

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 5 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 2  
 ) (Pages 207 - 340)  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
TRIAL DAY 2  
WEDNESDAY, MARCH 8, 2017  
8:50 A.M.  
LOS ANGELES, CALIFORNIA

\_\_\_\_\_  
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LOS ANGELES, CALIFORNIA; WEDNESDAY, MARCH 8, 2017

8:50 A.M.

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(Outside the presence of the jury.)

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: In this matter let me provide to counsel my thoughts on the issue. You can read it and then argue. I will come back in about five minutes.

MR. MENNINGER: Very good, Your Honor.

(Recess taken from 8:50 a.m. to 8:55 a.m.)

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

THE COURT: All right. Let me ask counsel, have you had an opportunity to read the Court's tentative on this?

MR. MENNINGER: Yes, Your Honor.

MR. RYAN: Yes, Your Honor.

THE COURT: All right. Somebody want to argue something?

MR. MENNINGER: Yeah, Your Honor, if I could briefly be heard.

THE COURT: Sure.

MR. MENNINGER: Your Honor, I think -- I don't disagree with anything that the Court says in the first three

1 pages. We agree that the mens rea --

2 THE COURT: Actually, those are all quotes from  
3 cases, so --

4 MR. MENNINGER: Sure, Your Honor, and that's --  
5 those are many of the same cases that we cited as well, that  
6 the general intent corresponds to knowledge. We can all agree  
7 that knowledge is the mens rea for this offense. Where I  
8 disagree with it --

9 THE COURT: I don't know what you mean by that.

10 MR. MENNINGER: Well, Your Honor, so --

11 THE COURT: There is a mens rea requirement.

12 MR. MENNINGER: That's right.

13 THE COURT: But the mens rea and the knowledge goes  
14 to the actus reus of the crime, not to all elements. The  
15 defense seemingly wants to say it goes to all elements of the  
16 crime.

17 MR. MENNINGER: Well, Your Honor, that's what the  
18 Court has said in *Alanis*, and not just in *Alanis*, in *Flores*  
19 *Figueroa*, in *Staples*, in *Torres v Lynch* and in *Excitement*  
20 *Video*. It's in the normal rules that when a statute has a  
21 mens rea requirement, it must apply to all of the elements of  
22 the crime, not just the actus reus, Your Honor. For example --

23 THE COURT: Well, the problem is that the Ninth  
24 Circuit has indicated in this context, it has already discussed  
25 it ad nauseam. So, therefore, what you want me to do is change

1 the Ninth Circuit approach, which I really can't do.

2 MR. MENNINGER: So, Your Honor, the Ninth Circuit  
3 hasn't spoken to the deport element, whether knowledge has  
4 spoken to the deport element.

5 THE COURT: It talks about other elements that says  
6 it's not required. The defendant need not be aware that his  
7 actions constitute an illegal action.

8 MR. MENNINGER: That's true, Your Honor.

9 THE COURT: Why would there be a mens rea as to  
10 that?

11 MR. MENNINGER: I'm sorry, Your Honor?

12 THE COURT: Why shouldn't there be a mens rea as to  
13 that? In other words, the Government doesn't have to show an  
14 illegal reentry; it just has to show an entry that turns out to  
15 be illegal, but the defendant doesn't have to know that his  
16 entry is illegal.

17 MR. MENNINGER: That's right, Your Honor.

18 THE COURT: Why is there mens rea as to that?

19 MR. MENNINGER: Because as the Supreme Court  
20 instructed in *Staples*, you don't need to know that it is  
21 illegal to possess this kind of firearm, but you do need to  
22 know that this firearm has the sort of features that make it,  
23 in fact, illegal. That's what the Court says in *Staples*.

24 THE COURT: But if the entry -- you're saying that  
25 he has to know or at least appreciate the fact that he's



1 previously been deported.

2 MR. MENNINGER: That's correct, Your Honor.

3 THE COURT: Well, first of all, you don't cover all  
4 the other bases that are covered in A1, which includes not only  
5 deportation, but also removal, also departure, all those  
6 things. You don't include those.

7 MR. MENNINGER: Right, and he is not being charged  
8 under those portions of the statute.

9 THE COURT: I don't know if he is or not.

10 MR. MENNINGER: The Government is alleged that he  
11 was previously deported and found in the United States.

12 MR. RYAN: That's right, Your Honor.

13 THE COURT: But if the evidence shows that he left  
14 the country while he was under ordered deportation, that would  
15 also suffice.

16 MR. RYAN: That's correct, Your Honor.

17 THE COURT: So if he was under order of deportation,  
18 even if he didn't know he was under order of deportation, if he  
19 left during order of deportation, that would still fall under  
20 the statute.

21 MR. MENNINGER: Yes, Your Honor, then we would argue  
22 that knowledge would be required for deportation, but that's  
23 not under the statute. As Mr. Ryan pointed out --

24 THE COURT: You have to actually know it is an order  
25 of deportation. Could he just appreciate the fact that the

1 Government said that he shouldn't be here? Does he have to  
2 understand that it's a deportation?

3 MR. MENNINGER: Well, the statute requires a  
4 deportation, right? And so --

5 THE COURT: He has to understand what it legally  
6 means to be deported is what you're saying.

7 MR. MENNINGER: Yes, I understand that he needs to  
8 be deported.

9 THE COURT: So he doesn't understand the concept of  
10 deported, but he knew he was being asked to leave, that  
11 wouldn't be sufficient. The Government would have to establish  
12 that he understood that he was being deported, not just simply  
13 he was being asked to leave the country.

14 MR. MENNINGER: Well, Your Honor, right, the statute  
15 requires deportation.

16 THE COURT: The defense argument is that he has to  
17 understand that he's being deported.

18 MR. MENNINGER: That's correct, not that he was --

19 THE COURT: That he was being asked to leave the  
20 country.

21 MR. MENNINGER: Or that he had gone voluntary  
22 departure, Your Honor.

23 THE COURT: I just want to make sure I understand  
24 the defense's argument.

25 MR. MENNINGER: Sure. You brought up earlier the

1 other parts of the statute, and I do note, and I agree with you  
2 there is Ninth Circuit case law that doesn't grapple with  
3 *Alanis* or *Staples* or any of those other cases as to those  
4 elements of the statute, but we are not making an argument as  
5 to those other elements of the statute. We are making an  
6 argument solely today to the deport element. And the Ninth  
7 Circuit has never said that the Government does not have to  
8 prove mens rea as to that element.

