

CA NO. 17-50195

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT


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UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

CESAR RAUL ACEVES,  
*Defendant-Appellant.*

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On Appeal from the United States District Court  
For the Central District of California,  
The Honorable George H. Wu, Presiding.  
CR NO. 15-00245-GW 

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**EXCERPTS OF RECORD - VOLUME 1 OF 5**



CUAUHTEMOC ORTEGA  
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*Counsel for Defendant-  
Appellant*

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**United States District Court  
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. CR 15-245-GW JS-3

Defendant CESAR RAUL ACEVES  
akas: \_\_\_\_\_

Social Security No. N O N E  
(Last 4 digits)

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
05	25	2017

**COUNSEL**

**David Menninger, DFPD**

(Name of Counsel)

**PLEA**

**GUILTY**, and the court being satisfied that there is a factual basis for the plea.  **NOLO**  **NOT**  
**CONTENDERE** **GUILTY**

**FINDING**

There being a finding/verdict of **GUILTY**, defendant has been convicted as charged of the offense(s) of:  
**8 U.S.C. § 1326(a),(b)(2): ILLEGAL ALIEN FOUND IN THE UNITED STATES FOLLOWING DEPORTATION as charged in the Indictment.**

**JUDGMENT AND PROB/COMM ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of: **TWENTY (20) MONTHS.**

It is ordered that the defendant shall pay to the United States a special assessment of \$100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Cesar Raul Aceves, is hereby committed on Count 1 of the Indictment to the custody of the Bureau of Prisons for a term of 20 months.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years under the following terms and conditions:

- The defendant shall comply with the rules and regulations of the United States Probation Office and General Order 05-02.
- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
- During the period of community supervision, the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment.
- The defendant shall comply with the immigration rules and regulations of the United States, and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation Office while residing outside of the United States; however, within



USA vs. **CESAR RAUL ACEVES**Docket No.: **CR 15-245-GW**

72 hours of release from any custody or any reentry to the United States during the period of Court-ordered supervision, the defendant shall report for instructions to the United States Probation Office located at: the United States Court House, 312 North Spring Street, Room 600, Los Angeles, California 90012.

5. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate, passport or any other form of identification in any name, other than the defendant's true legal name, nor shall the defendant use, any name other than his true legal name without the prior written approval of the Probation Officer.
6. The defendant shall cooperate in the collection of a DNA sample from the defendant.
7. As directed by the Probation Officer, the defendant shall not be present in any area known to him to be a location where members of the Eastside Longos Gang meet and/or assemble.
8. The defendant shall participate in mental health treatment, which may include evaluation and counseling, until discharged from the treatment by the treatment provider, with the approval of the Probation Officer.

The Court authorizes the Probation Office to disclose the Presentence Report to the substance abuse treatment provider to facilitate the defendant's treatment for narcotic addiction or drug dependency. Further redisclosure of the Presentence Report by the treatment provider is prohibited without the consent of the sentencing judge.

The Court authorizes the Probation Office to disclose the Presentence Report, and/or any previous mental health evaluations or reports, to the treatment provider. The treatment provider may provide any information (excluding the Presentence Report), to State or local social service agencies (such as the State of California, Department of Social Services), for the purpose of the client's rehabilitation.

Defendant is advised of his rights to appeal and will remain on bond pending his appeal.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

May 26, 2017

Date



GEORGE H. WU, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

May 30, 2017

Filed Date

By /s/ Javier Gonzalez

Deputy Clerk

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

**STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE**

While the defendant is on probation or supervised release pursuant to this judgment:

USA vs. **CESAR RAUL ACEVES**Docket No.: **CR 15-245-GW**

1. The defendant shall not commit another Federal, state or local crime;
2. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
3. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
4. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
5. the defendant shall support his or her dependents and meet other family responsibilities;
6. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
7. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
8. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
9. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
10. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
11. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
12. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
13. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
14. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
15. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
16. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

#### **STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS**

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15<sup>th</sup>) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence (pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
  - Non-federal victims (individual and corporate),
  - Providers of compensation to non-federal victims,
  - The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

#### **SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE**

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure; and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

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**RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

Defendant noted on appeal on \_\_\_\_\_

Defendant released on \_\_\_\_\_

Mandate issued on \_\_\_\_\_

Defendant's appeal determined on \_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_

the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

\_\_\_\_\_ By \_\_\_\_\_  
 Date Deputy Marshal

**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

\_\_\_\_\_ By \_\_\_\_\_  
 Filed Date Deputy Clerk

**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_  
 Defendant Date

\_\_\_\_\_  
 U. S. Probation Officer/Designated Witness Date



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	No. CR 15-245-GW
	)	
Plaintiff,	)	<b>FINAL JURY INSTRUCTIONS</b>
	)	
v.	)	
	)	
CESAR RAUL ACEVES,	)	
	)	
Defendant.	)	
_____	)	

**FINAL JURY INSTRUCTIONS**

**I. Introductory Instructions**

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return – that is a matter entirely up to you.

