

SEP 13 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHRISTIAN HARTZ FAULK,

Defendant - Appellant.

No. 11-50402

D.C. No. 3:11-cr-01287-DMS-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Argued and Submitted September 6, 2012
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **WATFORD** and **HURWITZ**, Circuit
Judges.

1. Warrants of removal are admissible under the public records hearsay exception, see United States v. Hernandez-Rojas, 617 F.2d 533, 535 (9th Cir. 1980), and we've permitted their use as proof of alienage, see United States v.

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

Sotelo, 109 F.3d 1446, 1449 (9th Cir. 1997); see also United States v. Hernandez-Herrera, 273 F.3d 1213, 1217–18 (9th Cir. 2001).

2. The prosecutor’s statement during closing argument that U.S. citizens aren’t placed in removal proceedings didn’t “undermine the fundamental fairness of the trial and contribute to the miscarriage of justice.” United States v. Del Toro-Barboza, 673 F.3d 1136, 1152 (9th Cir. 2012) (internal quotation marks omitted).

3. The district judge did not err in applying a sentencing enhancement for “intentionally or recklessly creating a substantial risk of death or serious bodily injury.” See U.S.S.G. § 2L1.1(b)(6). The alien in United States v. Torres-Flores, 502 F.3d 885, 889 (9th Cir. 2007), was hidden behind the back seat in the cab of a pickup truck. Here, the court found the alien was “locked in” a tiny compartment with “jagged edges” and “would not have the ability to exit on [her] own.” Faulk’s conduct was akin to transporting an alien in the trunk of a car, which is one of the examples listed in the Guidelines application notes as triggering the enhancement. See U.S.S.G. § 2L1.1 cmt. n.5.

AFFIRMED.