

MAY/JUNE 2021

VOLUME 27 NUMBER 3

DEVOTED TO  
INTELLECTUAL  
PROPERTY  
LITIGATION &  
ENFORCEMENT

Edited by Gregory J. Battersby  
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# IP *Litigator*<sup>®</sup>

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# Strategic Considerations in Parallel Trade Secrets Actions

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There are several circumstances in which the same facts or transactions at issue in a civil litigation will also give rise to multiple proceedings that will all occur in parallel. These can include a government investigation and subsequent criminal prosecution, civil injunctive relief action, and potentially sanctions proceedings, in addition to the civil action by a private plaintiff.

In fact, this confluence of parallel actions can occur somewhat frequently in trade secrets misappropriation cases. “It has been estimated that intellectual property in the United States is valued at nearly half the entire economy.”<sup>1</sup> It is no surprise, then, that the United States government has thrown itself into taking action against the perceived large scale theft of American trade secrets, especially by foreign actors. In recent years, the DOJ has placed particular emphasis on vindicating the interests of large corporations that have been victims of trade secret theft.<sup>2</sup> It is thus becoming more common for alleged perpetrators of trade secrets theft to face not only civil litigation from a victim corporation, but also a criminal indictment, and parallel criminal and civil regulatory litigation, on the same facts.

The prospect of a parallel government investigation is even more likely where the underlying facts involve a foreign nexus to the alleged trade secrets theft. The criminal charge of “economic espionage” is defined as the theft of trade secrets “intending and knowing that the offense will benefit any foreign government, foreign instrumentality, and foreign agent.”<sup>3</sup> In recent years the DOJ has been particularly willing to bring this charge when the foreign government perceived to benefit from trade secrets

theft is China. In November 2018, the U.S. Department of Justice under the Trump administration launched the “China Initiative,” a program intended to combat perceived efforts by the Chinese government to steal trade secrets and engage in economic espionage. Two years after the launch of the China Initiative, the Department of Justice released a “Year-in-Review” press release touting its success in making “incredible strides in countering the systemic effort” by China to “enhance its economic and military strength at America’s expense.”<sup>4</sup>

A parallel criminal trade secrets investigation presents significant implications for parties in what would ordinarily be civil trade secret matters. While the government may be acting to vindicate the interests of American people and corporations in safeguarding American intellectual property, there are strategic considerations a victim corporation must take into account where an alleged perpetrator is likely to face criminal charges. For example, a company in the victim/plaintiff role may want to file a complaint as quickly as possible to prevent further theft or use of its misappropriated trade secrets; however, there may be risks to doing so if a referral to criminal authorities is also contemplated. Early negative developments in a civil case (for example, the denial of a TRO) may mean that the government, with its much higher burden of proof, declines to investigate. Civil litigants filing for TROs may not yet have sufficient command of the facts to effectively “shape the narrative” in the way the government might like to do in prosecuting a criminal case. Problems can arise if government investigators discover facts in their initial investigation that are different from what plaintiffs have represented in civil pleadings. Parallel cases can also pose risks for timely recovery of damages—defending two or more cases for a protracted length of time may mean a defendant is insolvent when it comes time for a plaintiff to recover. And perhaps most importantly to trade secrets litigants, criminal charges can put the resolution of a civil case on hold for literal years.

Likewise, the threat of parallel investigations poses unique challenges to corporations accused of having participated in or sponsored a trade secrets misappropriation or economic espionage. Government prosecutors may benefit where a plaintiff is successful in developing

key facts in civil discovery, as discovery under Federal Rule of Criminal Procedure 16 is much more limited than civil discovery. Defendant corporations faced with two or more parallel proceedings face mounting defense costs and other expenses along with a future resolution that will likely involve significant criminal fines and penalties on top of damages eventually owed to plaintiffs. And defendants must carefully consider how to mount a full defense in such a case without waiving any of the constitutional rights afforded to them in light of a parallel criminal investigation. As a result, despite the costs associated with delaying resolution for (sometimes) many years, accused corporations are often better off seeking a stay of the civil litigation as soon as possible.

