

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 4 OF 5**



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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE GEORGE H. WU, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No.  
 ) CR 15-00245-GW (SS)  
 )  
CESAR RAUL ACEVES, ) VOLUME 1  
 ) (Pages 1 - 206)  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
TRIAL DAY 1  
TUESDAY, MARCH 7, 2017  
9:05 A.M.  
LOS ANGELES, CALIFORNIA

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LOS ANGELES, CALIFORNIA; TUESDAY, MARCH 7, 2017

9:05 A.M.

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THE COURTROOM DEPUTY: Please remain seated and come to order. This United States District Court is now in session, the Honorable George H. Wu presiding.

THE COURT: All right. I will call the matter of the United States versus Aceves.

May I have appearances.

MR. AVEIS: Good morning, Your Honor. Kyle Ryan and Mark Aveis on behalf of the United States. Also at counsel table is Joshua Arambulo.

THE COURT: Good morning.

CASE AGENT: Good morning, Your Honor.

MR. MENNINGER: Good morning, Your Honor. David Menninger here with my colleague, Stephen Demik. We are here on behalf of Cesar Raul Aceves, who is present, out on bond.

THE COURT: Before I bring in the jury, I have a couple of questions. Did the Government give me a witness list?

The answer is "yes," today.

All right. Also, I presume there is no problem with me telling the jury that the case will not go any longer than Friday. It may go sooner, but certainly by Friday. I assume that's agreeable to both sides?

1 MR. RYAN: Yes, Your Honor.

2 MR. MENNINGER: Yes, Your Honor.

3 THE COURT: And how are the stipulations going to be  
4 presented to the jury? Are you guys just going to offer them  
5 in the beginning? Or during the process? Or how?

6 MR. RYAN: Your Honor, I was planning to read them  
7 at different stages throughout the trial.

8 THE COURT: Okay. All right.

9 MR. RYAN: And also, we filed a stipulation as to  
10 foundation yesterday to the Government's exhibit list.

11 THE COURT: Yes, I saw that.

12 MR. MENNINGER: Just one thing on that, Your Honor.  
13 The defendant also agreed that all the documents in the A-file,  
14 the Government has agreed to stipulate to foundation and  
15 admissibility.

16 THE COURT: Okay.

17 MR. RYAN: Authenticity.

18 MR. MENNINGER: Authenticity, my mistake.

19 THE COURT: Foundation as to all those documents?

20 MR. RYAN: As to the certified, yes, Your Honor.

21 THE COURT: All right.

22 MR. RYAN: Given that we have stipulated to the  
23 foundation for the Government's stipulation list, we would seek  
24 to move into evidence at this time Exhibits 1 through 22.

25 THE COURT: You should move it in front of the jury

1 so the jury understands which ones are admitted. So if I do it  
2 now, they won't know it was admitted.

3 MR. RYAN: We can reference that they have been  
4 admitted in front of the jury as well, Your Honor.

5 THE COURT: Just what you need to do in the start of  
6 your case is "The Government moves to admit," and then  
7 everybody knows and it's there.

8 MR. RYAN: Very well, Your Honor.

9 THE COURT: Are any of the witnesses going to  
10 testify through interpreters?

11 MR. RYAN: No, Your Honor.

12 THE COURT: But there is a document that the  
13 interpretation is going in.

14 MR. RYAN: That's correct, and we have a stipulation  
15 to that translation.

16 THE COURT: All right. I'll give the parties a  
17 preliminary set of jury instructions sometime -- well, at the  
18 next break. Okay?

19 MR. RYAN: One other thing before we bring the jury  
20 in.

21 THE COURT: Yes.

22 MR. RYAN: The defense has represented that they  
23 intend to introduce a document that was previously on the  
24 Government's exhibit list, but we removed. It's the  
25 defendant's application to register lawful permanent residence.



1 We believe that that document is irrelevant to the case. It  
2 also should be excluded under Federal Rules of Evidence 403,  
3 and we would ask the Court to exclude the document and order  
4 the defense not reference it during voir dire.

5 THE COURT: Well, let me just ask, that's not one of  
6 the documents -- is that one of the documents in the certified  
7 A-file?

8 MR. RYAN: It is a document in the certified A-file,  
9 so we wouldn't object based on what the document is. We would  
10 just object based on relevance on 403.

11 THE COURT: Let me just ask the defense counsel. Is  
12 some witness going to testify as to that?

13 MR. MENNINGER: Yes, Your Honor. I believe that  
14 is -- that will be a subject of the cross-examination,  
15 Your Honor. The Government -- I should say, just to clarify,  
16 Your Honor, this was on the Government's witness list as early  
17 as yesterday morning.

18 THE COURT: When you say "this was on the  
19 Government's witness list" --

20 MR. MENNINGER: I'm sorry, exhibit list, as soon as  
21 yesterday morning. It is a document in the A-file. This case  
22 is about the A-file. That is the Government's case is all the  
23 documents that are in the A-file, and the completeness of the  
24 A-file. And as a document that is in the A-file, I believe  
25 that it's necessary for the jury to be able to see how those

1 documents are handled and how those documents and applications  
2 are processed.

3 MR. RYAN: Well, Your Honor, there's many documents  
4 in the A-file that are not relevant to this case. This is one  
5 of them. It was on the Government's exhibit list because we  
6 were not sure how to prove alienage. However, based on the  
7 Court's ruling yesterday on the motion in limine on  
8 citizenship, we no longer need to rely on that document.  
9 That's why we took it off our exhibit list.

10 THE COURT: Let me just ask. I understand the  
11 Government is making an argument that the document is  
12 irrelevant. However, the document was on the Government's  
13 witness list as of yesterday. I don't understand how the  
14 Government could argue that it's irrelevant.

15 MR. RYAN: It was relevant for purposes of  
16 establishing alienage because the defendant admitted he was  
17 from Mexico in that document. Other than that, it's not  
18 relevant.

19 THE COURT: I don't know. I haven't seen the  
20 document so I don't know whether or not it is or is not  
21 relevant. Put it this way, I'm not going to strike the  
22 document at this point in time. Obviously both sides know that  
23 before an exhibit can be shown to the jury, the exhibit has to  
24 be admitted. And so if the defense tries to question or admit  
25 the document in, at that point in time you can object, and I

1 will consider the situation at that point.

2 MR. RYAN: Okay, Your Honor.

3 THE COURT: Okay. Did he agree with me, your silent  
4 partner?

5 MR. RYAN: Yes, Your Honor.

6 THE COURT: That's good.

7 All right. So what else do we need to talk about before  
8 bringing in the jury?

9 MR. RYAN: I believe that's it.

10 THE COURT: Okay. Let me just ask, we are going to  
11 have to move the people in the courtroom a bit because we have  
12 to place the jury.

13 So do you want to decide how you do that, Javier?

14 THE COURTROOM DEPUTY: You said you were eventually  
15 going to put them in the front row.

16 THE COURT: Let me just do this. We are going to  
17 have a lot of jurors, so what I want you to do is sit in the  
18 back row. Once I seat the jurors, you can feel free to sit  
19 anywhere you want at that point, but just in the beginning  
20 because it's going to be a little crowded, let me just move you  
21 to the back row.

22 Let me ask, Javier, how long is it going to take for us to  
23 get the jury?

24 THE COURTROOM DEPUTY: Hopefully ten minutes from  
25 when I called them.

1 THE COURT: Why don't you tell the jury to come in  
2 at 9:30, tell the jury room to bring them in at 9:30 so you  
3 guys can take a break until 9:30, and we will bring them up and  
4 then we will start.

5 (Recess taken from 9:12 a.m. to 9:24 a.m.)

6 THE COURTROOM DEPUTY: Please remain seated and come  
7 to order.

8 THE COURT: All right. Let me give to both sides a  
9 copy of the preliminary jury instructions, and we will talk  
10 about it sometime this morning.

11 All right. Let me ask counsel -- I don't see any jurors  
12 out there. I thought you said there were some out there.

13 (Discussion off the record.)

14 THE COURT: Let me indicate to counsel, insofar as  
15 the alternate jurors are concerned, what I usually do is rather  
16 than having the counsel exercise peremptories, what you can do  
17 is you can talk to each other after you've selected the 12, and  
18 as to the alternates, the jurors that are remaining, could be  
19 alternate jurors, you guys can stip and agree to who the two  
20 you want, and you can either agree on two in order or two --  
21 any two in the order will be determined by a flip of the coin.  
22 Whatever you guys want to do is fine. So after we choose the  
23 original 12, I will ask you guys for a sidebar, and you guys  
24 can tell me if you agree or not. Okay?

25 Does either side object to that?

1 MR. RYAN: No, Your Honor.

2 MR. MENNINGER: No, Your Honor.

3 THE COURT: Then, obviously, if you guys can't  
4 agree, there would be the peremptories with the Government  
5 first and then defendant, and one peremptory challenge each.

6 THE COURTROOM DEPUTY: Okay. We're ready.

7 THE COURT: Great.

8 (In the presence of the prospective jury.)

9 THE COURT: All right. Good morning, ladies and  
10 gentlemen. Can you hear me?

11 (Members of the prospective jury said, "Yes.")

12 THE COURT: You have been brought here in the matter  
13 of United States of America versus Raul Aceves, which is case  
14 number CR 15-245-GW. And let me just give you a brief  
15 description of what this case is about. The defendant is  
16 charged with one count of being an alien found in the United  
17 States following deportation.

18 The charge reads: On or about November 26 of 2014,  
19 defendant, an alien, who had been officially deported and  
20 removed from the United States on or about July 29th, 2010, was  
21 found in Los Angeles County within the Central District of  
22 California, after knowingly and voluntarily reentering and  
23 remaining in the United States without having obtained  
24 permission from the attorney general or the secretary of  
25 Homeland Security to reapply for admission to the United States

1 following deportation and removal. The defendant has denied  
2 this charge.

3 At this point in time let me have the clerk swear in the  
4 jury panel.

5 THE COURTROOM DEPUTY: Please stand and raise your  
6 right hand, please.

7 **THE PROSPECTIVE JURY WAS SWORN**

8 (The prospective jury responded, "I do.")

9 THE COURTROOM DEPUTY: Please have a seat.

10 THE COURT: Let me talk to you a little bit briefly  
11 about a couple of things about this case and about how I  
12 proceed in this courtroom. The first thing you are probably  
13 asking yourselves is how long is this case going to last? I  
14 can't tell you the time in which the case will end because,  
15 obviously, that depends on a lot of factors that are, in part,  
16 beyond my control.

17 However, I can tell you that we expect the case to go to  
18 the jury no later than Friday. In other words, by Friday you  
19 should have heard all the testimony, the arguments of counsel,  
20 and the Court's jury instructions, and so the case should be  
21 available for the jury to start its deliberations on Friday.

22 Now, I can't tell you when the jury will end that  
23 deliberations because sometimes jurors deliberate for a lengthy  
24 period of time. Sometimes they deliberate a shorter period of  
25 time. I can never estimate on that because it depends on many

1 things, or just simply it will happen in the future and I don't  
2 know what the future will bring, but we do expect the case to  
3 go to the jury by Friday.

4 Let me ask, even though you may have been asked this  
5 question before, I will ask you this question again, how many  
6 of you feel it would pose a hardship for you to serve as a  
7 juror?

8 Was that me?

9 THE COURTROOM DEPUTY: No.

10 THE COURT: We have special effects. That was a  
11 dramatic interlude.

12 So when I talk about a hardship, what I mean, something  
13 that would seriously affect either you or your immediate  
14 family. For example, let's assume we have a situation where a  
15 prospective juror has just started a job, and that employer  
16 does not pay for jury service. And if you were to miss even a  
17 couple of days of pay, that might cause you to be unable to  
18 make a rent payment or a mortgage payment or a car payment. I  
19 would consider something of that sort to be a hardship.

20 Or, for example, let's assume that we have a juror who  
21 found out last night that he or she has a medical condition  
22 that requires them to see a doctor in the immediate future, and  
23 so you have an appointment tomorrow to see a doctor, and it is  
24 for a very serious condition. I consider that to be a hardship  
25 as well.

1           However, if you tell me that you scheduled a liposuction  
2 consultation tomorrow, I probably would not be too impressed.  
3 So it's something that's fairly serious because all of us are  
4 citizens of this country, and as citizens, we have certain  
5 duties, one of which is to serve when called as a juror at  
6 least -- well, not at least. I guess it would be more than  
7 once a year, but at least once a year, although I don't know if  
8 any of you have been called more often than that. But all of  
9 us as citizens have that responsibility.

10           I, myself, when I get my little jury notice, I can't serve  
11 as a juror in a federal court because I'm a federal judge so  
12 they don't like that. However, I think I would be a good juror  
13 even on a federal case, but I have to go across the street to  
14 state court, and I get to do the same thing that you may have  
15 experienced in state court when called as a juror. So it is a  
16 responsibility that we all have, and I take that responsibility  
17 very serious, as should all of you.

18           Now, the way that we are going to go inquire about  
19 hardship is that if any of you feel that it would be a hardship  
20 for you, what I want you to do is just form a line in front of  
21 the railing there, and I will ask each of you, in turn, to come  
22 up to the sidebar, which is this area located immediately to my  
23 right, and I will have a conversation with you and the  
24 attorneys outside of the hearing of other people in the  
25 courtroom.



1           When I have a sidebar, let me ask the members of the  
2 audience, don't strain to listen because it would kind of  
3 defeat my purpose of having the sidebar. And also, this will  
4 be the last time that I ask about hardship. So in other words,  
5 if any of you feel it might be a possible hardship, speak now  
6 or forever hold your peace. Once we start the trial itself, it  
7 would be very hard for me to excuse jurors because of hardship,  
8 so that's the reason I'm asking now, and I will not ask again.

9           Let me ask, do any of you have any questions about  
10 hardship, in general.

11           Yes, sir. If you are asking me about something specific,  
12 just go in the line and we will talk about it at sidebar.

13           So again, in other words, if you feel at all that it might  
14 possibly be a hardship, speak now because this is the only time  
15 I'm going to inquire about hardship. So if any of you feel it  
16 would be a hardship, just form a line behind the railing, and I  
17 will talk to each of you in turn.

18           And let me have counsel on sidebar.

19           Let me have the first prospective juror just stand right  
20 here.

21           (Discussion held at sidebar.)

22           THE COURT: Good morning. What's your name?

23           PROSPECTIVE JUROR: Louise.

24           THE COURT: Louise, what is your last name?

25           PROSPECTIVE JUROR: Castillo.

1 THE COURT: What is your situation?

2 PROSPECTIVE JUROR: My situation is I'm behind on my  
3 car payment and my rent.

4 THE COURT: Let me ask, what do you do?

5 PROSPECTIVE JUROR: I work for a company for like to  
6 make food, food and stuff for parties.

7 THE COURT: It's like a catering business?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Are you like the waiter, or are you like  
10 the cook or preparer?

11 PROSPECTIVE JUROR: I'm -- I'm like in the  
12 warehouse.

13 THE COURT: Okay. Let me ask, does your employer  
14 pay for jury service?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Have you asked your employer?

17 PROSPECTIVE JUROR: I haven't.

18 THE COURT: Why don't you do this. At some point in  
19 time we will take a break this morning.

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: What I want you to do is call your  
22 employer and ask if they pay for jury service, because if they  
23 pay for jury service, then it's not going to be a problem.

24 PROSPECTIVE JUROR: Okay.

25 THE COURT: Because you will be here, and you will

1 be paid anyway. If you're not going to be paid -- let me ask  
2 you a couple more questions. Is there anybody else in your  
3 household, in other words, the people you live with, is there  
4 anyone else in your household who works?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Who is that?

7 PROSPECTIVE JUROR: It's my sister and my dad.

8 THE COURT: Okay. And so if they were to continue  
9 working -- obviously, if you were serving as a juror here, they  
10 could make the rent payments if you weren't to contribute,  
11 couldn't they?

12 PROSPECTIVE JUROR: No.

13 THE COURT: You don't know?

14 PROSPECTIVE JUROR: I don't think so.

15 THE COURT: All right. Let me ask counsel, do  
16 either side have any questions?

17 MR. MENNINGER: No.

18 THE COURT: What I want you to do at some point on a  
19 break, call your employer and ask your employer. I presume  
20 they have like a human resources department or something like  
21 that. Ask whether or not they pay for you when you are on jury  
22 service.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: And I will call you up sometime later  
25 this morning. Okay?

1 PROSPECTIVE JUROR: Okay.

2 THE COURT: Thanks.

3 (In open court.)

4 THE COURT: Next juror.

5 Let me speak to the jurors. One other thing I forgot to  
6 tell you, if I find you have a hardship, I don't excuse you  
7 from jury service. All I do is send you back to the juror room  
8 and you become someone else's problem. I can't excuse you from  
9 jury duty; I just can excuse you in this case. I just want to  
10 make sure you understand it.

11 Also, if you get sent out, it may be possible you don't  
12 get sent out to another case. It is also a possibility that  
13 you may get sent out to another case and that case may take  
14 longer than this case. We have cases that take weeks. I don't  
15 want anyone to have a false impression if I find you have a  
16 hardship. I won't excuse you; I will just simply excuse you  
17 from this case. I hope you understand.

18 Not that I referenced you in particular.

19 (Discussion held at sidebar.)

20 THE COURT: Let me ask you to approach. What's your  
21 name?

22 PROSPECTIVE JUROR: Meytal Sabbah.

23 THE COURT: What's the last name?

24 PROSPECTIVE JUROR: Sabbah.

25 THE COURT: And what's your situation?

1 PROSPECTIVE JUROR: I'm sorry?

2 THE COURT: What's your situation?

3 PROSPECTIVE JUROR: The situation is just at this  
4 point I can't afford losing what you described, four to six  
5 days.

6 THE COURT: Let me ask you -- I guess you are an  
7 office manager?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Are you the human resources person for  
10 your office?

11 PROSPECTIVE JUROR: Yeah, under one of the hats I  
12 wear.

13 THE COURT: So your employer does not pay for jury  
14 duty?

15 PROSPECTIVE JUROR: I think he will be nice enough  
16 to pay for today, but other than that, he won't be able to.

17 THE COURT: What type of office do you work in?

18 PROSPECTIVE JUROR: It is a company that's an  
19 international distributor, and actually the company's going  
20 under, so hardship itself, and we're downsizing. So I do  
21 actually wear many hats, and that would be problematic.

22 THE COURT: Let me ask, in your household is there  
23 anybody else who works, other than yourself?

24 PROSPECTIVE JUROR: No.

25 THE COURT: So you are saying even if you were to

1 miss a couple days' payment, you would have a hardship making a  
2 rent payment or car payment?

3 PROSPECTIVE JUROR: I don't want to take a risk.  
4 You said it could be up to Friday, Monday, Tuesday, that could  
5 be four to six business days. One or two is fine, but --

6 THE COURT: Okay. Let me ask counsel, do any of you  
7 have any questions?

8 MR. RYAN: No.

9 MR. MENNINGER: No.

10 THE COURT: Why don't you sit down, and I will let  
11 you know in a couple of minutes.

12 (In open court.)

13 THE COURT: All right. Next prospective juror.

14 (Discussion held at sidebar.)

15 THE COURT: Good morning. What's your name?

16 PROSPECTIVE JUROR: Alexander Bornstein, Your Honor.

17 THE COURT: And what's your situation?

18 PROSPECTIVE JUROR: I live paycheck to paycheck.

19 I'm just a cook. Missing three to four days of work -- missing  
20 two days could put me short.

21 THE COURT: Where do you work?

22 PROSPECTIVE JUROR: I work for Clifton Cafeteria,  
23 sir.

24 THE COURT: They don't pay for jury duty?

25 PROSPECTIVE JUROR: I'm not sure.

1 THE COURT: I will tell you what, on a break why  
2 don't you call them up and ask them if they pay for jury duty,  
3 because otherwise --

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Let me ask you, aside from yourself, is  
6 there anyone else in your household who works?

7 PROSPECTIVE JUROR: Yes, my father.

8 THE COURT: Is it a situation where, for example,  
9 you guys rent? Or do you guys own a house? Or what?

10 PROSPECTIVE JUROR: I pay rent under them.

11 THE COURT: Okay. Let me ask, if the situation were  
12 you were to miss like a week's worth of rent payments --

13 PROSPECTIVE JUROR: I wouldn't be homeless as a  
14 result, but it would definitely put me behind on a lot because  
15 I have to take that out of the next. I only live paycheck to  
16 paycheck, sir.

17 THE COURT: Why don't we do this. Why don't you  
18 call your HR person and see if they will pay for jury duty.

19 PROSPECTIVE JUROR: Absolutely.

20 THE COURT: And then let me know.

21 Let me ask counsel, do you have any questions for this  
22 prospective juror?

23 MR. MENNINGER: No, Your Honor.

24 THE COURT: All right. Thank you very much.

25 (In open court.)

1 THE COURT: All right. The next juror.

2 (Discussion held at sidebar.)

3 THE COURT: Good morning, sir. What's your name?

4 PROSPECTIVE JUROR: Good morning, Your Honor. My  
5 name is Leo Barillas.

6 THE COURT: And what is your situation?

7 PROSPECTIVE JUROR: Well, me and my wife, we have  
8 two small children, and we have one vehicle, and this morning I  
9 got to drive her to work. I live in the Antelope Valley.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR: It took me two hours and 20  
12 minutes to get here this morning after driving her to work and  
13 back, and then even afterwards I have to pick her up. It  
14 depends on what time I get out of here today is what time I get  
15 her.

16 THE COURT: Let me ask you, how far away is your  
17 home from here?

18 PROSPECTIVE JUROR: 61 miles.

19 THE COURT: 61 miles. Because actually, if it was  
20 80, we could actually have you stay.

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: So basically you only have one car?

23 PROSPECTIVE JUROR: And my two children. I have to  
24 drop them off at like 4:30 in the morning. Just this morning  
25 it was a big -- I had to take my wife to work and then drive



1 here myself. I did it one day, but I can't imagine if I had to  
2 do it four more days, or even if I get on a case, I don't know  
3 how many days. It can be done, but it is difficult, but, I  
4 mean, if you really do need me, I'm here, but it's just that  
5 you just said speak up now --

6 THE COURT: Sure.

7 PROSPECTIVE JUROR: -- or be quiet.

8 THE COURT: We don't do car rentals, do we?

9 THE COURTROOM DEPUTY: I don't think so. I can  
10 always ask, Judge.

11 THE COURT: All right. But the major problem is the  
12 transportation. Let me ask, if we got a rental car for you,  
13 would that solve the problem?

14 PROSPECTIVE JUROR: Well, yeah. She doesn't have a  
15 license.

16 THE COURT: Oh.

17 PROSPECTIVE JUROR: My wife and I have been together  
18 how many years. We work together, and I drive her -- we drive  
19 together and I have let it go. I have not had her put on  
20 insurance. I know it sounds terrible, but --

21 THE COURT: Okay.

22 PROSPECTIVE JUROR: She let her license expire back  
23 in January. That's another thing. But, I mean --

24 THE COURT: All right. Let me ask counsel, do you  
25 have any questions?

1 MR. RYAN: No.

2 MR. MENNINGER: No, thanks.

3 THE COURT: All right. Thank you very much. Why  
4 don't you go back and sit down. I will let you know in a  
5 couple of minutes.

6 PROSPECTIVE JUROR: Thank you.

7 (In open court.)

8 THE COURT: Next prospective juror.

9 (Discussion held at sidebar.)

10 THE COURT: Good morning, sir. What's your name?

11 PROSPECTIVE JUROR: Grady Olson.

12 It's not so much a hardship, but I wanted to let you know  
13 because I couldn't inform Ms. Maria downstairs because she was  
14 too busy to answer my question. I went to a jury trial that  
15 went to two verdicts last year from the end of November to the  
16 beginning of December, misplaced my proof of service, so I was  
17 not able to e-mail or fax it in when I got the federal service  
18 summons. I don't mind doing it again. It's not a hardship.  
19 Like I said, I just want to make sure that I let you guys know  
20 because it's one of the things on the back that says "Have  
21 you?"

22 THE COURT: Javier, do you know whether or not there  
23 was any problem if the prospective juror has served on a jury  
24 in the state court within the past year?

25 THE COURTROOM DEPUTY: I can check.

1 THE COURT: Check with that, but if it's not going  
2 to be a hardship --

3 PROSPECTIVE JUROR: No. I wanted to make sure I let  
4 somebody know so I wouldn't get in trouble.

5 THE COURT: You won't get in trouble. He will check  
6 and make sure there is no problem with that. And if there's no  
7 problem, you can serve?

8 PROSPECTIVE JUROR: Yes, sure.

9 THE COURT: Thanks.

10 (In open court.)

11 THE COURT: Next prospective juror.

12 (Discussion held at sidebar.)

13 THE COURT: What's your name?

14 PROSPECTIVE JUROR: Michael Wood.

15 THE COURT: Wood?

16 PROSPECTIVE JUROR: Yeah.

17 THE COURT: What's your situation?

18 PROSPECTIVE JUROR: A week from today I have an  
19 appointment for having a hernia surgery set up.

20 THE COURT: What time is that appointment?

21 PROSPECTIVE JUROR: I think it's like 10:00 or  
22 something. I'm not sure, but it's Tuesday.

23 THE COURT: It's Tuesday?

24 PROSPECTIVE JUROR: 8:45 or something like that.

25 THE COURT: What time do you think you will be out?

1 PROSPECTIVE JUROR: From the --

2 THE COURT: It's a consult; it's not the operation?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: So maybe once you see the doctor, he  
5 will release you?

6 PROSPECTIVE JUROR: Yeah, set up the surgery.

7 THE COURT: Let me ask, if I were to give you time  
8 to go to that consult, you would otherwise not have a problem  
9 serving as a juror in this matter?

10 PROSPECTIVE JUROR: Yeah, I guess. If what you  
11 said -- it depends on how long this is going to go because if I  
12 have to postpone that, then --

13 THE COURT: No. I said I obviously would allow you  
14 to go to that --

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: -- because we just may take a break  
17 Tuesday morning or something like that if you were a juror in  
18 this case. If that were the situation, would you still have a  
19 hardship?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Let me ask counsel, any questions?

22 MR. RYAN: No.

23 MR. MENNINGER: No.

24 THE COURT: If you are a juror in this case,  
25 definitely remind me that you have an appointment because I

1 will definitely forget that you have that appointment, but if  
2 you remind me, I will definitely let you have that time off.

3 PROSPECTIVE JUROR: Thank you.

4 THE COURT: Great. Thank you very much.

5 (In open court.)

6 THE COURT: Next prospective juror.

7 (Discussion held at sidebar.)

8 THE COURT: Good morning, sir.

9 PROSPECTIVE JUROR: Good morning.

10 THE COURT: What is your name?

11 PROSPECTIVE JUROR: Renant.

12 THE COURT: What is your last name?

13 PROSPECTIVE JUROR: Ofalsa.

14 THE COURT: What is your hardship?

15 PROSPECTIVE JUROR: I don't know the duty for jury  
16 duty. I still have a problem understanding my language.

17 THE COURT: Let me ask you, it says here that you  
18 are, I guess, a hemo -- in other words, you are a technician  
19 dealing with blood?

20 PROSPECTIVE JUROR: Yes, hemodialysis.

21 THE COURT: Let me ask, did you go to school in this  
22 country?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: I presume that was done in English?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Also, let me just ask, Lancaster, how  
2 far is Lancaster from here?

3 THE COURTROOM DEPUTY: 65 miles.

4 THE COURT: Is it about 65 miles?

5 PROSPECTIVE JUROR: I got here, I got lost. I got  
6 here 8:00. I have been looking for parking lot.

7 THE COURT: Let me ask, so you are not more than 80  
8 miles from here?

9 PROSPECTIVE JUROR: No, no. Everything is the time,  
10 the time frame, because 7:00 is going to be traffic.

11 THE COURT: Okay. Right, but let me just ask you,  
12 the nature of your hardship claim is what exactly? Are you  
13 claiming you don't understand English? Or it's too far a  
14 drive?

15 PROSPECTIVE JUROR: Sometimes I have a problem  
16 understanding. Sometimes I misunderstand or misinterpret.

17 THE COURT: Let me put it this way, if you are a  
18 technician, nothing that's said here is going to be as  
19 complicated as learning to be a technician and the stuff you  
20 have done.

21 PROSPECTIVE JUROR: Okay.

22 THE COURT: If you are a technician -- and again,  
23 one thing I will say is that I always tell the jurors if any of  
24 you have any problems understanding what's going on, all I want  
25 you to do is raise your hand, and I always will have the

1 attorneys take care of the problem. If you hear a term you  
2 don't understand the meaning of, I will have them tell you what  
3 the meaning of the term is and that sort.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: So that shouldn't be a problem.

6 PROSPECTIVE JUROR: Thank you.

7 THE COURT: Do any of you have any questions?

8 MR. MENNINGER: I didn't get your number.

9 PROSPECTIVE JUROR: 38.

10 THE COURT: 38.

11 (The prospective juror left the sidebar discussion.)

12 THE COURT: All right. Let me ask counsel, are  
13 there any -- would any side agree to excuse any of those  
14 jurors? And if you want me to summarize, I can summarize for  
15 you. I was thinking as to Juror No. 20 and also Juror No. 28.  
16 I can give you the names.