9 THE COURT: Let me hear from the Government.

10 MR. RYAN: Your Honor, we will submit on this issue.

11 THE COURT: Sometimes -- you have to do some  
12 independent work every now and then. So in other words, if  
13 they make an argument, you should respond to the argument when  
14 I ask you to respond to the argument, just not simply say you  
15 agree with me.

16 MR. RYAN: Very well, Your Honor. We believe that  
17 the mens rea in this case only applies to the defendant's  
18 conduct, his conduct, which is laid out in *Torres*. His conduct  
19 in this case is the entry and remaining in the United States,  
20 and that's consistent with the model jury instruction that he  
21 knowingly enter and knowingly remain.

22 The mens rea does not apply to any of the other elements.  
23 The defense wants you to selectively apply the knowledge  
24 requirement to the first element where Ninth Circuit case law  
25 says that it does not apply to the other elements.

1 THE COURT: Well, no, the Ninth Circuit doesn't  
2 specifically say that, but the Ninth Circuit has discussed the  
3 mens rea element that's required and has indicated that it  
4 doesn't ever say that the mens rea would be applicable as to  
5 the first element, but there was no case that simply says that.

6 MR. RYAN: Correct. The Ninth Circuit has not --  
7 has not said that the mens rea applies to that -- to the first  
8 element, even though it has had multiple opportunities to do so  
9 if it wanted to.

10 THE COURT: All right. Let me also indicate the  
11 defense position. The Ninth Circuit talked about this  
12 situation after *Staples*, and these cases cite to *Staples*, for  
13 example, and there's no indication at that point in time that,  
14 again, that the defendant has to appreciate the fact that he  
15 was, in fact, deported previously.

16 MR. MENNINGER: Your Honor, if I may, I believe  
17 Your Honor is referring to *Salazar Gonzalez*, which you've cited  
18 on page 2 at the bottom of your tentative ruling. And *Salazar*  
19 *Gonzalez*, quite frankly, Your Honor, is one of the best cases  
20 in our favor because in that case it does exactly what the  
21 Court required in *Staples*, just as to a different element.

22 The knowledge of deport -- the defendant didn't ask for an  
23 instruction on the knowledge of deport. The defendant asked  
24 for an instruction on knowledge of being found in the United  
25 States, and the Court says yes under the rules of *Staples*, it

1 applies to that element.

2 THE COURT: No, that's because voluntariness was an  
3 element as found by the circuit court.

4 MR. MENNINGER: Your Honor, I read that the case  
5 just says that in order for to be found in, he must not only  
6 have entered voluntarily, but also have knowledge. So those  
7 are two separate things, right? He has to have voluntarily  
8 entered, and not just voluntarily entered, he has to know he  
9 was in the United States.

10 I think this was a border case, right, where he is found  
11 somewhere along the border and there wasn't a fence. So he was  
12 walking voluntarily, but maybe he knew he had crossed the  
13 border, and maybe he didn't. So I think what the Court said  
14 here is the "voluntariness" and "found in" are different.

15 And if I could just say one more thing, Your Honor, and  
16 that's yesterday, the Court said, "This is colorable. I will  
17 allow the defendant to bring in this evidence," and the  
18 Government just conceded saying there wasn't a Ninth Circuit  
19 decision saying this is an element.

20 THE COURT: No, but the Ninth Circuit has virtually  
21 said it by discussing what the mens rea is. Although I agree  
22 that, you know, there is no case that talks about this specific  
23 situation because, obviously, this is somewhat of a different  
24 argument that has been raised in this case.

25 The problem, however, is -- well, let me just ask, if, in

1 fact, this is not an element and I give instruction saying it  
2 is an element and he's found not guilty -- well, we don't know  
3 because we would have to have special interrogatories because  
4 of this element. I mean, we can't try him over again if the  
5 Court has made a mistake in this area in that regard.

6 Whereas if I do include it -- sorry. If I do say it's not  
7 required, you can always appeal it, and then later on if it  
8 turns out that I'm wrong on it, then, you know, you can try it  
9 again in that fashion, and that will be the correct application  
10 of the law.

11 So I don't see why I would in this situation where I do  
12 not think that the additional instruction that defense wants is  
13 appropriate, why I would say, even if it's somewhat arguable, I  
14 will throw it in just to see what happens, when the effect is,  
15 you know, if I am wrong, what can I say? He's not going to get  
16 tried again. I presume that's a fact.

17 MR. MENNINGER: No expert res judicata on that,  
18 Your Honor, so I will defer to the Court on that.

19 THE COURT: Let me ask the Government, if it turns  
20 out I'm wrong as far as that element is concerned and he is  
21 acquitted because of that error on my part, the Government  
22 can't seek to retry him again because I gave the wrong jury  
23 instruction?

24 MR. RYAN: Right, Your Honor, I think that's  
25 correct. And also I just want to note, we are not conceding

1 there is a colorable claim here. Our argument remains that the  
2 actus reus of this crime is the entry and remaining in the  
3 United States, and that is the only --

4 THE COURT: Well, it's either entry or remaining.

5 MR. RYAN: Knowingly enter and knowingly remain,  
6 that's what the model instruction says.

7 THE COURT: Well, let me put it this way. If he  
8 remains, he has to have entered.

9 MR. RYAN: I agree.

10 THE COURT: But the actus reus really can be as to  
11 either.

12 MR. RYAN: Correct.

13 THE COURT: Because he could have mistakenly entered  
14 the United States, not appreciating the fact that, as defense  
15 counsel argues in a particular case, he may not realize where  
16 the border is. So when he entered, he may not have known where  
17 the border of the United States is, but thereafter he goes a  
18 hundred miles up, and he goes to Phoenix or something like that  
19 and says, "Oh." He can't really argue at that point in time he  
20 may not have known, but he may not have known at the time of  
21 entry, but he certainly knew at the time he was found and  
22 remained in the United States.