## The Fifth Amendment and Parallel Proceedings

A defendant may assert his or her<sup>5</sup> Fifth Amendment right against self-incrimination in any civil case where the defendant is “confronted by substantial and real, and not merely trifling or imaginary, hazards of incrimination.”<sup>6</sup> Invocation of Fifth Amendment rights is not as simple as it may sound, however. *Waymo LLC v. Uber Technologies Inc.*, filed in 2017 in the Northern District of California,<sup>7</sup> illustrates the risks where key parties decline to testify. There, Waymo’s complaint alleged that Uber conspired with Anthony Levandowski, a former executive at Waymo, to steal Waymo’s trade secrets regarding self-driving car technology. Based in part on Waymo’s civil complaint (and unusually pointed commentary from the presiding Judge), the U.S. Attorneys’ Office for the Northern District of California opened a criminal trade secrets investigation into Levandowski’s conduct.<sup>8</sup>

At his deposition in the civil case, Levandowski invoked his Fifth Amendment rights and declined to testify; he also declined to produce any of the allegedly misappropriated documents.<sup>9</sup> Levandowski was later indicted for theft of trade secrets<sup>10</sup> and sentenced to 18 months in jail.<sup>11</sup> In a court-ordered brief on the Fifth Amendment issue, Levandowski’s attorneys argued that Waymo’s allegations of steal[ing]” and “misappropriat[ing]” intellectual property inherently “conjure the threat of criminal sanction under 18 U.S.C. § 1832 or other similar federal or state statutes. Accordingly, merely by virtue of the accusations themselves, there is a ‘possibility’ of prosecution, and Mr. Levandowski cannot be compelled to testify.”<sup>12</sup> Though Levandowski *was* actively under criminal investigation at the time of his invocation, this situation can arise as a practical matter in almost any civil trade secrets misappropriation case. As Levandowski’s counsel argued, an allegation of theft of trade secrets

inherently carries a risk of criminal prosecution which may justify invocation of an individual’s right against self-incrimination.

Importantly, asserting a Fifth Amendment privilege against self-incrimination in a federal civil case carries the distinct risk that the court may permit an adverse inference from a party’s refusal to testify. This is one of the more difficult positions in which parallel actions (or even the potential existence of a parallel investigation) place defendants: key individual witnesses must choose between waiving their Fifth Amendment rights in order to mount a full defense in a civil case or preserving their Fifth Amendment rights while risking a potentially damaging negative inference. The plaintiffs in *Waymo v. Uber* briefed the court regarding their entitlement to a number of damaging negative fact inferences as a result of Levandowski’s refusal to testify.<sup>13</sup> The case subsequently settled with Waymo receiving \$245 million worth of Uber shares,<sup>14</sup> with the potential for negative inference jury instructions a likely factor in driving the resolution.

## Parallel Proceedings and Case Continuity

Some of the same concerns about the effect of parallel proceedings on potential criminal defendants’ rights may affect the continuity of a civil case, delaying it—often for years—until a criminal case is resolved. This point is illustrated by the parallel civil and criminal cases of *Micron v. United Microelectronics Corp.* and *U.S. v. United Microelectronics Corp.*, both filed in the U.S. District Court for the Northern District of California. Both cases involved an alleged conspiracy to steal semiconductor-related trade secrets from Micron Technology Inc., a U.S. semiconductor company.<sup>15</sup>

UMC was the first criminal prosecution brought by the U.S. Department of Justice pursuant to the China Initiative. An indictment of UMC and its Chinese joint venture partner Fujian Jinwha for economic espionage and trade secrets misappropriation was unsealed on the same day the initiative was announced: November 1, 2018.<sup>16</sup> Micron, the entity whose trade secrets were allegedly stolen, had filed its initial complaint against UMC (and other defendants) almost a year previously on December 5, 2017.<sup>17</sup> The civil case was thus well under way when the DOJ indicted five defendants, including UMC, Fujian Jinwha and three individuals, on criminal charges involving the same underlying facts.