17 MR. RYAN: Which one is 28?

18 THE COURT: 28 is Ms. Sabbah, S-a-b-b-a-h. She is  
19 the one that's the office manager. She is the one that said  
20 she would have a financial problem. And the other one is  
21 Mr. Barillas, because he's indicating he has a car problem, and  
22 if we make him come, his wife will be driving illegally, which  
23 I don't think we want to encourage. So can I get a stip to a  
24 for-cause challenge as to both of those for hardship.

25 MR. MENNINGER: That's fine, Your Honor.

1 MR. RYAN: Yes, Your Honor.

2 THE COURT: There are a couple of others that said  
3 they would check with their human resources department, and  
4 obviously, if they indicate that their companies won't pay,  
5 then I will ask you again as to a for-cause challenge for  
6 those.

7 (In open court.)

8 THE COURT: All right. At this point in time, let  
9 me thank and excuse Ms. Sabbah.

10 What you need to do is go back to the jury room and tell  
11 them I have excused you from this case, not from jury duty, but  
12 from this case.

13 And also Mr. Barillas. Again, I'm not excusing you, but  
14 I'm excusing you from this case. Go back to the jury room.

15 And then as to Mr. Bornstein and Mr. Castillo, I need for  
16 you to contact your human resources department, and let me know  
17 what your situation is. And so I will let you do that sometime  
18 this morning, and you can get back to me.

19 All right. Let me introduce you to the participants in  
20 this matter. And I will have them introduce themselves.

21 For the Government we have?

22 MR. RYAN: Good morning. My name is Carl Ryan,  
23 assistant United States attorney.

24 MR. AVEIS: Mark Aveis, assistant United States  
25 attorney.



1 SPECIAL AGENT: Joshua Arambulo.

2 THE COURT: And for the defense?

3 MR. MENNINGER: David Menninger.

4 MR. DEMIK: Stephen Demik.

5 THE COURT: All right. In addition to the  
6 defendant, who may or may not testify, he has a choice in that  
7 regard, we have the following witnesses also: Joshua Arambulo;  
8 Sonia Elsberry; Javier Madrid; Roberto Villalobos, Jr.; and  
9 Terrence Rachel.

10 Let me ask any of the prospective jurors, do any of you  
11 recognize any of the attorneys or officers in this case or the  
12 defendant or the names of any prospective witnesses?

13 No one. Okay. There goes six degrees of separation.

14 Now let me just also tell you a couple of things about the  
15 operations in this courtroom. In addition to this case, I  
16 basically handle at any given period of time approximately 400  
17 other cases, and so in addition to this trial, I will be  
18 handling other cases periodically.

19 That means that, for example, on Mondays and Thursdays I  
20 have what I call a morning calendar. In other words, I have to  
21 address some of those things in those other cases and I do them  
22 on Mondays and Thursdays. So, therefore, the starting time on  
23 those days will be later than normal. Normally I will start at  
24 8:30, and we will go to noon, and then from 1:00 to  
25 approximately 5:00, with a break in the morning and a break in

1 the afternoon, and that's the normal scheduling.

2 But on Mondays and Thursdays I will start approximately  
3 between either 9:30 or 10:30, sometime in between then. I will  
4 let you know the day before what time the starting time is  
5 because on Mondays and Thursdays I have to talk to attorneys on  
6 my other cases.

7 And also, for those of you who have been jurors before on  
8 other cases, one of the things that inevitably happens is a  
9 situation where you are asked to come back at a certain period  
10 of time and the Court is not ready to start at that period of  
11 time. If that happens in this case, let me apologize for that  
12 situation in advance, but sometimes I will have a situation  
13 where I will have to address something in one of my other cases  
14 that comes up unexpectedly, and I might not be able to start at  
15 exactly the time I asked you to come back. So please forgive  
16 me if that were to happen. I will try to keep those situations  
17 to a minimum.

18 Conversely, however, if I do ask you to come back, I can't  
19 actually start this matter until the last juror is back in the  
20 courtroom or in the jury room. So, therefore, the last person  
21 to arrive more or less determines the starting time. So please  
22 be considerate of your fellow jurors. And if I ask you to come  
23 back at a certain time, please come back at that point in time.

24 Also, you have to keep in mind, sometimes in the mornings  
25 it may take a little bit of time to get through the security

1 people downstairs because they are, for lack of a better term,  
2 they are very thorough. So keep that in mind. All right.

3 Now, let me also indicate to you that if at any point in  
4 time during this trial or during this case, if at any point in  
5 time there is a problem that you have, either, for example, you  
6 hear something and you don't understand the meaning of what you  
7 heard; or you can't hear a witness who testifies; or there's  
8 something that's distracting you from this case, for example,  
9 it gets too hot in the courtroom or gets too cold in the  
10 courtroom, please raise your hand and bring the situation to my  
11 attention, and I will try to remedy the problem by either  
12 having the witness speak louder or having the witness explain  
13 the terms that he or she uses or adjust the thermostat or  
14 whatever.

15 So in other words, would all of you agree or promise me if  
16 something distracts you from this case of that sort, please  
17 raise your hand and bring it to my attention? Do you all  
18 promise to do that?

19 Okay. Great.

20 We will start at this point in time what I refer to -- or  
21 what is the voir dire process or the voir dire portion of the  
22 trial. Now, all of you have been called as prospective jurors  
23 in this case, but you are not actually jurors in this case  
24 because we will have 12 jurors and 2 alternate jurors in this  
25 case. So you are just the panel. You are not jurors in this

1 case yet. So we start the voir dire process to select the  
2 jurors.

3 And there are two explanations for voir dire: The first  
4 explanation is the fact that either side in this case can  
5 excuse jurors for a particular reason or no reason whatsoever.  
6 In other words, they have a right under the statutes to excuse  
7 a juror because -- let's say that juror reminds them of  
8 somebody that they used to go to high school with that beat  
9 them up during the recess periods. They can do that under the  
10 statutes. So that's the first explanation of the voir dire  
11 process.

12 So in order to allow the attorneys to exercise the  
13 authority that they have with a modicum of intelligence, they  
14 need to know something about you, about your background and  
15 about your views on issues that may arise in this case. So we  
16 conduct this question period to give them a basis to exercise  
17 the authority that they have under the statute.

18 The second explanation for the voir dire process, which is  
19 probably the better explanation, but the first one is funnier,  
20 but the second explanation, the better explanation, is to tell  
21 you that both sides for this case, both the Government and the  
22 defendant, is entitled to a fair and impartial jury.

23 In other words, they are entitled to jurors who can  
24 consider the evidence, weigh the evidence on a logical and  
25 reasonable basis, and come to a good verdict despite the effect

1 on one side or the other. In other words, both sides are  
2 entitled to a fair and impartial jury. And in other words, to  
3 make sure that both sides get a fair and impartial jury, we do  
4 the voir dire process.

5 Do all of you remember the oath that you took at the  
6 beginning of this case?

7 When we do ask these questions it's not our intention to  
8 be rude or inquire so much, but nowadays with the Internet, you  
9 can seemingly get anything on anyone, but that's not our  
10 intention. Our intention is to find out, again, about you for  
11 purposes of selecting an appropriate jury in this case.

12 Now, the way we are going to go about doing this, each of  
13 you will be called in turn, and you will be given a sheet of  
14 paper which has seven questions on it. Those questions are  
15 more or less self-explanatory, and we will ask you to answer  
16 those questions initially.

17 Once all jurors have answered those seven questions, then  
18 I will have certain other questions that will either require a  
19 "Yes, Your Honor" answer, and if you have a "yes" answer, what  
20 you need to do is raise your hand if you are answering that  
21 question "yes," and then I will have certain follow-up  
22 questions. Once I finish my questioning, both sides will be  
23 given a brief period of time to ask follow-up questions what  
24 they think is appropriate. So that's how the voir dire process  
25 is done.

1           Now, I do want to emphasize that we do want candid  
2 answers, and I do understand that sometimes if a person --  
3 well, a person may think to themselves, "Well, if I answer that  
4 question really truthfully, it might seem like I'm biased."  
5 Well, let's be honest with ourselves; all of us have biases of  
6 one sort or another. The mere fact that you have a bias does  
7 not necessarily mean that you cannot serve as a juror on the  
8 case.

9           A particular bias may mean you can't serve as a juror on a  
10 particular case, however, but let's talk about examples. Let's  
11 assume that we have a case where a defendant was charged with  
12 driving while intoxicated, and we have a prospective juror who  
13 has a son or daughter that was killed by a drunk driver. I  
14 think all of us would agree that person probably should not  
15 serve as a juror in that type of case.

16           It's not to say that that person is a horrible person or  
17 that person is unfair; it's simply to recognize that person  
18 might have an emotional reaction to the evidence in the case  
19 that might skew their perception of the evidence. So that's  
20 not to say that that person could not serve as a juror on a  
21 breach of contract case or murder case; it's simply to  
22 recognize that juror should not serve as a juror on that  
23 particular case. So please give us honest and truthful answers  
24 to our questions.

25           And finally, if any of you feel reluctant to give an

1 answer in open court, just simply ask for a sidebar. I will  
2 always grant a juror's request for a sidebar, and you will be  
3 allowed to give your answers outside the hearing of other  
4 persons in this courtroom.

5 Do any of you have any questions on the voir dire process?

6 No. Okay.

7 Let me have the clerk read off the first 16 names, and  
8 then after he's done that, I'm going to play a little bit of  
9 musical chairs with the remaining jurors. It's like musical  
10 chairs, except there's no music and there's no fun, but other  
11 than that, it's very similar to musical chairs.

12 THE COURTROOM DEPUTY: Brian Ly, William Wittenberg,  
13 and Jill Smith, please come forward.

14 Katherine McKinney, Mary Gary and Devin Goodwin.  
15 Josemarie Santos, Aleli Reyes, Steven Veen, Donita Lyons,  
16 Alexander Ibarra, Brian Barker, Josecarlito Vicerra, Chung  
17 Park, Bruce Holmes, Stephanie Romero, Luis Castillo, Ingrid  
18 Garciachoa, Maria Martinez, Alexander Bornstein, Denise Brown,  
19 Brian Worsely, Lynn Stone.

20 We are doing 30, Your Honor?

21 THE COURT: Why don't we do 36, 6 more.

22 THE COURTROOM DEPUTY: We have 24, so another 8.

23 THE COURT: Oh, actually --

24 THE COURTROOM DEPUTY: No, another 12.

25 THE COURT: Why don't we make it 30, then put

1 another 6 on that side.

2 THE COURTROOM DEPUTY: Brian Worsely -- sorry.  
3 Christine Heckert, Mac Bailey, James Parkhurst, Troy Benjamin,  
4 Epigmenio Villegas, and Grady Olson.

5 THE COURT: Will they fit?

6 THE COURTROOM DEPUTY: Yes, I think so.

7 THE COURT: They will just be very friendly.

8 Okay. At this point in time, ladies and gentlemen, who  
9 are seated, I'm going to give you individual numbers because,  
10 one, you have seen how I pronounce names, and I pretty much  
11 cannot pronounce a name that has more than two letters in the  
12 last name. I don't know why that was. Maybe it's the way I  
13 was born, but I can't do that. So I will give you numbers, and  
14 frankly, I find numbers much more personable than names.

15 Starting in the back row, sir, in the back you are  
16 Juror No. 1.

17 Sir, Juror No. 2.

18 Ma'am, Juror No. 3.

19 Ma'am, Juror No. 4.

20 Ma'am, Juror No. 5.

21 Sir, Juror No. 6.

22 Sir, Juror No. 7.

23 And last in the row, you are Juror No. 8.

24 In the front row, sir, you are Juror No. 9.

25 Ma'am, Juror No. 10.



1 Juror No. 11.

2 Juror No. 12.

3 Sir, you're Juror No. 13. Are you Chinese? No? Because  
4 Chinese, 13 is such a lucky number, and you are Juror No. 13.

5 Ma'am, you are Juror No. 14.

6 Sir, Juror No. 15.

7 And last in that row, ma'am, you are Juror No. 16.

8 Mr. Castillo, in the back there, sir, you are Juror  
9 No. 17.

10 Next to you, ma'am, you're Juror No. 18.

11 Ma'am, Juror No. 19.

12 Sir, Juror No. 20.

13 Ma'am, Juror No. 21.

14 Ma'am -- Mr. Bornstein -- oh, ma'am -- I can't remember.  
15 Bornstein, you were 20.

16 Ma'am, you're Juror No. 21.

17 Sir, Juror No. 22.

18 Ma'am, Juror No. 23.

19 Ma'am, Juror No. 24.

20 Sir, Juror No. 25.

21 Sir, Juror No. 26.

22 Sir, Juror No. 27.

23 Sir, Juror No. 28.

24 Did I miscount?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Where did I miscount. I got 16 right.  
2 Mr. Castillo is 17, 18, 19, 20, 21, 22, 23.

3 THE COURTROOM DEPUTY: I'm short one.

4 THE COURT: You were short one. So I was right;  
5 you're wrong. I'm the judge. I'm always right.

6 No stop, stop. Javier, whatever you have done is fine  
7 because I don't think we can fit another person in that row.  
8 They would be whatever.

9 So, sir, you are Juror No. 28 -- sorry, 29.

10 And sir next to him, Juror No. 28.

11 Do we all know our numbers?

12 Now, what my clerk is going to do -- what my clerk has  
13 done -- actually, let's try this without a microphone for the  
14 people in the box, and we will use the microphone for the  
15 people in the row.

16 Let me ask Juror No. 1, you received this list with the  
17 questions on it, if you can answer those questions. And then  
18 also, let me just caution, the only thing that is slightly  
19 tricky is juror number -- sorry, is question number 5.

20 Let me just indicate to the jurors, this is -- we just  
21 moved into this courthouse, and it has funny sounds every now  
22 and then, but that's not you; it's the courtroom.

23 The only question that is kind of tricky is question  
24 number 5. What we need to know is whether or not you served as  
25 a juror before, and if you have, was it a criminal case or

1 civil case? If it was a criminal case, we need to know the  
2 type of crimes that were charged. And we also need to know  
3 whether or not the jury reached a verdict. Don't tell us what  
4 the verdict was. Because every now and then I will have a  
5 juror says, oh, he found him innocent or he found him guilty.  
6 We don't want to know the actual verdict; we just want to know  
7 whether or not a verdict was reached. And we also need to know  
8 whether or not you were the foreperson of the jury.

9 Do all the jurors know what a foreperson is? Raise your  
10 hand.

11 What a foreperson is -- all the persons in a jury are  
12 equal. In other words, there's no leader of a jury. All votes  
13 are equal to each. However, what happens when the jury goes  
14 into the jury room and they go into deliberations, they select  
15 a person that acts as a foreperson. The foreperson is kind of  
16 like the secretary.

17 In other words, the foreperson would take a record of who  
18 voted which way. And if there is anything else in terms of  
19 order, how the jurors give comments, they may assign a  
20 particular order or something of that sort, but that really is  
21 the function of the foreperson. It's kind of like an  
22 administrative position, not a leadership position.

23 Sir, can you give us the answers to questions 1 through 7?

24 PROSPECTIVE JUROR NO. 1: Yes. Do I stand, or  
25 should I sit?

1 THE COURT: You just have to speak loudly.

2 PROSPECTIVE JUROR NO. 1: My name is Brian Ly. I  
3 live in the West Los Angeles area. So I'm a software  
4 developer. I work for Avanade, and I've worked there for four  
5 years now. I worked for Southern California Edison before as  
6 well in the past ten years, and I was an intern there. And  
7 before that I was working for River See, which is no longer  
8 here. I don't have a spouse. I am living at home with my  
9 family.

10 Do I name them out?

11 THE COURT: No. You just have to indicate what they  
12 do, if you are living with any adults, what the adults do.

13 PROSPECTIVE JUROR NO. 1: Oh, what they do?

14 THE COURT: Yeah.

15 PROSPECTIVE JUROR NO. 1: So my father works at a  
16 grocery store, my mom is a stay-at-home mom, and my brother  
17 works at Hertz. I haven't served on a jury. I don't have any  
18 special education or training in law enforcement, medical field  
19 or claims investigation. And I don't have anyone associated in  
20 my family, relative or close friends or neighbors that are in  
21 law enforcement.

22 THE COURT: All right. Thank you very much.

23 Juror No. 2.

24 PROSPECTIVE JUROR NO. 2: William Wittenberg. I  
25 live in Santa Clarita, California. I am in sales for a

1 company, Kapstone, K-a-p-s-t-o-n-e, Container for the past two  
2 years, and we are still in sales for a company called Rockten,  
3 one word. My wife is a stay-at-home mother, and my son is a  
4 supervisor at an amusement park. I was dismissed from a -- as  
5 a juror before, just wasn't accepted, went through the process  
6 and wasn't --

7 THE COURT: In other words, you weren't selected?

8 PROSPECTIVE JUROR NO. 2: I wasn't selected.

9 THE COURT: Don't say "dismissed" because it sounds  
10 like you were selected and then something happened.

11 PROSPECTIVE JUROR NO. 2: I will correct it next  
12 time.

13 THE COURT: All right.

14 PROSPECTIVE JUROR NO. 2: No special education. I  
15 do have some friends that are in law enforcement and a neighbor  
16 that works for the sheriff's department at Pitchess, in  
17 Castaic, Prison.

18 THE COURT: The friends that are in law enforcement,  
19 how did you meet most of them, or if you met them in a common  
20 way?

21 PROSPECTIVE JUROR NO. 2: Some are through my son,  
22 my oldest boys. They were friends on the football team and  
23 eventually became part of the sheriff's department. Some were  
24 football parents that were deputies.

25 THE COURT: Okay. And with the friends who are in

1 law enforcement, do you ever talk with them about their law  
2 enforcement experiences?

3 PROSPECTIVE JUROR NO. 2: Yes.

4 THE COURT: Do you think you know anything more  
5 about law enforcement, because you have friends who are in law  
6 enforcement, than, let's say, an average person would?

7 PROSPECTIVE JUROR NO. 2: I would not say -- no.

8 THE COURT: Okay. And have they ever talked to you  
9 about any situation where they had to deal with anyone who was  
10 not a citizen of the United States?

11 PROSPECTIVE JUROR NO. 2: Yes.

12 THE COURT: What type of context would those be,  
13 generally?

14 PROSPECTIVE JUROR NO. 2: One of them is a deputy  
15 for Lancaster, and he's on special forces out there. And then  
16 another one, my neighbor across the street is a deputy at the  
17 detention center, Pitchess Detention Center, so the day-to-day  
18 things that happen.

19 THE COURT: Okay. Do any of you -- do any of your  
20 friends talk about how they deal with people who are in their  
21 custody that are not citizens?

22 PROSPECTIVE JUROR NO. 2: Experiences of what  
23 happens, but I don't know what you mean by -- do they tell me  
24 how they treat those people or experiences in what happened?

25 THE COURT: Well, for example, how do they know that

1 the deputies know that these individuals are noncitizens?

2 PROSPECTIVE JUROR NO. 2: One of them works for a  
3 gang unit up in Lancaster.

4 THE COURT: All right. And so, in other words,  
5 those are the types of information contained in, let's say, the  
6 rap sheets or something of that sort? Is that what you're  
7 saying?

8 PROSPECTIVE JUROR NO. 2: I'm not sure what you  
9 mean.

10 THE COURT: In other words, is that how that  
11 particular officer knows that particular individual is a  
12 noncitizen?

13 PROSPECTIVE JUROR NO. 2: I don't know how he  
14 determines it.

15 THE COURT: All right. Thank you.

16 Juror No. 3.

17 PROSPECTIVE JUROR NO. 3: My name is Jill Smith. I  
18 live in Simi Valley, Ventura County. I am retired. Before  
19 that, eight years ago I worked in a restaurant. My husband's  
20 retired. He worked for the fire department, and he's been out  
21 for seven years. No kids living at home. I never served on a  
22 jury. No special training. And yes, we have a close friend  
23 that's LAPD and L.A. County Sheriff, and I think he works for  
24 Burbank PD.

25 THE COURT: And how did you meet those friends?

1 PROSPECTIVE JUROR NO. 3: The Burbank one is my  
2 daughter's friend, and, you know, they're married and have  
3 kids.

4 THE COURT: Then it's more than a friend.

5 PROSPECTIVE JUROR NO. 3: Not my daughter, she's not  
6 married to him.

7 THE COURT: Oh, okay.

8 PROSPECTIVE JUROR NO. 3: Just friends.

9 And then across the street was LAPD. He just moved. And  
10 then a friend of ours from when our kids grew up, he is L.A.  
11 County Sheriff.

12 THE COURT: All right. Do you think you know  
13 anything more about law enforcement because you have friends  
14 that are members of law enforcement?

15 PROSPECTIVE JUROR NO. 3: No.

16 THE COURT: No.

17 And your husband retired from fire fighting for what area?

18 PROSPECTIVE JUROR NO. 3: L.A. County.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR NO. 3: Uh-huh.

21 THE COURT: Juror No. 4.

22 PROSPECTIVE JUROR NO. 4: I'm Katherine McKinney. I  
23 live in Santa Monica. I'm an admissions assistant at an  
24 independent K-through-12 school in Santa Monica, and I have  
25 been doing that for two years, and before that I was a mom. I



1 still am a mom. My husband is a school administrator. And  
2 that's the only other adult in my house. I have been called to  
3 jury service, but I have never been selected. And I don't have  
4 any special education. I do have two male cousins: one is an  
5 assistant U.S. attorney, and the other one is an FBI special  
6 agent.

7 THE COURT: Okay. The one who -- well, as to both  
8 of them, do you ever talk to them about their work?

9 PROSPECTIVE JUROR NO. 4: I do. They live in  
10 Indianapolis and Chicago, so I don't see them very often.

11 THE COURT: Which is which?

12 PROSPECTIVE JUROR NO. 4: The assistant U.S.  
13 attorney is in Indianapolis.

14 THE COURT: Okay. And do you know what type of work  
15 they specialize in? In other words, do they do criminal work?  
16 Do they do civil work?

17 PROSPECTIVE JUROR NO. 4: Well, the FBI agent does  
18 criminal, mostly white collar. He's new to it. He's been an  
19 FBI agent for six months.

20 THE COURT: All right. Thank you.

21 And Juror No. 5.

22 PROSPECTIVE JUROR NO. 5: My name is Mary Gary. And  
23 I live in Diamond Bar, California. I'm currently retired. And  
24 my prior occupation, I was a police dispatcher for about five  
25 different agencies in my lifetime. My husband, he owns a

1 couple restaurants. And my nephew is a sheriff deputy for  
2 Chino Hills. My brother-in-law is a lawyer. And that's about  
3 it.

4 THE COURT: Okay. And when you say you were a  
5 dispatcher, for which police organizations?

6 PROSPECTIVE JUROR NO. 5: At one time Brea PD,  
7 Tustin PD, Fontana, Cal Poly PD, and Pomona school district,  
8 they had a police department on campus.

9 THE COURT: Okay. And did you receive any training  
10 in like criminal law or anything of that sort, or were you  
11 simply functioning as a dispatcher?

12 PROSPECTIVE JUROR NO. 5: Well --

13 THE COURT: In other words, for example, they use  
14 like code words, like it's a 187 and things of that sort.

15 PROSPECTIVE JUROR NO. 5: Oh, yeah, two different  
16 departments, yeah.

17 THE COURT: Okay. All right. And also, as to the  
18 brother-in-law who is a lawyer, what type of law does he  
19 practice, do you know?

20 PROSPECTIVE JUROR NO. 5: Estate.

21 THE COURT: Estates, okay.

22 And you said you had nephews in law enforcement?

23 PROSPECTIVE JUROR NO. 5: Yes.

24 THE COURT: Do you ever talk to him about his law  
25 enforcement work?

1 PROSPECTIVE JUROR NO. 5: Occasionally.

2 THE COURT: Do you think you know anything special  
3 about law enforcement because of those conversations?

4 PROSPECTIVE JUROR NO. 5: Just from my prior  
5 experience, I have a lot of knowledge.

6 THE COURT: In other words, he didn't tell you  
7 anything you didn't already experience through dispatching for  
8 law enforcement agencies?

9 PROSPECTIVE JUROR NO. 5: Exactly.

10 THE COURT: All right. Thank you.

11 Juror No. 6.

12 MR. RYAN: Your Honor I might have missed it, but  
13 can you ask Ms. Gary about her prior jury service?

14 PROSPECTIVE JUROR NO. 5: Oh, yes, I have been on  
15 several juries: criminal trial, murder.

16 THE COURT: Let me ask you this: How many cases  
17 have you served as a juror on?

18 PROSPECTIVE JUROR NO. 5: I would say around three  
19 that I can remember.

20 THE COURT: Okay. And one of them was a murder  
21 case, you said?

22 PROSPECTIVE JUROR NO. 5: Yeah.

23 THE COURT: And what were the other two, if you can  
24 recall?

25 PROSPECTIVE JUROR NO. 5: Robbery.

1 THE COURT: All right. And are both robberies?

2 PROSPECTIVE JUROR NO. 5: I can't recall. The very  
3 first one, it was years ago.

4 THE COURT: Were you the foreperson in any of those  
5 juries?

6 PROSPECTIVE JUROR NO. 5: No.

7 THE COURT: And were verdicts reached in all of  
8 them?

9 PROSPECTIVE JUROR NO. 5: Yes.

10 THE COURT: All right. Thank you very much.

11 Juror No. 6.

12 PROSPECTIVE JUROR NO. 6: Hi. My name is Devin  
13 Goodwin. I live in Hollywood. Currently I work for a media  
14 company called Mamba Sphere, Incorporated. I work in promotion  
15 and management. Within the past ten years I have had a number  
16 of different jobs: I worked for New Records, Museum of Natural  
17 History, a staffing company, a radio station, and as a scene  
18 shop painter.

19 THE COURT: As a what?

20 PROSPECTIVE JUROR NO. 6: Scene shop painter, like  
21 painting sets. I live with my girlfriend. She is a stylist;  
22 hair and makeup in West Hollywood. I have never served on a  
23 jury before, first time. And no special education or training.  
24 Two friends from my hometown, Massachusetts, their fathers were  
25 both detectives. I have a cousin who practices civil law.

1 That's it.

2 THE COURT: All right. Because he practices civil  
3 law, do you know what type of -- does he do litigation? What  
4 exactly is he doing?

5 PROSPECTIVE JUROR NO. 6: I'm not exactly sure.

6 THE COURT: The friends' who, I guess, fathers were  
7 in law enforcement, did you feel -- do you feel you know  
8 anything special about law enforcement because you may have  
9 talked to them about their work?

10 PROSPECTIVE JUROR NO. 6: I know where to look for  
11 speed traps.

12 THE COURT: Very good thing to know. Thank you.

13 Juror No. 7.

14 PROSPECTIVE JUROR NO. 7: Good morning. My name is  
15 Josemarie Santos. I live in Long Beach. I am the CEO and  
16 owner of my own business called Boogie Made. I do merchandise  
17 contracts in the electronic dance music industry. I have been  
18 doing that for two years. Prior to that I was doing graphic  
19 design for a startup called 30 For Life. My mom works in child  
20 development and domestic violence cases in the school system.  
21 My dad's a lab assistant, and my younger brother is a product  
22 engineer at Apple. I never served on a jury before. I wasn't  
23 selected, sent me home. No special education. And I don't  
24 have any close friends or relatives in law enforcement.

25 THE COURT: All right. Thank you.

1 Juror No. 8.

2 PROSPECTIVE JUROR NO. 8: Hi. Good morning. My  
3 name is Aleli Reyes. And I live in Cerritos, California, Los  
4 Angeles. And my current occupation is I am a school nurse at  
5 Santa Ana Unified School District for -- now it's about one  
6 year and three months. And my -- I have work as vocational  
7 nurse in a few hospitals in Paramount. My husband is an  
8 ordained Four Square pastor, and my daughter that lives with me  
9 is also worship pastor. And I haven't selected to serve on a  
10 jury before. And special education is mostly on the medical  
11 field, case management. And I don't have any relatives or  
12 friend that works for law enforcement agencies.

13 THE COURT: All right. Thank you.

14 Juror No. 9.

15 PROSPECTIVE JUROR NO. 9: My name is Steve Veen. I  
16 live in Downey. Currently unemployed; previously was CFO of a  
17 company called Aura Systems. My wife is a stay-at-home mom.  
18 One son in college; another son as a software engineer at IBM.  
19 Have not served on a jury. I am a CPA. My son's fiance's  
20 father works for the sheriff's department, a couple of friends  
21 of ours work for LAPD. My other son's ex-girlfriend's parents  
22 both worked for ICE.

23 THE COURT: Okay. Son's ex-girlfriend's parents  
24 worked for ICE?

25 PROSPECTIVE JUROR NO. 9: Both of them.

1 THE COURT: Do you know what they did for ICE?

2 PROSPECTIVE JUROR NO. 9: One was in Long Beach; one  
3 was in Santa Ana. The father, I think, was in the gang unit.

4 THE COURT: Do you ever talk to them at all about  
5 their work?

6 PROSPECTIVE JUROR NO. 9: When he was going with  
7 them and we got together with them, yes, we did, just, you  
8 know --

9 THE COURT: Do they ever tell you specifically about  
10 how they do investigations and things of that sort?

11 PROSPECTIVE JUROR NO. 9: To some degree, I think  
12 so. It used to be interesting to sit and listen to what they  
13 had to say, but I don't recall much of it.