23 MR. MENNINGER: Yes, and that is the actus reus.

24 THE COURT: But there is a difference between  
25 entering and remaining. I just want to make sure because

1 sometimes you are not really careful in this regard.

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

4 THE COURT: Yes.

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

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

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

11 THE COURT: Yes.

12 Okay. Anything else from the defense?

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

17 THE COURT: Sure, not a problem.

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

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



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

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

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

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

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

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

1 happened to you?"

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

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

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

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

7 MR. MENNINGER: That's right.

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

13 MR. MENNINGER: Of course not.

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

17 MR. MENNINGER: Sure.

18 THE COURT: So we understand that.

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

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

25 THE COURT: I understand. I already indicated that

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

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

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

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

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

17 THE COURT: Sure.

18 (Discussion off the record.)

19 MR. MENNINGER: Thank you, Your Honor.

20 Nothing further.

21 THE COURT: Okay. All right.

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

1 MR. MENNINGER: Thank you, Your Honor.

2 MR. RYAN: Thank you, Your Honor.

3 MR. MENNINGER: I forgot to ask for that.

4 THE COURT: Let me also ask Government counsel, do  
5 you have your witness out there?

6 MR. RYAN: Yes, Your Honor. Do you want us to go  
7 get him?

8 THE COURTROOM DEPUTY: All rise for the jury.

9 (In the presence of the jury.)

10 THE COURTROOM DEPUTY: You may be seated.

11 THE COURT: All right. Good morning, ladies and  
12 gentlemen.

13 (Members of the jury responded, "Good morning.")

14 THE COURT: I apologize for not starting exactly on  
15 time, but I still needed to resolve a matter with the  
16 attorneys. And I think I resolved that matter, so we are ready  
17 to go.

18 And let me just indicate to the witness, sir, you were  
19 previously placed under oath in this matter yesterday, but it's  
20 still applicable at this point in time.

21 Do you understand that?

22 THE WITNESS: I understand that.

23 THE COURT: All right. We will continue with the  
24 examination.

25 MR. MENNINGER: Thank you, Your Honor.

1           **JOSHUA ARAMBULO, GOVERNMENT WITNESS, WAS PREVIOUSLY SWORN**

2                                   **CROSS-EXAMINATION (Continued)**

3           BY MR. MENNINGER:

4           Q       Agent Arambulo. So we talked about a motion that an  
5           Attorney Carlos Spector filed in Mr. Aceves's removal case; is  
6           that correct?

7           A       Yes, we talked about that.

8           Q       And the reason, that the immigration judge removed him  
9           without a hearing, correct?

10          A       I assume so, yes.

11          Q       But when the prosecutor filed these criminal charges  
12          against Mr. Aceves, those papers were not in the A-file?

13          A       As far as I know, they were not, correct.

14          Q       They were not in the A-file.

15                 In fact, Agent Ron Oki, the case agent before you, had to  
16          specifically request those from the immigration department?

17          A       They were requested, yes.

18          Q       After this case was filed?

19          A       That's correct, yes.

20          Q       So they weren't placed in the A-file at that time?

21          A       At that time, no.

22          Q       One moment.

23                 Your Honor, I would ask to publish --

24                 I'm sorry, Agent Arambulo can you turn to government  
25          Exhibit 16, please.

1 A 16?

2 Q Yes.

3 Permission to publish, Your Honor.

4 THE COURT: Any objection to 16?

5 MR. AVEIS: It's already in evidence, Your Honor.

6 MR. MENNINGER: Sorry, Your Honor. It's not turned  
7 on yet.

8 Q So I want you to turn to the last page of those documents.

9 A Is that the proof of service page?

10 Q That's right, Your Honor -- Agent Arambulo.

11 So that indicates that Agent Spector actually gave those  
12 documents to the Department of Homeland Security, correct?

13 A That's correct.

14 Q That means he also gave them to ICE, correct?

15 A Not to ICE, but to the court, I believe.

16 Q So -- well, it says that he gave it to DHS office,  
17 correct?

18 A At the following address, correct, yes.

19 Q And DHS is the prosecutor in the immigration case,  
20 correct?

21 A Correct, yes.

22 Q It's not the court itself?

23 A Correct.

24 Q The court is the EOIR, right, the executive office of  
25 immigration review?

1 A The one that makes the judgments, exactly.

2 Q So when he said he gave it to the agent, that means he  
3 gave it to ICE, correct?

4 A Yes.

5 Q Here he said he gave the statements to ICE, correct?

6 A Yes, according to this proof of service, yes.

7 Q But they were not in the A-file?

8 A As far as I know, they were not, yes.

9 Q Now I want to talk to you about an I-212 application, an  
10 application for permission to reenter.

11 A Sure.

12 Q You testified about that yesterday?

13 A Yes, I did.

14 Q And the Government has to prove that Mr. Aceves did not  
15 have permission to reenter?

16 A Correct.

17 Q Your testimony is when someone files a decision -- I'm  
18 sorry. When there is a decision on an application for a  
19 permission to reenter, the decision would have to be placed in  
20 the A-file?

21 A Typically, yes.

22 Q Either an approval or denial?

23 A Yes, either one.

24 Q The decision might take some time?

25 A Fair statement, yes.

1 Q But eventually, the decision would have to be made, and it  
2 would have to go in the A-file?

3 A Typically, yes.

4 Q And your testimony is that because there is no decision in  
5 the A-file, there is a no evidence that an application was  
6 made?

7 A Well, to me, there was no application in the A-file at  
8 all. That was my testimony that there was no application.

9 Q But the fact that there is no decision means that there is  
10 no application was made, correct?

11 A I mean, if you want to logically conclude that --

12 MR. RYAN: Your Honor, objection; speculation, move  
13 to strike.

14 THE COURT: Well, which part?

15 MR. RYAN: The entire thing. The witness' answer is  
16 based on testifying.

17 THE COURT: Overruled.

18 BY MR. MENNINGER:

19 Q Sir, I want to talk to you about another type of  
20 application, which is called an I-485 application. You are  
21 familiar with that type of application, correct?