Following denial of its motion to dismiss Micron’s complaint, defendant UMC immediately moved to stay the civil case in light of the criminal proceeding. Both the Fifth Amendment implications and broader discovery

available in a civil case were argued as factors mandating a stay.

In its motion to stay the civil proceeding, UMC argued the parallel proceedings would prejudice its ability to defend itself in either case: either its ability to defend itself in the criminal proceeding would be prejudiced by Micron's ability to obtain discovery against its directors and officers in the civil proceeding, or UMC's ability to defend itself in the civil proceeding would be prejudiced by its directors and officers invoking their Fifth Amendment rights.<sup>18</sup>

UMC further argued that the issues at stake in the civil and criminal proceedings were essentially identical,<sup>19</sup> and that "the more liberal obligations under civil discovery rules could force [criminal Defendants] and other key individuals to produce materials that would expose facts that they would not be required to produce in the criminal proceeding, and substantially prejudice all the indicted parties when they would inevitably be used against them there anyway."<sup>20</sup> Implicit in UMC's concern over providing discovery to Micron in the case was Micron's apparent cooperation with the U.S. Attorneys' office investigating the criminal matter, without which a criminal indictment would never have been brought.

The court granted UMC's stay motion in July of 2019. The court found the risk of prejudice to the Defendants "arising from an inability to obtain testimony from individuals who have the right not to incriminate themselves [was] substantial."<sup>21</sup> Likewise, the court found that the Defendants would be forced to publicly disclose more information about their defenses in the course of the civil proceeding than the government would be entitled to under the Federal Rules of Criminal Procedure.<sup>22</sup>

Moreover, the court held that "the public interest is furthered by a stay because the public's interest in the integrity of the criminal case is entitled to precedence over the civil litigant."<sup>23</sup> Although the public also has a strong interest in the protection of trade secrets, [...] and companies that presently compete in the same market as Micron have a strong interest in preserving the integrity of the market, [...] such interests are advanced by the pending criminal prosecution, which seeks to protect both the public's interest in protecting Micron's trade secrets as well as the integrity of the" semiconductor market.<sup>24</sup>

On Oct. 28, 2020, more than two years after charges were unsealed and nearly three years after the civil case was initiated, UMC entered a guilty plea in the criminal case.<sup>25</sup> Despite this significant development, on January 5, 2021 the court in the civil proceeding denied Micron's motion to lift the stay. Although the court held that UMC's original arguments no longer justified the stay, co-defendant (and former venture partner) Fujian

Jinhua's circumstances were unchanged and thus the stay should not be lifted until the criminal case against it has concluded.<sup>26</sup> Given Fujian Jinhua's position as a Chinese entity operating outside the territorial reach of U.S. prosecutors, resolution of the criminal case against that entity remains elusive. Nearly three and a half years after filing its civil suit, there is still no end in sight for plaintiff Micron with respect to this case.

## Parallel Civil Regulatory Proceedings

On the same day the criminal case was filed, the United States Government brought yet a third case against UMC and Fujian Jinhua. This third legal proceeding was a civil action for injunctive relief under 18 U.S.C. § 1836(a), "which permits the Attorney General to 'obtain appropriate injunctive relief' against violations of 18 U.S.C. §§ 1831 and 1832."<sup>27</sup> The Government sought this injunction to prohibit UMC and Jinhua from "exporting, reexporting, causing the export of, attempting to export to the United States; selling or supplying, directly or indirectly to the United States; or causing the import into the United States of, any products containing" semiconductor technology, or for conveying the alleged misappropriated trade secrets in any way.<sup>28</sup> The relief requested duplicates that which Micron requested in its own complaint, which sought to prohibit "UMC and Jinhua from further acquisition, disclosure, use, and possession of the Micron trade secrets[.]"<sup>29</sup>