14 THE COURT: So you pretty much don't recall  
15 basically anything?

16 PROSPECTIVE JUROR NO. 9: No.

17 THE COURT: And the friends who were with LAPD, how  
18 did you mostly meet those?

19 PROSPECTIVE JUROR NO. 9: Neighbors. Two friends of  
20 my youngest son, about his age, and then one of them his dad  
21 also worked for LAPD.

22 THE COURT: All right. Thank you.

23 Juror No. 10.

24 PROSPECTIVE JUROR NO. 10: My name is Donita Lyons.  
25 I live in the Koreatown of Los Angeles. I'm an insurance

1 business manager for AAA Insurance. I have been there for four  
2 years. Before that I worked at Enterprise Rent-a-Car for 11  
3 years. I am not married; I'm single. I did serve on a civil  
4 case that did go to jury -- I mean go to verdict, excuse me. I  
5 do not have any special education. And no friends in law  
6 enforcement.

7 THE COURT: All right. Thank you very much.

8 Oh, you weren't the foreperson of that jury, were you?

9 PROSPECTIVE JUROR NO. 10: No, I was not.

10 THE COURT: Juror No. 11.

11 PROSPECTIVE JUROR NO. 11: My name is Alexander  
12 Ibarra. I'm a quality control inspector -- sorry, number 2, I  
13 live in Long Beach. Number 3, I am a quality control inspector  
14 at a place called Plasma Technology. Before that I used to  
15 work at Target and Z Gallery. I'm single. First, never served  
16 on a jury before. I have no special education. And I don't  
17 know anyone in law enforcement.

18 THE COURT: All right. Thank you.

19 Juror No. 12.

20 PROSPECTIVE JUROR NO. 12: My name is Brian Barker.  
21 I currently live in Miracle Mile. Current occupation is a  
22 technology consultant for Slalom Consulting, worked there for  
23 just under a year; previously in finance with Apple; before  
24 that, in private tax with Deutsche Bank; and before that,  
25 public taxes with HCVT here in Southern California. My spouse



1 is a real estate project manager.

2 I have served on a jury before. It was a criminal case,  
3 domestic abuse. The jury did reach a verdict, and I was the  
4 foreperson of that jury. No special education with regards to  
5 law enforcement. I am a California CPA. And then my  
6 mother-in-law used to be work with the attorney general, but  
7 that was probably 20 years ago, still has her bar license but  
8 no longer practices.

9 THE COURT: Okay. What exactly did she do for the  
10 attorney general?

11 PROSPECTIVE JUROR NO. 12: I haven't talked much to  
12 her about it.

13 THE COURT: Okay. Thank you.

14 Juror No. 13.

15 PROSPECTIVE JUROR NO. 13: My name is Josecarlito  
16 Vicerra. I live in Alhambra. Currently I am not employed  
17 right now. I formerly work at Clara Home for like 20 years or  
18 so. My wife works at Golden State Care Center. She's a  
19 qualified mental retardation person -- personnel. And I have  
20 my eldest kids, my daughter is in college right now, and my son  
21 is junior high. And I never served on a jury before. No  
22 special education in law enforcement, but my cousin works in  
23 law enforcement in Bureau of Correctional in Las Vegas, Nevada.

24 THE COURT: All right. Thank you very much.

25 Juror No. 14.

1 PROSPECTIVE JUROR NO. 14: My name is Chung Park. I  
2 live in the South Bay. I currently work in human resources for  
3 Japan Airlines. I have been there for two years. Before that,  
4 I worked in Internet publishing, another human resources job.  
5 Three weeks at a law office.

6 THE COURT: Three weeks?

7 PROSPECTIVE JUROR NO. 14: Three weeks. That kind  
8 of explains my experience.

9 I've also worked for -- in college, for -- it was an  
10 events-related job. And currently there are three other adults  
11 in my family: my parents, one is a cashier, one works in the  
12 cafeteria. I have a sibling who is currently unemployed.  
13 Let's see. I have never been selected to serve on a jury  
14 before. I don't have any special education in law except for  
15 degrees, but I don't think that counts. And 7, my brother,  
16 he's had, I think, a few internships, and I'm sorry, I don't  
17 have the details with me, but for district attorney offices,  
18 and that's about it.

19 THE COURT: Is he going to law school for something?

20 PROSPECTIVE JUROR NO. 14: He's graduated. He has a  
21 license, but not California.

22 THE COURT: Okay. He graduated from which state?

23 PROSPECTIVE JUROR NO. 14: Oregon.

24 THE COURT: But he lives down here now?

25 PROSPECTIVE JUROR NO. 14: Yes.

1 THE COURT: You said he is currently unemployed?

2 PROSPECTIVE JUROR NO. 14: Correct.

3 THE COURT: Is he looking for a legal job?

4 PROSPECTIVE JUROR NO. 14: I think so.

5 THE COURT: You should be close to your brother.

6 What everybody wants to know, what is the name of the law  
7 firm you worked three weeks at?

8 PROSPECTIVE JUROR NO. 14: You know, I forgot.

9 THE COURT: You are protecting the innocent, I  
10 guess. Thank you.

11 Juror No. 15.

12 PROSPECTIVE JUROR NO. 15: Hi. My name is Bruce  
13 Holmes. I live in the South Bay. I'm retired from Boeing. I  
14 was there for 31 years. I have accepted a position. As soon  
15 as jury duty is over I'm going to start for a company called  
16 Louis 6. My wife is a bond trader. She works in finance. I  
17 have served on three trials: one was a hit and run. It came  
18 to a verdict; the second one was a burglary. I was an  
19 alternate on that jury; and the third one was a civil trial, a  
20 plastic surgery gone awry.

21 I have no education in law enforcement or the law. It's a  
22 bit of a stretch, but when I was in college I worked for the  
23 police department as a -- they called us student marshals.  
24 There was a lot of crime on my campus, so they had a group of  
25 students walking around at night with walkie-talkies looking

1 for anything suspicious. I also gave out parking tickets.

2 THE COURT: You were probably the most popular  
3 person on campus.

4 That case, the civil case, did that come to a verdict?

5 PROSPECTIVE JUROR 15: Yes.

6 THE COURT: What exactly did you do for Boeing?

7 PROSPECTIVE JUROR 15: At Boeing, I was an engineer.  
8 I worked in space and electronics.

9 THE COURT: And then the new job, what type of job  
10 is that?

11 PROSPECTIVE JUROR 15: Same type of work.

12 THE COURT: All right. Thank you.

13 Juror No. 16.

14 PROSPECTIVE JUROR NO. 16: Hi. My name is Stephanie  
15 Romero. I do live in the West Los Angeles area. I am  
16 currently employed as an assistant manager at a Little Caesar's  
17 Pizzeria. I have worked at hospitals in Marina del Rey, and I  
18 worked in a convalescent home. My fiance is currently  
19 unemployed. I have not served on a jury before. I do not have  
20 no special education in law enforcement or medical field. And  
21 I have no associates with the law enforcement agencies.

22 THE COURT: All right. Before his current state of  
23 unemployment, what did your fiance do?

24 PROSPECTIVE JUROR NO. 16: He was a dispatcher at  
25 The Cheesecake Factory.

1 THE COURT: All right. Mr. Castillo, don't be  
2 nervous because you have a microphone.

3 PROSPECTIVE JUROR 17: My name is Luis Castillo. I  
4 live in Moorpark, California, in Ventura County. I work for a  
5 company that made food parties, catering company. My dad works  
6 with me, and he's a chef. My sister works in Target, and I  
7 worked there for three years. I have never served in a jury  
8 before. I don't have any special education or training. And I  
9 don't have anybody in the law enforcement agency.

10 THE COURT: All right. Thank you.

11 Juror No. 18.

12 PROSPECTIVE JUROR NO. 18: Hi. My name is Ingrid  
13 Garcia. I live in Van Nuys. I am a receptionist for a company  
14 called Green Set. It's a prop rental company. I have been  
15 there eight years. Before that, I was a receptionist for a  
16 staffing agency. I have two daughters under the age of 18: 8  
17 and 13. And my spouse is a surgical technician for Holy Cross  
18 in San Fernando. And I never served on a jury. And I don't  
19 have any special education or training for now. And I don't  
20 know anybody in law enforcement.

21 THE COURT: Thank you very much.

22 Juror No. 19.

23 PROSPECTIVE JUROR NO. 19: Hi. My name is Maria  
24 Martinez. I live in Huntington Park. I work at Jersey Mike's  
25 as a district manager. I used to work at Domino's, manage a

1 Domino's. My husband works at a warehouse. He managed the --  
2 what's called a Fam Brand. I never served on a jury before. I  
3 don't have no special education. And I do have a cousin that  
4 is LAPD.

5 THE COURT: Do you ever talk with the cousin about  
6 their work?

7 PROSPECTIVE JUROR 19: No.

8 THE COURT: Thank you very much.

9 Juror No. 21 [sic].

10 PROSPECTIVE JUROR 20: I'm Alex Bornstein. I live  
11 in the South Bay area. I currently work for Clifton's  
12 Cafeteria. I worked for a slew of restaurants in the past ten  
13 years. I can't possibly remember every one of them. I can  
14 turn in a resume, if you would like. My father is a mechanic,  
15 and my brother works at Ralphs, and my mom is a stay-at-home  
16 mom. I have never been on a jury before. I have no special  
17 education or training. And I have no friends or associates in  
18 law enforcement.

19 THE COURT: All right. Thank you.

20 Juror No. 22.

21 PROSPECTIVE JUROR 21: 21.

22 THE COURT: Sorry, 21. I looked at the wrong  
23 number. I'm dyslexic.

24 PROSPECTIVE JUROR 21: My name is Denise Brown. And  
25 I live in the Crenshaw District of Los Angeles, Los Angeles

1 County. I'm currently -- well, I'm retired. I worked for AT&T  
2 for 42 years. My --

3 THE COURT: Did you start when you were five?

4 PROSPECTIVE JUROR 21: No, out of high school. My  
5 husband is also retired. I have two adult sons: one is a  
6 project manager at UCLA; the other one works for the county  
7 children's social services. I have served on jury duty about  
8 five times: I have one criminal case, two civil cases, can't  
9 remember the other ones.

10 I was not the foreperson. I have been an alternate twice.  
11 No special education in law enforcement. I have two neighbors  
12 who live directly across the street that are retired now, but  
13 they were both probation officers for the county.

14 THE COURT: All right. What does your husband do?  
15 He's retired?

16 PROSPECTIVE JUROR 21: He's retired also.

17 THE COURT: What did he do before his retirement?

18 PROSPECTIVE JUROR 21: Actually, he worked for  
19 attorneys as far as process server.

20 THE COURT: Okay. And the cases that you recall  
21 that you were a juror on, you were never the foreperson in any  
22 of those cases, right?

23 PROSPECTIVE JUROR 21: No.

24 THE COURT: And you mentioned a criminal case and  
25 two civil cases. Were verdicts reached in all those, if you

1 can remember?

2 PROSPECTIVE JUROR 21: One, no.

3 THE COURT: Okay. Which one was there not a verdict  
4 in?

5 PROSPECTIVE JUROR 21: It was arson.

6 THE COURT: Oh, okay. So it was a criminal case?

7 PROSPECTIVE JUROR 21: Uh-huh.

8 THE COURT: Do you know why there was not a verdict  
9 reached? Was it a situation where the case was taken away from  
10 the jury, or was it a situation where the jury just simply  
11 couldn't reach a verdict?

12 PROSPECTIVE JUROR 21: Couldn't reach a verdict.

13 THE COURT: Is the reason why they couldn't reach a  
14 verdict a disagreement as to the evidence, or was it --

15 PROSPECTIVE JUROR 21: Yes.

16 THE COURT: Okay. Thank you.

17 All right. Juror No. 22.

18 PROSPECTIVE JUROR 22: My name is Brian Worsely. I  
19 live in Valencia. I'm the vice president of creative  
20 advertising at Warner Brothers. I have worked there for 11  
21 years. My wife is a stay-at-home mother. I have never been  
22 selected to serve on a jury. I do not have any special  
23 education or training in law enforcement. I have an uncle who  
24 is a retired sheriff's deputy, and friends and neighbors in  
25 Santa Clarita who worked for LAPD or L.A. County Sheriff's



1 Department.

2 THE COURT: All right. Do you think you know  
3 anything special about law enforcement that most people would  
4 not know because you have friends and neighbors who are in the  
5 law enforcement field.

6 PROSPECTIVE JUROR 22: No, sir.

7 THE COURT: No, okay. Thank you very much.

8 Juror No. 23.

9 PROSPECTIVE JUROR 23: Hi. I'm Lynn Stone. I live  
10 in Whittier. I'm a legal assistant at Bowman & Brooke, a  
11 national law firm, worked there for 14 years. My husband is a  
12 lawyer who specializes in police defense. I have not been on a  
13 jury before. I attended law school. My stepson is a sergeant  
14 at Burbank PD, and my best friend of 40 years is a retired L.A.  
15 Sheriff.

16 THE COURT: All right. Let me ask you, the work  
17 that you do as a legal assistant, is it primarily in civil  
18 litigation, or is it --

19 PROSPECTIVE JUROR 23: Civil litigation.

20 THE COURT: Is there any particular type of civil  
21 litigation?

22 PROSPECTIVE JUROR 23: Products liability.

23 THE COURT: Okay. And your husband that does police  
24 defense work, in other words, he represents law enforcement  
25 officers who have been charged with, let's say, use of

1 excessive force and things of that sort?

2 PROSPECTIVE JUROR 23: Correct.

3 THE COURT: Does he ever do any criminal defense  
4 work?

5 PROSPECTIVE JUROR 23: Yes.

6 THE COURT: He does criminal defense work as well.  
7 So he represents defendants who have been charged with a crime?

8 PROSPECTIVE JUROR 23: Police officers.

9 THE COURT: He deals exclusively with police  
10 officers?

11 PROSPECTIVE JUROR 23: Correct.

12 THE COURT: Either them being sued civilly or  
13 representing them if they have been charged with a crime?

14 PROSPECTIVE JUROR 23: Correct.

15 THE COURT: Do you ever talk to him about his cases?

16 PROSPECTIVE JUROR 23: I used to work with him, yes.

17 THE COURT: That doesn't mean you talk with him.

18 Sometimes the best relationships are the ones where -- well, I  
19 shouldn't go there. All right. So do you think you have any  
20 special knowledge about like police -- well, I guess how police  
21 operate because of the fact that you have a husband and you,  
22 yourself, have been involved with cases involving policemen in  
23 one form or another?

24 PROSPECTIVE JUROR 23: Yes, sir.

25 THE COURT: I will save this next question for

1 later.

2 All right. And also because of the fact that one of your  
3 best friends is with law enforcement as well?

4 PROSPECTIVE JUROR 23: Correct.

5 THE COURT: Do you feel you have any knowledge about  
6 dealings with immigration law because of the fact that you have  
7 had experience with law enforcement, people who are associated  
8 with law enforcement in general?

9 PROSPECTIVE JUROR 23: Probably not specifically.

10 THE COURT: Not specifically. All right. Thank  
11 you.

12 All right. Thank you very much. Juror No. 24.

13 PROSPECTIVE JUROR 24: I am Christine Heckert. I  
14 live in Downey. My current occupation is I'm a dental  
15 assistant in an office, Kulik Dental, and I have been there six  
16 years at this time, and I've worked with other dentists, I have  
17 been doing it for 24 years. I have Sukut Dental. I don't  
18 remember the other ones closer to ten years ago. My husband is  
19 a retired phone company worker, worked for GTE or Verizon. My  
20 son is a security officer, a guard or guard shack security  
21 officer at a private community. I have served or was picked  
22 for a criminal case for a jury, but the case went away the next  
23 day, so there was no verdict.

24 Dental training, not medical. Nothing with law. I work  
25 with people who their spouses are in law enforcement. I

1 usually hear just bits and pieces, but not anything major.

2 Some of them have students that are going to law school and

3 some friends. And then my son-in-law is in the Marines.

4 THE COURT: All right. Thank you very much.

5 Juror No. 25.

6 PROSPECTIVE JUROR 25: My name is Mac Bailey, Jr.

7 I'm from Carson, California. Right now I'm a lead supervisor

8 for CPS Security for seven years; before that, I was a loss

9 prevention agent. And then also my fiance at the time is a

10 childcare provider. Never served on a jury before. I have

11 training in claims and investigation. And my mother was a

12 clerk typist for Parker Center.

13 THE COURT: Okay. Thank you.

14 Let me ask you, when you are coming to provide security

15 services, what type of security service and where?

16 PROSPECTIVE JUROR 25: As a matter of fact, the

17 company I work for, we was here when this building was built.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR 25: And also we do construction,

20 commercial, and then gated communities also.

21 THE COURT: All right. Thank you.

22 And Juror No. 26.

23 PROSPECTIVE JUROR 26: Yeah, my name is James

24 Parkhurst. I live in Pismo Beach, California. I am

25 self-employed. I have a bakery in Pismo Beach, and I'm a

1 concessionaire; I go to fairs. And my wife is a former banker,  
2 and now she helps me out at the fairs. I have served on three  
3 juries that I can remember: two of them were solved, and the  
4 other one was settled out of court. And I have no special  
5 training in medical or law enforcement. I have an uncle who  
6 was a deputy sheriff in Los Angeles County.

7 THE COURT: All right. And the case that you were a  
8 juror on, the two that went to completion, were there verdicts  
9 in both those cases?

10 PROSPECTIVE JUROR 26: Yes, there was.

11 THE COURT: And were they criminal cases or civil?

12 PROSPECTIVE JUROR 26: One of each.

13 THE COURT: And what was the criminal case about?

14 PROSPECTIVE JUROR 26: It was a theft.

15 THE COURT: Theft, okay.

16 And were you the foreperson in either of those cases?

17 PROSPECTIVE JUROR 26: Neither one.

18 THE COURT: Okay. Thank you.

19 Juror No. 27.

20 PROSPECTIVE JUROR 27: Hi. My name is Troy  
21 Benjamin. I live in the South Bay. I'm a documentary producer  
22 and director of photography and a freelance writer for Marvel  
23 and Inside Editions, several publishers. My wife is a  
24 hairstylist. I served on a jury about seven years ago. It was  
25 a criminal case, stalking trial against a former district

1 attorney. I was not the foreperson.

2 Special education, just some entertainment law reading.  
3 My father was the former president of the Colorado Bar  
4 Association, Denver Bar Association, so I have grown up on law.  
5 The only association with law enforcement I have, my  
6 grandfather is retired FBI, and that's it.

7 THE COURT: All right. And the case that you were a  
8 juror on, were you the foreperson?

9 PROSPECTIVE JUROR 27: I was not, no.

10 THE COURT: And there was a verdict reached?

11 PROSPECTIVE JUROR 27: There was, yes.

12 THE COURT: All right. Thank you very much.

13 Juror No. 28.

14 PROSPECTIVE JUROR 28: Good morning. Epigmenio  
15 Villegas. I live in Hollywood. I'm currently a store director  
16 for Norgan Marcus, a grocery store; prior to that, also store  
17 director for Vons Grocery Company. My wife is an attorney; she  
18 works for county counsel down the street. I have served on a  
19 jury before, criminal case, reached a verdict. I was not the  
20 foreman. No special training. And I have two cousins who work  
21 for the sheriff's department.

22 THE COURT: What do they do for the sheriff's  
23 department?

24 PROSPECTIVE JUROR 28: One works for Men's Central  
25 Jail, and the other works in a special task force.

1 THE COURT: And the case that you were a juror on,  
2 you said it reached a verdict?

3 PROSPECTIVE JUROR 28: Yes.

4 THE COURT: Was it a criminal case?

5 PROSPECTIVE JUROR 28: Criminal case, yes.

6 THE COURT: What was the crime charged?

7 PROSPECTIVE JUROR 28: Robbery.

8 THE COURT: And your wife works at county counsel.  
9 What portion of county counsel?

10 PROSPECTIVE JUROR 28: She does public health and  
11 mental health.

12 THE COURT: And how long has she been there?

13 PROSPECTIVE JUROR 28: She's been there a couple  
14 years. Prior to that she worked for supervisor Gloria Medina  
15 and also for Villaraigosa.

16 THE COURT: All right. Thank you.

17 Juror No. 29.

18 PROSPECTIVE JUROR 29: Good morning. My name is  
19 Grady Olson. I currently live in Monrovia, Los Angeles County.  
20 I'm working as a front end clerk at Sprouts Farmers Market and  
21 as a crew member for McDonald's; before that, I worked as a  
22 palletizer at a factory in Azusa; and before that, I was a  
23 security guard for various events, as well as a dialysis center  
24 for four years.

25 I live with my mother and my father and my grandmother.

1 Both my grandmother and my father are retired. My father is on  
2 disability. My grandmother is on regular social security. My  
3 mother works for the Monrovia city council as a clerk and for  
4 the Monrovia USD -- MUSD for an afterschool program at Clifton  
5 Middle School.

6 I don't have any other special training in law except for  
7 the security guard training I received. I have a -- my great  
8 grandfather on my mother's side was deputy chief of police for  
9 Los Angeles County for several years and chief of police for  
10 Newport Beach Police Department for 25 years. I have a cousin  
11 who is a police officer in Monrovia PD, another cousin who just  
12 received his bar association for law for -- I forgot the name  
13 of it, civil rights law.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR 29: I have been on a jury before  
16 that went to trial, and we reached a verdict. I was not the  
17 foreperson.

18 THE COURT: Was it a criminal case or civil?

19 PROSPECTIVE JUROR 29: Civil, but medical  
20 malpractice.

21 THE COURT: And the cousin you said is a lawyer  
22 doing civil?

23 PROSPECTIVE JUROR 29: Civil rights law mostly for  
24 the Compton/Watts area of Los Angeles County.

25 THE COURT: So in other words, he or she represents



1 plaintiffs suing the Government or --

2 PROSPECTIVE JUROR 29: Currently, yes, that's what  
3 he wants to do. I don't know if he is actually part of a law  
4 firm yet. He just passed his -- he just got his -- he just  
5 passed his bar and got his full associations last year in May.

6 THE COURT: All right. Thank you.

7 At this point in time we will take a break. Ladies and  
8 gentlemen, we will take a 15-minute break. Let me ask you to  
9 come back -- just be in the hallway out there at five minutes  
10 after 11:00, and we will start again.

11 And also let me just ask Mr. Castillo and Mr. Bornstein,  
12 see if you can contact your human resources department and let  
13 me know what the situation is. Okay.

14 (Recess taken from 10:52 a.m. to 11:06 a.m.)

15 (Out of the presence of the prospective jury.)

16 THE COURTROOM DEPUTY: Your Honor, Mr. Castillo said  
17 "no" and Mr. Bornstein said he is still waiting to hear from  
18 HR.

19 THE COURT: But Mr. Castillo?

20 THE COURTROOM DEPUTY: No. Mr. Castillo said HR  
21 said he doesn't get paid.

22 THE COURT: Let me ask counsel.

23 Mr. Castillo said he is the one that has a hardship.

24 MR. RYAN: No objection for cause, Your Honor.

25 MR. MENNINGER: No objection for cause, Your Honor.

1 THE COURT: I'm going to excuse him. Because I'm  
2 going to be excusing him, don't ask him any questions because  
3 it will take longer. Thank you.

4 THE COURTROOM DEPUTY: Are we ready?

5 THE COURT: If the jury is ready, we're ready.

6 THE COURTROOM DEPUTY: Yes.

7 (In the presence of the prospective jury.)

8 THE COURT: Let me ask Juror No. 19, somebody was  
9 sitting next to you, right, that's not there.

10 PROSPECTIVE JUROR 19: Yeah.

11 THE COURT: So we are missing somebody?

12 THE COURTROOM DEPUTY: Yes, sir.

13 THE COURT: I know who we're missing.

14 THE COURTROOM DEPUTY: I do, too. I think she went  
15 downstairs.

16 THE COURT: All right. At this point in time we  
17 will continue with some questions. What I'm going to be doing  
18 now is asking certain questions, and if any of you have a "yes"  
19 answer to the question, please raise your hand. All right?

20 Do all of you understand? If you have a "yes" answer,  
21 raise your hand, and keep your hand up until I note for the  
22 record who answered "yes" to the question.

23 First question: Have any of you or any of your immediate  
24 family or very close friends ever been involved in a criminal  
25 case, either as a witness or a victim of a crime or a defendant

1 in a criminal matter?

2 All right. Keep your hands up and leave them up.

3 Okay. Juror No. 6, Juror No. 9, Juror No. 20 and  
4 Juror No. 23 and Juror No. 29. All right. And Juror No. 26.

5 All right. Juror No. 6, what was the situation?

6 PROSPECTIVE JUROR NO. 6: A friend of mine, her  
7 boyfriend was called as a character witness for one of the  
8 Boston bombers.

9 THE COURT: Okay. That didn't have any effect on  
10 you whatsoever?

11 PROSPECTIVE JUROR NO. 6: I mean, I just knew. I  
12 knew them.

13 THE COURT: And, Juror No. 9, what was the  
14 situation?

15 PROSPECTIVE JUROR NO. 9: Defendant in a financial  
16 case.

17 THE COURT: Okay. Was it a civil case or criminal  
18 case?

19 PROSPECTIVE JUROR NO. 9: Criminal.

20 THE COURT: And what was the situation?

21 PROSPECTIVE JUROR NO. 9: Financial fraud at a  
22 subsidiary of the company I was CFO of.

23 THE COURT: And so you were charged with a crime?

24 PROSPECTIVE JUROR NO. 9: Yes.

25 THE COURT: And that was charged by the -- was it

1 the state?

2 PROSPECTIVE JUROR NO. 9: Federal.

3 THE COURT: Federal. All right.

4 And where was the case?

5 PROSPECTIVE JUROR NO. 9: Where? Here.

6 THE COURT: Here, in the old courthouse?

7 PROSPECTIVE JUROR NO. 9: I think so.

8 THE COURT: Spring Street.

9 PROSPECTIVE JUROR NO. 9: Brownish building, Roybal  
10 building.

11 THE COURT: Roybal, okay.

12 All right. And you were represented by counsel?

13 PROSPECTIVE JUROR NO. 9: Yes.

14 THE COURT: How far did the matter go? In other  
15 words, you went through an indictment?

16 PROSPECTIVE JUROR NO. 9: Yes.

17 THE COURT: And did you actually go to trial?

18 PROSPECTIVE JUROR NO. 9: Yes.

19 THE COURT: Who was your trial lawyer?

20 PROSPECTIVE JUROR NO. 9: I've forgotten the name  
21 now.

22 THE COURT: Must have done pretty well because you  
23 weren't convicted.

24 PROSPECTIVE JUROR NO. 9: Correct.

25 THE COURT: Looking back at that situation, how do

1 you feel -- how long ago was it?

2 PROSPECTIVE JUROR NO. 9: About 15 years.

3 THE COURT: Okay. And looking back at the  
4 situation, what are your feelings?

5 PROSPECTIVE JUROR NO. 9: I've some serious problems  
6 with the FBI, the federal prosecutors --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 9: -- in terms of the way  
9 they look at things, and their conduct.

10 THE COURT: Okay. What precisely in terms of their  
11 conduct?

12 PROSPECTIVE JUROR NO. 9: Intimidation of witnesses  
13 on my behalf.

14 THE COURT: Well, not on your behalf, but --

15 PROSPECTIVE JUROR NO. 9: Well, witnesses that  
16 were --

17 THE COURT: Would testify on your behalf?

18 PROSPECTIVE JUROR NO. 9: In favor of me,  
19 intimidation of them, threatening on bringing them into the  
20 case if they were to continue helping, things like that.

21 THE COURT: Okay. Well, obviously you understand  
22 that the prosecution here is the United States Attorney's  
23 Office --

24 PROSPECTIVE JUROR NO. 9: Yes.

25 THE COURT: -- representing the United States

1 government.

2 You understand that?

3 PROSPECTIVE JUROR NO. 9: Yes.

4 THE COURT: So do you think you could be fair and  
5 impartial to them because of your personal experiences?

6 PROSPECTIVE JUROR NO. 9: I might be a little  
7 harsher, but --

8 THE COURT: When you say "harsher" -- I mean, let's  
9 put it this way. There are a lot of people that describe  
10 this -- they use various types of analogies, but let's say this  
11 analogy: At the start of a race, would the defense and  
12 government be at the same place starting off? Or would the  
13 defense be a step ahead of the government because of your prior  
14 experiences?

15 PROSPECTIVE JUROR NO. 9: Well, I'd say they're at  
16 the same point at the starting line, but I would look at them a  
17 bit harsher.

18 THE COURT: Okay. When you say you would look at  
19 them a bit harsher, what exactly do you mean? Because,  
20 obviously, as I will explain later on in this case, in this  
21 case, this is a criminal case, and in a criminal case the  
22 burden of proof is always on the Government to prove the  
23 defendant guilty beyond a reasonable doubt, which is the  
24 highest burden.

25 The defendant doesn't have to do anything. The defendant

1 doesn't have to present any evidence. The defendant doesn't  
2 have to testify if he doesn't want to, and if he decides not to  
3 testify, you can't use that against him in any way, shape or  
4 form because the burden is always on the Government in a  
5 criminal case to prove the defendant's guilt beyond a  
6 reasonable doubt. So when you say you would be harsh on the  
7 Government, the Government still has a very high burden anyway.