This is a criminal case brought by the United States Government. The Government charges the defendant Cesar Raul Aceves with a violation of 8 U.S.C. § 1326(a) – namely that, on or about November 26, 2014, the Defendant, an alien, who had been previously deported or removed from the United States on or about July 29, 2010, was found in Los Angeles County, within the Central District of California, after knowingly and voluntarily re-entering and remaining in the United States without having obtained permission from the Attorney General or the Secretary of Homeland Security, to reapply for admission to the United States following deportation and removal.

The Defendant has pleaded not guilty to the charge. The Defendant is presumed to be innocent unless and until the Government proves the Defendant guilty beyond a reasonable doubt.

In addition, the Defendant does not have to testify or present any evidence to prove innocence. The Government has the burden of proving every element of the charge beyond a reasonable doubt.

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that the Defendant did not testify.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the Defendant is guilty. It is not required that the Government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the Defendant is guilty, it is your duty to find the Defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the Defendant is guilty, it is your duty to find the Defendant guilty.

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received in evidence; and
- (3) any facts to which the parties have agreed.

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

(1) Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

(2) Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.

3 Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

By way of example, if you wake up in the morning, look out the window, and see that the sky is cloudy and the sidewalk is wet, you may find from those facts that it rained during the night. However, other evidence, such as a turned on garden hose, may provide a different explanation for the presence of water on the sidewalk. Therefore, before you decide that a fact has been proved by circumstantial evidence, you must consider all the evidence in the light of reason, experience and common sense.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

- (1) the witness's opportunity and ability to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.



The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

You are here only to determine whether the Defendant is guilty or not guilty of a violation of 8 U.S.C. § 1326(a) as described in these instructions. The Defendant is not on trial for any other conduct or offense.

A document written in the Spanish language has been used during this trial and an English translation of it has been placed into evidence.

The evidence you are to consider is only that provided through the official court translators. Although some of you may know the Spanish language, it is important that all jurors consider the same evidence. Therefore, you must accept the evidence presented in the English translation and disregard any different meaning.

The charge in this case alleges that the crime was committed "on or about" a certain date. Although it is necessary for the Government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged herein, it is not necessary for the Government to prove that the offense was committed precisely on the date charged.

## **II. The Crime Charged**

The Defendant is charged with a violation of 8 U.S.C. § 1326(a). He is accused of being an alien who, after removal and/or deportation from the United States, was found in this country. In order for the Defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

First, the Defendant was removed or deported from the United States or he departed the United States while an order of removal or deportation was outstanding;

Second, thereafter, the Defendant voluntarily entered the United States;

Third, after entering the United States, the Defendant knew that he was in the United States and knowingly remained;

Fourth, the Defendant was found in the United States without having obtained the consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission into the United States; and

Fifth, the Defendant was an alien at the time of his entry into the United States.

An alien is a person who is not a natural-born or naturalized citizen of the United States.

Alienage cannot be proven either by a prior deportation order alone or a defendant's admission of noncitizenship alone without corroborating evidence. These two facts taken together, however, may establish alienage.

To establish that the Defendant was removed or deported from the United States or that he departed from the United States while an order of removal or deportation was outstanding, the Government must prove beyond a reasonable doubt that the Defendant physically left the country sometime between the time he was ordered removed or deported and the time that he was later found in the United States. It is not sufficient for the Government to merely show that

Defendant was ordered to leave.

In deciding whether the Government has established Defendant's departure from the United States, the jury may consider such evidence as: (1) credible eyewitness testimony by a person who personally observed the Defendant leave the country or (2) authenticated government or business records (such as a Form I-205 Warrant of Removal/Deportation) which record the departure.

An act is done "knowingly" if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The Government is not required to prove that the Defendant knew that his acts or omissions were unlawful. You may consider evidence of the Defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the Defendant acted knowingly.

### **III. Closing Instructions**

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would

require the entire trial process to start over. If any juror is exposed to any outside information, please notify the court immediately.

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the Government has proved its case against the Defendant beyond a reasonable doubt.

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone – including me – how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the Defendant, until after you have reached a unanimous verdict or have been discharged.