In February 20, 2019, before UMC had even filed a response to the government's complaint, UMC moved to stay the government's civil proceeding, citing many of the same arguments as it later asserted in the case brought by Micron—namely, broader civil discovery, Fifth Amendment implications, and disclosure of its defenses.<sup>30</sup> The Government filed a statement of Nonopposition; a mere two days after it was filed, the court granted UMC's motion to stay proceedings.<sup>31</sup> UMC was voluntarily dismissed from the civil case on the same day it pleaded guilty in the criminal case.<sup>32</sup> While Fujian Jinhua remains a party to the case, its deadline to file a response to the Government's complaint was extended to thirty days after resolution of the criminal case against it, which, as noted, remains uncertain.<sup>33</sup>

Even though the Government did not oppose the stay, the timing of the civil case—filed at the same time as the criminal action and dismissed (at least as to UMC) at the time of UMC's guilty plea—suggests that it was largely designed to put greater pressure on UMC and Fujian Jinhua in the criminal proceeding.

## Entity List Proceedings

At the same time as it was forced to defend three parallel legal proceedings, Fujian Jinhua faced yet another type of parallel action for its alleged role in misappropriating trade secrets from Micron: it was placed on the Bureau of Industry and Security (BIS)'s "Entity List." The Entity List is another tool in the Government's toolkit which can be used to place pressure on companies alleged to have stolen trade secrets. The "Entity List" refers to a section of the Export Administration Regulations which contains a list of foreign persons/entities "that are subject to specific license requirements for the export, re-export and/or transfer (in-country) of specified items."<sup>34</sup> BIS may also apply a presumption of denial of licenses to an entity on the List. That presumption can and often does have crippling economic consequences for a listed company.<sup>35</sup>

The Entity List was instituted in 1997 as a way to flag entities involved in some way in the production of weapons of mass destruction.<sup>36</sup> While many entities are still placed on the list due to "national security" concerns, theft of trade secrets is a growing justification for new listings. Indeed, there is a growing risk that entity listing may become a more prevalent enforcement tool in the trade secrets area as the United States government flexes its prosecutorial muscle against foreign companies believed to have been involved in trade secrets theft such as Fujian Jinhua. This has proved particularly true when it comes to the United States Government's push to prosecute those allegedly involved in passing American trade secrets to China,<sup>37</sup> supported by policies like the China Initiative. In line with these trends, Chinese companies made up by far the majority of new additions to the entity list in BIS's latest December 2020 revision.<sup>38</sup>

The entity list is an administrative tool that the government may use to expand its enforcement extraterritorially,<sup>39</sup> to reach and punish companies such as Fujian Jinhua over which the U.S. would not otherwise have jurisdiction. Entity listing may also be used concurrently with criminal and/or civil trade secrets litigation to apply additional pressure on companies accused of serious trade secret theft. Given the Entity List's potential for completely prohibiting a company from doing business with or in the U.S., prosecutors recognize the degree to which this tool can wield significant power in incentivizing parties to resolve a criminal case.

For example, in May 2019, Chinese telecommunications giant Huawei—along with all of its global subsidiaries and affiliates, which "cover 26 countries in Asia, the Middle East, Africa, Europe and the Americas"<sup>40</sup>—was placed on the BIS entity list.<sup>41</sup> This occurred on the

heels of two separate indictments of the company. The first indictment, filed in January 2019 in the Western District of Washington, alleged theft of trade secrets from T-Mobile regarding its proprietary robotic phone testing system, "Tappy."<sup>42</sup>

In its motion to dismiss the Washington indictment, Huawei pointed out that the facts underlying the case had already been settled between the parties in litigation back in 2014, when the jury awarded T-Mobile \$4.8 million in a breach of contract claim but no damages for misappropriation of trade secrets.<sup>43</sup> Huawei further claimed it had been subjected to selective prosecution—in essence, that it had been targeted years after the resolution of the civil case due to a concerted effort by the United States government to target Chinese corporations for political reasons.<sup>44</sup> The parties have stipulated to multiple trial continuances and these claims have not yet been decided by the court.<sup>45</sup>