8 Would you be even harsher than that?

9 PROSPECTIVE JUROR NO. 9: Yes, because based on  
10 things that I found out that had been done afterwards.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR NO. 9: The people would talk to  
13 me again, I don't trust much of what they say.

14 THE COURT: Okay. So you would be harsher on them  
15 because of your experiences?

16 PROSPECTIVE JUROR NO. 9: Yes.

17 THE COURT: Okay. Thank you.

18 All right. Juror No. 20, what's the situation?

19 PROSPECTIVE JUROR NO. 20: When I was 18 years old,  
20 I was charged with petty theft.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 20: We took a bargain -- took  
23 a bargain, probation's over. It was years ago.

24 THE COURT: Looking back at that situation, did you  
25 think that you were treated fairly by the arresting officers?

1 PROSPECTIVE JUROR NO. 20: Yes.

2 THE COURT: Do you think you were treated fairly in  
3 terms of the prosecution of the crime?

4 PROSPECTIVE JUROR NO. 20: Yeah.

5 THE COURT: Do you have any reluctance? You kind of  
6 waited a second before saying that.

7 PROSPECTIVE JUROR NO. 20: I mean, they didn't  
8 legally do anything wrong. I was -- I was just not happy that  
9 they kept attempting to threaten -- they kept threatening to up  
10 the charges if I don't -- refuse to cooperate.

11 THE COURT: Was anyone else involved in the  
12 situation other than yourself?

13 PROSPECTIVE JUROR NO. 20: There was one other  
14 individual.

15 THE COURT: Okay. And do you think that that  
16 individual was treated better or worse than you or the same?

17 PROSPECTIVE JUROR NO. 20: The same.

18 THE COURT: The same. Okay.

19 Let me ask, based upon that experience, do you think you  
20 could be fair and impartial to both sides in this case?

21 PROSPECTIVE JUROR NO. 20: Yes.

22 THE COURT: Okay. Thank you.

23 Juror No. 23, what was the situation?

24 PROSPECTIVE JUROR NO. 23: Oh, I was just -- I just  
25 didn't know if you were referring to the police officers I know



1 who have testified in criminal cases.

2 THE COURT: So you, yourself, have never been  
3 involved, but you have been involved, obviously, with law  
4 enforcement officers who have been accused of various crimes.  
5 All right. Thank you.

6 Juror No. 26 --

7 Let me ask Javier, can you get the microphone for  
8 Juror No. 26?

9 She's doing your job, Javier.

10 PROSPECTIVE JUROR 26: I was kind of like a victim.  
11 My motorhome was broken into and ransacked and stuff like that.

12 THE COURT: Okay. How long ago was that?

13 PROSPECTIVE JUROR 26: Hundreds of dollars worth of  
14 stuff stolen.

15 THE COURT: How long ago was that?

16 PROSPECTIVE JUROR 26: That was about four or five  
17 years ago.

18 THE COURT. And were the culprits ever caught?

19 PROSPECTIVE JUROR 26: Nobody was ever caught.

20 THE COURT: Do you think that the law enforcement  
21 officers who were involved in the investigation -- I presume  
22 you called the police, right?

23 PROSPECTIVE JUROR 26: Twice.

24 THE COURT: Do you think the law enforcement  
25 officers did what they could in terms of investigating the

1 matter?

2 PROSPECTIVE JUROR 26: It's questionable.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR 26: They came out, took  
5 fingerprints. That's as far as they went.

6 THE COURT: Can you think of anything that the law  
7 enforcement officers could have done that they didn't do?

8 PROSPECTIVE JUROR 26: I really don't know. It's  
9 not my expertise.

10 THE COURT: All right. Do you think you would be  
11 affected at all as a juror in this case by that experience?

12 PROSPECTIVE JUROR 26: No, not really.

13 THE COURT: All right. Thank you.

14 Juror No. 29.

15 PROSPECTIVE JUROR 29: I was considered a key  
16 witness in a criminal matter when I was younger. I witnessed a  
17 gentleman vandalize a car and was brought in. It was -- he  
18 took a plea bargain, so it never went to trial.

19 THE COURT: Do you have any feelings at this point  
20 in time about that experience? Do you think it was like  
21 frightening, or do you think it was burdensome, anything of  
22 that sort?

23 PROSPECTIVE JUROR 29: No.

24 THE COURT: You don't think you would be affected at  
25 all as a juror in this case by that situation?

1 PROSPECTIVE JUROR 29: No, sir. Context is  
2 everything.

3 THE COURT: All right. Thank you.

4 Do any of you for any reason have a strong opinion about  
5 law enforcement, either positive or negative? In other words,  
6 something that's different than what you think most members of  
7 the public would feel in terms of law enforcement. Do any of  
8 you have any strong feelings one way or another about law  
9 enforcement? If you do, raise your hand.

10 Okay. Juror No. 3.

11 Anyone else?

12 All right. Juror No. 3.

13 PROSPECTIVE JUROR NO. 3: I think we should support  
14 them more.

15 THE COURT: When you say "support them more," you  
16 don't think that --

17 PROSPECTIVE JUROR NO. 3: Why do we always hear the  
18 bad stuff?

19 THE COURT: All right. Thank you.

20 Let me ask this question: Would any of you treat a law  
21 enforcement officer as a witness differently than you would a  
22 person who was not a law enforcement officer? In other words,  
23 would any of you find or at least assume that if somebody  
24 identifies themselves as a law enforcement officer and they get  
25 on the witness stand, would any of you assume that they would

1 be more truthful or less truthful, or more accurate or less  
2 accurate than a witness who was not a law enforcement officer?

3 Juror No. 2.

4 Anyone else?

5 Juror No. 2, Juror No. 6.

6 Anyone else? I feel like I'm doing an auction. I'm not.

7 Okay. Juror No. 20.

8 Anyone else?

9 All right. Juror No. 2, what's your feeling?

10 PROSPECTIVE JUROR NO. 2: I think that they are a  
11 clan of people that protect each other.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 2: And somehow learn how to  
14 say the words properly to get their point across without  
15 incriminating themselves.

16 THE COURT: Incriminating themselves or  
17 incriminating others?

18 PROSPECTIVE JUROR NO. 2: Yeah. I think I've had  
19 some police officers that were involved in the Rodney King  
20 program, and used to hear they were the ones that stomped on  
21 Rodney King, and how they would talk about how they would  
22 answer their questions ahead of time knowing that it was  
23 politically correct.

24 THE COURT: Okay. So I think you're saying two  
25 things: One is that they're clannish, which means they kind of

1 protect their own. Is that what you're saying?

2 PROSPECTIVE JUROR NO. 2: In terms of you're talking  
3 about a witness, yes, yes.

4 THE COURT: The other thing is not necessarily they  
5 are rehearsed, but they have experience describing situations,  
6 and, therefore you feel -- well, just that they are rehearsed.  
7 They are more experienced in terms of testifying?

8 PROSPECTIVE JUROR NO. 2: I think that their  
9 statements are geared towards the protection of themselves.

10 THE COURT: Okay. But sometimes their testimony  
11 doesn't relate to themselves in any way, shape or form.  
12 Sometimes their testimony would be about something they saw,  
13 heard or did. In that situation -- in other words, you seem to  
14 be implying slightly that they would not be telling the truth.

15 PROSPECTIVE JUROR NO. 2: I think at times they  
16 don't.

17 THE COURT: But is that in terms of only when the  
18 testimony regards themselves? For example, if a police officer  
19 was involved in the Rodney King beating, what that officer said  
20 about what he did, you're saying you would have to take that  
21 with a grain of salt because you wouldn't necessarily find that  
22 would be truthful because he would have an interest in  
23 testifying in a particular way?

24 PROSPECTIVE JUROR NO. 2: From personal experiences,  
25 yes.

1 THE COURT: Okay. But what happens if it's a  
2 situation where the officer is testifying about something that  
3 has nothing to do with him, in other words, he just happened to  
4 be walking along, he sees one car hitting another car. Do you  
5 think that officer would be truthful?

6 PROSPECTIVE JUROR NO. 2: I think they have a  
7 rehearsed approach of how they answer.

8 THE COURT: All right. Thank you.

9 Juror No. 6.

10 PROSPECTIVE JUROR NO. 6: Yeah, kind of the same  
11 thing, situational. If it's involving them, I feel they  
12 operate from a position of power if they are more comfortable  
13 in the situation, but if it's not relating to them, then, you  
14 know, I guess it's a different situation.

15 THE COURT: Okay. And Juror No. 20.

16 PROSPECTIVE JUROR NO. 20: I feel that the police or  
17 that the law enforcement officials have a more in depth sense  
18 of how to manipulate their way through the justice system. I  
19 think like any job, that any kind of political motivation, any  
20 kind of -- any kind of grouping like that, they are under  
21 tremendous pressure to produce certain results as part of their  
22 job, and I think that even that somewhat twists the truth to  
23 varying degrees depending on what they are discussing. I do  
24 think that words from them should be taken with a grain of salt  
25 at the very least.

1 THE COURT: Okay. Let me ask the Jurors 2, 6 or 20,  
2 if I were to instruct you that at least initially all witnesses  
3 have to be treated equally, in other words, you can't assume  
4 that a particular witness would not be truthful, do you think  
5 you could follow that instruction? Or would you say, "Well, I  
6 really can't follow that instruction for purposes of witnesses  
7 who are law enforcement officers"?

8 Juror No. 2, do you think you would follow that  
9 instruction?

10 PROSPECTIVE JUROR NO. 2: No.

11 THE COURT: So in other words, you think you would  
12 have any problems with any witness that is a law enforcement  
13 witness?

14 PROSPECTIVE JUROR NO. 2: No. I would take it with  
15 a grain of salt, but no, I could not hold them that they are  
16 both at the starting point at the same time.

17 THE COURT: And that's true even if the witness is  
18 not testifying as to anything that has to do with themselves,  
19 in other words?

20 PROSPECTIVE JUROR NO. 2: From my dealings with  
21 people that I know that are in law enforcement and part of the  
22 jail systems and small things that I have been involved in, I  
23 don't think I could.

24 THE COURT: Okay. Thank you.

25 Juror No. 6, do you think you could follow that

1 instruction?

2 PROSPECTIVE JUROR NO. 6: Yeah. I don't think it  
3 would be an overriding factor, but I think there is always some  
4 kind of agenda.

5 THE COURT: But do you think you could follow that  
6 instruction?

7 PROSPECTIVE JUROR NO. 6: Yeah.

8 THE COURT: Okay. And, Juror No. 20, do you think  
9 you can follow that instruction?

10 PROSPECTIVE JUROR NO. 20: I believe that I could,  
11 yes.

12 THE COURT: All right. Thank you.

13 And aside from your -- well, aside from Juror No. 9, have  
14 any of you had an experience where either you, yourselves or  
15 anyone near or dear to you has been accused of a crime that you  
16 think should not have been accused of that crime, or went  
17 through a process of some sort of trial process or  
18 investigation process that you think was unfair?

19 Anyone else?

20 Okay. Juror No. 27.

21 PROSPECTIVE JUROR: 25.

22 THE COURT: You look 27. All right. Juror No. 25.  
23 All right. Anyone else?

24 All right. Juror No. 25, let's get the microphone to you  
25 and you can tell us what the situation is.



1 PROSPECTIVE JUROR 25: Sidebar.

2 THE COURT: All right. You want a sidebar. Let me  
3 have counsel at sidebar so we don't have to use the microphone.

4 (Discussion held at sidebar.)

5 THE COURT: All right. What was the situation?

6 PROSPECTIVE JUROR 25: I was on guard in '95, and a  
7 person came in and robbed the store.

8 THE COURT: Uh-huh.

9 PROSPECTIVE JUROR 25: The person took all the money  
10 from the registers, and as they were walking out the store, he  
11 turned his gun on a little girl.

12 THE COURT: He did what?

13 PROSPECTIVE JUROR: He turned his gun on a little  
14 girl, and I had to shoot him, and I winded up killing him. And  
15 the police came. They took me in. And I guess the prosecutor,  
16 they wanted me -- I went through a trial, basically, where it  
17 wasn't the police; it was just the prosecutor. It was nobody  
18 said I was a guard, so they thought it was just two men on the  
19 street --

20 THE COURT: Okay.

21 PROSPECTIVE JUROR 25: -- that was like I walked up  
22 and shot him.

23 THE COURT: I don't quite understand.

24 PROSPECTIVE JUROR 25: The whole thing, the person  
25 that was my -- what was they call it? Public defender.

1 THE COURT: Uh-huh.

2 PROSPECTIVE JUROR 25: He was basically telling me  
3 to take the charge, that way I could get a lesser charge. The  
4 whole thing --

5 THE COURT: Nobody brought up the fact that you were  
6 a security guard for the premises?

7 PROSPECTIVE JUROR 25: Huh-uh.

8 THE COURT: Just out of curiosity, where was this?

9 PROSPECTIVE JUROR 25: The old building.

10 THE COURT: When you say "the old building," Spring  
11 Street?

12 PROSPECTIVE JUROR 25: Yes.

13 THE COURT: So this was a federal charge?

14 PROSPECTIVE JUROR 25: Yeah, I think they was trying  
15 to. But what happened was the day that I was going to be  
16 getting sentenced, the person -- the manager of the store wind  
17 up -- he had been trying to find out where I was. The security  
18 company stopped taking my calls and everything. And he came to  
19 the store, brought all the witnesses from the store, and came  
20 in and testified on my behalf.

21 THE COURT: Okay. I just want to make sure I  
22 understand the situation. I understand the scenario, but I  
23 can't figure out who's doing what. Was this a federal case or  
24 state case?

25 PROSPECTIVE JUROR 25: I think it was federal

1 because of --

2 THE COURT: Were you charged with a manslaughter  
3 charge?

4 PROSPECTIVE JUROR 25: Yes.

5 THE COURT: And this was?

6 PROSPECTIVE JUROR 25: It was '95.

7 THE COURT: I don't see a basis for a federal  
8 charge.

9 PROSPECTIVE JUROR 25: Yeah, because the whole  
10 thing, when they finished up testifying, the judge basically  
11 said he felt that the prosecutor was just gunning, and the  
12 person that was defending me didn't do their job.

13 THE COURT: But this was in federal court?

14 PROSPECTIVE JUROR 25: I think so, because the whole  
15 thing it was just -- I was young at the time.

16 THE COURT: But you don't happen to recall the  
17 building that was in? Because you can tell from the building.

18 PROSPECTIVE JUROR 25: Because I went to different  
19 places, and I know basically the judge had come in, and he  
20 said, "I didn't even know you were a security guard."

21 THE COURT: Do you happen to recall the name of the  
22 judge?

23 PROSPECTIVE JUROR 25: It was '95.

24 THE COURT: This is a big thing in your life.

25 PROSPECTIVE JUROR 25: I know, but I was just so

1 glad to get out of there after the testimony and everything.  
2 You know something, it never shows up on my record or anything  
3 like that.

4 THE COURT: Let me ask you, obviously you went  
5 through that experience, do you think it would affect you as a  
6 juror in this case?

7 PROSPECTIVE JUROR 25: No.

8 THE COURT: Let me ask counsel, do any of you have  
9 any questions?

10 MR. RYAN: What was the final outcome of that?

11 THE COURT: He got released.

12 PROSPECTIVE JUROR 25: I got released. Everything  
13 was taken off my record. It never comes up as anything on my  
14 criminal record or anything because he said I was basically  
15 unjustly done wrong.

16 MR. AVEIS: Can I just ask for clarification?

17 THE COURT: Yes.

18 MR. AVEIS: You were arrested?

19 PROSPECTIVE JUROR 25: Yeah.

20 MR. AVEIS: For -- it involved someone who died?

21 PROSPECTIVE JUROR 25: It wind up he was robbing the  
22 store.

23 MR. AVEIS: I understand. And no charges were  
24 brought, or they were dropped?

25 PROSPECTIVE JUROR 25: They dropped them in the end

1 because the witnesses came in and told him that I was a  
2 security guard. At the time nobody knew I was a security  
3 guard. They thought it was two guys on the street.

4 MR. AVEIS: When was this?

5 PROSPECTIVE JUROR 25: '95.

6 MR. AVEIS: Are you okay?

7 PROSPECTIVE JUROR 25: Trust me, I dealt with it and  
8 everything, so --

9 THE COURT: Any other questions?

10 MR. RYAN: No, Your Honor.

11 THE COURT: Thank you very much.

12 (In open court.)

13 THE COURT: All right. To help you understand, the  
14 immigration laws in the United States are overseen by the  
15 Department of Homeland Security. Sometimes they are referred  
16 to as ICE. Previously it was the INS and various officers. In  
17 other words, these are matters which involve federal law, not  
18 state law.

19 Do all of you understand that?

20 Okay. Do any of you have, yourselves, or anyone in your  
21 immediate family or anyone near and dear to you, ever have any  
22 experiences in dealing with immigration law? In other words,  
23 any of you have like family or friends who made applications  
24 for various immigration benefits, naturalization or permanent  
25 residency, things of that sort?

1           Okay. Juror No. 14. Okay.

2           And, Juror No. 20, you had your hand raised?

3                   PROSPECTIVE JUROR NO. 20: No, I misunderstood until  
4 you clarified it.

5                   THE COURT: Okay. Juror No. 14. Anyone else?

6           No one. Okay.

7           Juror No. 14, what was the situation?

8                   PROSPECTIVE JUROR NO. 14: Oh, I'm a naturalized  
9 citizen. My parents are permanent residents.

10                   THE COURT: Okay.

11                   PROSPECTIVE JUROR NO. 14: So I guess we went  
12 through the whole process.

13                   THE COURT: Let me ask you, looking back at the  
14 process, do you have any criticisms of the process? Do you  
15 think it took too long? Do you think that somebody didn't  
16 review the applications correctly? Any problems with the  
17 process at all?

18                   PROSPECTIVE JUROR NO. 14: No, not much of a  
19 problem. I do remember when we were applying for permanent  
20 residency, I was really little, but I felt that there was -- we  
21 had to go to some office to turn in some paperwork. And it's  
22 all really vague, but I do remember you have to bring a  
23 Government-issued ID, everyone. I was very little. I didn't  
24 have anything.

25           The person wouldn't accept my paperwork because a child

1 didn't have a government-issued ID that was not like a  
2 passport. I didn't have a driver's license or something like  
3 that. So I felt that was pretty unreasonable. But from what I  
4 hear, it's sort of like format. They just do it. It's like a  
5 format; they have to do that. That's one, I guess, negative  
6 experience, but I would say --

7 THE COURT: Let me ask, do you think you would be  
8 affected at all as a juror in this case because of that  
9 experience?

10 PROSPECTIVE JUROR NO. 14: No, I don't think so.

11 THE COURT: Okay. Let me ask, do any of you have  
12 strong feelings about, either positive or negative, about the  
13 United States immigration laws or policies, including those  
14 particular laws that require people who seek admission into the  
15 United States to register and to request permission to enter if  
16 they are not a United States citizen or a lawful permanent  
17 resident or otherwise have a visa here in the United States?

18 Okay. Juror No. 2.

19 Anyone else?

20 Juror No. 3, Juror No. 22. And that's it.

21 Okay. Juror No. 2, what's your opinion?

22 PROSPECTIVE JUROR NO. 2: I just think that the  
23 process has not worked well over the last decade or so  
24 politically, and that changes need to be made in terms of  
25 vetting and properly documenting people that want to come and

1 be American citizens.

2 THE COURT: When you say the process hasn't been  
3 working, do you mean that it is too liberal? Too restrictive?

4 PROSPECTIVE JUROR NO. 2: Too liberal, way too  
5 liberal.

6 THE COURT: All right. Thank you.

7 And, Juror No. 3.

8 PROSPECTIVE JUROR NO. 3: I may have misunderstood.  
9 I just thought, "Hey, I welcome everybody. Take the test."

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 3: Or whatever you take, fill  
12 out the paperwork.

13 THE COURT: So in other words, you have no problem  
14 with the law that would allow people to come in if there was a  
15 basis for them?

16 You all understand, though, most people cannot simply come  
17 in and apply for citizenship? In other words, to get  
18 citizenship, there are certain restrictions that you have to  
19 meet and things of that sort, and then after a certain period  
20 of time, if you meet the requirements, then they can become a  
21 citizen. But for the most part, people cannot simply make an  
22 application to become a citizen because they may not meet the  
23 requirements under the law.

24 Do you understand that?

25 PROSPECTIVE JUROR NO. 3: What are the requirements?



1 THE COURT: Well --

2 PROSPECTIVE JUROR NO. 3: Is there a big long list?  
3 Can they come here and work?

4 THE COURT: No, because, for the most part, one  
5 cannot become a citizen of the United States unless they are  
6 born in the United States or your parents are citizens of the  
7 United States, or I think there are just so many different  
8 types of requirements as to how you can become a citizen of the  
9 United States.

10 But for the most part, if you are born in another country,  
11 you can't make an application to become a citizen of the United  
12 States unless you meet the criteria that is set out in the  
13 legislation that is passed by Congress.

14 So with that in mind, do you have any feelings about the  
15 immigration process?

16 PROSPECTIVE JUROR NO. 3: I do know it's not  
17 working.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 3: I wish I could help.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 3: I know a woman from  
22 Ireland, and it took her a long time to get her citizenship,  
23 but that was such a big deal for her --

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 3: -- you know.

1 THE COURT: All right. Thank you.

2 And, Juror No. 22.

3 PROSPECTIVE JUROR 22: You asked if we felt strongly  
4 one way or the other.

5 THE COURT: Yes.

6 PROSPECTIVE JUROR 22: I do feel strongly that we  
7 should follow the law and --

8 THE REPORTER: I'm sorry. I can't hear you, sir.

9 THE COURT: He will get the microphone.

10 PROSPECTIVE JUROR 22: Just to reiterate, you asked  
11 if we feel strongly one way or the other. I feel strongly that  
12 the laws are a little lax, and that we should follow proper  
13 channels and come through immigration legally instead of  
14 illegally.

15 THE COURT: All right. Thank you.

16 Let me ask this: In the course of this case I will be  
17 telling you or setting out certain criteria as to -- well let  
18 me put it this way: In this case I will define certain -- the  
19 crime itself and the elements that the Government must prove  
20 beyond a reasonable doubt in order to convict the defendant.

21 And as I have indicated, the Government has a high burden  
22 of proof because the Government has to prove their case beyond  
23 a reasonable doubt, but that is all they have to prove. In  
24 other words, they have to meet the criteria and the level of  
25 proof. They don't have to go further, do more.

1 Do any of you have really strong opinions about the  
2 immigration area that would cause you to, perhaps, not follow  
3 my instructions on the law because you have very strong  
4 feelings one way or the other about the immigration laws of the  
5 United States?

6 All right. Juror No. 2.

7 Anyone else?

8 Juror No. 28, you were saying something to Juror No. 29.  
9 I feel like a grammar schoolteacher. What were you saying to  
10 Juror No. 29?

11 You don't want to say it in public. Okay.

12 All right. Let me ask Juror No. 2.

13 PROSPECTIVE JUROR NO. 2: As respectful as I can be  
14 to you, what happens in this room is only one example. What  
15 happens in the real world is what I base my judgment on.

16 THE COURT: What do you mean by that? Not that I  
17 take it personally, but you're in my courtroom.

18 PROSPECTIVE JUROR NO. 2: The process for many years  
19 of applying for citizenship and immigration has been flawed and  
20 broken in terms of the ones that deserve it, make it very  
21 difficult to get to, and the ones that don't deserve it can  
22 hide and never be seen.

23 We look at a half a million immigrants in Southern  
24 California that have been here 20-something years but never  
25 went through the process. So I think the system has a lot of

1 cracks in it, so it's hard for me to, with respect in your  
2 house here, just turn the rest of my opinion off.

3 THE COURT: Okay. So -- and that opinion would  
4 affect you as a juror in this case, you think?

5 PROSPECTIVE JUROR NO. 2: I believe so. I would  
6 follow my heart.

7 THE COURT: Okay. Let me just ask, how many have  
8 heard, for example, about President Trump's executive order on  
9 immigration on entry from certain countries? If you have --  
10 let me just do it this way. How many have not heard about it?

11 Okay. Jurors No. 16, 17.

12 Who else raised their hand? Who else?

13 Jurors No. 16 and 17 are the only ones that have not heard  
14 about it.

15 Now, sometimes persons who are called to be jurors, either  
16 in a civil case or in a criminal case, sometimes say, "Well, I  
17 have very strong philosophical or religious beliefs that would  
18 make it difficult for me to serve as a juror in a case." Some  
19 people take the position that they cannot judge other people;  
20 therefore, they don't want to serve as a juror because they  
21 feel they have to judge other people.

22 Do any of you have any individual strong either  
23 philosophical or religious beliefs that you feel would pose a  
24 problem serving as a juror in this case? Anyone?

25 No.

1           Now, as I've indicated, this is a criminal case, and  
2 jurors in a criminal case are called to make a determination as  
3 to whether or not the Government can prove the defendant's  
4 guilt beyond a reasonable doubt. That is your function. You  
5 weigh the evidence and make a determination as to certain  
6 issues as to whether or not the Government's burden of proof  
7 has been met. However, one of the things that you will not be  
8 asked to do, and this is something that is up to me, is the  
9 issue of punishment. In other words, if you find the defendant  
10 guilty of the crime, then you're not going to be asked to give  
11 any sort of opinion or remark as to what the punishment should  
12 be. That is something that is up to me.

13           Let me ask, do any of you feel that it would be hard for  
14 you to serve as a juror in this case because if you convict the  
15 defendant, you're not going to know what his sentence is going  
16 to be because it is a situation where the sentence will be  
17 determined by me? Do any of you feel that would be  
18 problematic, that you would have difficult serving as a juror  
19 in this case because of that fact? If you do, raise your hand.

20           Juror No. 14. Anyone else?

21           And Juror No. 1.

22           Okay. Juror No. 1 first because he is numerically ahead.

23                   PROSPECTIVE JUROR NO. 1: I just feel like going  
24 through the whole process and everything, you kind of want to  
25 know what the outcome is.

1           THE COURT: Eventually you could find out what the  
2 outcome is. What will happen, if the defendant is convicted,  
3 then what I do is I schedule the matter for a sentencing  
4 hearing, and at the sentencing hearing various materials are  
5 presented to me, and I consider various elements and factors in  
6 terms of selecting an appropriate sentence. But -- and that's  
7 a matter of public record.

8           So if you are interested at the time of sentencing, you  
9 could sit in here at the time of sentencing, if you desire. So  
10 it's not a secret. It's made in the public, but it's made by  
11 me; it's not made by a jury.

12           So in that situation, would you still have some sort of,  
13 you know, nagging feeling or some sort of reluctance?

14           PROSPECTIVE JUROR NO. 1: For me personally, I feel  
15 like I kind of don't know what's going to happen to him. I may  
16 feel, depending on the outcome, if it's very -- if it's  
17 something very severe that I didn't think would happen, or that  
18 you punish him in a way that I didn't feel was in line of what  
19 I feel he should have got, it would be kind of -- if it was  
20 more severe than I thought it was --

21           THE COURT: In other words, you would be concerned,  
22 if you convict him, that he would get sentenced to life or  
23 something?

24           PROSPECTIVE JUROR NO. 1: Yeah.

25           THE COURT: Or even 20 years or 10 years or

1 something like that, that would bother you.

2 Let me ask you, since you are not going to be involved in  
3 the sentencing process, do you think that would affect you as a  
4 juror? In other words, you could not weigh the evidence  
5 because of the fact that you will not know, if you convict,  
6 what his sentence definitely would be?

7 PROSPECTIVE JUROR NO. 1: I think I could, but it  
8 will just be in the back of my mind.

9 THE COURT: All right. Thank you.

10 So in other words, you still think you could be fair as a  
11 juror in this case if you don't know what the sentence winds up  
12 being?

13 PROSPECTIVE JUROR NO. 1: Yes.

14 THE COURT: Juror No. 14, what is your feeling?

15 PROSPECTIVE JUROR NO. 14: I prefer to know the  
16 process. I don't have a problem that the jury -- if you decide  
17 on a punishment, that's completely fine, but I think I would  
18 like to know what are the punishments, if there were  
19 beforehand.

20 THE COURT: But you still feel you could be fair as  
21 a juror in this case even if you don't know what the punishment  
22 he would receive would be?

23 PROSPECTIVE JUROR NO. 14: Yeah.

24 THE COURT: Okay. All right. Thank you.

25 Let me ask, do any of you feel that we should know

1 something about you before we decide whether or not you should  
2 be a juror in this case?

3 Let me ask, Juror No. 18, because you walked in late, this  
4 can be your Jerry Springer moment. Let me ask you, do you  
5 think there's something we should know about you before you  
6 decide whether or not you should be a juror in this case?

7 PROSPECTIVE JUROR NO. 18: No.

8 THE COURT: No? You're just a blank --

9 PROSPECTIVE JUROR NO. 18: Sorry. I went to the  
10 restroom.

11 THE COURT: We didn't want to know that. Let me  
12 ask, if you were sitting on the prosecution side, would the  
13 prosecution side want you as a juror in this case, do you feel?

14 PROSPECTIVE JUROR NO. 18: Sure, I guess.

15 THE COURT: Let me ask, if you were sitting in the  
16 defendant's chair, would the defendant want you as a juror in  
17 this case?