**EXCERPT OF TRIAL TRANSCRIPT FROM**  
**MARCH 8, 2017**

1 sometimes you are not really careful in this regard.

2 MR. RYAN: Well, Your Honor, the model instruction  
3 says he knew he was in the United States and knowingly remain.

4 THE COURT: Yes.

5 MR. RYAN: That's the reason that I stated it that  
6 way.

7 THE COURT: But he doesn't -- he can do it either at  
8 a point of entry or remaining in this portion of the crime that  
9 you charged him with.

10 MR. RYAN: With the "found in," yes.

11 THE COURT: Yes.

12 Okay. Anything else from the defense?

13 MR. MENNINGER: Well, Your Honor, if the Court is  
14 going to rule that -- is not going to give the jury  
15 instruction, I would just ask to make an offer of proof for the  
16 facts that we would elicit.

17 THE COURT: Sure, not a problem.

18 MR. MENNINGER: The defense would seek to introduce  
19 the following facts, Your Honor: Mr. Aceves was told he was  
20 going to have a hearing in the notice to appear. He indicated  
21 that he wanted to have a hearing on the document that has been  
22 marked for identification purposes as Exhibit Number 211. He  
23 did not receive that hearing, Your Honor. He was ordered  
24 deported based on a motion that was filed by an attorney.

25 There's no evidence in the record that this attorney

1 explained what that motion meant, that Mr. Aceves understood  
2 what that motion meant. In fact, we would intend to show  
3 evidence that this attorney has no record at all of  
4 representing Mr. Aceves whatsoever. In fact, we have a witness  
5 to testify to that.

6 He never received the removal order. The removal order  
7 was sent via mail to his attorney on July 27, 2010. Mr. Aceves  
8 was already on a bus to Mexico -- I'm sorry, served via mail on  
9 July 27, 2010. Mr. Aceves was already on a bus to Mexico two  
10 days later. We would represent that it's a reasonable  
11 inference from that fact that there's no way that the mail  
12 could have gotten from the immigration Court to the attorney's  
13 office and then back to the detention facility outside of  
14 El Paso where Mr. Aceves was being held.

15 Further, the defense would submit that the evidence would  
16 show that on the very bus that Mr. Aceves was riding out of the  
17 detention facility, there were several individuals -- three  
18 individuals, in fact, that, in fact, were not getting deported,  
19 that, in fact, had received voluntary departure.

20 So it's a reasonable inference to think Mr. Aceves had an  
21 attorney who said he would help him, turn to the person sitting  
22 next to him and said, "Hey, I never saw a judge. What's going  
23 on?"

24 And that guy says, "Well, I got voluntary departure."

25 And he turns to the guy on the other side and asks, "What

1 happened to you?"

2 "Oh, here's a departure order."

3 THE COURT: Let me not let you go too far.

4 MR. MENNINGER: That's it, Your Honor.

5 THE COURT: You already indicated the defendant  
6 isn't going to testify.

7 MR. MENNINGER: That's right.

8 THE COURT: I understand the offer of proof. I'm  
9 not going to ask the Government to respond to the offer of  
10 proof because, again, I don't think it needs to at this point  
11 in time. The Government is obviously not conceding that you  
12 could establish that.

13 MR. MENNINGER: Of course not.

14 THE COURT: But it is that offer of proof, and we  
15 understand that for purposes of the record, if this matter goes  
16 on appeal.

17 MR. MENNINGER: Sure.

18 THE COURT: So we understand that.

19 MR. MENNINGER: It's just the facts that we will  
20 present to the jury to make the ultimate determination,  
21 Your Honor.

22 MR. RYAN: Your Honor, we would just like to put on  
23 the record we object to that all of that evidence as  
24 irrelevant.

25 THE COURT: I understand. I already indicated that

1 the Government was not accepting that offer of proof, that the  
2 defendant could establish that, and obviously you are also  
3 reserving the relevancy arguments as well. So I understand all  
4 that.

5 Let me just ask this: Now that I have made this ruling,  
6 how is this case going to go forward? Because obviously, I  
7 guess, the defendant's planned presentation is going to be  
8 different. So what should I be doing at this point?

9 MR. MENNINGER: Your Honor, I will shelf -- you  
10 know, I will not be arguing those facts that I just put in  
11 evidence. I will not be crossing the agents on those facts.  
12 Instead, we will just be challenging the Government on its  
13 burden of proof and the reliability and accuracy of the A-file.

14 THE COURT: All right. Okay. Let me ask, then, is  
15 there anything else I need to do before I bring the jury out?

16 MR. MENNINGER: Just one moment, Your Honor.

17 THE COURT: Sure.

18 (Discussion off the record.)

