the defendant is charged
28 with violating the wire fraud statute, "a good-faith belief that the victim will be repaid
and will sustain no loss is no defense at all") (citation and quotation marks omitted).

1 information as would provide a reasonable basis to believe that the person sought
2 committed the offense for which extradition is requested”). Probable cause means “a
3 prima facie case of guilt . . . sufficient to hold the extraditee for trial.” *Emami v. U.S.*
4 *Dist. Court for N. Dist. of Cal.*, 834 F.2d 1444, 1452 (9th Cir. 1987). An extradition
5 court’s finding of probable cause will be sustained if there is *any* competent evidence to
6 support it. *Quinn*, 783 F.2d at 817 n.41.

7 Yordanov argues that the evidence submitted by Bulgaria is insufficient to
8 establish probable cause. The Court does not agree. Judge Eick found probable cause for
9 a prosecution under Bulgarian Criminal Code § 209(1) based on evidence that Yordanov
10 “promised to purchase and ship the nine subject vehicles; received the money to do so;
11 failed to do so; made false representations that he had done so; made false assurances that
12 the vehicles were in containers in New York ready for shipment; and made false
13 representations that he would see to it that the cars were shipped[,]” as well as evidence
14 that “Yordanov used Angelov’s money for Yordanov’s own purposes and then lied about
15 it.” Extradition Order at 35. Judge Eick’s finding is supported by competent evidence
16 which is more than sufficient to establish a prima facie case of guilt under Bulgarian
17 Criminal Code § 209(1).⁶

18 Yordanov contends that his evidence, which purportedly shows a course of
19 legitimate dealings between Yordanov and Angelov, explains away Bulgaria’s evidence.
20 The Court does not agree. Yordanov’s evidence is not inconsistent with Bulgaria’s
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22 ⁶ Yordanov argues that Bubarov’s statements and Angelov’s statement are
23 inconsistent as to whether Yordanov used the transferred money for personal expenses.
24 The Court does not see any inconsistency. *Compare* Case No. 2:16-cv-00170-CAS-E
25 (Doc. 43-2 at 4) (Bubarov statement: Yordanov confessed that he did not purchase the
26 vehicles “because he ha[d] some payments to make”) *with id.* (Doc. 43-3 at 3) (Angelov
27 statement: “Yordanov said that he did not buy the cars but used the money for his own
28 purposes.”). Even if the witness statements were inconsistent, it would not help
Yordanov. The Court must affirm if there is *any* competent evidence supporting a
finding of probable cause. *Quinn*, 783 F.2d at 817 n.41.

1 evidence; Pencheva, Angelov, and Bubarov all acknowledge that Yordanov initially
2 performed his obligations under the oral agreement with Angelov. *See, e.g.*, Case No.
3 2:16-cv-00170-CAS-E (Doc. 43-3) (Angelov statement, acknowledging that he imported
4 around 100 cars from Yordanov before the alleged fraud began). Nor does evidence of
5 past performance under an oral agreement preclude a finding of criminal fraud where, as
6 here, there is evidence that the defendant made fraudulent misrepresentations with respect
7 to the particular transaction at issue.

8 **VI. CONCLUSION**

9 For the foregoing reasons, Yordanov's petition for habeas relief (Doc. 3) is
10 **DENIED**. The stay of extradition proceedings entered on March 21, 2017 (Doc. 8) is
11 **VACATED**.

12 **IT IS SO ORDERED.**

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14 DATED: April 18, 2017



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16 CHRISTINA A. SNYDER
17 UNITED STATES DISTRICT JUDGE
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