22 A Application for lawful proof of residence, yes.

23 Q Also known as a green card application?

24 A In laymen's terms, yes.

25 Q Just like an I-212, permission to enter, on an I-485,



1 immigration produces a written decision on the application?

2 MR. RYAN: Objection; relevance.

3 THE COURT: Let me have counsel on the sidebar.

4 (Discussion held at sidebar.)

5 THE COURT: The problem I have is the Government's  
6 case, the Government did not present evidence of how these  
7 things work, and what is the function of these things. And so,  
8 therefore, he's crossing on it for your failure to have raised  
9 these things, and so how am I supposed to know what the  
10 relevance is or nonrelevance is if you don't establish what the  
11 procedures are in these various procedures?

12 MR. RYAN: Your Honor, whether the defendant applied  
13 for a lawful permanent residence is irrelevant to any of the  
14 issues in this case. They are trying to say he thought he had  
15 consent to come back into the United States, which is not an  
16 element to the offense.

17 THE COURT: Why isn't it part of his attempt to try  
18 to get permission from the attorney general to come back?

19 MR. RYAN: That's not the same thing. Whether he  
20 applied for lawful permanent residence and permission to enter  
21 the United States is not the same thing.

22 THE COURT: Let me hear a response from the defense.

23 MR. MENNINGER: Your Honor, so Agent Arambulo did  
24 not have --

25 You know, Your Honor, I don't think the noise is on.

1 THE COURT: They can't hear if you keep your voice  
2 down.

3 MR. MENNINGER: Fair enough.

4 Agent Arambulo did not have any personal knowledge of any  
5 of the elements of the offense. He is only testifying as to  
6 the A-file. We are simply questioning and challenging his  
7 credibility as a witness as to what happened to the A-file, as  
8 well as the sloppy bookkeeping that I mentioned yesterday.

9 THE COURT: Yeah, but the sloppy bookkeeping -- now  
10 that I've made my ruling, the sloppy bookkeeping is kind of  
11 like irrelevant.

12 MR. MENNINGER: Well, Your Honor, I would  
13 respectfully disagree with that. It's not going to the  
14 knowledge; it's going to the reliability of the documents that  
15 are the Government's. That the only basis for his testimony.  
16 His testimony is based on the completeness and accuracy of  
17 every document in the A-file.

18 And wherein, just like we did on the missing motion, just  
19 like I discussed with the motion that was supposed to be in the  
20 A-file but wasn't in the A-file, this is just another document  
21 that's supposed to be in the A-file and wasn't in the A-file.

22 THE COURT: Well -- but I don't quite understand.  
23 You're asking about a document that's supposedly not in the  
24 A-file. Who's testified that the document should be in the  
25 A-file?

1 MR. MENNINGER: Well, Agent Arambulo said that if  
2 there was permission to reenter, it would be in the A-file.

3 THE COURT: Okay.

4 MR. MENNINGER: And I'm attempting to elicit his  
5 testimony that there should be a decision for this application.

6 THE COURT: There is no testimony that application  
7 has ever been made.

8 MR. MENNINGER: I'm working on it, Your Honor.  
9 That's what I'm trying to get at.

10 THE COURT: I will sustain the objection. You are  
11 going to have to lay a foundation for this.

12 MR. MENNINGER: Sure, Your Honor. This is the  
13 application. We talked about this yesterday. This was on the  
14 Government's exhibit list Monday morning. On Monday morning  
15 this was on their exhibit list.

16 THE COURT: Well, then, show it to him. See if you  
17 can lay a foundation for it.

18 MR. MENNINGER: Absolutely, Your Honor. He will  
19 recognize it.

20 (In open court.)

21 BY MR. MENNINGER:

22 Q Agent Arambulo, we were discussing a 945 [sic] green card  
23 application, correct?

24 A Yes, we were.

25 Q And you're aware there was a green card application in

1 Mr. Aceves's A-file?

2 MR. RYAN: Objection; relevance.

3 THE COURT: Overruled. He can answer that question  
4 as asked.

5 THE WITNESS: I'm aware there was one application in  
6 the A-file.

7 BY MR. MENNINGER:

8 Q And that was a green card application?

9 A Yes, it was.

10 Q I'm going to hand you a document. One moment.

11 Permission to approach, Your Honor.

12 THE COURT: All right. Presumably the Government  
13 has no objection.

14 MR. RYAN: No objection to showing him the document.

15 THE COURT: To showing him the document.

16 MR. RYAN: No objection to that, Your Honor.

17 THE WITNESS: Thank you.

18 BY MR. MENNINGER:

19 Q Agent Arambulo, do you recognize the document that I just  
20 handed to you?

21 A Yes. This was the 485 that was in the A-file.

22 MR. MENNINGER: Your Honor, I would ask to admit  
23 defense Exhibit 203 into evidence.

24 MR. RYAN: Your Honor, the Government objects on  
25 relevance and 403.

1 THE COURT: Let me ask the defense counsel, what's  
2 the relevance of the document?

3 MR. MENNINGER: Well, Your Honor, if you want, we  
4 can do this at sidebar, but the relevance of the document is  
5 this is a document that was in the A-file, and I'm questioning  
6 the witness as to immigration's practices and bookkeeping --  
7 bookkeeping methods, Your Honor, and how they keep or don't  
8 keep documents.

9 THE COURT: What would be the basis for this witness  
10 testifying as to bookkeeping methods since he is not the  
11 custodian or the creator of that particular record?

12 MR. MENNINGER: Well, Your Honor, he introduced all  
13 of the A-file documents in the Government's case in chief. He  
14 testified he is familiar with how immigration practices, and he  
15 testified he is familiar with the A-file and he is familiar  
16 with those documents.

17 THE COURT: But that doesn't necessarily mean he can  
18 testify as to why certain documents were or were not put in the  
19 A-file. In other words, he can testify as to what the A-file  
20 actually contains because you can look at it.