18 PROSPECTIVE JUROR NO. 18: Yes.

19 THE COURT: Okay. So in other words, both sides  
20 should want you. All right.

21 Let me ask, is there anyone of you -- aside from Juror No.  
22 2 has already indicated and Juror No. 9 has already indicated  
23 one way. Aside from Jurors Number 2 and 9, do any of you feel  
24 you could not be a completely fair and impartial juror to both  
25 sides in this case for any reason?



1           So all of you feel you can be completely fair and  
2 impartial? All right.

3           Do any of you not want to serve as a juror in this case  
4 for any reason? For example, you don't like the color scheme  
5 of this courtroom? You don't like the sound of my voice?  
6 Anything? For any reason, you do not want to serve as a juror  
7 in this case for any reason, speak now or forever hold your  
8 peace.

9           Juror No. 14.

10           PROSPECTIVE JUROR NO. 14: Are you talking about  
11 this particular case or --

12           THE COURT: No, just this particular case, this  
13 case. I'm not going to try to throw you into any other cases  
14 in this courthouse, just this one.

15           PROSPECTIVE JUROR NO. 14: Nothing particular.

16           THE COURT: Okay. Thank you.

17           Let me have counsel on the sidebar.

18           (Discussion held at sidebar.)

19           THE COURT: Let me ask counsel, any other questions  
20 you want me to ask?

21           MR. RYAN: Just a question of Juror No. 8,  
22 Your Honor.

23           THE COURT: Okay.

24           MR. RYAN: She has her husband and daughter both are  
25 pastors. I just want to make sure she doesn't have any

1 problem --

2 THE COURT: I already asked that question, do they  
3 have any religious or philosophical beliefs that would make  
4 them not serve as a juror in this case? I already asked her.  
5 Let me put it this way: You can ask her. I will give the  
6 attorneys ten minutes to ask questions.

7 Anything from defense?

8 MR. MENNINGER: No.

9 Do you want to do peremptories now or wait until after?

10 THE COURT: No, something might turn up later, so we  
11 will wait.

12 So we will start with the Government first and then  
13 defense after.

14 MR. MENNINGER: What time do you want to go to  
15 lunch?

16 THE COURT: Let's try to get through this part. Why  
17 don't we do this: We will have the Government do the first  
18 part. We will do your first ten minutes and then the second.  
19 Why don't we do this because Juror No. 20 -- Juror No. 17 is  
20 out because we already agreed he has a problem, and Juror  
21 No. 20, he said he hasn't been able to get ahold of his HR  
22 people, so hopefully he will be able to get back to us after  
23 lunch.

24 Why do you have him here? He has not said anything. He  
25 just kind of like looks -- it's getting to be annoying.

1           You, every now and then, say something.

2           MR. DEMIK: You don't want me to talk.

3           (In open court.)

4           THE COURT: All right. At this point we will have  
5 questions from the attorneys, starting with the Government  
6 counsel first.

7           MR. RYAN: So in this case, all of the Government's  
8 witnesses are a part of the U.S. immigration system. In light  
9 of some of the answers that some of you have given, do any of  
10 you have any feelings about that fact?

11           For the record, no one raised their hands.

12           Judge Wu asked all of you about President Trump's  
13 immigration order, and all but two of you showed some sort of  
14 awareness of that. Can you please give me a better idea of  
15 what your feelings are about President Trump's order.

16           THE COURT: Are you talking about the original one  
17 or the new one?

18           MR. RYAN: Any of President Trump's orders, if  
19 anyone has any strong feelings about them.

20           THE COURT: That would take too long a period of  
21 time, so you have to rephrase your question.

22           MR. RYAN: How about the new one that just came out.

23           Juror No. 2.

24           PROSPECTIVE JUROR NO. 2: It's a hundred percent  
25 necessary.

1 MR. RYAN: Why do you feel that?

2 PROSPECTIVE JUROR NO. 2: Because the process has  
3 been pretty weak for the last ten years of immigration, and I  
4 think we need to start to do something. Again, it's only a  
5 short amount of time, the 75 or 90 days, whatever it is, but  
6 the process has to begin somewhere.

7 MR. RYAN: Okay. Thank you.

8 Juror No. --

9 PROSPECTIVE JUROR 6: It was a misguided attempt to  
10 stop terrorists come in and protect his business interests with  
11 no regard to people's actual feelings or families or how things  
12 are nowadays.

13 MR. RYAN: Juror No. 4.

14 PROSPECTIVE JUROR NO. 4: I feel similarly to Juror  
15 No. 6. I think he is acting without information and sort of  
16 rash. And what makes me really uncomfortable about it, he is  
17 targeting a certain part of the world. And whether or not our  
18 policies are misguided at this point, I think we need to take  
19 an educated look at what's going wrong and approach it as a  
20 worldwide issue, not an issue that's targeting one kind of  
21 people.

22 MR. RYAN: And by "one kind of people," are you  
23 talking about Muslims?

24 PROSPECTIVE JUROR NO. 4: Muslims, Middle Eastern.

25 MR. RYAN: So that is the part of the ban you are

1 opposed to?

2 PROSPECTIVE JUROR NO. 4: No. The overarching  
3 thing, I think he did it just to stir the pot, and I mean, I  
4 think things much harsher than that. I think he is incredibly  
5 racist, and I think he did this to appease his -- the people  
6 that voted for him and to show, like, his strong arm that "I'm  
7 doing something," without giving much thought to what it's  
8 really doing to families, to people in all walks of life, from  
9 immigrants that are doing jobs that no one wants to do, all the  
10 way up to people who have multiple Ph.D.s and are in this  
11 country working and now they can't leave and their families  
12 can't come.

13 MR. RYAN: Do you think your opinion about that  
14 immigration law would affect -- does it affect your opinion  
15 about all immigration laws?

16 PROSPECTIVE JUROR NO. 4: I think it doesn't. I  
17 like to think I'm able to listen to evidence and make a  
18 rational decision.

19 MR. RYAN: Okay. Juror No. 1.

20 PROSPECTIVE JUROR NO. 1: I just feel like he's --  
21 with his current -- his current one is like it's still barring  
22 people, like a specific group of people, and it's -- coming  
23 from a family that migrated over here from, like, in Asia over  
24 to the U.S., it's kind of unfair that he's barring specific  
25 people or a group of people or he's grouping different types of

1 people as the same, and he's just like preventing them from  
2 coming in.

3 MR. RYAN: When did your family migrate over here  
4 from?

5 PROSPECTIVE JUROR NO. 1: Years ago. And it was  
6 like they go through a whole process, but then there were some  
7 complications. But like now even with his new rule, it's still  
8 preventing a lot of people from making a life change, which  
9 U.S. is for -- well, like my family migrated to the U.S. for a  
10 better life, so he's preventing all these people who want a  
11 better life from coming in.

12 MR. RYAN: Now, all the people that just expressed  
13 those somewhat strong opinions about immigration, do you think  
14 you could put aside those opinions and still be fair in this  
15 case?

16 PROSPECTIVE JUROR NO. 2: No.

17 MR. RYAN: Juror No. 2, no.

18 Juror No. 1?

19 PROSPECTIVE JUROR NO. 1: I mean yes, but I may  
20 sympathize more with people who are coming in.

21 MR. RYAN: Okay. Juror No. 4.

22 PROSPECTIVE JUROR NO. 4: Yeah, I think I can be  
23 fair.

24 MR. RYAN: 6.

25 PROSPECTIVE JUROR NO. 6: I agree with what Juror

1 No. 4 said. With Trump's policies, I think his point is to  
2 stop terrorism. Barring a group of people from coming into the  
3 country would not stop terrorism, but at the same time I think  
4 you are going to ask can I be fair? And yes, I will be fair.  
5 I will look at evidence first.

6 MR. RYAN: Okay. Thank you.

7 Anybody else, strong opinions about President Trump's  
8 executive order?

9 All right. Juror No. 8, you said that your husband and  
10 your daughter are both pastors, right?

11 PROSPECTIVE JUROR NO. 8: Yes.

12 MR. RYAN: I know the judge already asked you this,  
13 but I want to make sure. Do you think that given your  
14 connection to religious life, that you would have trouble  
15 passing judgment in this case?

16 PROSPECTIVE JUROR NO. 8: Not at all because I'm, as  
17 a citizen now and as a believer of like -- I was, like, kind of  
18 have information regarding my identity as a citizen, and what  
19 is your role is to really, like, kind of uphold the rules of  
20 the government. And I know that it's the government is a  
21 divine appointment, and we know that it's really for the  
22 interests and good order of the society. So I'm not going to  
23 have a hard time, you know, not unless it's opposed to the will  
24 of God.

25 MR. RYAN: What would you say to that? It's opposed

1 to the will of God?

2 PROSPECTIVE JUROR: God is a forgiving God, and it's  
3 already settled that we are already forgiven. You haven't been  
4 born, and whatever you have done -- whatever you have done, you  
5 are still forgiven, but I will be really fair for what the  
6 rules is going to be.

7 MR. RYAN: Okay. Juror No. 14? I think, 14. You  
8 said you became a naturalized citizen, right?

9 PROSPECTIVE JUROR NO. 14: Uh-huh.

10 MR. RYAN: When was that?

11 PROSPECTIVE JUROR NO. 14: Let's see. I'm sorry,  
12 it's probably three, four -- several years ago.

13 MR. RYAN: Several years ago?

14 PROSPECTIVE JUROR NO. 14: Yeah.

15 MR. RYAN: So would you say you are familiar with  
16 some of the documents that you have to fill out to become a  
17 citizen?

18 PROSPECTIVE JUROR NO. 14: Yes.

19 MR. RYAN: Could you put aside what you already know  
20 about the immigration system and just base your opinion in this  
21 case on the evidence from the Government and the defense?

22 PROSPECTIVE JUROR NO. 14: Could you repeat that.

23 MR. RYAN: Could you take what you already know  
24 about the applications that you have already filled out and set  
25 that aside and only base this case off the evidence that you



1 see that was presented in this Court?

2 PROSPECTIVE JUROR NO. 14: Yeah.

3 MR. RYAN: You think so. Okay.

4 I don't think I have any more questions, Your Honor.

5 THE COURT: All right. At this point, it's now  
6 noon, so let me excuse the jury for lunch, but just a couple of  
7 things before I let you go for lunch. First of all, if you are  
8 wondering where to go to lunch, on the bottom floor of this  
9 building there is a cafeteria that's actually better than the  
10 cafeteria in the old courthouse, so you might want to eat there  
11 if you're not familiar with this area.

12 If you are somewhat familiar with this area, if you were  
13 to go down to the first floor and go make a right as you exit  
14 the building, that would put you on Hill? Or is it Broadway?  
15 It puts you on Broadway if you were to go to the right. And go  
16 two blocks, you wind up at the Grand Central Market. It's a  
17 very interesting place because it has all these old eatery  
18 places. I don't want to call them hip places, but they have  
19 Eggslut.

20 I have never eaten at Eggslut. I thought it was a very  
21 strange name for a restaurant. They have various fast food  
22 places. It's sort of interesting. But as I said, it's two  
23 blocks down. On Hill you would make a right.

24 And there's also there's a lot of Japanese restaurants.  
25 If you were to just continue down First Street for about three

1 or four blocks, there's a lot of Japanese places that have very  
2 interesting food too. But remember, I'm asking you to come  
3 back at 5 minutes after 1:00, so please be prompt.

4 Also, when you are on these breaks, please do not talk  
5 about this case with anyone. And have a very pleasant lunch,  
6 and I will see you here back at 5 minutes after 1:00.

7 PROSPECTIVE JUROR NO. 2: Your Honor, when we walk  
8 out, keep our badges off?

9 THE COURT: You don't have to because I see people  
10 walking around with badges, but if you want to take it off,  
11 feel free to take it off.

12 PROSPECTIVE JUROR NO. 2: Thank you.

13 (Out of the presence of the jury.)

14 THE COURT: Let me ask counsel, did you have an  
15 opportunity to look at the proposed jury instructions, the  
16 first set?

17 MR. RYAN: Yes, Your Honor. We have no objection.

18 MR. MENNINGER: None from the defense, Your Honor.

19 THE COURT: We will make copies, and we will use  
20 those as the preliminary jury instructions.

21 Have a very pleasant lunch.

22 MR. MENNINGER: Thank you, Your Honor.

23 MR. RYAN: Thank you, Your Honor.

24 (Recess taken from 12:01 p.m. to 1:04 p.m.)

25 (Outside the presence of the jury.)

1 THE COURTROOM DEPUTY: Please remain seated and come  
2 to order. This United States District Court is again in  
3 session.

4 THE COURT: All right. Let me ask counsel, anything  
5 I need to do before we bring the jury in?

6 MR. RYAN: No, Your Honor.

7 MR. MENNINGER: The only thing I would ask,  
8 Your Honor, is just that any potential witnesses not be in the  
9 courtroom. I understand Agent Arambulo is the case agent, and  
10 he will be on the witness stand first, but I would ask that  
11 witnesses not be in the courtroom.

12 THE COURT: Let me ask the Government, are there any  
13 witnesses in the courtroom?

14 MR. RYAN: No, there's not, Your Honor.

15 THE COURT: So the persons in the back row are not  
16 going to be witnesses, then?

17 MR. MENNINGER: No, Your Honor.

18 THE COURT: Okay. Great.

19 Also, can I get a stip that the court reporter doesn't  
20 need to transcribe the jury instructions as read since the  
21 jury's going to get a written copy, as counsel are as well?

22 MR. RYAN: Yes, Your Honor, stipulated.

23 MR. MENNINGER: As long as they are made part of the  
24 record, Your Honor.

25 THE COURT: Yes.

1 MR. MENNINGER: Okay. That's fine.

2 THE COURT: We will attach them as part of the  
3 record.

4 MR. MENNINGER: Very good, Your Honor.

5 (Discussion off the record.)

6 THE COURT: Why don't you bring the jury in.

7 THE COURTROOM DEPUTY: Yes, Your Honor.

8 (In the presence of the prospective jury.)

9 THE COURTROOM DEPUTY: You may be seated.

10 THE COURT: At this point, ladies and gentlemen, we  
11 will start with the questioning from defense.

12 MR. MENNINGER: Thank you, Your Honor.

13 So we have been talking a lot today about immigration,  
14 deportation. It kind of feels like something we can't get away  
15 from; it's in the news all the time, and I think that there's a  
16 lot of really strong feelings and emotions on all sides of the  
17 issue. And so -- and I think those are really --

18 THE COURT: Stop, Counsel. Is this leading to a  
19 question?

20 MR. MENNINGER: Yes, yes, Your Honor. Yeah, yeah.

21 So a lot of people think that people who don't have  
22 permission to be in the United States should be deported. My  
23 question is: Does that mean that we should vote to convict in  
24 this case? Does anyone agree with that statement?

25 Juror No. 2, yeah.

1 PROSPECTIVE JUROR NO. 2: If you're breaking the  
2 law, then yes.

3 MR. MENNINGER: Okay. Okay. So if you're breaking  
4 the law, you would vote to convict. And is that -- does that  
5 derive from your view that if someone is here without  
6 permission, they should be deported, correct?

7 PROSPECTIVE JUROR NO. 2: Yes.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR NO. 2: I mean, there's part of  
10 it, you know, for this particular situation of -- if the  
11 pre-facts that we have heard about what the case has to be, the  
12 person was in here, was deported and is back in here again, it  
13 strengthens my position.

14 MR. MENNINGER: Okay. Does anyone want to respond  
15 to that, this idea that if someone should be deported, then  
16 that means we should vote to convict in this case? Or if the  
17 defendant, Mr. Aceves, should be deported, that means we should  
18 vote to convict in this case? Anyone have -- does anyone want  
19 to share Juror No. 2's view?

20 I want to thank you because sometimes it's hard to express  
21 a view that somebody might not agree with, so thank you.

22 Anyone else?

23 PROSPECTIVE JUROR 29: Without knowing the facts of  
24 the case, I'm a law-abiding citizen, and if there is proof that  
25 a law was broken, then I would think you have to convict in

1 this case.

2 MR. MENNINGER: Thank you.

3 Anyone else?

4 PROSPECTIVE JUROR NO. 12: Just like I approach  
5 everything else, content is everything. If I agree with the  
6 statement, if the letter of the law has been broken, then it's  
7 the duty of each person to convict, I guess the broken law, if  
8 it's just -- if it's a matter of well kind of broke the law,  
9 then no, but if this is a broken law, then you have to convict.

10 MR. MENNINGER: You said that it would make a  
11 difference. You said maybe kind of broken the law or actually  
12 broken the law. Can you talk about that a little bit more?

13 PROSPECTIVE JUROR 29: When it comes to some things  
14 with government, bureaucracy is a thing and some things are  
15 slow. So let's say -- I'm throwing this out there. If I got a  
16 notice in the mail that said I had to be there on Tuesday at  
17 5:00, and I show up at 5:00 but I had to be there at 4:00,  
18 tentatively I have broken the rule even though I wasn't given  
19 the opportunity to follow the rule because someone else down  
20 the line didn't do their job properly. That would be a  
21 position where yes, I broke the rule, but I didn't break the  
22 rule. You know what I mean?

23 MR. MENNINGER: Yeah, yeah. Thank you.

24 PROSPECTIVE JUROR 29: Context is everything.

25 MR. MENNINGER: Does anyone share that view?

1 Or maybe Juror No. -- is it Juror No. 12? Do you want to  
2 respond to what he said?

3 PROSPECTIVE JUROR NO. 12: I think throughout the  
4 context of the case you end up with facts, and the case will be  
5 presented to the point where there will be a law there. Was  
6 that law broken? Burden of proof is on the prosecution, and  
7 then you will know kind of the answer to that question.

8 MR. MENNINGER: Anyone else?

9 Juror No. 1.

10 PROSPECTIVE JUROR NO. 1: Yes, I agree, we don't  
11 know exactly what happened, and seeing the evidence and seeing  
12 what's laid out in front of us, then we have a better  
13 understanding what the situation is, because right now we just  
14 know that it is an immigration -- it's dealing with  
15 immigration. That's all we know.

16 MR. MENNINGER: Right, right. We heard Juror No. 2  
17 say if he should be deported, then yes, he would vote to  
18 convict. Do you agree with that view?

19 PROSPECTIVE JUROR NO. 1: If he is to be deported?

20 MR. MENNINGER: If he is deported, then that should  
21 be a vote for conviction.

22 PROSPECTIVE JUROR NO. 1: Just on deportation  
23 itself?

24 MR. MENNINGER: Yes. Is that something you agree  
25 with?

1 PROSPECTIVE JUROR NO. 1: To agree with him of  
2 deportation?

3 MR. MENNINGER: To convict him of the criminal  
4 offense.

5 PROSPECTIVE JUROR NO. 1: If he has broken the laws,  
6 and if we find out he did break the laws through the evidence  
7 and the punishment is deportment, as we said before, the jurors  
8 don't actually have a say in the punishment, but if that's the  
9 punishment, then that's what it's going to be.

10 MR. MENNINGER: Very good. Thank you.

11 Anyone else want to respond to this issue?

12 The next thing I want to talk about is the burden -- the  
13 Government's burden of proof beyond a reasonable doubt because  
14 I think that's something that I would struggle as a juror,  
15 because what that really means is that if you don't see the  
16 right evidence on this day and it doesn't add up to burden of  
17 proof beyond a reasonable doubt, it doesn't matter what you  
18 might feel in your heart. And I think that is something that  
19 is really hard when people feel like they have to make this  
20 really important decision.

21 Does anyone else -- does that resonate with anyone? Does  
22 anyone agree or disagree?

23 Yeah, Juror No. 5 -- 6.

24 PROSPECTIVE JUROR NO. 6: 6. Yeah, it may be hard  
25 because it may technically meet the criteria, but it may still



1 not feel right. I took a class in college where we studied the  
2 Constitution and Supreme Court cases and stuff, and we were  
3 taught how they followed specifically wording, and things might  
4 be interpreted by specific modes of thinking. You can have a  
5 larger picture, but it doesn't work. It seems like you could  
6 be pigeon-holed sometimes.

7 MR. MENNINGER: Do you think it could be harder for  
8 you to hold the Government to that burden?

9 PROSPECTIVE JUROR NO. 6: Yeah, because you can see  
10 both sides of it. I see what you think, but doesn't this make  
11 sense too?

12 MR. MENNINGER: Right.

13 Anyone else?

14 Yeah, Juror No. 4.

15 PROSPECTIVE JUROR NO. 4: I think I might say  
16 something similar, but I think the challenge is going to be we  
17 all will have our own philosophical and moral beliefs, which  
18 may not necessarily link up with the law. And I think from my  
19 own thing, I think that's what would be hard would be to take  
20 the law and try to let that rise above what I may believe  
21 philosophically.

22 MR. MENNINGER: Sure, sure. Thank you.

23 Does anyone else think that would be hard or have anything  
24 else to say on that issue?

25 Well, another thing I want to discuss is the defense's

1 right to remain silent. I will just tell you right now,  
2 Mr. Aceves is not going to be taking the stand. And I think,  
3 you know, a lot of people, you know, have a natural tendency,  
4 and it's something that either resonates with me, that if I  
5 don't hear someone's side of the story, how am I supposed to  
6 side with that person? Does anyone else like have that as a  
7 gut feeling, that maybe that's something that you think?

8 Yeah, Juror No. 1.

9 PROSPECTIVE JUROR NO. 1: Well, if he knows he  
10 hasn't done anything wrong or at least want to get his side of  
11 the story out, it would help if he did speak like his own side  
12 because we're listening to other people, that it's from their  
13 point of view or what they know, and then we are outsiders. So  
14 we don't know exactly what they know, what the defendant knows  
15 unless they tell us, and this gives us an idea how they are  
16 thinking or how they feel and things like that.

17 MR. MENNINGER: Okay. Thank you.

18 Juror No. 6.

19 PROSPECTIVE JUROR NO. 6: Yeah, I think it's like an  
20 important opportunity to speak for yourself because you are  
21 here in this country once and you got caught, and now you're  
22 back. You kind of messed up. And you have to help yourself  
23 out, so I think it's important to speak for yourself.

24 MR. MENNINGER: So it would be hard for you to vote  
25 not guilty if you didn't hear from the defendant?

1 PROSPECTIVE JUROR NO. 6: Yeah.

2 THE COURT: Anyone else?

3 PROSPECTIVE JUROR 10: I would just say that's what  
4 lawyers are for, if he doesn't speak for himself, as long as  
5 the lawyers are giving their opinion -- or not even their  
6 opinion, but the facts on what he's saying. He doesn't have to  
7 speak, so I wouldn't convict him either way if he did or  
8 didn't. I would listen to the facts.

9 MR. MENNINGER: Juror No. 6, you want to respond to  
10 what Juror No. 10 said?

11 PROSPECTIVE JUROR NO. 6: It makes a lot of sense.  
12 The point of lawyers is to tell a story and present it in a way  
13 that benefits them, but I don't know. Yeah, I would still kind  
14 of like to hear something, just a personal anything.

15 MR. MENNINGER: Yeah, Juror No. 2.

16 PROSPECTIVE JUROR NO. 2: I mean, that's where I  
17 mentioned before that the system doesn't always work in the  
18 right favor of the defendant, whoever it happens to be. I'm  
19 sure there's excuses and reasoning and he had family and  
20 whatever else that drove anybody to come back and do those  
21 types of situations, but that's where the burden on the  
22 Government has to be a hundred percent irrefutable, is my  
23 perspective of a broken system.

24 MR. MENNINGER: Okay. Okay. Thank you. Thanks for  
25 sharing that.

1 THE COURT: Counsel, you have a juror over there  
2 raising his hands.

3 MR. MENNINGER: Oh, sorry. I will go to 29 and  
4 then --

5 THE COURT: Then that's it. Your time is up.

6 PROSPECTIVE JUROR 29: Similar to a what Juror  
7 No. 10 said, it's always helpful to hear someone else's own  
8 words on a situation, but it's not inherently necessary  
9 depending upon the evidence presented, that's really what you  
10 have to make the decision on as a juror. It's not just a  
11 person -- it's not just taking a person's word on faith; it's  
12 the evidence to back it up.

13 If the evidence says one way or the other, then it really  
14 doesn't matter if the person takes the stand or not. The  
15 evidence already shows; the facts will tell you what the facts  
16 will tell you. Personally, what I like to hear, a defendant's  
17 own words and their own reasons for why they did what they did,  
18 of course. But going into deliberation to decide on the facts  
19 and whether or not the letter of the law is there or broken,  
20 the burden of proof is met, doesn't necessarily need that extra  
21 level of context, I would say. So for me personally, it  
22 wouldn't drastically alter one way or the other.

23 MR. MENNINGER: All right. Thank you.

24 And, Juror No. 20.

25 PROSPECTIVE JUROR NO. 20: The Fifth Amendment was

1 created to help people in a situation where on the stand their  
2 words could be turned into incriminating evidence against  
3 themselves. And as part of appreciation of not just being an  
4 American, but of all the freedoms that we are afforded, the  
5 Fifth Amendment is very important because if things were as  
6 simple as just common sense "yes" or "no," we wouldn't need so  
7 many attorneys and so many legal books or eight years of school  
8 and the bar exam to interpret the law.

9 The Fifth Amendment, even though in personal disputes it  
10 may feel a lot better to hear both sides of the story in its  
11 entirety, there are times in a courtroom when it's more than  
12 just a basic debate between two people, and the Fifth Amendment  
13 is there in place to help the defense to give themselves the  
14 best possible legal defense, at least in my --

15 MR. MENNINGER: Thank you.

16 Thank you, Your Honor.

17 THE COURT: All right. Let me just ask the jurors a  
18 couple things, just a couple of comments. One thing that I  
19 would instruct the jury later on, but I will instruct you at  
20 this point in time, in regards to what Juror No. 10 said,  
21 nothing that is said by an attorney is evidence. In other  
22 words, the attorneys are allowed to make opening statements,  
23 they're allowed to make closing arguments, and they are  
24 obviously allowed to ask questions, and things of that sort,  
25 but what the attorneys themselves say is not evidence.

1           In other words, if the attorney asks a question of a  
2 witness, the witness's answer is the evidence, not the  
3 question, with one exception. If both sides, both the  
4 attorneys on both sides agree on a fact, you have to -- the  
5 jury has to accept that fact as true, and that's called a  
6 stipulation. So if the attorneys reach a stipulation, I will  
7 have them bring it to your attention, and you will have to  
8 regard that as truth.

9           In other words, what the attorneys say is not evidence.  
10 That doesn't mean you have to disregard what the attorneys say,  
11 obviously, because, again, what the attorneys will be doing,  
12 both in the opening statement and closing argument, is they are  
13 going to be kind of directing the jury as to how they should  
14 view the evidence, which is an appropriate view of an attorney.  
15 But other than that, what the attorneys say is not evidence.

16           Do all the jurors understand it?

17           Okay. And the other thing is, as I instructed you earlier  
18 and I will instruct you again now, the defendant has a  
19 constitutional right not to testify. In other words, that is  
20 part of the Constitution of this country. Therefore, if the  
21 defendant elects not to testify, you cannot use that fact  
22 against him in any way. In other words, you can't go back in  
23 the jury room and say, "Oh, he should have testified," or  
24 something to that effect. You can't use that fact against him.

25           Do all of you understand it?

1           Okay. Let me have counsel at sidebar.

2           MR. AVEIS: Your Honor, would you please read the  
3 beyond-a-reasonable-doubt instruction to the jury as well?

4           THE COURT: I will read what the  
5 beyond-a-reasonable-doubt instruction is to the jury at the  
6 close of the case.

7           MR. AVEIS: In response to Juror No. 2's inquiry  
8 where he said the Government's proof needed to be 100 percent  
9 irrefutable, may be helpful if that juror heard --

10          THE COURT: Let me just indicate that's not the  
11 standard, and I won't read that instruction at this point in  
12 time because I don't feel I need to give that instruction at  
13 this point.

14          Okay. Let me have counsel at sidebar.

15          (Discussion held at sidebar.)

16          THE COURT: Let me indicate to counsel, previously  
17 both sides had agreed that Jurors No. 2 and 9 and 17 would be  
18 dismissed for cause.

19          MR. RYAN: 2 and 9, Your Honor?

20          MR. MENNINGER: We haven't conferred.

21          THE COURT: You haven't conferred on that?

22          MR. RYAN: Do you want us to meet and confer first?

23          THE COURT: Whatever way you want to do it. You  
24 guys can meet and confer. However you guys want to do it is  
25 fine with me.

1 (Discussion off the record.)

2 THE COURT: Let me indicate to counsel, this is not  
3 a bargaining session. If you guys stipulate, that's fine, but  
4 otherwise, you know, it's not something -- it's not a  
5 carpet-trading situation.

6 MR. MENNINGER: Then we stipulate, Your Honor.

7 MR. RYAN: 2 and 9.

8 THE COURT: All right. And previously both sides  
9 agreed to 17, right?

10 MR. RYAN: Correct.

11 MR. MENNINGER: Yes.

12 THE COURT: The other one is Mr. Bornstein, number  
13 21. HR has not responded to him, so we don't know whether or  
14 not he's going to be excused in the future.

15 MR. RYAN: We can challenge him for cause anyway,  
16 Your Honor, based on his statements that he views law  
17 enforcement with a grain of salt.

18 THE COURT: So? He can view law enforcement  
19 testimony with a grain of salt. It doesn't mean he can't be  
20 fair.

