

AUG 27 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

NOEL GAGE,

Defendant - Appellee.

No. 08-10326

D.C. No. 2:07-cr-00039-JLQ-LRL

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

HOWARD AWAND,

Defendant - Appellee.

No. 09-10043

D.C. No. 2:07-cr-00039-JLQ-LRL-1

Appeal from the United States District Court
for the District of Nevada
Justin L. Quackenbush, Senior District Judge, Presiding

Argued and Submitted August 11, 2009
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: **KOZINSKI**, Chief Judge, **REINHARDT** and **SILVERMAN**,
Circuit Judges.

Due process compels use immunity only for defense witnesses who will offer testimony that directly contradicts the testimony of a government witness who has been given use immunity. See, e.g., United States v. Straub, 538 F.3d 1147, 1161–62 (9th Cir. 2008); United States v. Alvarez, 358 F.3d 1194, 1216 (9th Cir. 2004). Direct contradiction means more than just different subjective interpretations of the same facts. Because Dr. Kabins would not have directly contradicted a government witness who received use immunity, the indictment must be reinstated.

REVERSED.