21 MR. MENNINGER: Right.

22 THE COURT: And he can explain what is in it.

23 MR. MENNINGER: Right.

24 THE COURT: But how can he testify as to why certain  
25 things are or are not in it since he did not create the

1 document?

2 MR. MENNINGER: Fair enough, Your Honor. I don't  
3 intend to ask him why; I just intend to ask him whether.

4 THE COURT: Whether what?

5 MR. MENNINGER: Whether any decision on this  
6 application is in the A-file or not.

7 THE COURT: I will allow him to testify as to that.

8 MR. MENNINGER: And permission to publish,  
9 Your Honor.

10 THE COURT: No. You have to ask him the question  
11 first.

12 MR. MENNINGER: Sure. Would the Court --

13 THE COURT: I don't know yet because you haven't  
14 laid a foundation for his ability to testify as to this, other  
15 than the fact that he said that it was contained in the A-file.

16 MR. MENNINGER: Yes.

17 THE COURT: But any other question besides that, I  
18 don't know what the relevance is because you haven't laid the  
19 foundation for it.

20 MR. MENNINGER: Thank you, Your Honor.

21 Q So, Agent Arambulo, we are looking at this application for  
22 permanent residence, correct?

23 A Yes.

24 Q And it was filed in 1997?

25 A According to the receipt date, yes, September 30th, 1997.

1 Q And did you locate a decision on this application in the  
2 A-file?

3 A A written decision, no, but I did notice on the action  
4 block it did say "Case terminated." So one can deduce that the  
5 application was denied.

6 Q Okay. But you're aware of -- you're familiar that there  
7 are regulations that apply to how immigration handles  
8 applications, correct?

9 A Actually, I'm not. In terms of regulations, that's not --  
10 that wouldn't be my particular expertise.

11 Q Fair enough.

12 A I work for enforcement and removal, whereas these  
13 applications are adjudicated by, as you know, citizenship and  
14 immigration services, which is a whole nother agency within the  
15 department.

16 Q Sure, sure.

17 And the I-212 is also adjudicated by this other agency?

18 A Yes, correct.

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

20 THE COURT: All right.

21 (Discussion off the record.)

22 BY MR. MENNINGER:

23 Q So, Agent Arambulo, based on your review of the records,  
24 your testimony today is there's no evidence that Mr. Aceves has  
25 permission to be in the United States, correct?

1 A Can you repeat the question?

2 Q Sure. Based on your review of the records, your testimony  
3 today is that there is no evidence that Mr. Aceves has  
4 permission to be in the United States, correct?

5 A Yes, based on review of the A-file and based on my review  
6 of our system databases.

7 Q CLAIMS, correct?

8 A Yes.

9 Q So your testimony, that he doesn't have any lawful status  
10 in the United States?

11 A Yes, that's correct.

12 Q That he's never had any lawful status in the United  
13 States?

14 A Yes, correct.

15 Q That -- and you just testified he applied for this  
16 permanent resident status, correct?

17 A It looks like he applied twice, yes.

18 Q But he was not granted that status?

19 A Both times he was not granted, yes.

20 Q And that's based on your review of the A-file and CLAIMS?

21 A Yes.

22 Q And you testified earlier that you're familiar with the  
23 CLAIMS system?

24 A Yes, through my own experience, yes.

25 Q Right. You know how to use the CLAIMS system?



1 A Yes.

2 Q In fact, you looked up Mr. Aceves in that system?

3 A I looked him up using his A-number, yes, I did.

4 Q And can we -- can you turn to Government Exhibit 23.

5 A Yes, the CLAIMS inquiry printout, yes, right there.

6 MR. MENNINGER: Your Honor, this has already been  
7 admitted by the Government. I would just ask for permission to  
8 publish.

9 THE COURT: Sure.

10 BY MR. MENNINGER:

11 Q So this is a one-page document, correct?

12 A Yep, just one page.

13 Q One moment.

14 So, Agent Arambulo, I received, pursuant to a subpoena,  
15 the entire -- or a nine-page printout from the CLAIMS system.  
16 Can I show it to you?

17 A Yeah, sure.

18 Thank you.

19 Q So Agent Arambulo, can you help me understand why the  
20 district record manager, when I asked for all the CLAIMS  
21 inquiry, I got nine pages instead of just the one?

22 A Okay. So -- okay. I'm going to lay this down for you.  
23 Okay. So you see the first page, correct?

24 Q Yes.

25 A Now, I entered -- in querying the defendant's A-number,

1 this is what results.

2 Q Sure.

3 A Okay. So as you can see under the forms, these are the  
4 forms that are listed for that defendant's A-number --

5 Q Fair enough.

6 A -- this particular inquiry.

7 Q Fair enough.

8 THE COURT: Let me just stop. The jury doesn't have  
9 the slightest idea what you are talking about because they  
10 don't have it in front of them.

11 MR. MENNINGER: Your Honor, I'm trying to lay that  
12 foundation in order to admit it into evidence.

13 THE COURT: Well, I will allow it into evidence.  
14 Let me just ask the witness, do you recognize this

15 document? I'm asking you. You're the witness.

16 THE WITNESS: Oh, I'm sorry. You are talking about  
17 the first page, the certification?

18 THE COURT: This document -- in other words, the  
19 document that's currently marked as Exhibit 209, do you  
20 recognize this document?

21 THE WITNESS: Yes.

22 THE COURT: What exactly is it?

23 THE WITNESS: These are printouts from the CLAIMS  
24 database, which I had testified earlier to, tracks the  
25 applications of people that file applications.

1 THE COURT: The previous exhibit was Exhibit  
2 Number 23. Is Exhibit 23 part of this document?

3 THE WITNESS: It is the first page, right here.

4 THE COURT: Well -- so it is part of this -- in  
5 other words, Exhibit 23 is part of Exhibit 209?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Why is the -- I guess you're  
8 asking why the document that you received consists of nine  
9 pages, whereas Exhibit 23 is only one page? Is that what  
10 you're asking him?