In January 2020, a second indictment was returned against Huawei in the Eastern District of New York.<sup>46</sup> The superseding indictment in New York added racketeering and conspiracy to misappropriate trade secrets charges<sup>47</sup> to an existing indictment alleging that Huawei had obfuscated its relationship with its Iran-based subsidiary, Skycom, in order to avoid US laws regarding export of US products to Iran in violation of the International Emergency Economic Powers Act.<sup>48</sup> The superseding indictment included charges relating to a bonus policy Huawei allegedly had for employees who provided confidential competitor information.<sup>49</sup>

Both cases involving Huawei are still ongoing. In the meantime, the Entity List has effectively prohibited Huawei and all of its subsidiaries from doing business in the United States. The US has also put pressure on other countries, including Australia, New Zealand and Japan, to ban Huawei's networking equipment.<sup>50</sup>

## Conclusion

As evidenced particularly by the cases of Fujian Jinhua and Huawei, the Government has a great deal of power to sanction defendants accused of misappropriating trade secrets on multiple fronts. This power is more often than not leveled at foreign entities, particularly those operating in China. While oral argument on Huawei's selective prosecution claim will not be heard until 2022, the company is not alone in protesting the United States' efforts to target Chinese companies for alleged theft of trade secrets. The China Initiative has raised numerous civil rights issues with regard to the treatment of Asian Americans and Asian immigrants who are subjected to criminal investigation that some claim is politically motivated. Multiple Asian American and civil rights



organizations have requested that the new administration re-examine the China Initiative and, in particular, address the potential unintended discriminatory side effects of the branding of the initiative and its policies.<sup>51</sup> The calls for reform have only increased in light of the sharp increase in anti-Asian hate crimes since the beginning of the COVID-19 pandemic.<sup>52</sup>

In light of these trends and the US government's broad power to take action against trade secret misappropriation, companies defending these claims—especially those with Chinese business partners or operations—must carefully prepare for the possibility of multiple actions. With so many avenues for relief, it is likely that information gleaned from one case may spur multiple proceedings or actions. For example, Huawei spokesperson Glenn Schloss has stated that the criminal trade secrets charges against the company “are largely based on recycled civil disputes from the last 20 years that have been previously

settled, litigated and in some cases, rejected by federal judges and juries.”<sup>53</sup>

However, for defendants, key successes in one case can sometimes be used to defeat claims in multiple parallel proceedings. Take for example the indictment filed by prosecutors in the Northern District of California in June 2018 against former Jawbone employees on allegations they took trade secrets to competitor Fitbit in *U.S. v. Mogal*.<sup>54</sup> Each of the six defendants had previously been involved in, and successfully defended, a similar civil suit in California state court.<sup>55</sup> After the federal criminal jury acquitted the first former employee to go to trial, prosecutors dismissed the remaining defendants, finally ending a case that had gone on for years.<sup>56</sup> Lengthy delays, skyrocketing costs, and strategic pitfalls at every turn can be just some of the many issues parties in parallel trade secrets proceedings will face on their path to a final resolution.