19 MR. MENNINGER: Thank you, Your Honor.

20 Nothing further.

21 THE COURT: Okay. All right.

22 Let me also indicate to counsel what I'm going to be doing  
23 is I'm going to be including a copy of my tentative and also  
24 your e-mails to me, citations to me from yesterday evening, and  
25 that will be part of the record as well.



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - TRIAL

Case No. CR 15-245-GW Date March 8, 2017
Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE
Interpreter NONE
Javier Gonzalez Deputy Clerk
Carol J. Zurborg Court Reporter/Recorder
Kyle J. Ryan; Mark Aveis Assistant U.S. Attorney

U.S.A. v. Defendant(s): Present Cust. Bond Attorneys for Defendants: Present App. Ret.
Cesar Raul Aceves David Menninger, DFPD Stephen Demik, DFPD

Day COURT TRIAL 2nd Day JURY TRIAL Death Penalty Phase
One day trial; Begun (1st day); Held & continued; Completed by jury verdict/submitted to court.

Opening statements made
Witnesses called, sworn and testified.

Exhibits identified Exhibits admitted
Government rests. Defendant(s) Aceves rest.

Motion for mistrial by is granted denied submitted
Motion for judgment of acquittal (FRCrP 29) is granted denied submitted

Closing arguments made Court instructs jury Bailiff sworn
Alternates excused Jury retires to deliberate Jury resumes deliberations

Finding by Court as follows: Jury Verdict as follows:
Dft # Guilty on count(s) Not Guilty on count(s)

Jury polled Polling waived
Filed Witness & Exhibit lists Filed Jury notes Filed Jury Instructions Filed Jury Verdict

Dft # Referred to Probation Office for Investigation & Report and continued to for sentencing.
Dft # remanded to custody. Remand/Release# issd. Dft # released from custody.

Bond exonerated as to Dft #
Case continued to March 9, 2017 at 10:00 a.m. for further trial.

Other: Jury excused. Tentative Ruling on the Mens Rea Requirement is attached hereto. Court hears oral argument.
Clerk reviews admitted exhibits with counsel to be submitted to the Jury. Court and counsel confer re jury instructions. Defendant's In Camera Ex Parte Application is deemed MOOT.

3 : 25
Initials of Deputy Clerk

Court's Tentative Ruling on the *Mens Rea* Requirement in 8 U.S.C. § 1326(a) as to the Crime of Being Found in the United States without Permission following Deportation

I. Cases

*United States v. Rivera-Sillas*, 417 F.3d 1014, 1020 (9th Cir. 2005)

Section 1326 does not specify mens rea. This does not mean, however, that § 1326 violation is a status or strict liability offense; it is not. A "found in" offense under § 1326 is a general intent crime. General intent crimes concern, in the words of the Fifth Circuit, "willful and knowing acts." We are comfortable presuming that a defendant who is found in the United States willfully and knowingly acted in order to enter this country. Therefore, "alleging that the defendant is a deported alien subsequently found in the United States without permission suffices [to allege general intent]." [Footnotes omitted.]

*Pena-Cabanillas v. United States*, 394 F.2d 785, 789-90 (9th Cir. 1968), *abrogated on other grounds in United States v. Arnett*, 353 F.3d 765, 766 (9th Cir. 2003) (*en banc*)

Sections having no language concerning specific intent include . . . 1326, Reentry of deported aliens. \* \* \* \*

The Immigration and Nationality Act represents the final product of a most intensive and searching investigation and study over a three year period. *See* 1952 U.S. Code Cong. and Adm. News, p. 1678. It would be absurd for this court to think that Congress inadvertently left "intent" out of Section 1326.

Since Congress used no words bearing on specific intent, such an element is not part of the statute or of the government's burden of proof. Put differently, the government need not prove that appellant knew he was not entitled to enter the country without the permission of the Attorney General. Hence the refusal to admit into evidence the affidavit, bearing on appellant's purported place of birth, was not error.

General intent – Voluntary act

There still must be the general intent to do the prohibited act, to-wit enter. Obviously if appellant was drugged and carried across the line, he would not be guilty of the offense, although nevertheless subject to deportation. The indictment alleges he "\* \* \* knowingly and wilfully entered the United States \* \* \*", thus negating an involuntary act and alleging the general intent to enter. There is no real dispute as to this issue.