21 MR. MENNINGER: Your Honor, I believe he did  
22 indicate --

23 THE COURT: I think he also said that he can be  
24 fair. So the answer to 21 is no, but you can exercise  
25 peremptory on him, if you so desire.



1           So is there anyone else? 2, 9 and 17?

2           MR. RYAN: That's for cause, Your Honor?

3           MR. MENNINGER: And for peremptories, just the first  
4 14?

5           THE COURT: No. What we do is the first 12. When  
6 you exercise a peremptory or if I otherwise excuse, I will have  
7 someone fill in that seat. The next person goes in and fills  
8 that seat.

9           MR. RYAN: So 13 will fill in that seat?

10          THE COURT: 13 -- well, would that be too confusing?  
11 I will tell you what, let's just do 12 in order. In other  
12 words, the first 1 through 12, and then when one is excused, it  
13 will be 1 through 13, and then the next one will be 1 through  
14 14. So everyone will stay where they are seated, but it will  
15 just count to 12.

16          MR. MENNINGER: So nobody will get up.

17          MR. AVEIS: So we will know what the panel will look  
18 like at any point in time.

19          THE COURT: You will know what the panel looks like  
20 at any point in time.

21          (In open court.)

22          THE COURT: All right. At this point in time the  
23 Court would like to excuse Jurors No. 2, 9 and 17.

24          Could you please go back to the jury room and tell them  
25 you have been excused from this matter. Thank you.

1           And then we will start with the challenges from the  
2 parties starting with the Government first.

3           And let me just ask counsel, both sides have the chart so  
4 you understand how the order goes?

5           MR. RYAN: Yes, Your Honor.

6           MR. MENNINGER: Yes, Your Honor.

7           THE COURT: So starting with the Government.

8           MR. RYAN: Your Honor, would the Court please thank  
9 and excuse Juror No. 6.

10           THE COURT: All right. Thank you, Juror No. 6.  
11 Would you please go back to the jury room and tell them you  
12 have been excused from this matter.

13           And for the defense.

14           MR. MENNINGER: Your Honor, the defense would like  
15 to thank and excuse Juror No. 8.

16           THE COURT: Thank you very much, Juror No. 8. Go  
17 back to the jury room and tell them you have been excused from  
18 this matter.

19           For the Government.

20           MR. RYAN: I'm sorry, Your Honor, can I have a  
21 moment?

22           THE COURT: Sure.

23           MR. RYAN: Thank you.

24           (Discussion off the record.)

25           MR. RYAN: Your Honor, would the Court please thank

1 and excuse Juror No. 4.

2 MR. MENNINGER: Thank you very much, Juror No. 4.  
3 Please go back to the jury room and tell them you have been  
4 excused from this matter.

5 For the defense.

6 MR. MENNINGER: Your Honor, the defense would like  
7 to thank and excuse Juror No. 5.

8 MR. MENNINGER: Thank you very much, Juror No. 5.  
9 Would you please go back to the jury room and tell them you  
10 have been excused from this matter.

11 And for the defense again.

12 MR. MENNINGER: Your Honor, the defense would like  
13 to thank and excuse Juror No. 3.

14 THE COURT: Thank you very much, Juror No. 3. Could  
15 you please go back to the jury room and tell them you have been  
16 excused from this matter.

17 For the Government.

18 MR. RYAN: Your Honor, would the Court please thank  
19 and excuse Juror No. 20.

20 THE COURT: All right. Thank you -- well, let me  
21 see.

22 MR. RYAN: I think he's the 12th juror.

23 MR. MENNINGER: I think you're right.

24 THE COURT: All right. Thank you very much Juror  
25 No. 12 -- sorry, 20.

1 MR. RYAN: 20, Your Honor.

2 THE COURT: Would you please go back to the jury  
3 room and tell them you have been excused from this matter.

4 For the defense.

5 MR. MENNINGER: One moment, Your Honor.

6 (Discussion off the record.)

7 MR. MENNINGER: Your Honor, the defense would like  
8 to thank and excuse Juror No. 15.

9 THE COURT: Thank you very much, Juror No. 15.  
10 Would you please go back to the jury room and tell them you  
11 have been excused from this matter.

12 For the defense.

13 MR. MENNINGER: One moment, Your Honor.

14 Your Honor, the defense would like to thank and excuse  
15 Juror No. 22.

16 THE COURT: Thank you very much, Juror No. 22.  
17 Would you please go back to the jury room and tell them you  
18 have been excused from this matter.

19 For the Government.

20 MR. RYAN: Your Honor, we will pass.

21 THE COURT: All right. And for the defense.

22 MR. MENNINGER: Your Honor, we would like to thank  
23 and excuse Juror No. 23, Your Honor.

24 THE COURT: All right. Thank you very much,  
25 Juror No. 23. Would you please go back to the jury room and

1 tell them you've been excused from this matter.

2 For the defense.

3 MR. MENNINGER: Your Honor, we would like to thank  
4 and excuse Juror No. 24.

5 THE COURT: Sorry, which one? Number 24?

6 MR. MENNINGER: Juror No. 24, Your Honor.

7 THE COURT: Thank you very much, Juror No. 24.

8 Would you please go back to the jury room and tell them you  
9 have been used from this matter.

10 And for the Government.

11 MR. RYAN: We will pass, Your Honor.

12 THE COURT: All right. For the defense.

13 MR. MENNINGER: Your Honor, the defense would like  
14 to thank and excuse Juror No. 26.

15 THE COURT: Thank you very much, Juror No. 26.

16 Would you please go back to the jury room and tell them you  
17 have been excused from this matter.

18 MR. RYAN: Your Honor, could we have a brief  
19 sidebar?

20 THE COURT: Sure.

21 (Discussion held at sidebar.)

22 THE COURT: Yes?

23 MR. RYAN: Your Honor, the defense has excused six  
24 white jurors in a row. We are making a reverse Batson  
25 challenge for Juror No. 23.

1 THE COURT: Wait a second. Let me put it this way.  
2 I understand why the defense counsel excused Juror No. 23.  
3 That one, to my mind, is a no-brainer.

4 MR. RYAN: Juror No. 24?

5 THE COURT: 24, I will ask the defense counsel.  
6 Juror No. 15 I have -- I see -- well, I can see why he would  
7 excuse Juror No. 15.

8 MR. RYAN: Juror No. 22.

9 THE COURT: Just a second. Let me pull it up.

10 MR. MENNINGER: If I may, Your Honor.

11 THE COURT: Okay. All right. I will ask an  
12 explanation for Juror No. 22.

13 MR. MENNINGER: 24, you said, Your Honor.

14 THE COURT: I am going to ask for an explanation for  
15 24, 22, and Juror No. 5, I understand why. Let me just ask --  
16 when I say "I understand why," does the Government need for me  
17 to explain why I think the defense counsel excused?

18 MR. RYAN: Juror No. 5 is fine. Juror No. 23 is  
19 fine.

20 THE COURT: Juror No. 15, well, let me hear the  
21 explanation for Juror No. 15. Before you start that, let me  
22 just look at Juror No. 3 and Juror No. 8.

23 I would want an explanation as to Juror No. 3 as well, so  
24 it's 3, 22 and 24. And let me just see as to Juror No. 8.

25 Juror No. 8 I could understand as well.

1 MR. RYAN: What was the most recent challenge,  
2 Your Honor? 26?

3 THE COURT: 26 was the most recent.

4 So just to make the record clear -- well, why don't I do  
5 this. Why don't I have an explanation as to 26 as well. So  
6 basically let me just ask counsel, Government counsel, when I  
7 say "I understand why," do you want the defense counsel to  
8 indicate why as to those as well, or are you satisfied those  
9 ones are obvious why they exercise?

10 MR. RYAN: I believe he set out a prima fascia case,  
11 so I would need him to set forth an explanation as to all of  
12 them.

13 THE COURT: Let me have a defense explanation for  
14 all of them.

15 MR. MENNINGER: Okay.

16 THE COURT: Starting with 8, which is your first  
17 one.

18 MR. MENNINGER: Is it 3, Your Honor?

19 THE COURT: Your first one was number 8, that was  
20 your first peremptory exercise, Juror No. 8.

21 MR. DEMIK: Juror No. 8 isn't white.

22 MR. MENNINGER: I don't believe she is white,  
23 Your Honor. I believe she is Hispanic.

24 THE COURT: So Juror No. 5.

25 MR. MENNINGER: She was a retired police dispatcher,

1 Your Honor.

2 THE COURT: Okay. That's obvious.

3 As to Juror No. 3?

4 MR. MENNINGER: She has close friends in law  
5 enforcement, LAPD, husband was in the fire department,  
6 Your Honor, and also she expressed concern about immigration  
7 issues.

8 THE COURT: All right. And Juror No. 15?

9 MR. MENNINGER: One moment, Your Honor.

10 Oh, yeah, he was a volunteer marshal and had a pro law  
11 enforcement attitude.

12 THE COURT: I don't find that as a pretext, but he  
13 is also the one that said he would have problems on Tuesday  
14 anyway for a medical appointment.

15 MR. RYAN: We would be done before then.

16 THE COURT: What?

17 MR. RYAN: You said by Tuesday of next week.

18 THE COURT: Yeah, but if we are not done by Friday,  
19 if the jury is deliberating, then we have to excuse him because  
20 I indicated I would let him go for his medical, then that would  
21 be somewhat problematic.

22 MR. RYAN: Even with the two alternates?

23 THE COURT: Even with the two alternates, but that's  
24 in addition to the fact that he did serve as a volunteer law  
25 enforcement while he was in college.



1 All right. Then as to 22?

2 MR. MENNINGER: Your Honor he expressed anti -- not  
3 anti-immigrant, but more restrictive beyond immigration.

4 THE COURT: He did.

5 MR. MENNINGER: And he has law enforcement friends.

6 THE COURT: Well, a lot of them have law enforcement  
7 friends. So?

8 And as to 23, your explanation is?

9 MR. MENNINGER: She's the one whose husband  
10 specialized in defense of law enforcement.

11 THE COURT: Then as to 24?

12 MR. MENNINGER: She also had friends in law  
13 enforcement and a son who was in the Marines, and many of the  
14 ICE officers and government witnesses are former military.

15 THE COURT: And as to 26?

16 MR. MENNINGER: He has an uncle in law enforcement.  
17 He's also the victim of a crime, Your Honor.

18 THE COURT: Okay.

19 MR. RYAN: Your Honor, we would argue that those are  
20 pretexts based on the current composition of the jury. To  
21 expand this, 13 and 19 have law enforcement connections as  
22 well.

23 THE COURT: Okay.

24 MR. RYAN: Many of the reasons for striking is for  
25 law enforcement connections.

1 THE COURT: Well, they have other reasons.

2 Anything else?

3 MR. RYAN: That's it, Your Honor.

4 THE COURT: Okay. Anything from the defense?

5 MR. MENNINGER: No, Your Honor.

6 THE COURT: All right. I'm not going to find a  
7 sufficient basis to find a problem, but the next time he does  
8 exercise one, let me know.

9 MR. AVEIS: Yes, Your Honor.

10 MR. RYAN: Thank you, Your Honor.

11 MR. MENNINGER: Thank you, Your Honor.

12 THE COURT: And defense is next, is my  
13 understanding.

14 (In open court.)

15 THE COURT: All right. The next opportunity is with  
16 the defense.

17 MR. MENNINGER: Your Honor, the defense would like  
18 to thank and excuse Juror No. 19.

19 THE COURT: All right. Thank you very much,  
20 Juror No. 19. Could you please go back to the jury room and  
21 tell them you have been excused from this matter.

22 And for the Government.

23 MR. RYAN: Your Honor, we'll pass.

24 THE COURT: All right. And for the defense.

25 MR. MENNINGER: Your Honor, the defense will pass.

1           THE COURT: All right. Let me do this. We are  
2 going to play musical chairs again, no fun, but I'll order you  
3 around. Let me have Juror No. 7, could you go to the chair  
4 next to Juror No. 1.

5           Let me ask that Juror No. 9, could you go to chair  
6 number -- well, you would be in the third seat there. And let  
7 me have the rest of the jurors just line up in order so we can  
8 figure out where you guys are.

9           Juror No. 9, you would be in seat number 3.

10          And then Juror -- okay. I'm so proud. Then let's have  
11 Juror No. 18 go to seat -- the seat in the front row. And then  
12 Juror No. 21 -- Juror No. -- it's sad when you forget numbers,  
13 let alone names.

14          Juror No. 25, could you sit in the chair next to  
15 Juror No. 21.

16          And then, Juror No. 27, could you sit next to  
17 Juror No. 25.

18          And that makes 12. If I could add, I would be Dr. Wu.

19          All right. Let me have counsel on sidebar.

20          (Discussion held at sidebar.)

21          THE COURT: Do you want to stip? There's only two  
22 there. Do you want me to do voir dire?

23          MR. RYAN: If the defense is willing to stipulate to  
24 those two.

25          MR. MENNINGER: We're fine, Your Honor.

1 THE COURT: Any particular order?

2 MR. RYAN: 28, 29.

3 THE COURT: 28 and 29?

4 MR. MENNINGER: Yes, Your Honor.

5 (In open court.)

6 THE COURT: Let me have the Jurors No. 28 and 29  
7 just sit next to Juror No. 27. And let me indicate to Jurors  
8 No. 28 and 29, you're going to be the alternate jurors in this  
9 matter. I hope you know what an alternate juror is.

10 I take that as a "yes."

11 PROSPECTIVE ALTERNATE JUROR: Yes.

12 THE COURT: In that case, let me have the Jurors 1  
13 through 27 stand up to be sworn in as the regular jurors, and  
14 then I will have Jurors No. 28 and 29 sworn in as alternates.

15 THE COURTROOM DEPUTY: Please raise your right hand.

16 **THE JURY WAS SWORN**

17 (The jury responded, "I do.")

18 THE COURT: All right. Let me have the Jurors No.  
19 28 and 29 stand and be sworn in as alternate jurors.

20 THE COURTROOM DEPUTY: Gentlemen.

21 **THE ALTERNATE JURORS WERE SWORN**

22 (The alternate jurors responded, "I do.")

23 THE COURT: All right. Let me thank and excuse the  
24 prospective jurors in the audience. You can go back down to  
25 the jury room and tell them you have been excused from this

1 matter, and thank you very much.

2 And let me have the jury follow my clerk. He will take  
3 you into the jury room and you can see -- we have a great view  
4 from the jury room, by the way. I'm sure you will enjoy it.  
5 And he will tell you the secret codes and things of that sort,  
6 and then we will start the trial itself maybe in about ten  
7 minutes. Okay.

8 (Out of the presence of the jury.)

9 THE COURT: All right. Let me ask counsel, anything  
10 else we need to talk about before the jury comes back and we  
11 start?

12 Let me ask counsel, how long are your opening statements  
13 going to be?

14 MR. RYAN: Less than five minutes, Your Honor.

15 MR. MENNINGER: Maybe ten minutes, Your Honor.

16 THE COURT: Okay. Let me caution both sides, I know  
17 you've heard this before, but opening statements are not  
18 closing arguments. If you make a closing argument in your  
19 opening statement, I will admonish you, and the second time you  
20 do it, I will take that as a sign you don't want to give a  
21 closing argument. Okay?

22 MR. RYAN: Yes, Your Honor.

23 MR. MENNINGER: Thank you, Your Honor.

24 THE COURT: Off the record.

25 (Recess taken from 1:48 p.m. to 1:58 p.m.)

1 (Out of the presence of the jury.)

2 THE COURTROOM DEPUTY: Please be seated and come to  
3 order.

4 THE COURT: Let me ask counsel, is there anything  
5 pertinent that needs to be done before I bring the jury out?

6 MR. RYAN: No, Your Honor.

7 MR. MENNINGER: Just I would ask the clerk if we  
8 could have another set of ear phones for the interpreter for a  
9 family member.

10 THE COURT: Okay.

11 (Pause in proceedings.)

12 THE COURTROOM DEPUTY: All rise for the jury.

13 (In the presence of the jury.)

14 THE COURTROOM DEPUTY: You may be seated.

15 THE COURT: All right. Ladies and gentlemen, you  
16 have been given a set of preliminary jury instructions. I will  
17 be reading these to you at this point in time. However, in  
18 your deliberations, before your deliberations, I will give you  
19 a final set of jury instructions, and that is a final set of  
20 jury instructions that will control your deliberations.

21 Also, let me ask the persons who bring in things to drink,  
22 be really careful about the things and don't let them fall over  
23 because this is new carpeting.

24 PROSPECTIVE JUROR: Absolutely.

25 THE COURT: And I'm a petty person in that regard.

1 All right. Ladies and gentlemen, these are the  
2 preliminary instructions.

3 (Jury instructions read by the Court, not transcribed  
4 herein.)

5 THE COURT: Ladies and gentlemen, any questions on  
6 those instructions?

7 No. Okay.

8 At this point in time let me ask the Government, does the  
9 Government wish to make an opening statement?

10 MR. RYAN: Yes, Your Honor. Thank you.

11 Your Honor, can the jurors have notebooks to take notes?

12 THE COURT: I thought we provided them with  
13 notebooks. They are just hiding them from you.

14 (Discussion off the record.)

15 THE COURT: So this guy is in a bar, and he is  
16 getting drunker and drunker, and he is just getting drunker and  
17 drunker and just vomits himself. He goes, "Oh, my gosh, what  
18 am I going to do. My wife is going to kill me. My wife is  
19 going to kill me."

20 The bartender says, "Don't worry about it. Put a \$10 bill  
21 in your pocket and tell her the person next to you got sick and  
22 afterwards he gave you \$10 for the cleaning of your shirt."

23 And the guy goes, "That's a really good idea." And the  
24 guy goes home --

25 I don't know if I told this one, by the way. Let's stop

1 now. I had to occupy that brief moment. I'll tell you later.

2 Let's have the opening statement.

3 MR. RYAN: Thank you, Your Honor.

4 Good afternoon, everyone. Defendant, Cesar Raul Aceves,  
5 was born in Mexico. He's in the United States illegally. He  
6 was deported to Mexico in July of 2010. At the time he was  
7 warned about the consequences of reentering the United States  
8 after his deportation, but he reentered the United States here  
9 anyway. Once he was here, he was found in Long Beach,  
10 California, over a hundred miles away from the Mexican border.

11 As you will hear in this trial, it's illegal for a person  
12 who was deported to return to the United States without getting  
13 permission from the United States government.

14 Today you will hear from deportation officers. They will  
15 talk about how they deport the person at the United  
16 States/Mexican border. They will also talk about alien files,  
17 also known as an A-file. The defendant has an A-file, and you  
18 will hear and see some of the documents in it.

19 One of those documents shows that on July 12th, 2010, the  
20 defendant was put in immigration court proceedings. A few  
21 weeks later, through his immigration attorney, the defendant  
22 admitted that he was a Mexican citizen and asked to be deported  
23 immediately to Mexico. The very next day, the immigration  
24 judge granted that request; he ordered the defendant be sent  
25 back to Mexico.



1           That same day a deportation officer gave the defendant the  
2 warnings about reentering the United States illegally,  
3 including that he could be criminally prosecuted. Two days  
4 later, deportation officers physically deported the defendant  
5 to Mexico. They watched him walk across the bridge from Del  
6 Rio, Texas into Mexico. After being deported, the defendant  
7 reentered the United States illegally. He did not get the  
8 permission.

9           A deportation officer will testify that he reviewed the  
10 defendant's A-file, and he checked the immigration databases to  
11 make sure that the defendant did not have that permission, and  
12 he will testify that he did not.

13           Ladies and gentlemen, the defendant was deported to  
14 Mexico. He was warned of the consequences of returning  
15 illegally, but he did so anyway. At the end of this trial I  
16 will speak to you again. I will ask you to consider the  
17 evidence and only the evidence in this case. I will ask you to  
18 use your common sense, and I will ask you to return the only  
19 verdict consistent with the evidence in this case, that the  
20 defendant is guilty of the crime of being an alien found in the  
21 United States after deportation.

22           Thank you.

23           THE COURT: All right. Does the defense wish to  
24 give opening statement?

25           MR. MENNINGER: Yes, Your Honor.

1 THE COURT: All right.

2 MR. MENNINGER: Ladies and gentlemen, Mr. Ryan just  
3 told you about how they're going to show that Mr. Aceves was  
4 officially deported and removed in 2010, how they know he is an  
5 alien, how they know that he reentered the country. You heard  
6 the things he was going to prove. I would like to think of it  
7 as building blocks stacked one on top of the other. But here's  
8 the real question in this case: What are those blocks resting  
9 on?

10 THE COURT: Counsel.

11 MR. MENNINGER: Yes, Your Honor?

12 THE COURT: That's an argument. That is not an  
13 opening statement.

14 MR. MENNINGER: Fair enough, Your Honor.

15 THE COURT: All right.

16 MR. MENNINGER: I want you to ask yourself, what is  
17 underlying --

18 MR. RYAN: Objection; argumentative, Your Honor.

19 THE COURT: He's right. What does the defense  
20 expect to prove by way of evidence?

21 MR. MENNINGER: Fair enough, Your Honor.

22 The defense will show that underlying all of these points  
23 is the alien file, or the A-file, just as Mr. Ryan mentioned.  
24 The A-file -- it's actually sitting on the table right now.  
25 It's a collection -- the evidence will show it's a collection

1 of documents sitting in a paper folder.

2 The evidence will show that not one person remembers even  
3 meeting Mr. Aceves in 2010, not one person remembers him at  
4 all. The evidence will show that the Government's case begins  
5 and ends with that paper folder. And in that paper folder you  
6 might -- you will hear that if it's in that paper folder, then  
7 it must be true; and if it's not in that paper folder, then it  
8 can't exist; that the Government is doing the right thing, that  
9 it doesn't make mistakes; that when it enters orders of  
10 removal, it doesn't make mistakes; that the documents are  
11 trustworthy; when it takes a bus full of men and women down to  
12 Mexico, it doesn't make mistakes.

13 But in this courtroom, before someone can be criminally  
14 punished, it's the Government's burden of proving evidence  
15 beyond a reasonable doubt. Mr. Aceves is entitled to --  
16 constitutionally entitled to have a jury of his peers look  
17 carefully at the evidence presented, and unless the Government  
18 proves every element of the offense beyond a reasonable doubt,  
19 he cannot be found guilty of that offense.

20 And you're going to see over the course of the trial that  
21 there are a lot of problems with this paper folder, with this  
22 alien file. Even though every document that immigration has  
23 about a person is supposed to be kept in this file, evidence  
24 will show that that is not true here. In fact, there's some  
25 really critical documents that were just completely missing

1 from this A-file.

2 For example, you're going to hear that in this deportation  
3 case in 2010, an attorney filed some documents in immigration  
4 court asking for Mr. Aceves to be deported. He said he was  
5 representing Mr. Aceves, and just asked for his client to be  
6 deported. And you will hear that because of that, Mr. Aceves  
7 never got a chance to stand up and be heard in immigration  
8 court. He was ordered --

9 MR. RYAN: Objection, Your Honor. That is not an  
10 element to the crime. Irrelevant.

11 MR. MENNINGER: Your Honor, I'm getting there. It  
12 goes to the completeness of the A-file, Your Honor.

13 THE COURT: I also instructed the jury, statements  
14 made by the attorneys in the opening statement are not  
15 evidence, and so we will see where it goes.

16 MR. MENNINGER: Thank you, Your Honor.

17 So these are the documents that were the basis, the reason  
18 he got deported without having a chance to stand up in  
19 immigration court, but you will hear that these critical  
20 documents, they weren't in the A-file. You know, you will hear  
21 that every important document that immigration has about a  
22 person should be in the A-file, but these documents, perhaps  
23 the most important documents, were just not in there. In fact,  
24 the prosecution -- you will hear that the prosecution had to go  
25 get them just for this case.

1           And, in fact, you will also hear that after the judge  
2           relied on those documents to order Mr. Aceves deported without  
3           him having his day in court, the evidence will show that no one  
4           even gave Mr. Aceves a copy of that deportation order. The  
5           order saying that he could never live in the United States, the  
6           evidence will show that he didn't even get a copy of it.

7           MR. RYAN: Objection, Your Honor.

8           THE COURT: Really, you are making a closing  
9           argument at this point in time.

10          MR. MENNINGER: Your Honor, I just want to --

11          THE COURT: It is an opening statement.

12          MR. MENNINGER: Sure, Your Honor, I just want to  
13          highlight the facts that the evidence will show.

14          THE COURT: You are making an argument.

15          MR. MENNINGER: Of course, Your Honor. I will try  
16          to ensure it's just what the evidence shows.

17                 The evidence will show that there are other documents that  
18                 are missing from the A-file. For example, the evidence will  
19                 show that there's missing a written decision from an  
20                 application that was filed way back in 1997. It's just not in  
21                 the A-file. You will see that Mr. Aceves applied to become a  
22                 lawful permanent resident, and there should be --

23          MR. RYAN: Objection, relevance.

24          MR. MENNINGER: Your Honor, it goes to the A-file.  
25          It goes to missing documents in the A-file. This document is

1 not in the A-file.

2 THE COURT: Let me just have counsel at sidebar for  
3 a moment.

4 (Discussion held at sidebar.)

5 THE COURT: Let me ask counsel, I thought the  
6 defendant does not testify. If the defendant does not testify,  
7 what is the evidence that you have that such document was  
8 filled out, that such document was provided to the INS, and  
9 that document should be in the A-file?

10 MR. MENNINGER: So the application is in the A-file.  
11 The regulations say when a decision is made, the decision must  
12 be written, and it's not in the A-file.

13 THE COURT: That's not my question. You said that  
14 he gave -- had an application, that the application is not in  
15 the A-file is what you said.

16 MR. MENNINGER: My apologies, Your Honor. The  
17 application is in the A-file. The decision is not.

18 MR. RYAN: It's irrelevant, Your Honor. Under 403  
19 this is outweighed by any probative value of that.

20 MR. MENNINGER: If I may, Your Honor, the Government  
21 has to prove beyond a reasonable doubt that he didn't have  
22 permission to reenter.

23 THE COURT: Do you have any evidence that that  
24 application would allow him to come into this country?

25 MR. MENNINGER: No, Your Honor, that's not our

1 defense. Our defense is that the A-file is not reliable, and  
2 that it's missing critical documents, just like the documents  
3 from the deportation proceedings.

4 THE COURT: Why is that a critical document if the  
5 document did not allow him to come into this country? Why is  
6 that a critical document?

7 MR. MENNINGER: Your Honor, it's a document that  
8 should be in his A-file. Their case depends on the  
9 completeness of the A-file.

10 THE COURT: The last time we looked --

11 MR. MENNINGER: We are not arguing --

12 THE COURT: -- that the A-file contains all of the  
13 documents, and if it doesn't contain all of the documents.  
14 That he is somehow allowed to remain in this country?

15 MR. MENNINGER: We are not arguing that. We are not  
16 arguing that he is allowed to remain. We are attacking the  
17 Government's evidence. The Government is saying if it does not  
18 belong in the A-file, it doesn't exist. We are seeking to  
19 prove that there were critical documents that are not in the  
20 A-file.

21 THE COURT: The problem is if the -- why do you have  
22 to talk to him? It's easier just to say it. What I don't  
23 understand is what is the evidence that he has some basis to  
24 stay in this country or to come into this country?

25 MR. MENNINGER: We are not arguing what is the

1 lawful permanent resident, Your Honor. We are arguing that the  
2 A-file does not have the documents that it should contain. So  
3 when the Government says the A-file is complete and because  
4 documents are not in the A-file we know they don't exist,  
5 that's not true because the A-file is not --

6 THE COURT: That wasn't his argument.

7 MR. MENNINGER: Your Honor, I believe that that will  
8 be their argument because permission to reenter is not in the  
9 A-file. It doesn't exist.

10 MR. RYAN: It's part of the argument, Your Honor,  
11 but there's additional arguments as well.

12 THE COURT: Like what?

13 MR. RYAN: They queried databases as well. In  
14 addition to the A-file, they have other ways to check.

15 THE COURT: So you are just making an argument to  
16 counter his argument. I will allow the argument to be made at  
17 the closing argument, but I'm not going to allow it at the  
18 opening statement because you are arguing at this point.

19 MR. MENNINGER: I will just make clear I'm telling  
20 what the evidence --

21 THE COURT: No, Counsel. I will give you one more  
22 minute, but all you have been doing the last three minutes is  
23 arguing. All you needed to say is that, you know, the A-file  
24 lacks these documents.

25 MR. MENNINGER: Okay.



1 THE COURT: That's the evidence that you are  
2 supposedly going to base that on. The effect of that is  
3 argument.

4 MR. MENNINGER: Thank you.

5 (In open court.)

6 MR. MENNINGER: Pardon the interruption there.

7 So the evidence will show that there's critical documents  
8 that are missing from the A-file. You will see that there  
9 should be a written decision on the application that was filed  
10 back in 1997 in the A-file, but it's not there. It's totally  
11 missing. Who knows where it is.

12 So as you sit here over the next day or two, I ask you to  
13 think about what proof you are seeing of the elements of the  
14 offense. And if the proof begins and ends with the A-file, how  
15 can that be proof beyond a reasonable doubt?