11 MR. MENNINGER: Right, and I think I got my answer,  
12 Your Honor.

13 And I would move to admit it into evidence.

14 THE COURT: I don't know what his answer was.

15 MR. MENNINGER: I'm sorry, I will let him finish.

16 THE COURT: I will allow it in. Let me hear what  
17 the explanation is.

18 MR. RYAN: No objection, Your Honor.

19 THE WITNESS: Short explanation of why there is only  
20 one page submitted under Exhibit 23 is because this is all you  
21 need to know regarding which applications were filed at the  
22 time we are trying to establish if he ever filed an I-212.  
23 Correct?

24 BY MR. MENNINGER:

25 Q Sure.

1 A So we ran the inquiry under the forms. There was no  
2 I-212. There you see the 181, the I-765 and the other I-765,  
3 and there was no 212.

4 THE COURT: Let me just do it this way.

5 MR. MENNINGER: Fair enough, Your Honor.

6 THE COURT: Let me just ask, what exactly is the  
7 CLAIMS system again?

8 THE WITNESS: It is a system that is kept that  
9 tracks applications that are filed from -- you know, for  
10 immigration benefits.

11 THE COURT: Okay. So what applications would be  
12 included in the CLAIMS system?

13 THE WITNESS: I would like to think pretty much all  
14 the applications that can be filed.

15 THE COURT: When you talk about applications, what  
16 do you mean?

17 THE WITNESS: Applications that are benefiting an  
18 alien.

19 THE COURT: For any sorts of benefits? For example,  
20 anytime the alien would apply for any sort of benefit from  
21 either a state government or federal government or --

22 THE WITNESS: When I say "benefit," I'm talking in  
23 regards to status, immigration status.

24 THE COURT: So in other words, if an alien were to  
25 seek an application for status?

1 THE WITNESS: Like a green card.

2 THE COURT: A green card. In other words, when you  
3 refer to "status," you are talking about status in the  
4 United States?

5 THE WITNESS: In the United States. I'm not talking  
6 about benefits like state benefits, like welfare or anything  
7 like that.

8 THE COURT: So in other words, if an alien were to  
9 apply to -- would it be the Department of Homeland Security or  
10 ICE?

11 THE WITNESS: Well, it would be under the Department  
12 of Homeland Security.

13 THE COURT: For some sort of immigration benefit,  
14 those sort of applications should be included in the CLAIMS  
15 system?

16 THE WITNESS: As well as -- as long as documents  
17 with an A-number. It depends on how you query the system. I  
18 just queried his A-number, and this is what resulted.

19 THE COURT: All right.

20 MR. MENNINGER: Can I publish it, Your Honor?

21 THE COURT: Yes.

22 BY MR. MENNINGER:

23 Q So, Agent Arambulo, you told me that -- you just told me  
24 that there's, based on your review of the records of the CLAIMS  
25 system, there is no evidence that my client ever had lawful

1 status in the United States, correct?

2 A Correct.

3 Q You just told me that a minute ago.

4 A Yes.

5 Q I want you to turn to the second page that is already part  
6 of the Government's exhibit.

7 You see where it says "Receipt number" at the top there?

8 A Yes.

9 Q "WAC," and then a list of digits?

10 A Yes.

11 Q And do you recognize the receipt number from any A-file  
12 document?

13 A May I look at the A-file?

14 Q Absolutely.

15 A We are looking at the 181 receipt number, correct?

16 Q That's correct.

17 Do you recognize that number from the application for  
18 lawful permanent residence? I believe I just handed it to you.

19 A Oh, I'm sorry.

20 Q No problem. Take your time.

21 A Yes, I'm sorry. Yeah, it's right in front of me. My  
22 apologies.

23 Q The receipt number that's up here is the same number --  
24 receipt number for his green card application; that's correct?

25 A That's correct, yes.

1 Q And you just testified that green card application, he  
2 never got that status, correct?

3 A Yes.

4 Q Here by where it says "Action," it says "Case term:  
5 Status acquired by other means." Am I reading that correctly?

6 A Yeah, if ACQ stands for acquired, yes.

7 Q Sure. And then if you turn one more page, again we see  
8 the same receipt number, correct?

9 A Yes.

10 Q That's a receipt number for his green card application?

11 A That is accurate, yes.

12 Q And we see action code written right here?

13 A Yes.

14 Q And then again we see "Case term: Status acquired by  
15 other means"?

16 A Yes.

17 MR. MENNINGER: No further questions, Your Honor.

18 THE COURT: All right. Redirect?

19 MR. RYAN: Yes, Your Honor. Thank you.

20 MR. MENNINGER: Wait, Your Honor. One more thing.  
21 I just wanted to clarify that has been admitted into evidence.

22 THE COURT: It hasn't been, but I presume you are  
23 moving it be admitted.

24 MR. MENNINGER: Yes, Your Honor.

25 THE COURT: Any objection?

1 MR. RYAN: No objection.

2 THE COURT: It's admitted. That's Exhibit 209.

3 (Exhibit 209 received into evidence.)

4 MR. MENNINGER: That's right, Your Honor. Thank  
5 you.

6 **REDIRECT EXAMINATION**

7 BY MR. RYAN:

8 Q Okay. So for Exhibit 209, I have separately numbered  
9 them. I just want to walk through them real quick.

10 A Yeah, sure.

11 Q Take a look at the first page.

12 What is this page?

13 A First page would be a certification from CIS certifying  
14 the documents that were subpoenaed by defense counsel.

15 Q What does that mean?

16 A It's just authenticizing the printouts that was obtained.

17 Q And the second page, can you tell what that is?

18 A Not really, but it looks like a stamp from the Homeland  
19 Security.

20 Q What is this page again?

21 A This is the results from the inquiry.

22 THE COURT: Let me indicate to counsel, you don't  
23 have the full page on the screen.

24 MR. RYAN: Oh, sorry.

25 Q There's three results. Let's go through them. What is



1 the first one?