*United States v. Leon-Leon*, 35 F.3d 1428, 1432-33 (9th Cir. 1994)

Leon-Leon sought to offer at trial evidence that he was in possession of a green card to establish that he reasonably believed he had permission to reenter the United States. He argues the district court erred in precluding this evidence. Leon-Leon concedes that our decision in *Pena-Cabanillas v. United States*, 394 F.2d 785 (9th Cir. 1968), is controlling. However, Leon-Leon contends this case was wrongly decided and requests we overrule the decision and adopt the Seventh Circuit's decision in *United States v. Anton*, 683 F.2d 1011 (7th Cir. 1982).

In *Pena-Cabanillas*, we held that specific intent is not an element of § 1326. 394 F.2d at 790. As a result, we further held that: The government need only prove that the accused is an alien and that he illegally entered the United States after being deported according to law. . . . Put differently, the government need not prove that [the alien] knew he was not entitled to enter the

country without the permission of the Attorney General. *Id.* at 789-90.

*United States v. Roman*, 2012 U.S. Dist. LEXIS 68785, at \*3-5 (E.D. Cal. May 11, 2012)

In *United States v. Leon-Leon*, 35 F.3d 1428, 1432 (9th Cir. 1994), the Ninth Circuit considered whether the district court erred in excluding evidence that when Leon-Leon was arrested, he had a green card and so reasonably believed he had permission to reenter the United States. The court said that because specific intent is not an element of the crime, "the government need not prove that [the alien] knew he was not entitled to enter the country without the permission of the Attorney General." *Id.* (quoting *Pena-Cabanillas v. United States*, 394 F.2d 785, 789-90 (9th Cir. 1968)). Defendant argues this holding has been undercut by *United States v. Salazar-Gonzalez*, 458 F.3d 851 (9th Cir. 2006), *overruled on other grounds by United States v. Orozco-Acosta*, 607 F.3d 1156 (9th Cir. 2010). In that case, the defendant argued he had not knowingly and voluntarily entered the United States but rather had wandered into the country without knowing he was crossing the border. *Id.* at 854. The court reiterated that "being 'found in' the United States under § 1326 is a crime of 'general intent.'" *Id.* at 855. It explained, however, that a general intent mens rea requires that the defendant have knowledge with respect to the actus reus of the offense. *Id.* The court concluded that "for a defendant to be convicted of a § 1326 'found in' offense, the government must prove beyond a reasonable doubt that he entered voluntarily and had knowledge that he was committing the underlying act that made his conduct illegal – entering or remaining in the United States." *Id.* at 856 (emphasis in original). Defendant cites no cases suggesting this holding, concerning knowledge of the physical component of the crime, permits him to present evidence relating to a precondition of entry.

*United States v. Ayala*, 35 F.3d 423, 426 (9th Cir. 1994)

Ayala's final argument is that the indictment should have been dismissed because it failed to allege that he intended to violate the law when he re-entered the United States. In *Pena-Cabanillas v. United States*, 394 F.2d 785, 788-89 (9th Cir. 1968), we held that the government does not need to allege specific intent under 8 U.S.C. § 1326. *See also United States v. Ramos-Quirarte*, 935 F.2d 162, 163 (9th Cir. 1991) (specific intent is not an element of a § 1326 offense). Thus, it is irrelevant whether Ayala intended to violate § 1326; all that is necessary is that Ayala entered the United States voluntarily. *See Pena-Cabanillas*, 394 F.2d at 790. Ayala cannot contend that his re-entry to and subsequent presence in the United States were involuntary.

Ayala acknowledges that our decision in *Pena-Cabanillas* does not support his position. He argues, however, that we should revisit the intent requirements of § 1326 because the enhanced penalties in § 1326(b) (adopted in 1988) have shed the statute of its regulatory purpose and made it a distinctly penal statute. We reject the argument. The 1988 amendments to § 1326 did not change the intent requirements of the statute; they simply enhanced the penalties for aliens who violate § 1326(a) and have prior felony records. *Pena-Cabanillas* controls.

*United States v. Salazar-Gonzalez*, 458 F.3d 851, 855-57 (9th Cir. 2010), *overruled on other grounds United States v. Orozco-Acosta*, 607 F.3d 1156, 1162 (9th Cir. 2010)

Although § 1326 does not include an express mens rea element, our cases make clear that being "found in" the United States under § 1326 is a crime of "general intent." \* \* \* \* We have also held that "voluntariness of the return is an element of the ["found in" offense] and, as such, must be proved beyond a reasonable doubt by the prosecution."