16 MR. RYAN: Objection; argumentative.

17 THE COURT: That will be his last comment on it.

18 Anything else?

19 MR. MENNINGER: No, thank you, Your Honor.

20 THE COURT: All right. Thank you.

21 Let's have the first Government witness.

22 MR. RYAN: Your Honor, the United States calls  
23 deportation officer Joshua Arambulo.

24 THE COURT: All right.

25 THE COURTROOM DEPUTY: Stop there, sir. Raise your

1 right hand.

2 **JOSHUA ARAMBULO, GOVERNMENT WITNESS, WAS SWORN**

3 THE WITNESS: I do.

4 THE COURTROOM DEPUTY: Thank you. Have a seat.

5 State your name, and spell your last name for the record.

6 THE WITNESS: Good afternoon. My name is Joshua  
7 Arambulo. First name is spelled J-o-s-h-u-a, last name is  
8 spelled A-r-a-m, as in Mary, b, as boy, u-l-o.

9 **DIRECT EXAMINATION**

10 BY MR. RYAN:

11 Q Good afternoon, Officer Arambulo.

12 A Good afternoon.

13 Q Where do you work?

14 A I work for the Department of Homeland Security Immigration  
15 Customs Enforcement out of the Los Angeles field office.

16 Q What is your title?

17 A My official title is deportation officer.

18 Q How long have you been a deportation officer?

19 A I have been a deportation officer since February of 2008,  
20 but I have been with ICE since 2006.

21 Q What are your primary duties in that job?

22 A My current duties are to investigate cases of people that  
23 have been deported and have illegally reentered the country.

24 Q As a deportation officer are you familiar with the term  
25 "alien"?

1 A Yes, I am.

2 Q What does that word mean?

3 A By statute, that word refers to or is defined as a person  
4 that is not a citizen or national of the United States.

5 Q What is an alien file, or A-file?

6 A An A-file -- excuse me. An alien file is an actual file  
7 that contains documents as it pertains to an alien's encounters  
8 with immigration officials.

9 Q And can you explain what an A-number is?

10 A An A-number is a number that's assigned to an A-file as  
11 well as to the corresponding person that A-file belongs to.

12 Q As part of your duties, how many times have you reviewed  
13 A-Files approximately?

14 A It's upwards of over hundreds.

15 Q Who is currently in possession of the A-file for this  
16 defendant, Cesar Raul Aceves?

17 A I'm currently in possession of this file.

18 Q Have you reviewed this A-file?

19 A Yes, I have.

20 Q Are you familiar with Government's Exhibits 1, 2, 3, 4, 16  
21 and 23?

22 (Exhibits 1, 2, 3, 4, 16 and 23 for identification.)

23 THE WITNESS: 4 --

24 BY MR. RYAN:

25 Q 16 and 23.

1 A Yes, I am.

2 Q Where did you see these documents?

3 A They were placed in the A-file.

4 Q Were these part of the A-file that were relating to the  
5 defendant's legal status?

6 A Yes.

7 MR. RYAN: Your Honor, the Government would seek to  
8 move these exhibits into evidence.

9 THE COURT: Any objection?

10 MR. MENNINGER: No, Your Honor.

11 THE COURT: All right. They're admitted.

12 (Exhibit 1, 2, 3, 4, 16 and 23 received into evidence.)

13 BY MR. RYAN:

14 Q Officer Arambulo, if you could just turn to Government  
15 Exhibit 1, which I will place up on the screen.

16 What is this document?

17 A This is a notice to appear.

18 Q What is a notice to appear?

19 A Notice to appear is a document that's served upon a person  
20 that is placed into removal proceedings in front of an  
21 immigration court.

22 Q Who is the person being ordered to appear on this  
23 document?

24 A In this document it is listed as Cesar Raul Aceves.

25 Q What is the date on this notice to appear?

1 A The date on this notice is July 12th, 2010.

2 Q And what is the number in the upper right-hand corner?

3 A That was the A-number that's associated with the  
4 defendant.

5 Q And are there any allegations listed on this page?

6 A Yes, there are.

7 Q Can you please read Allegations 1 and 2?

8 A Allegation Number 1 reads: "You are not a citizen or  
9 national of the United States." Allegation Number 2 reads:  
10 "You are a native of Mexico and a citizen of Mexico."

11 Q When an allegation says "you," to whom is that referring?

12 A That is referring to the person who is being served this  
13 document.

14 Q And in your experience, do these allegations commonly  
15 appear in notices to appear?

16 A Yes.

17 Q Please look at the bottom of the second page of this  
18 exhibit.

19 Who usually signs in the bottom right of that page?

20 A The bottom right is signed by the officer or agent that's  
21 served this notice to appear to the person who receives it.

22 Q And at the bottom left, there is another signature. It  
23 says "Signature of respondent personally served." Who is the  
24 respondent?

25 A In this particular case, it is the defendant.

1 Q And what does it mean if the respondent is personally  
2 served?

3 A That means that they're served in person, face to face  
4 with an officer.

5 Q If you could turn to Exhibit 16 for me.

6 What is this document?

7 A This is a motion for immediate removal.

8 Q And are these types of documents typically found in

9 A-Files?

10 A Typically, yes.

11 Q What is the number next to the word "File" on this page?

12 A That is the A-number corresponding to the defendant.

13 Q Do you recognize the A-number?

14 A Yes.

15 Q And whose is it?

16 A The defendant's, Cesar Raul Aceves.

17 Q And if you would turn to the fourth page.

18 A Okay.

19 Q It says "Respondent admits Allegations 1 through 5." What  
20 does that mean?

21 A It means that he is not contesting those allegations that  
22 the Government --

23 Q Which allegations are those?

24 A Well, as I read, Number 1 and 2, that would be you are not  
25 a citizen and national of the United States; number 2 I believe

1 is you are a citizen or national of Mexico.

2 Q So this relates back to the notice to appear?

3 A Correct, yes.

4 Q It also says under "Relief requested: Order removal." In  
5 your experience, what does that mean?

6 A In my experience, the person that is ordered removed and  
7 is requesting that type of removal just wants to return to  
8 their country as soon as possible.

9 Q And can you tell from this motion whether the person was  
10 represented by an attorney in immigration court?

11 A Per these documents, yes.

12 Q How can you tell?

13 A I believe on -- it looks like almost every page, the  
14 attorney's name is listed on the upper left-hand corner, as  
15 well as the attorney signed it on the third page where it says  
16 "Attorney correspondent," as well as I believe on the fourth  
17 page "Signature of counsel" is listed on the bottom. So that,  
18 to me, would signify that he was represented by counsel at the  
19 time.

20 Q Thank you.

21 Your Honor, at this time I would like to read the  
22 stipulation identified as Government Exhibit 20.

23 (Exhibit 20 for identification.)

24 THE COURT: All right. Any objection?

25 MR. MENNINGER: No, Your Honor.

1 THE COURT: All right. Let me indicate, as I  
2 indicated to the jury, when the parties have reached a  
3 stipulation, that means they both agree on the facts, so you  
4 must accept the fact that they have stipulated to it as true.  
5 Okay. Thank you.

6 MR. RYAN: Thank you, Your Honor.

7 "The following Government exhibits are true and correct  
8 copies of documents found in the A-file of Cesar Raul Aceves,  
9 A-number 076602456, as described below: Government Exhibit 6,  
10 Mexican Birth Certificate of Cesar Raul Aceves; and Government  
11 Exhibit 7, English translation of Birth Certificate of Cesar  
12 Raul Aceves.

13 "Government Exhibit 7 is an accurate translation of  
14 Government Exhibit 6.

15 "Government Exhibits 6 and 7 may be received into evidence  
16 at trial without objection."

17 (Exhibit 6 and 7 for identification.)

18 MR. RYAN: We would move Government Exhibits 6 and 7  
19 into evidence, Your Honor.

20 THE COURT: All right. Government Exhibits 6 and 7  
21 are admitted.

22 (Exhibit 6 and 7 received into evidence.)

23 BY MR. RYAN:

24 Q Officer Arambulo, if you could turn to Government  
25 Exhibit 2.



1           What is this document?

2   A       This document is a summary order of an immigration judge  
3 ordering removal for the respondent, which is defendant.

4   Q       And do you recognize the A-number at the top of this  
5 document?

6   A       Yes, I do.

7   Q       And whose is that A-number?

8   A       That is defendant's.

9   Q       Are these types of removal orders commonly found in  
10 A-Files?

11   A       Yes.

12   Q       What is the date of this document?

13   A       This document is dated July 27th, 2010.

14   Q       Does this document relate back to the notice to appear we  
15 discussed earlier?

16   A       Yes.

17   Q       Does it relate to the defendant's motion that he filed in  
18 immigration court?

19   A       Yes, it does.

20   Q       How do you know that?

21   A       I believe it relates to the notice to appear because,  
22 number one, his A-number is listed there, as well as his name,  
23 and also it is dated sometime three days after his notice to  
24 appear was served. And in regards to the motion, that was  
25 dated, I believe, the day after he put in that -- or excuse me.

1 This order was dated a date after the motion was submitted.

2 Q At the bottom after the "Remove order" it says "Appeal"  
3 with the word "Waived." What, in your experience, does that  
4 mean?

5 A In my experience that means that the respondent does not  
6 want to contest their case anymore and just wants to return to  
7 their country as soon as possible.

8 Q If we could turn to Exhibit 3, please.

9 What is this document?

10 A This is a warrant of removal/deportation.

11 Q And have you read this document before?

12 A Yes, I have.

13 Q How do you know it relates to the defendant?

14 A I believe it relates to him because of the A-number is  
15 listed on the upper right-hand corner, as well as his name is  
16 listed in the center of the page.

17 Q What is the purpose of this type of document?

18 A The purpose of this document is to indicate that somebody  
19 has been ordered removed by some type of entity, as well as it  
20 is a verification confirmation of somebody being removed as  
21 indicated on the second page.

22 Q Okay. Talking about the second page, let's take a look at  
23 that.

24 Now, at the top of this page where it says "Port," "Date"  
25 "Manner of entry," there's some handwriting. Are you used to

1 seeing these types of notes on this document?

2 A Yes, I am.

3 Q Who writes those notes, generally?

4 A Generally the person that confirms the removal of the  
5 person being removed.

6 Q And it says "Del Rio, Texas." In your experience, is that  
7 a city on the Mexican border?

8 A Yes, it is.

9 Q And there is a handwritten date 7/29/10. What does that  
10 date mean?

11 A That is the date the person was actually seen or witnessed  
12 going back across the border to Mexico.

13 Q And then it says "Afoot." What does that mean?

14 A That means the person walked.

15 Q Based on this document, can you tell if anyone verified  
16 the deportation?

17 A Yes, I can tell.

18 Q How can you tell?

19 A There are two signatures: one is signed right next  
20 towards the bottom of the page saying "Departure witnessed by."  
21 That is the first witness of the removal. Below that, on the  
22 bottom of the page you will see "Departure verified by." That  
23 is a second officer or agent that verified this particular  
24 removal.

25 Q And why is there a fingerprint, picture and signature on

1 this document?

2 A That is to confirm the identity of the person being  
3 removed.

4 MR. RYAN: Your Honor, at this time I would like to  
5 read the fingerprint stipulation identified as Government  
6 Exhibit 21.

7 (Exhibit 21 for identification.)

8 THE COURT: All right. Any objection?

9 MR. MENNINGER: No, Your Honor.

10 THE COURT: All right.

11 MR. RYAN: Let me just have one moment, Your Honor.

12 "The following Government exhibits are true and correct  
13 copies of documents found in the A-file of Cesar Raul Aceves,  
14 A-number 076602456, as described below: Government Exhibit 3,  
15 Form I-205, Warrant of Removal/Deportation, dated July 27,  
16 2010; Government Exhibit 11A, Tenprint Fingerprint Card, dated  
17 July 12th, 2010; and Government Exhibit 12A, Tenprint  
18 Fingerprint Card, dated April 10th, 2015.

19 "The right index finger on Government Exhibit 3; a Form  
20 I-205, Warrant of Removal/Deportation bearing name Aceves,  
21 Cesar Raul, is the fingerprint of defendant.

22 "The fingerprints on Government Exhibit 11A, the Tenprint  
23 Fingerprint Card bearing name Aceves, Cesar Raul, dated July  
24 12th, 2010, are the fingerprints of defendant.

25 "The fingerprints on Government Exhibit 12A, the Tenprint

1 Fingerprint Card bearing name Aceves, Cesar Raul, dated April  
2 10th, 2015, are the fingerprints of defendant.

3 "All of the fingerprints on Government Exhibits 3, 11A,  
4 and 12A belong to the same person. If called as a witness at  
5 trial, Amy K. Gordon would so testify. Ms. Gordon is a Latent  
6 Print Examiner for the Department of Homeland Security  
7 Biometric Support Center.

8 "All of the fingerprints on Government Exhibits 3, 11A,  
9 and 12A belong to the defendant.

10 "Government Exhibits 3, 11A and 12A are admissible without  
11 further objection at trial."

12 (Exhibit 11 and 12 for identification.)

13 MR. RYAN: The Government seeks to admit Exhibits 11  
14 and 12.

15 THE COURT: All right. Defense?

16 MR. MENNINGER: No objection, Your Honor.

17 MR. RYAN: Your Honor, on the stipulation, we had  
18 originally identified those exhibits as "A," and they were  
19 redacted, and we subsequently we took out the "A," so just 11  
20 and 12.

21 THE COURT: All right. That's fine.

22 (Exhibits 11 and 12 received into evidence.)

23 MR. RYAN: Thank you, Your Honor.

24 Q Officer Arambulo, if you could turn to Exhibit 4, please.

25 What is this document?

1 A This document is Warning to Alien to Remove or be  
2 Deported.

3 Q How do you know this relates to defendant?

4 A I know that it relates to defendant because it has his  
5 corresponding A-number as well as his name listed after the  
6 A-number.

7 Q What is the purpose of this document?

8 A The purpose of this document is to give the -- give a  
9 person that is being removed a warning, and let's them know the  
10 consequences of returning to the country illegally.

11 Q Thank you.

12 Are you familiar with the CLAIMS system?

13 A Yes, I am.

14 Q What is that?

15 A The CLAIMS system is a system that tracks applications  
16 that are turned in to the USCIS, which stands for the United  
17 States Citizenship and Immigration Services.

18 Q What type of applications does it track?

19 A Anything from applications for lawful permanent residency,  
20 which is your green card. It tracks applications for  
21 employment authorization. It tracks applications for  
22 citizenship, as well as it will track applications for  
23 permission to reenter the country after having previously been  
24 removed. That's just a small sample. Actually, there's a lot  
25 more.

1 Q Okay. If you will turn to Exhibit 23.

2 A Got it.

3 Q Do you recognize this document?

4 A Yes, I do.

5 Q What is this?

6 A This is a printout from an inquiry that was placed into  
7 CLAIMS regarding the defendant and to see what type of  
8 applications he has filed.

9 Q Is there any indication on this printout that the  
10 defendant has become a United States citizen?

11 A No, there's not.

12 Q Was there any indication the defendant had received  
13 permission to enter into the United States?

14 A There is no indication, no.

15 Q Was there any indication that he even asked for permission  
16 to come back in?

17 A No, there is not.

18 Q Are you familiar with the forms that are placed in the  
19 A-file that indicate citizenship?

20 A Yes I am.

21 Q What are those forms?

22 A The forms are the N-400 and the N-600.

23 Q Did you find any of those forms in defendant's A-file?

24 A No, I did not.

25 Q Generally, if an alien becomes a United States citizen,

1 would that paperwork be in the A-file?

2 A Generally, yes.

3 Q Generally, if someone had received permission to reenter  
4 the United States, would that paperwork be in the A-file?

5 A It would be, yes.

6 Q Is there any indication in the A-file of citizenship?

7 A No.

8 Q Is there any indication in the A-file the defendant  
9 requested permission to reenter the United States?

10 A There is none.

11 MR. RYAN: No further questions, Your Honor.

12 THE COURT: All right. Cross?

13 MR. MENNINGER: Thank you, Your Honor. Just one  
14 moment.

15 **CROSS-EXAMINATION**

16 BY MR. MENNINGER:

17 Q Agent Arambulo, you are the case agent for this  
18 prosecution, correct?

19 A That's correct, yes.

20 Q That means you're responsible for investigating the case?

21 A Yes.

22 Q Getting all the evidence the prosecution needs to prove  
23 its case?

24 A Yes, that's correct.

25 Q But when the charges were filed, there was another agent



1 on this case?

2 A That's correct, yes.

3 Q His name is Agent Ron Oki?

4 A That's correct.

5 Q In fact, you just got on this case a few months ago?

6 A I wouldn't say a few months ago. I guess it depends on  
7 what your definition is "a few months ago" because this case  
8 has been continued so many times.

9 Q Fair enough.

10 You have never spoken with Mr. Aceves?

11 A In person?

12 Q Yes.

13 A No.

14 Q So you have never asked him if he was officially deported  
15 or removed?

16 A No, I haven't.

17 Q You never asked him if he reentered the United States  
18 without permission?

19 A No.

20 Q So all of your testimony today is based on the documents  
21 and databases that you have reviewed?

22 A Yes, that's correct.

23 Q Based on your review of the alien file?

24 A Correct.

25 Q And your review of the Government's databases, like the

1 CLAIMS database you just talked about?

2 A Right.

3 Q So an A-file is a file of all of the records that  
4 immigration keeps about a person?

5 A Yes.

6 Q A record of all of the immigration-related documents that  
7 the federal government has for one person?

8 A Yes.

9 Q They're all kept in one place?

10 A Define "one place" for me.

11 Q In the A-file, right?

12 A Yeah. There's also times sometimes an A-file will be  
13 unavailable, so sometimes a temporary file will be made.

14 Q So everything related to official deportation or removal  
15 would normally be in the A-file?

16 A Normally, yes.

17 Q And you know that removal is the same thing as  
18 deportation?

19 A I know that, yes.

20 Q You know that because of your training and experience?

21 A Yes, sir.

22 Q You know the removal is the technical legal word for  
23 deportation?

24 A Yes.

25 Q And you have looked at Mr. Aceves's A-file?

1 A Yes, I have.

2 Q And you're familiar with the documents that are in that  
3 file?

4 A Yes.

5 Q And you say in your testimony there is no documents in the  
6 A-file saying that Mr. Aceves had permission to reenter?

7 A None that I could find, no.

8 Q And there's no proof of a lawful status in the A-file?

9 A None that I could find.

10 Q And if permission to reenter is not in the A-file, then it  
11 doesn't exist?

12 A Well, I'm not only going by the A-file, I'm going by the  
13 CLAIMS check, which checks the applications that were filed on  
14 the alien's behalf.

15 Q So you just mentioned that sometimes there's another file  
16 called a T-file; is that correct?

17 A Sometimes, yes.

18 Q So at certain times documents are not all kept in the  
19 A-file, correct?

20 A There can be times, yes.

21 Q And when the T-file is created, is there a form that's  
22 printed up and included in the A-file?

23 A Form?

24 Q Yeah. Is there a document in the A-file that shows that?

25 A Typically no.

1 Q And, in fact, there was a T-file at a time in Mr. Aceves's  
2 case; is that correct?

3 A I wouldn't know.

4 Q You don't know whether there's a T-file created in this  
5 case?

6 A For this file, I don't know.

7 Q Okay. Can I ask you to take a look at the actual physical  
8 A-file.

9 A Yeah. Can I go down there and pick it up?

10 MR. MENNINGER: Is that okay, Judge, if he picks up  
11 the actual A-file?

12 THE COURT: Sure.

13 BY MR. MENNINGER:

14 Q Agent Arambulo, can you look at the inside cover on the  
15 left-hand side.

16 A Yes.

17 Q There is a notation in there about a T-file being created?

18 A There you go, yeah.

19 Q So there was, in fact, a T-file for Mr. Aceves?

20 A Yes.

21 Q And there's not a document or preprinted form in the  
22 A-file that says that, that you could see that would tell you  
23 that?

24 A Not that I could recall.

25 Q It's just handwritten in pen on the inside folder?

1 A That's what it looks like here, yes.

2 Q Now I want to talk about how you locate an A-file for  
3 someone.

4 A Okay.

5 Q How you could search for an immigration database. You  
6 typically -- or you can look into it with a name and date of  
7 birth, correct?

8 A No. You are asking about checking the file for the  
9 location of the A-file?

10 Q No, I'm sorry, to try to see if someone has an A-file.

11 A Oh, yeah.

12 Q There is a way to search with a name and date of birth; is  
13 that correct?

14 A That's correct, yes.

15 Q In fact, you recently looked for an A-file for one Raul  
16 Aceves Padilla; is that correct.

17 A That's correct, yes.

18 Q Raul Aceves Padilla is Cesar's biological father?

19 A I believe so, yes.

20 Q And he has an A-file?

21 A Yes.

22 Q Pretty sizable A-file?

23 A I'm sorry?

24 Q A pretty sizable A-file, would you say?

25 A I wouldn't know because I have never received that A-file.

1 Q But you do know he has an A-file, correct?

2 A Yes, I do know that.

3 Q In fact, he has been a lawful permanent resident since  
4 '85?

5 A I believe '95.

6 MR. RYAN: Objection; relevance.

7 THE COURT: I will sustain the objection unless you  
8 can lay a foundation.

9 MR. MENNINGER: Well, Your Honor, he just testified  
10 that he knows that he has an A-file, that he searched for it.  
11 And I want the jury --

12 MR. RYAN: Objection, Your Honor. He is going to  
13 make the argument.

14 THE COURT: Pardon?

15 MR. RYAN: He has to lay the foundation to the  
16 witness, right?

17 THE COURT: Yes, but I think he is attempting to  
18 explain what he is attempting to lay the foundation of what it  
19 is.

20 MR. MENNINGER: Right.

21 THE COURT: And what is the foundation?

22 MR. MENNINGER: Well, Your Honor, he just testified  
23 that he -- that he had searched -- he recently looked for this  
24 A-file and I want to elicit specifically how an agent would  
25 locate an A-file.

1 THE COURT: That's not what he is objecting to.

2 MR. MENNINGER: Fair enough, Your Honor.

3 THE COURT: All right.

4 BY MR. MENNINGER:

5 Q So -- well, as you mentioned, you did look for this A-file  
6 recently, the A-file for Raul Aceves Padilla?

7 A Correct.

8 Q And you found it, or you know it exists?

9 A I know it exists, yes.

10 Q But earlier the prosecution in this case just a few weeks  
11 ago couldn't find an A-file for Raul Aceves Padilla?

12 A That's correct. I couldn't find it.

13 Q You couldn't find it in the immigration database?

14 A No, because I had the improper date of birth, so we were  
15 searching with the wrong date of birth.

16 Q Right. You had the date of birth of June 3rd, 1958 but  
17 it's really June 8th, 1958?

18 MR. RYAN: Objection; relevance.

19 THE COURT: Let me have counsel on sidebar.

20 (Discussion held at sidebar.)

21 MR. MENNINGER: Your Honor, I'm just trying to point  
22 out if you have one digit wrong, you won't find an A-file.  
23 That's all.

24 MR. RYAN: They have an A-file in this case, but  
25 they are trying to backdoor that the father is a lawful

1 permanent resident.

2 THE COURT: I don't understand the relevance of your  
3 line of questioning.

4 MR. MENNINGER: So, Your Honor, I mean, he just  
5 testified that he didn't know whether there is a whole separate  
6 file created for my client until I pointed out that it was  
7 handwritten on the inside, and I think immigration's ways --

8 THE COURT: Are you trying to argue this is sloppy  
9 bookkeeping?

10 MR. MENNINGER: Absolutely, absolutely, Your Honor.

11 MR. AVEIS: He is trying to get in that his father  
12 is lawfully here. He is bootstrapping.

13 MR. MENNINGER: I'm just trying to point out,  
14 Your Honor, if one digit is off in the date of birth, there is  
15 not an A-file.

16 THE COURT: What is the point of all this?

17 MR. MENNINGER: It is sloppy bookkeeping and  
18 inadequate investigation, Your Honor.

19 THE COURT: Let me just ask you -- let me just stop  
20 you. Are you challenging the documents that you've already  
21 indicated can come into this case?

22 MR. MENNINGER: No. We are challenging that those  
23 are the complete A-file, that every single document that should  
24 be in there is in there because we know --

25 THE COURT: Let's assume that your argument is



1 correct. What does that have to do with this case?

2 MR. MENNINGER: Well, he just testified that he  
3 knows that -- he testified that it's his opinion that there is  
4 no permission to reenter --

5 THE COURT: Let me ask you, what is the document  
6 that you think is in existence that is not in the file?

7 MR. MENNINGER: Your Honor, we think there is a  
8 reasonable doubt as to whether there's permission to reenter.

9 THE COURT: On what basis do you think that?

10 MR. MENNINGER: Because the Government's evidence on  
11 that is it's not in the A-file, and we know there are documents  
12 missing from the A-file. We know that there is a file at the  
13 time, a completely separate file.

14 THE COURT: What does that prove other than pure  
15 speculation?

16 MR. MENNINGER: Your Honor, that's reasonable doubt.

17 THE COURT: No, it's not. It's pure speculation.

18 MR. MENNINGER: Your Honor --

19 THE COURT: I can understand your argument if your  
20 client would testify and say, "I made this application," or "I  
21 did this or that," then I could understand that then if they  
22 were to say, "Oh, it's not in the file," then you can argue all  
23 this stuff and argue the file is incomplete and it's a mess. I  
24 can understand that. But if he's not testifying, and I don't  
25 understand what it is that you're arguing other than the fact

1 that, you know, there might be some sloppy bookkeeping.

2 MR. MENNINGER: Well, Your Honor, of course my  
3 client doesn't have to testify.

4 THE COURT: I agree, but the problem is that if your  
5 client wants to raise a defense, he has to have a factual basis  
6 for raising the defense.

7 MR. MENNINGER: Your Honor, we are just challenging  
8 the Government's case. This is what the Government has put  
9 forth, and we are pointing out there are flaws in that. That's  
10 what Agent Arambulo just said. He said "Because this is not in  
11 the A-file, it doesn't exist. That's how you know, Jury." He  
12 literally just said that.

13 THE COURT: Let me hear from the Government.  
14 Is the Government really that stupid in this case?

15 MR. RYAN: No, Your Honor. We have the entire  
16 A-file. All the documents are in there.

17 THE COURT: If that's your argument, I'm going to  
18 allow him to go forward. You really have blown the arguments  
19 in this case. So I will let the defendant go forward.

20 (In open court.)

21 BY MR. MENNINGER:

22 Q All right. Agent Arambulo, you testified that you did --  
23 that you have found the A-file for Raul Aceves Padilla,  
24 correct?

25 A Well, I established that there was an A-number.

1 Q You established that there was one?

2 A Yeah.

3 Q But briefly you were not able to find one because you had  
4 the wrong date of birth, correct?

5 A That's correct.

6 Q So you had the date of birth as June 3rd, 1958?

7 MR. RYAN: Objection; relevance.

8 THE COURT: Overruled.

9 THE WITNESS: I believe so, that was the correct  
10 date.

11 BY MR. MENNINGER:

12 Q But the correct birth date is June 8, 1958?

13 A Yes.

14 Q And the difference between June 3rd, 1958 and June 8, 1958  
15 means that the A-file didn't come up in your search?

16 A It might have, but without the specific date, it was  
17 pretty difficult to center on exactly that set of names with a  
18 particular date of birth.

19 Q Fair enough. Thank you.

20 A Yep.

21 Q Now I want to talk about Mr. Aceves's removal proceedings  
22 from 2010. The purpose of a removal proceeding is to determine  
23 whether someone can stay in the country or not, correct?

24 A That's correct.

25 Q The proceedings where a person can make the case to the

1 immigration judge?

2 A Yes.

3 Q They typically make this case at a hearing in immigration  
4 court?

5 A Yes.

6 Q And at the hearing, ICE or immigration tries to prove that  
7 the person should be deported?

8 A Yes.

9 Q And the person presents his defense or can present his  
10 defense as to why he should be allowed to stay?

11 MR. RYAN: Objection; speculation.

12 THE COURT: Let me ask the witness, do you  
13 understand the question?

14 THE WITNESS: I'm sorry?

15 THE COURT: Do you understand the question?

16 THE WITNESS: If you can repeat it one more time.

17 THE COURT: Why don't you repeat the question.

18 MR. MENNINGER: Sure.

19 Q So you said that at the hearing in immigration court, ICE  
20 or immigration tries to prove that the person should be  
21 deported?

22 A I think in theory, yes, that is the point.

23 Q And the person who is in immigration court is allowed to  
24 present his defense as to why he is allowed to stay?

25 A Yes, you are allowed to do that.

1 Q And then the immigration judge decides whether or not to  
2 enter an official order of deportation or removal?

3 A It is up to the discretion of the immigration judge,  
4 correct.

5 Q But the immigration judge is the one who makes that  
6 decision?

7 A Yes, that's correct.

8 Q So it's not to decide if somebody is guilty of a crime in  
9 immigration court?

10 A What's the question?

11 Q Sure. The immigration judge doesn't decide if someone is  
12 guilty of a crime or not, right?

13 A Correct. He just orders somebody removed or allows them  
14 to stay in the country.

15 Q And you testified that removal proceedings before an  
16 immigration judge start with the notice to appear?

17 A Yes.

18 Q The notice to appear tells the person that ICE, or  
19 immigration, is trying to deport them?

20 A In short, yeah. In short, yes.

21 Q It also tells them when and where the immigration court  
22 will be?

23 A Yes.

24 Q And Mr. Aceves received a notice to appear?

25 A Yes, he did.

1 Q And it was given to him on July 12th, 2010?

2 A I believe that's the date on here, then that's correct,  
3 yes.

4 Q And the notice to appear told him that he would get a  
5 hearing at immigration court in El Paso, Texas?

6 A I would have to look at the --

7 Q Please, go ahead. It's Government's Exhibit 1.

8 A Yes, El Paso, Texas is correct.

9 Q This notice to appear didn't actually tell him the date or  
10 time of the hearing; is that correct?

11 MR. RYAN: Objection; relevance.

12 THE COURT: Overruled.

13 THE WITNESS: Yeah, that's correct. That's usually  
14 set up at a later point once the documents are put on or once  
15 the case is put on a docket with an immigration judge.