1. *Bloomberg\_article\_civil\_or\_criminal\_enforcement\_of\_trade\_secret.pdf* (carltonfields.com).
2. How Private Trade Secret Cases Collide With DOJ's War on Criminal Trade Secret Theft: Bondurant Mixson & Elmore LLP (bmelaw.com) (naming indictments against defendants who stole trade secrets from, among others, T-Mobile, General Electric, Apple, DuPont, GE Aviation, and Coca-Cola.).
3. 18 U.S.C. § 1831.
4. <https://www.justice.gov/opa/pr/china-initiative-year-review-2019-20>.
5. The right against self-incrimination only applies to natural persons, but corporations may face significant issues where key employees/officers involved in the alleged theft of trade secrets elect to invoke their Fifth Amendment rights based on the doctrine of *respondet superior*.
6. *United States v. Apfelbaum*, 445 U.S. 115, 128 (1980).
7. *Waymo LLC v. Uber Technologies, Inc.*, 3:17-cv-00939 (N.D. Cal. filed Feb. 23, 2017).
8. <https://www.reuters.com/article/us-uber-tech-alphabet-ruling/lu-s-judge-calls-for-criminal-probe-into-trade-secrets-theft-raised-in-uber-case-idUSKBN18805G>.
9. Plaintiff Waymo LLC's Reply In Support Of Its Motion For Preliminary Injunction, *Waymo LLC v. Uber Technologies, Inc.*, No. 254-4 at 10 (Apr. 21, 2017).
10. Former Uber Self-Driving Car Executive Indicted For Alleged Theft Of Trade Secrets From Google | USAO-NDCA | Department of Justice.
11. Former Uber Executive Sentenced To 18 Months In Jail For Trade Secret Theft From Google | USAO-NDCA | Department of Justice.
12. Intervenor Anthony Levandowski's Court-Ordered Fifth Amendment Submission, No. 244at 4 (Apr. 19, 2017).
13. Plaintiff Waymo LLC's Reply In Support Of Its Motion For Preliminary Injunction, *supra* note 9, at 10–13.
14. *Waymo v. Uber: Surprise Settlement Five Days into Trial - Harvard Journal of Law & Technology*; Waymo accepts \$245 million and Uber's 'regret' to settle self-driving car dispute | Reuters.
15. *United States of America v. United Microelectronics Corp., et al.*, 3:18-cr-465 (N.D. Cal.). Ms. Nall was counsel for one of the parties to this case; no confidential information is provided in this article.
16. *United States of America v. United Microelectronics Corp., et al.*, 3:18-cr-465 (N.D. Cal.).
17. *Micron v. United Microelectronics Corp. et al.*, 3:18-cv-06643-MMC, No. 1 (N.D. Cal. filed Dec. 5, 2017), [gov.uscourts.cand.320086.1.0\\_2.pdf](http://gov.uscourts.cand.320086.1.0_2.pdf) (courtlister.com).
18. *Id.* at 6.
19. *Id.* at 7.
20. *Id.* at 8.
21. *Micron Tech., Inc. v. United Microelectronics Corp.*, No. 17-cv-06932-MMC, 2019 U.S. Dist. LEXIS 115650, at \*6 (N.D. Cal. July 11, 2019).
22. *Id.* at \*8.
23. *Micron Tech, Inc.* at \*9 (quoting *Jones v. Conte*, 2005 U.S. Dist. LEXIS 46962, 2005 WL 1287017, at \*2 (N.D. Cal. April 19, 2005)).
24. *Id.* at \*9.
25. *United States of America v. United Microelectronics Corp., et al.*, 3:18-cr-465 (N.D. Cal.) at Dkt 150.
26. Order Denying Plaintiff's Motion To Lift Stay; Vacating Hearing (Jan 5, 2021) at \*2–3.
27. [gov.uscourts.cand.334166.1.0\\_1.pdf](http://gov.uscourts.cand.334166.1.0_1.pdf) (courtlister.com) at 3.
28. [gov.uscourts.cand.334166.1.0\\_1.pdf](http://gov.uscourts.cand.334166.1.0_1.pdf) (courtlister.com) at 1–2.
29. [gov.uscourts.cand.320086.1.0\\_2.pdf](http://gov.uscourts.cand.320086.1.0_2.pdf) (courtlister.com) at 18.
30. UMC's Motion To Stay Proceeding, Case 3:18-cv-06643-MMC (2/20/2019) (hereafter “US v. UMC Motion to Stay”).
31. Order Granting UMC's Motion To Stay Proceeding, Case No. 3:18-CV-06643 MMC (2/22/2019).
32. Microsoft Word - Notice of Voluntary Dismissal of UMC.docx (courtlister.com)
33. Order Approving Stipulation To Extend Time For Defendant Fujian Jinhua Integrated Circuit Co. Ltd. to Respond To Complaint (7/30/2019).
34. Entity List (doc.gov).
35. In its motion to stay the various civil proceedings, UMC argued that Micron would not be prejudiced by the stay because Fujian Jinhua, UMC's co-defendant and the entity to whom it was alleged to have transferred DRAM technology, had already been placed on the Entity List, effectively barring it from participation in U.S. commerce. Because license applications for exports or transfers to Fujian Jinhua therefore carried a presumption of denial, UMC argued that it had been “effectively prohibited from transferring DRAM technology to Jinhua,” mitigating the threat of further harm to Micron. See *Micron v. UMC*, Motion to Stay (Dkt. 204) at 9–10.
36. Entity List (doc.gov).
37. In December of 2018, Deputy Attorney General Rod Rosenstein noted that “[m]ore than 90 percent of the Department's cases alleging economic espionage over the past seven years involve China. More than two-thirds of the Department's cases involving thefts of trade secrets are connected to China.” U.S. Department of Justice, Deputy Attorney General Rod J. Rosenstein Announces Charges Against Chinese Hackers, [justice.gov](http://justice.gov) (Dec. 20, 2018), <https://www.justice.gov/opa/speech/deputy-attorney-general-rod-j-rosenstein-announces-charges-against-chinese-hackers>.
38. See Federal Register: Addition of Entities to the Entity List, Revision of Entry on the Entity List, and Removal of Entities From the Entity List.
39. Microsoft Word - Revised Int\_1 Government Contractor Article.DOC (cailaw.org).
40. U.S. Targets Huawei and Telecommunications Trade (pillsburylaw.com).
41. file (doc.gov).
42. Case 2:19-cr-00010 (Indictment (justice.gov)).
43. Defendants' Motion To Dismiss The Indictment For Selective Prosecution, Or In The Alternative, For Discovery, 2:19-cr-00010, No. 57, at 2; *T-Mobile USA, Inc. v. Huawei Device USA, Inc. et al.*, No. 2:14-cv-01351 (W.D. Wa. Sept. 2, 2014).
44. Defendants' Motion To Dismiss The Indictment For Selective Prosecution, Or In The Alternative, For Discovery, 2:19-cr-00010, No. 57; Huawei Alleges “Selective Prosecution” by the DOJ | Trade Secrets Watch (orrick.com). The company has been vocal about labelling the indictment “political persecution.” Huawei Statement on US Justice Department Indictment - Huawei.
45. *United States v. Huawei Device Co., Ltd.*, 2:19-cr-00010—CourtListener.com. *Oral argument on the issue of selective prosecution will be heard by the court on April 19, 2022. Id.*