[A] general intent mens rea also requires that a "defendant possessed knowledge with respect to the actus reus of the crime." *Carter v. United States*, 530 U.S. 255, 268, 120 S. Ct. 2159, 147 L. Ed. 2d 203 (2000); see also *United States v. Gracidas-Ulibarry*, 231 F.3d 1188, 1196 (9th Cir. 2000)(en banc) ("In general, 'purpose' corresponds to the concept of specific intent, while 'knowledge' corresponds to general intent."). To act with general intent, a defendant must know the facts that make his actions illegal, but not that the action itself is illegal. That is, the defendant need only intend to perform the underlying prohibited action, not to break the law. Thus, the Supreme Court has held that a federal firearms statute, construed as requiring a mens rea of general intent, requires the government to prove that a defendant knew he possessed a firearm with the features barred by the statute, even if he was unaware that the law forbade possession of such a firearm. *Staples v. United States*, 511 U.S. 600, 619, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994). \* \* \* \*

We therefore hold that for a defendant to be convicted of a § 1326 "found in" offense, the government must prove beyond a reasonable doubt that he entered voluntarily and had knowledge that he was committing the underlying act that made his conduct illegal - entering or remaining in the United States.

*United States v. Flores-Villar*, 536 F.3d 990, 999 (9th Cir. 2008)

In the wake of *United States v. Smith-Baltiher*, 424 F.3d 913, 925 (9th Cir. 2005), which permitted evidence of a defense of reasonable belief that a defendant charged with attempted illegal entry was a United States citizen, Flores-Villar sought leave to introduce evidence of his belief that he was a United States citizen. He contends that excluding it denied him a meaningful opportunity to present a defense and so violated the Sixth Amendment. We disagree. Attempted illegal entry -- at issue in *Smith-Baltiher* -- is a specific intent crime, but as *Smith-Baltiher* recognized, illegal reentry and being found in the United States is not. *Id.* at 924. As the crime charged is a general intent crime, Flores-Villar's mistaken belief is not a defense.

Neither *Staples v. United States*, 511 U.S. 600, 619, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994), nor *United States v. Salazar-Gonzalez*, 458 F.3d 851, 855 (9th Cir. 2006), is to the contrary. Both indicate that a general intent mens rea requires a defendant to know the facts that make what he does illegal. This means that the government had to prove beyond a reasonable doubt that Flores-Villar knew he was in the United States, not that the underlying action (entering and remaining in this country) was itself illegal.

*United States v. Valdez-Novoa*, 760 F.3d 1013, 1031-32 (9th Cir. 2014)

In *Corona-Garcia*, we considered whether the government introduced sufficient independent evidence of the corpus delicti in a case where the defendant was convicted of illegal entry in violation of § 1326(a). *Corona-Garcia*, 210 F.3d at 977-79. We held that "[t]he gravamen of the offense in this case -- that is to say the conduct at the core of the offense -- is entry." *Id.* at 978. We "expressly reject[ed] [the defendant's] contention that 'illegal entry' is the gravamen of the offense." *Id.* at 978 n.3.

## II. Discussion

*Elonis v. United States*, 135 S. Ct. 2001 (2015), primarily relied upon by Defendant Aceves is not controlling or particularly relevant. That case involved a different statutory scheme. The Court therein did state:

The fact that the statute does not specify any required mental state, however, does not mean that none exists. We have repeatedly held that “mere omission from a criminal enactment of any mention of criminal intent” should not be read “as dispensing with it.” *Morrisette v. United States*, 342 U.S. 246, 250, 72 S. Ct. 240, 96 L. Ed. 288 (1952). This rule of construction reflects the basic principle that “wrongdoing must be conscious to be criminal.” *Id.*, at 252, 72 S. Ct. 240, 96 L. Ed. 288.

*Id.* at 2009. However, the Court went on to observe that:

This is not to say that a defendant must know that his conduct is illegal before he may be found guilty. The familiar maxim “ignorance of the law is no excuse” typically holds true. Instead, our cases have explained that a defendant generally must “know the facts that make his conduct fit the definition of the offense,” *Staples v. United States*, 511 U.S. 600, 608, n. 3, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994), even if he does not know that those facts give rise to a crime.

*Id.*

As noted in the cases cited in Part I *supra*, the courts in the Ninth Circuit have discussed often and in detail the nature of the required *mens rea* for the crime of being an alien found in the United States following deportation and without the permission of the Attorney General in violation of 8 U.S.C. § 1326(a). The *mens rea* requirement is general intent and not specific intent. Further, the general intent *mens rea* requires that the defendant have knowledge with respect to the *actus reus* of the offense (*i.e.* the entering or remaining in the United States); not that the action itself is illegal.

Here, Defendant appears to be arguing that the Government must prove, not merely that he was previously deported, but also that he was aware of that fact at the time of the commission of the crime. There is no case from the Supreme Court or the Ninth Circuit that establishes that proposition.