2 A That is the I-81.

3 Q And what is that?

4 A That is the memorandum to create lawful permanent  
5 residence.

6 Q And the second one, what is that?

7 A 765 is an application for employment authorization.

8 Q And the third one?

9 A The same thing.

10 Q An application for employment authorization, what is that?

11 THE COURT: Also, you need to bring it -- it's not  
12 on the screen.

13 MR. RYAN: Sorry, Your Honor.

14 Q An application for employment authorization. What is  
15 that?

16 A It's to get your authorization work card to authorize you  
17 to work in the United States.

18 Q Now, taking a look at this page --

19 A Yes.

20 Q -- what is this one?

21 A This is in reference to the 181, the memorandum to create  
22 lawful permanent residence.

23 Q And the action code, do you know what that means?

24 A The "EN," no, I do not.

25 Q Where it says next to that "Case term: Status ACQ by

1 other means," do you know what that means?

2 A I do not know what it officially means, no, I do not. I  
3 just know that "case terminated" means that they were no longer  
4 adjudicating the case.

5 Q Then this page, what is this page?

6 A That gives you the dates of the actions in regards to the  
7 filing of that application. So as you can see, the application  
8 was received August 17th, 1999. Apparently there was a  
9 supervisory hold for some reason on that same date, and then  
10 you see the last date, which is when the case was terminated,  
11 which apparently looks like June 12th, 2009.

12 Q And do you recall the date that the defendant was deported  
13 from the United States?

14 A Off the top of my head, 2010.

15 Q All right. This is page 6 of that same exhibit. Do you  
16 know what this one relates to?

17 A This relates to the I-765, which was the application for  
18 employment authorization.

19 Q And can you tell, based on this document, whether that  
20 application was approved or denied?

21 A It looks like it was approved.

22 Q What date was it approved?

23 A I see employment start date as 6/23 /1999. And the reason  
24 why I say it looks like it is approved, because there is an  
25 expiration date associated with it, which is 6/22/2000, which

1 is a span of one year.

2 Q And then page 7, what is this one?

3 A This is in relation to that 765, application for  
4 employment authorization application, and it refers to the  
5 dates and the actions that took place regarding this  
6 application. So as you can see, first line says "Received" on  
7 that particular date, and it was approved on that particular  
8 date.

9 Q Page 8, what is this page?

10 A Similar to what we just saw, this is in reference to an  
11 application for employment authorization.

12 Q And was this one approved or denied?

13 A It was approved because it looks like he has an employment  
14 start date and an expiration date as well.

15 Q And what was that date?

16 A The employment start date was June 18th, 1998. The  
17 expiration date is June 17th, 1999, which is a span of one  
18 year.

19 Q And then this page?

20 A This would give you the action dates regarding the  
21 application. So you see it says received on June 18th, and it  
22 was approved on June 18th of 1998.

23 Q So would it be a fair statement to say that the remaining  
24 pages of this exhibit just go into greater detail than what we  
25 already discussed in Exhibit 23?

1 A Can you repeat that question, please.

2 Q Would it be fair to say that pages 4 through 8 that we  
3 just discussed go into greater detail than what we just  
4 discussed in Exhibit 23?

5 A Yes, it does go into greater detail.

6 Q Do you remember the line of questioning yesterday about  
7 the defendant's possible temporary file?

8 A Yes, I remember that.

9 Q Are documents from temporary files ever combined into the  
10 official A-file?

11 A Yes, they are.

12 Q When you queried this defendant's A-number, was there any  
13 evidence of a temporary file?

14 A No. It had already been merged, so it was just evidence  
15 of an A-file existing.

16 Q Based on your review of the A-file and the databases, was  
17 there any indication that the defendant had permission to  
18 reenter the United States?

19 A None.

20 Q And based on your review of the A-file, was there any  
21 indication that the defendant was not actually deported from  
22 the United States?

23 A No.

24 Q Now, you testified that the motion the defendant filed in  
25 the immigration court was not in the A-file.

1 A That's correct. It was requested, yes.

2 Q Originally.

3 Was the removal order from the immigration judge in the  
4 A-file?

5 A The summary order, yes, it was.

6 Q Was the warrant of removal in the A-file?

7 A Yes, it was.

8 MR. RYAN: One moment, Your Honor.

9 (Discussion off the record.)

10 MR. RYAN: Okay. Your Honor, can we have a brief  
11 sidebar?

12 THE COURT: All right.

13 (Discussion held at sidebar.)

14 MR. RYAN: Your Honor, the defense has raised the  
15 issue of this application to become a lawful permanent  
16 residence in 1999. They have also shown the case was  
17 terminated in 2009. That's a ten-year gap. The jury needs to  
18 know why it took so long to act on that case. They have opened  
19 the door. We should be able to elicit testimony why the  
20 department took so long to act on that case.

21 THE COURT: Is this witness going to be able to  
22 testify as to that?

23 MR. RYAN: Yes.

24 MR. DEMIK: How is he going to testify to that?

25 MR. RYAN: He knows why it took ten years.

1 MR. DEMIK: Was there a policy?

2 MR. AVEIS: He was in prison. That's the problem.

3 MR. MENNINGER: But is there a policy that when you  
4 stop, you adjudicate?

5 THE COURT: No, no.

6 MR. MENNINGER: You deny it as abandoned.

7 MR. AVEIS: They have opened the door and questioned  
8 not just the completeness of the file, but what appears to be  
9 inconsistencies in dealing with this application for residency  
10 status. The tail is now wagging the dog.

11 THE COURT: No, the problem is that the only thing  
12 that creates a somewhat of an ambiguity is acquired by other  
13 means. What does that mean?

14 MR. AVEIS: Well, it's not just that; it's that the  
15 witness is testifying based on the documents that the defense  
16 introduced that he was granted employment. Right?

17 THE COURT: Yes.

18 MR. AVEIS: That's a right to be here.

19 THE COURT: Yes.

20 MR. AVEIS: This jury has been thinking how is it  
21 that you go from right to be here to --

22 THE COURT: The problem with counsel is that the  
23 Government has not laid down the background of all this stuff,  
24 and so, you know, I don't understand. You want to correct  
25 something, but you have not laid the foundation to understand

1 where all these parts fit.

2 MR. AVEIS: Sure.

3 THE COURT: So, therefore, it's kind of a  
4 gobbledygook mess at this point.

5 MR. AVEIS: Yes. And if I may, the Government's  
6 initial presentation intended to be very, very crisp  
7 presentation of the five elements.