16 BY MR. MENNINGER:

17 Q Right. And that's what it says, the date and time will be  
18 later set?

19 A Yes, usually to be determined, correct.

20 Q When Mr. Aceves received this notice, it said he would see  
21 a judge, but the date had not been set yet, right?

22 A Yes, per this notice, yes.

23 MR. MENNINGER: One moment, Your Honor.

24 If I may approach, I would like to show a document to the  
25 witness, Your Honor.

1 THE COURT: What is the document?

2 MR. MENNINGER: It's a document from the A-file.

3 THE COURT: What document is it?

4 MR. MENNINGER: I can show it to the Court, if you  
5 would like.

6 THE COURT: Show it to --

7 MR. MENNINGER: Of course. I will show it to  
8 everyone.

9 THE COURT: Let me ask the Government counsel, any  
10 objection?

11 I take that as a "no."

12 MR. RYAN: We object, Your Honor, on relevance.

13 THE COURT: Is this part of the A-file?

14 MR. MENNINGER: Yes, Your Honor.

15 MR. RYAN: Yes, Your Honor.

16 THE COURT: Overruled.

17 BY MR. MENNINGER:

18 Q So, I have just shown you a document that's been marked  
19 defense Exhibit 211.

20 (Exhibit 211 for identification.)

21 THE WITNESS: Yes.

22 BY MR. MENNINGER:

23 Q You recognize this document?

24 A Yes, I do.

25 Q And this document was in Mr. Aceves's A-file?

1 A I can't recall immediately off the top of my head.

2 Q Okay. Do you want to take a look in the A-file and see?

3 A If you want me to, yeah, no problem.

4 Q Yeah, of course.

5 A Yes, it is placed in here.

6 MR. MENNINGER: Your Honor, we ask to admit defense  
7 Exhibit 211 into evidence.

8 THE COURT: All right. Any objection?

9 MR. RYAN: Yes, Your Honor, relevance.

10 Your Honor, can we have a brief sidebar on this issue?

11 THE COURT: All right.

12 (Discussion held at sidebar.)

13 MR. RYAN: Your Honor, they are trying to contest  
14 the underlying -- the validity of the underlying deportation.  
15 It was already ruled on in this case and was dismissed.  
16 Whether he is validly deported is no longer an issue here.

17 THE COURT: Well, let me decide here. Apparently  
18 the Government's case rests upon the A-file. You have  
19 indicated that to me. So, therefore, I'm allowing everything  
20 that's in the A-file to come in that's the Government's case.

21 MR. RYAN: Not every document is relevant to the  
22 elements of my case.

23 THE COURT: That might be but how do I know which is  
24 relevant and which are not relevant. If in fact the Court has  
25 already ruled there is no dispute, then at the time of closing



1 argument you can basically tell the jury the Court has already  
2 found if I in fact ruled that so this line of argument that  
3 he's trying to get in is defeated automatically because all you  
4 need to do is say the Court has already ruled that he was  
5 properly deported.

6 MR. RYAN: Right, but because the Court has already  
7 ruled we should be able to keep it out now.

8 THE COURT: The only problem is you keep saying your  
9 case is dependent on the A-file.

10 MR. RYAN: Not entirely dependent on the A-file.

11 THE COURT: Well, dependent partially on the A-file  
12 I'm going to allow it because if you rely on parts of it.

13 MR. RYAN: Part of it, yes.

14 THE COURT: How do I know what's relevant and not  
15 relevant.

16 MR. RYAN: It is asking for a hearing in immigration  
17 court.

18 THE COURT: I have no idea. I don't know what the  
19 defense is. What's your line of argument on this?

20 MR. MENNINGER: As we pointed out in the in camera  
21 trial memorandum we have asked for an instruction that he knew  
22 that he was deported, the fact that he was expecting a hearing  
23 and never received one is relevant to that.

24 THE COURT: No, but if he was lawfully deported.

25 MR. MENNINGER: We are not arguing --

1 THE COURT: Counsel, that's not going to work  
2 either. If he is lawfully deported I will sustain the  
3 objection on grounds of relevance that's the basis of trying to  
4 get this document is. You can't go around my ruling.

5 MR. MENNINGER: We are not trying to go around your  
6 ruling.

7 THE COURT: Yes, you are.

8 MR. MENNINGER: Your Honor, we submitted a jury  
9 instruction that he has to know he was deported.

10 THE COURT: It says on the document that he knows he  
11 was deported.

12 MR. MENNINGER: He didn't sign off on the document,  
13 Your Honor. He signed off on the document that he was being  
14 fingerprinted, Your Honor.

15 MR. RYAN: His signature is on the document. His  
16 picture is on the document. His fingerprint is on the  
17 document. His name and number are on the document.

18 MR. MENNINGER: Your Honor, that doesn't mean that  
19 he was deported as evidence we will bring out shows.

20 (In open court.)

21 THE COURT: Let's do this. Let me ask the jury. We  
22 are going to take a break at this point in time. Why don't you  
23 come back at 25 after, and we will start again at 25 after.

24 THE COURTROOM DEPUTY: All rise for the jury.

25 (Out of the presence of the jury.)

1 THE COURT: Let me also excuse the witness.

2 Thank you.

3 MR. RYAN: Your Honor, we will send the witness  
4 outside for now.

5 THE COURT: I just did.

6 MR. RYAN: Oh, sorry.

7 THE COURT: Let me indicate to the Government's  
8 counsel, the problem here is that the Government's presentation  
9 of its case -- I mean, the problem is, to be blunt, is that you  
10 probably know too much, and you don't establish the background  
11 of things you need to establish for background, and then you  
12 say -- when you're relying on certain portions of the A-file,  
13 you don't explain which portions are particularly relevant or  
14 not relevant. You just say, "Relying on this, this and this"  
15 and saying, "Relying on the A-file."

16 If the Government relies on the A-file, I will allow the  
17 defense to attack the A-file. But since you didn't point out  
18 the relevant portions, you just say, "Relying on this portion  
19 or that portion," you are not saying what is the relevant  
20 portion. You are not laying the background so the defense can  
21 attack the contents of the A-file.

22 MR. RYAN: Your Honor, I don't think we dispute that  
23 they can attack the contents, but the way they're doing it is  
24 they are trying to attack the validity of the underlying  
25 removal order. The validity of the underlying removal order,

1 it is valid. The Court has ruled that in a 1326 ruling. So  
2 the only question now is whether he was actually deported.  
3 This document does not say anything and does not go to that  
4 issue.

5 THE COURT: I would probably agree at this point in  
6 time with all of the discussion we have had, but up until this  
7 point in time, what can I say? In other words, you really need  
8 to establish -- if you're going to be talking about the A-file,  
9 you really need to establish the background as to what is  
10 supposed to be contained in the A-file, the progression in  
11 which these documents somehow make sense in relationship to  
12 each other, but you haven't done any of that, so it's pretty  
13 much impossible to tell, other than the fact that you've  
14 admitted this document and this document and this document,  
15 what exactly it all means.

16 MR. RYAN: Your Honor, we are just -- the documents  
17 we submitted go specifically to one element of the offense or  
18 another. That's why they're relevant in the case. The  
19 documents they are trying to submit do not go to any element in  
20 this case.

21 THE COURT: Well, you know, it might have been  
22 helpful in your opening statements, you said what you say, what  
23 the Government needs to show is A, B, C and D, and the  
24 Government will show that by showing A, by this document, this  
25 document and this document; B, by this document, this witness's

1 testimony. That's really what an opening statement is, what  
2 you expect the evidence to be in terms of that which you're  
3 arguing your case.

4 And usually when one argues a case, one bases it upon the  
5 jury instructions because the jury instructions say what the  
6 elements are. And so that's kind of like the easiest way to do  
7 that, but you kind of didn't do it that way. So it's difficult  
8 at least for me to figure out what you're doing at this point  
9 in time.

10 But conversely, however, the defense is -- apparently your  
11 argument is because it is sloppy recordkeeping, guess what, the  
12 defendant was never deported from the United States, but  
13 unfortunately, the problem is the record portion, that portion  
14 of the A-file is not sloppy. Those documents are there.

15 MR. MENNINGER: Right, Your Honor. Well, those  
16 documents are there. We would submit there's a reasonable  
17 doubt as to whether those documents are reliable. And also,  
18 the key piece is what is not there. They are saying permission  
19 is not there.

20 THE COURT: Let me stop you. The problem is is that  
21 I can understand you are making that argument if you had  
22 evidence to establish that, for example, there is a photograph,  
23 there is a fingerprint, and there is a signature. Are you  
24 planning to offer evidence that that is not his signature? Are  
25 you planning to offer evidence that is not his photograph? Are

1 you planning to argue something along those lines. That, I  
2 don't understand.

3 MR. MENNINGER: Your Honor, we are intending to  
4 argue that document is unreliable, and when we have those  
5 witnesses that signed that document, we fully intend to cross  
6 them on that. Agent Arambulo will testify --

7 THE REPORTER: One at a time.

8 THE COURT: If the substance of your argument is "Do  
9 you remember him signing this?" I mean how many years ago is  
10 it? And how many have they looked at?

11 MR. MENNINGER: I agree with you, Your Honor. That  
12 is one point, but that's not the only point, Your Honor.

13 THE COURT: Let me ask the Government, does the  
14 Government have a fingerprint expert? Does the Government  
15 have --

16 MR. RYAN: He stipulated that the fingerprint on  
17 that warrant of removal is the defendant's.

18 THE COURT: All right. If that's stipulated to, I  
19 don't quite understand what the argument is here.

20 MR. MENNINGER: Well, Your Honor, our argument is  
21 that the document is unreliable for what it purports to show,  
22 Your Honor. It purports to show he was deported, and we will  
23 argue, and when we get to those witnesses, we will establish  
24 that, Your Honor, that there's a reasonable doubt as to whether  
25 that document actually proves what it purports to prove.

1 THE COURT: All right. I will see what happens, but  
2 let me ask, as to this particular document here, the one that  
3 you want to get in, Number 211, what's the point of this?

4 MR. MENNINGER: Well, Your Honor, it's like the  
5 prosecution just said, there are certain elements of the  
6 offense. We submit that one of those elements, and we have  
7 argued in a trial brief that remains pending, that one of the  
8 points that the Government needs to prove is that Mr. Aceves  
9 knew that he was being deported. The fact that he had been  
10 offered a hearing and did not receive the hearing, did not  
11 receive the removal order, calls into question, reasonable  
12 doubt, whether he knew that he was being deported.

13 THE COURT: Let me ask the Government, what is the  
14 evidence to the fact did he have a hearing, or was the hearing  
15 waived?

16 MR. RYAN: He waived his hearing. He filed a motion  
17 for immediate removal through his immigration attorney, and the  
18 judge granted that request.

19 THE COURT: And what is the evidence that he  
20 actually made the request?

21 MR. RYAN: He filed a motion.

22 THE COURT: I understand his attorney filed the  
23 motion. Did he sign the motion?

24 MR. AVEIS: It's not an element that he knew he was  
25 deported.

1 MR. RYAN: All right. Going back to that, that  
2 isn't an element, Your Honor. The element is that he was  
3 deported from the United States. Reading knowledge into that  
4 is not supported by case law or the jury instructions.

5 MR. MENNINGER: Your Honor, as we argued in our  
6 brief, yes, it is supported by case law. We admit the  
7 Ninth Circuit has not decided one way or another, but Supreme  
8 Court case law, combined with en banc Ninth Circuit instruction  
9 of what the mens rea for this crime is, together make clear  
10 that the knowledge is the correct mens rea and applies to every  
11 element of the defense.

12 THE COURT: I will certainly agree with the defense,  
13 that if the Ninth Circuit hasn't made a ruling on this, the  
14 factual predicate should be established one way or the other.  
15 Even if I rule against the defendant, that it's not a  
16 requirement, I should at least allow the defendant to lay the  
17 factual foundation for it such that if it goes on appeal and  
18 the Ninth Circuit in its wisdom elects to find that it is part  
19 of the mens rea in that regard, then there would be a -- we  
20 would have already done the factual foundation one way or the  
21 other.

22 MR. AVEIS: May I be heard, please?

23 MR. MENNINGER: Yes, Your Honor.

24 MR. AVEIS: Thank you, I'm Mark Aveis for the  
25 defendant.



1 I just want to put on the record because there are a  
2 number of people speaking.

3 THE COURT: You already announced that at the  
4 beginning of the case.

5 MR. AVEIS: Your Honor, I just want to be clear,  
6 counsel at sidebar -- the jury is not here -- mentioned that  
7 there was an in camera trial memorandum, and counsel has now  
8 said that we made that argument. I would assume that the  
9 reference to the en banc Ninth Circuit decision that counsel  
10 has just alluded to, among the other arguments, were contained  
11 in that in camera trial memo. The Government has not seen  
12 that. We are a bit concerned that we haven't had a chance to  
13 deal with what appears to be an ex parte contact between the  
14 defense and the Court about --

15 THE COURT: No, the ex parte contact was in the way  
16 of an in camera request for a subpoena, is my recollection.

17 MR. AVEIS: He just said there is an in camera trial  
18 memorandum which reference case law, which is total news to us  
19 in the last two seconds.

20 MR. MENNINGER: Can I address that, Your Honor?

21 THE COURT: Yeah, I don't recall -- let me put this,  
22 he may have filed it. I don't recall reading it.

23 MR. AVEIS: Great, but we don't know what it says.

24 THE REPORTER: One at a time, please.

25 MR. MENNINGER: I'm sorry, Court Reporter.

1           The legal argument I'm referring to is a public filing.  
2           It's Document 115, the defense proposed jury instructions. If  
3           you look at pages 5 and 6 and 7 is the legal argument I'm  
4           referring to. We argued a theory of defense that was simply  
5           based on facts, Your Honor. That document contains no law.

6           MR. AVEIS: Is there an in camera trial memorandum,  
7           though?

8           THE COURT: As I indicated, I haven't read it. They  
9           may have filed it, but I haven't read it if they have filed it.

10          Let me ask counsel, did you file such an in camera?

11          MR. MENNINGER: Yes. We did file an in camera memo,  
12          Your Honor. It was just facts, not any case law whatsoever.

13          THE COURT: What document number?

14          MR. MENNINGER: If you give me a moment, I can tell  
15          you, Your Honor.

16          THE COURTROOM DEPUTY: It's not on the docket yet.

17          MR. MENNINGER: There was a notice of manual filing  
18          that disclosed it as a trial memorandum, Your Honor.

19          THE COURT: When was it filed?

20          MR. MENNINGER: Perhaps Thursday or Friday,  
21          Your Honor.

22          THE COURTROOM DEPUTY: It was launched on the 2nd.

23          THE COURT: All right. Let me ask, why are you  
24          filing a trial memorandum in camera?

25          MR. MENNINGER: Your Honor, because that contains

1 the theory of the defense.

2 THE COURT: So what. We are in trial. Why are  
3 you -- I mean --

4 MR. MENNINGER: Because the defense has a right,  
5 Your Honor, not to disclose the theory of the defense. We have  
6 a duty to disclose any evidence that we are going to use in our  
7 case in chief. We have complied with that. We are not  
8 required to disclose our theory and what facts we seek to  
9 elicit with, you know -- I'm sorry, what arguments we seek to  
10 make with the facts that are elicited at trial.

11 THE COURT: The problem is you are making these  
12 arguments that aren't based on fact, well, at least it hasn't  
13 been established at this point in time. Maybe you will be able  
14 to establish these. I don't know.

15 MR. MENNINGER: I'm getting there, Your Honor.

16 MR. AVEIS: Counsel just said they have a duty to  
17 disclose the facts that they are to use in their case in chief.  
18 Are we to infer, therefore, there will be an affirmative  
19 defense?

20 THE COURT: I presume there is going to be an  
21 affirmative defense.

22 MR. AVEIS: I don't believe they have a legal duty  
23 to do that. And to give you what those facts are and not us,  
24 I'm not sure that's right, but beyond that, whether or not it's  
25 an affirmative defense --

1 THE COURT: Let me put it this way. Attacking the  
2 elements of the case in chief is never an affirmative defense.

3 MR. AVEIS: Precisely. I think it's sort of a  
4 declined bottle of reasoning for them to provide anything in  
5 camera that would relate to any fact.

6 THE COURT: Let me just ask the defense counsel as a  
7 matter of law, which you really should disclose to the Court,  
8 what is the contention -- on what basis are you saying that the  
9 defendant has to have been aware that he was deported --

10 MR. MENNINGER: Sure, Your Honor.

11 THE COURT: -- rather than simply to have been  
12 deported?

13 MR. MENNINGER: Right. So the Supreme Court in  
14 *Alanis* in 2015 ruled that --

15 THE COURT: What's the case citation?

16 MR. MENNINGER: It's on page 5 of that filing,  
17 Your Honor. It's 135 Supreme Court 2009. How that a criminal  
18 statutes mens rea requirement applies to all elements of the  
19 defense necessary to make this conduct a crime.

20 THE COURT: Sorry, you said on page --

21 MR. MENNINGER: Page 5 of the defense jury  
22 instructions, Your Honor.

23 THE COURT: Oh, okay. Just a moment.

24 MR. MENNINGER: I'm at the middle paragraph,  
25 Your Honor, at line -- I guess it's about 11.

1           So that's the Supreme Court's ruling on applying the mens  
2           rea to each element of the offense, and the Ninth Circuit makes  
3           clear, if you look at page 6, the first paragraph, that the  
4           mens rea for the current offense, being found in the United  
5           States as an alien after deportation, is knowledge. Therefore,  
6           knowledge needs to apply to every element of the offense,  
7           including that he was deported.

8           THE COURT: All right. I will take a look at the  
9           cases.

10          MR. RYAN: Thank you, Your Honor.

11          THE COURT: Let the court reporter take a short  
12          break, and we will probably take another break in the afternoon  
13          as well.

14          (Recess taken from 3:18 p.m. to 3:29 p.m.)

15          (Out of the presence of the jury.)

16          THE COURTROOM DEPUTY: Please be seated and come to  
17          order.

18          MR. AVEIS: Sorry, Your Honor.

19          MR. RYAN: Sorry.

20          THE COURT: All right. Before we bring in the jury,  
21          as to the objection to the Exhibit 211, at this point, again, I  
22          don't understand what the point of that exhibit is, even  
23          understanding the defense's defense at this point. What is the  
24          relevance of that document?

25          MR. MENNINGER: Sure, Your Honor. So he was

1 expecting a hearing, and he did not receive that hearing. So  
2 under these unique facts, Your Honor --

3 THE COURT: Let me stop. You can't say that because  
4 he's not going to testify. So, therefore, what he expects, et  
5 cetera, you know, what --

6 MR. MENNINGER: This document says "I request a  
7 hearing," and his initials are next to it, Your Honor.

8 THE COURT: Okay. But you can establish that he  
9 requested a hearing.

10 MR. MENNINGER: Absolutely.

11 THE COURT: Okay.

12 MR. MENNINGER: That's all we're trying to do,  
13 Your Honor.

14 THE COURT: All right. Let me ask.

15 MR. RYAN: Well, that's not relevant, though, to any  
16 elements of the defense. I think this is coming back to  
17 whether he knew he was deported.

18 THE COURT: I guess the defense's argument is that  
19 there is a mens rea as to the -- well, let me just ask, make  
20 sure I understand the defense's defense at this point. If you  
21 look at the Ninth Circuit jury instruction 9.6, which I presume  
22 is the applicable one for this section.

23 MR. MENNINGER: It's the model --

24 THE COURT: Ninth Circuit instruction.

25 MR. RYAN: I think it's 9.8.

1 THE COURT: 9.8.

2 MR. MENNINGER: Let me check, Your Honor.

3 Yeah, 9.8.

4 THE COURT: All right. Let's look at 9.8.

5 MR. MENNINGER: Your Honor, it does not state it in  
6 the model jury instruction, Your Honor, but we believe that in  
7 light of later developing Supreme Court case law, the mens rea  
8 would also need to be applied to the deport.

9 THE COURT: Okay.

10 MR. MENNINGER: And, Your Honor, I point out, this  
11 is quite a unique case. Most times people are deported, they  
12 are there. They receive a copy of the order.

13 THE COURT: No, oftentimes they don't have to. They  
14 can make a request, through their attorneys, for just the  
15 voluntary leaving. They just leave. It happens quite often.

16 MR. MENNINGER: Your Honor, a person who voluntarily  
17 departs the United States cannot be convicted of illegal  
18 reentry and require deportation.

19 MR. RYAN: Judge, we have a deportation in this  
20 case. Every piece of evidence in this case points to the fact  
21 that there was a deportation.

22 THE COURT: Let me just ask -- let me have the  
23 elements of 9.8. You're saying that the first element has a  
24 mens rea requirement? Is that the one that requires the --

25 MR. MENNINGER: Yes, Your Honor. The mens rea is

1 knowing for this offense, and under the rule of *Alanis* and  
2 *Flores-Figueroa*, that must apply to every element of the  
3 offense.

4 THE COURT: Okay. So what they're saying is that  
5 there's a mens rea element as to number one, the defendant knew  
6 that he had previously been deported or departed the United  
7 States, so while there was an order of removal outstanding.

8 MR. RYAN: Right, and there is a mens rea element.  
9 It's a general intent crime. The founding portion of 1326,  
10 general intent, general intent is knowledge. You read the  
11 knowledge mens rea per the actus reus in this case, the actus  
12 reas is knowing entering the United States and remaining, not  
13 the fact that he was deported.

14 THE COURT: They are claiming that the mens rea goes  
15 to the first element as well as that they have knowledge that  
16 they previously were deported. I presume that's what the  
17 defense is arguing.

18 MR. MENNINGER: Yes, Your Honor.

19 THE COURT: Okay. I'm not saying that they're  
20 right.

21 MR. RYAN: Okay.

22 THE COURT: I'm just saying that is their theory.  
23 Let's put it this way. That issue has not been previously  
24 argued to me, and so I don't know whether or not I can say at  
25 this point in time that the defense is incorrect in that



1 regard.

2 MR. RYAN: Your Honor, if we read the mens rea into  
3 the first element, why wouldn't we read it into every other  
4 element? That makes no sense that he would have to know he's  
5 an alien to know he didn't have consent. We don't read it into  
6 every other element of the defense. It is read into the actus  
7 reas, which is the knowing and remaining. This deportation is  
8 like a condition precedent for this offense. It's not -- it's  
9 not the actus reas itself.

10 THE COURT: Again, I mean, I haven't had an  
11 opportunity to look at this.

12 MR. RYAN: Your Honor, I think we do need a ruling  
13 on this prior to going forward, though, because we won't know  
14 whether the questions being asked are relevant to the elements  
15 of the offense until we know whether the knowing requirement  
16 should be read into the first element, which it should not.

17 THE COURT: Let me ask this question: How many more  
18 witnesses do we have?

19 MR. RYAN: I have three -- four more witnesses.

20 THE COURT: How long are those witnesses going to  
21 take?

22 MR. RYAN: I'm sure each one should take 15 minutes,  
23 maybe.

24 THE COURT: 15 minutes. I will tell you what, I  
25 will excuse the jury at this point in time because this issue

1 is -- obviously we are going to have to resolve it now,  
2 otherwise the whole trial is going to be one more after another  
3 of these objections. And if I don't rule on this now, then it  
4 will be a mess anyway.

5 MR. MENNINGER: Well, Your Honor, can I just briefly  
6 be heard on that? Like Your Honor said, if this goes to an  
7 appeal, in order for the Ninth Circuit to deal with it, they  
8 have to see the whole facts of the case.

9 THE COURT: Let me just stop you. I would agree  
10 with you if it was a colorful argument, but if it's just simply  
11 not even plausible, that's not to say -- I don't know if I  
12 should say that because we are on the record, and the Ninth  
13 Circuit could obviously read my next comment. I should  
14 probably keep it to myself.

15 So why don't we just do it this way. I just want to make  
16 sure it's a colorable argument. Obviously if I find it's a  
17 colorable argument, I would agree with you, I should let the  
18 defense lay the fact foundation, and I will. Let me look at  
19 the law.

20 So why don't I do this. Let me excuse the jury at this  
21 point in time and indicate to them that I will have them come  
22 back tomorrow at 8:45. All right?

23 MR. RYAN: Yes, Your Honor. Thank you.

24 THE COURT: And let me have you guys come back --  
25 well, what I want for you guys to do, I want you guys to give

1 me by 5:30 all citations that you have on this point. And if  
2 you want to, I will allow you to do a two-page memo, but I  
3 primarily want the citations because I think I understand the  
4 argument. So just give me two pages of text or argument and  
5 whatever citations you want me to look at.

6 MR. MENNINGER: Okay. Your Honor, would the Court  
7 want something in addition to what we already filed?

8 THE COURT: Yes, I want something, in other words, a  
9 separate document which incorporates these arguments.

10 MR. MENNINGER: Okay.

11 MR. AVEIS: Your Honor, can we do that by e-mail  
12 with CCs to everybody?

13 THE COURT: Yeah, that's fine.

14 MR. AVEIS: So we will send that to --

15 THE COURT: Yeah, send it to -- by 5:00. Javier  
16 won't be here.

17 THE COURTROOM DEPUTY: I can check my e-mails at  
18 home and send it to you.

19 THE COURT: You can?

20 THE COURTROOM DEPUTY: Sure.

21 THE COURT: That's fine. By 5:30, and we will do it  
22 in that fashion.

23 So let me have the jury come back in, and I will let them  
24 know. I know they are going to be disappointed that they are  
25 not going to be staying until 5:00, but into everybody's life,

1 rain must fall.

2 (Pause in proceedings.)

3 THE COURTROOM DEPUTY: All rise for the jury.

4 (In the presence of the jury.)

5 THE COURTROOM DEPUTY: You may be seated.

6 THE COURT: Ladies and gentlemen, there is an issue  
7 that's come up that I need to resolve, and I need to talk with  
8 the attorneys further about this matter. So rather than  
9 keeping you waiting in the jury room, I'm going to let you go  
10 at this point in time and have you come back tomorrow at 8:45.  
11 We will start again at 8:45.

12 When you come in, you don't need to check in. Maybe my  
13 clerk already told you. You don't need to check into the jury  
14 room downstairs. Simply come into the entryway, and you will  
15 be buzzed in at 8:45. Remember, when you are on these breaks,  
16 don't talk about the case with anyone. Have a very pleasant  
17 evening and we will start again tomorrow at 8:45.

18 Put those notebooks in the jury room.

19 JUROR: In the jury room?

20 THE COURT: Yes, because some days I have other  
21 matters in the courtroom.

22 (Out of the presence of the jury.)

23 THE COURTROOM DEPUTY: You may be seated.

24 THE COURT: All right. Anything else we need to do  
25 at this point in time?

1 MR. RYAN: The Government would request that the  
2 defense turn over the trial memorandum that was turned over in  
3 camera.

4 THE COURT: Let me just ask, I understand that prior  
5 to the start of trial the defense has a right not to disclose  
6 their defense, but we are in the trial, and the problem is is  
7 that, you know, your secrecy in this regard is making it  
8 difficult to make rulings because, again, it's not clear  
9 apparently to the Government what you're trying to do, and,  
10 frankly, it's not quite clear to the Court what you are trying  
11 to do. Not saying what you are trying to do is incorrect, but  
12 it's not clear what you are trying to do.

13 What is the problem of turning over the memo?

14 MR. MENNINGER: Your Honor, because the Government  
15 is, of course, in contact with its witnesses.

16 THE COURT: Yes.

17 MR. MENNINGER: And these are merely the facts that  
18 we seek to elicit from its witnesses, Your Honor. That's all  
19 that's in the trial memorandum.

20 MR. RYAN: We will have no contact with the  
21 witnesses overnight.

22 MR. MENNINGER: Your Honor, if the Court --  
23 Your Honor, again, it's not something that we need to disclose  
24 to the Government.

25 THE COURT: I will tell you what I will do.

1 MR. MENNINGER: It's not a discovery item.

2 THE COURT: Let me put it this way. I will not  
3 require you to turn it over tonight, but I will require you to  
4 turn it over tomorrow because by that point in time I will have  
5 ruled on the legal issue. And so once I have ruled on the  
6 legal issue, I will require it to be turned over one way or the  
7 other because either, one, it's not going to be that apropos;  
8 or two, it's going to be very apropos, but I think the  
9 Government has a right at that point in time to be apprised  
10 what exactly your argument is. Okay?

11 MR. MENNINGER: If that's the Court's ruling.

12 THE COURT: All right. Thank you.

13 MR. RYAN: Thank you, Your Honor.

14 (Proceedings concluded at 3:42 p.m.)

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