There is, however, Ninth Circuit precedent indicating that Defendant’s contention is not correct. In *Leon-Leon*, 35 F.3d 1428, the Circuit held that the district court did not err in precluding the defendant from proffering evidence that he had a green card (the defendant was seeking to establish that he had a reasonable belief that he had permission to reenter the United States). It reasoned that: “The government need only prove that the accused is an alien and that he illegally entered the United States after being deported according to law. . . . Put differently, the government need not prove that [the alien] knew he was not entitled to enter the country without the permission of the Attorney General.” *Id.* at 1432. See also *Flores-Villar*, 536 F.3d at 999 (a defendant’s alleged reasonable (but mistaken) belief that he was a U.S. citizen is not a defense to a § 1326 charge and, hence, the trial court’s exclusion of such evidence was not error or a violation of the Defendant’s Sixth Amendment rights). Likewise, as observed in *Salazar-Gonzalez*, 458 F.3d at 855 (a case cited by Defendant himself):

[A] general intent *mens rea* . . . requires that a “defendant possessed knowledge with respect to the *actus reus* of the crime.” To act with general intent, a defendant must know the facts that make his actions illegal, but not that the action itself is illegal. That is, the defendant need only intend to perform the underlying

prohibited action, not to break the law.

The Ninth Circuit's Manual of Model Criminal Jury Instruction No. 9.8 covering the elements that must be proved to establish the crime of being a deported alien found in the United States pursuant to 8 U.S.C. § 1326(a) clearly does not include any requirement that the defendant know or appreciate the fact that he previously was deported. The only elements containing a *mens rea* component are numbers two and three which respectively require proof that: (a) "the defendant *voluntarily* entered the United States" and (b) "after entering the United States the defendant *knew* that he was in the United States and *knowingly* remained. [Emphasis added]." In light of the above discussion, this Court does not believe that the additional element which Defendant seeks to include herein (*i.e.* that the Defendant must have actually known and/or understood that he had previously been deported) is appropriate.<sup>1</sup>

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<sup>1</sup> The Court would also note that the language of 8 U.S.C. § 1326(a) (1) actually covers any alien who "has been denied admission, excluded, deported, or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding . . ." Thus, the statute covers not only deported aliens, but also those who have been removed, excluded, denied admission or departed the United States while under an order of exclusion, deportation or removal.



**U.S. v. Aceves, CR 15-245-GW**

**Aveis, Mark (USACAC)** to: 'Javier\_Gonzalez@cacd.uscourts.gov  
v'

03/07/2017 05:23 PM

Cc: "David\_Menninger@fd.org", "stephen\_demik@fd.org", "Ryan,  
Kyle (USACAC)", "Ostiller, Cathy (USACAC)"

From: "Aveis, Mark (USACAC)" <Mark.Aveis@usdoj.gov>

To: "Javier\_Gonzalez@cacd.uscourts.gov" <Javier\_Gonzalez@cacd.uscourts.gov>

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History: This message has been replied to and forwarded.

Dear Judge Wu:

In response to the Court's directive from this afternoon, the government offers the following:

1. "Knowledge of Deportation:" The defense has argued that the Ninth Circuit Model Instruction for the charge (Instr. 9.8) is incorrect because it does not require that the government prove that defendant *knew* that he was deported. Defendant offered a disputed jury instruction (Dkt. 115) to this effect. The government submits that the disputed instruction is legally incorrect because the deportation element has no knowledge component, which defendant has conceded by stating that no binding case so holds (Dkt 115 at 6: "The Ninth Circuit has apparently never considered whether, in an illegal reentry prosecution, the government must prove that a defendant knew that he had previously been deported or removed."). Moreover, it is illogical. As defendant argued in connection with his disputed jury instruction, to the extent that there is knowledge component, it must relate to *defendant's* act(s), not the act(s) of others. Dkt. 115 at 6 ("Torres v. Lynch, 136 S. Ct. 1619, 1631 (2016) (explaining the general rule that a defendant must "know each fact making *his conduct* illegal" (Emph. Added))." That defendant was deported was the act of others – the government - not the defendant, and again, there is no case holding that the government must prove that defendant knew that he was deported. Accordingly, the Court should approve the Ninth Cir. Model Instruction and render such evidentiary rulings that are consistent with the law.