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46. U.S. v. Huawei Technologies, Case 1:18-cr-00457-AMD-CLP (2/13/2020)—Superseding Indictment.
  47. 123116377855 (uscourts.gov).
  48. 1st indictment (Case 1:18-cr-00457-AMD, 8/22/18) (gov.uscourts.nyed.421383.25.0.pdf (courtlister.com)).
  49. 123116377855 (uscourts.gov) p.5.
  50. U.S. charges Huawei with decadeslong theft of U.S. trade secrets—POLITICO.
  51. [https://advancingjustice-aajc.org/sites/default/files/2021-01/Letter to President-elect Biden Re the China Initiative.pdf](https://advancingjustice-aajc.org/sites/default/files/2021-01/Letter%20to%20President%20Biden%20Re%20the%20China%20Initiative.pdf).
  52. <https://www.lawfareblog.com/biden-administration-should-review-and-rebuild-trump-administrations-china-initiative-ground>; [https://www.washingtonpost.com/national-security/biden-china-asian-american-racism/2021/03/17/69eb4bc6-873d-11eb-82bc-e58213caa38e\\_story.html](https://www.washingtonpost.com/national-security/biden-china-asian-american-racism/2021/03/17/69eb4bc6-873d-11eb-82bc-e58213caa38e_story.html).
  53. U.S. charges Huawei with decadeslong theft of U.S. trade secrets—POLITICO.
  54. U.S. v. Mogal et al., Case No. 18-cr-00259-BLF-1 (N.D. Cal.).
  55. Aliphcom Inc. v. Fitbit Inc., CGC15-546004, California Superior Court, San Francisco County (San Francisco).
  56. Alaina Lancaster, Prosecutors Drop Remaining Charges in Jawbone-Fitbit Trade Secret Fight The Recorder (2020), <https://www.law.com/therecorder/2020/02/14/prosecutors-drop-remaining-charges-in-jawbone-fitbit-trade-secret-fight/>.





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