2. Defendant's Argument That the A-File Is Incomplete is Proper, But Cannot Be Used to Introduce Irrelevant and Prejudicial Information: Defendant has conceded that his primary attack on the government's case is that there may be information that defendant received consent to re-enter the U.S. Defendant's attack has thus-far been based on the cross-exam of Officer Arambulo. The defense is free to cross-examine Officer Arambulo about whether A-Files may or may not be incomplete, but it would be a huge stretch – indeed, gross speculation – to allow the defense to argue that the A-File's incompleteness showed that consent to re-enter the U.S. had been granted. Any other proper cross-examination about whether or not the A-File is complete should take about a minute. Furthermore, at its heart, defendant's argument is a subterfuge. Defendant is seeking to introduce inadmissible documents, whether or not they were in defendant's A-File, not to prove the incompleteness of the A-File. Instead, the documents that defendant seeks to introduce are designed to attack his underlying deportation or to prove a non-existent element. The Court has already denied defendant's motion to dismiss by holding that the underlying deportation proceeding was legitimate. The bell cannot be un-rung where the jury has heard irrelevant evidence.

3. Relevancy of Every Document in A-File: The Court questioned the government at side-bar about whether, because a document was in the A-File, it shouldn't otherwise be admissible. The government is only required to introduce evidence to prove the elements; the entire A-File isn't needed. Indeed, for example, some documents in the A-File show that defendant has been in the U.S. for years; that defendant was convicted of a serious felony for which he did 10 years in prison; and the like. None of those documents goes to an element of the charged offense at this time (i.e., if defendant persists in his attempt to show a non-element, like he thought he had permission to re-enter, the government should be able to elicit that it was unlikely, if not medically impossible, that a serious felon after serving 10 years in prison would have gotten consent to re-enter). Defendant's attempt to introduce A-File documents that are irrelevant and/or more prejudicial than probative only serves to confuse the jury because the jury will not be able to determine what may or may not be relevant to the elements of the offense. For example, if any writing, in the A-File or otherwise, relates to the validity of the underlying deportation, which is irrelevant, but the Court has allowed that document into evidence, the jury will not be able to understand why the document has been received.





**US. v Aceves, CR 15-245; Legal Argument Regarding Defense Proposed Instruction**

**David Menninger** to: Javier Gonzalez

03/07/2017 05:35 PM

Cc: "Ryan, Kyle (USACAC)", "Aveis, Mark (USACAC)", Stephen Demik

From: David Menninger/CACF/09/FDO@FDO  
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History: This message has been replied to and forwarded.

Judge Wu:

The defense offers the following legal argument and citations in response to the Court's request regarding the defense's proposed instruction regarding knowledge of the prior deportation:

1. The Ninth Circuit has made clear that the mens rea of the instant offense---being a noncitizen found in the United States after deportation---is knowledge.
  - a. *United States v. Gracidias-Ulibarry*, 231 F.3d 1188, 1195-96 (9th Cir. 2001) (en banc) (stating being found in the United States after deportation is a general intent crime which requires "knowledge")
  - b. *United States v. Salazar-Gonzalez*, 458 F.3d 851, 856 (9th Cir. 2006) (same)
  
2. The general rule is that a criminal statute's mens rea requirement applies to all elements of the offense necessary to make his conduct a crime. For example, in *Flores-Figueroa v. United States*, 556 U.S. 646 (2009), the Supreme Court considered a defendant charged with "using, without lawful authority, a means of identification of another person." The Court held that the "knowing" mens rea applied both to using the identification without lawful authority, as well as to the fact that the identification belong to another person. In other words, the defendant needed both to know that he was using the identification without authorization, as well as the fact that it belonged to another person. *Accord*:
  - a. *Elonis v. United States*, 135 S.Ct. 2001 (2015).
  - b. *United States v. X-Citement Video*, 513 U.S. 64 (1994).
  - c. *Staples v. United States*, 511 U.S. 600, 608 (1994).
  - d. *Torres v. Lynch*, 136 S. Ct. 1619, 1631 (2016)
  
3. As *Staples*, *Flores Figueroa*, and *X-Citement* illustrate, this rule is not limited to the act of the offense.
  - a. In *Staples*, the act was possession, and the Court held that the mens rea also applied to another element: that the weapon had special features.
  - b. In *Flores-Figueroa*, the act was use of identification without authorization, but the Court held that the mens rea also applied to another element of the offense: that the identification belonged to another person.
  - c. In *X-Citement Video*, the act was transporting a sexual depiction, but the Court also held that it applied to another element of offense: that the people depicted were minors.
  
4. Being an alien found in the United States without permission is not a crime. *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) ("As a general rule, it is not a crime for a removable alien to remain in the United States."). The feature that makes unlawful presence illegal is the prior deportation. Accordingly, the mens rea of the offense must also apply to that feature.

David Menninger  
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