8 THE COURT: The only problem is, again, that you  
9 obviously didn't look at the proposed jury instructions from  
10 the defense because if you had, you knew that they're not  
11 going -- that wasn't the approach that they were taking. So  
12 that's the reason why you need to lay down the foundation for  
13 all this stuff.

14 MR. AVEIS: I think we can all probably agree there  
15 could have been more careful pre-litigation.

16 THE COURT: For example, some of the jurors didn't  
17 understand that you simply couldn't make an application to  
18 become a citizen. Therefore, you should really go through the  
19 background as to if you are not a citizen of the United States,  
20 how do you come to the United States lawfully? How do you get  
21 permission to do this sort of stuff? What type of applications  
22 do you file? If you are found in the United States, what  
23 happens? What is the difference between a regular civil  
24 deportation and a criminal action? All this stuff, you don't  
25 get into that stuff, so nobody understands the context of what

1 you are talking about.

2 MR. AVEIS: None of the elements of the offense --

3 THE COURT: You can't understand the elements  
4 themselves without laying down the ground of all this stuff as  
5 well.

6 MR. AVEIS: I don't disagree with that except that  
7 it was our view that in the opening that would be connected to  
8 the close, that would be carefully and concisely described.  
9 However, what's more important here is that the defense, in  
10 attempting to show the file is not complete, that contains the  
11 order of removal, which is the critical order, the fact is they  
12 have opened the door to now have the Government explain and  
13 have the jury know why there is a ten-year gap, the ten-year  
14 gap being granted, a right to be here, and then being kicked  
15 out is because he sustained a felony.

16 MR. DEMIK: Your Honor, that's speculation.

17 MR. AVEIS: The felony is in the file.

18 THE COURT: The problem is he can't testify to that.

19 MR. AVEIS: He can.

20 MR. MENNINGER: He does not know the process.

21 MR. AVEIS: He is aware of why someone might be  
22 granted employment, right, and then be kicked out. He can  
23 answer that question or not. He should be offered the  
24 opportunity. There is a ten-year gap.

25 THE COURT: The problem is he said he doesn't



1 understand what the meaning of "acquired by other means."

2 MR. AVEIS: He does know the meaning of he was  
3 granted a right to work.

4 THE COURT: So.

5 MR. AVEIS: He should be asked "Do you know why it  
6 is that someone might be granted a right to work and then be  
7 removed?" He either says "yes" or "no." If he says "yes" --

8 THE COURT: What is the foundation upon which he  
9 would answer that question?

10 MR. AVEIS: This is his job. He is a deportation  
11 officer. He testified he is familiar with the means and  
12 methods of deportation.

13 THE COURT: Let me ask you, normally there is a  
14 document when the person's employment authorization ends. It  
15 ended -- the only thing that you have is he was authorized to  
16 work from '98 to '99. It ended, so his ability to work ended  
17 in '99.

18 MR. AVEIS: Correct.

19 THE COURT: So thereafter he wasn't authorized to  
20 work, so why is he in this country?

21 MR. AVEIS: So the question -- what they are trying  
22 to argue is that, among other things, that there's an implied  
23 consent for him to remain here, and the ten-year gap helps  
24 support that argument.

25 THE COURT: I don't understand. He was deported.

1 MR. AVEIS: In 2010.

2 THE COURT: So obviously he didn't have a right to  
3 be in this country because he was deported, and they haven't  
4 denied that he was deported in 2009.

5 MR. AVEIS: The incompleteness of the file shows  
6 there was a mistake in deporting him.

7 MR. MENNINGER: That's not our argument, Your Honor.  
8 Our argument is that this agent testified that there is no  
9 evidence that -- he looked in CLAIMS and that he looked in the  
10 A-file, and he said there is no evidence that he ever got  
11 lawful status. And I showed him --

12 THE COURT: Stop. The defense is indicating they  
13 are not challenging the deportation.

14 MR. AVEIS: They are.

15 THE COURT: Are you challenging the deportation?

16 MR. MENNINGER: We are not challenging the  
17 lawfulness of the deportation. We are going to be arguing that  
18 to the Ninth Circuit.

19 THE COURT: I don't understand what you are arguing.  
20 Your argument is that they're not challenging the fact that he  
21 was deported.

22 MR. AVEIS: Then why question if the file is  
23 complete, that there is something lurking?

24 MR. DEMIK: Your Honor, may I?

25 THE COURT: That's because if you leave the matter

1 amorphous, they are going to try to open every door that you  
2 leave opened. You didn't give any background to any of this  
3 stuff, so the jury doesn't understand the context in which this  
4 occurs, so they don't know what's going on. The defense is  
5 trying to capitalize on that. That's what happens when you  
6 don't give an orderly presentation of what this is about.

7 MR. AVEIS: We have four more witnesses.

8 THE COURT: Let's hope.

9 MR. DEMIK: I agree, Your Honor. It's not only our  
10 right, it's our job, and that's what we are doing, and I  
11 believe doing well.

12 THE COURT: Well --

13 MR. DEMIK: Very simply put, Your Honor, this is the  
14 Government's witness to testify about the A-file and his  
15 conclusions based on that A-file. Mr. Menninger's cross  
16 established that based on his review, there was no evidence of  
17 any status. What we have just shown is there's actually  
18 evidence of status. That questions and attacks the credibility  
19 of their witness and the adequacy of their documents, very  
20 simply put, Your Honor.

21 THE COURT: No. If you can argue that, you are  
22 arguing they can rehabilitate that witness on the basis of that  
23 attack.

24 MR. AVEIS: Status at the time of deportation.

25 MR. MENNINGER: No, Your Honor. It's just about his

1 awareness and looking into the documents in the A-file,  
2 Your Honor. We are not arguing; we are just questioning his  
3 credibility. We are not arguing the deportation was unlawful.

4 THE COURT: No, but if you are going to argue that  
5 his reading of the A-file is problematic, then I will allow him  
6 to rehabilitate himself. In other words, you can't have it  
7 both ways.

8 MR. MENNINGER: In what way rehabilitate,  
9 Your Honor?

10 THE COURT: Because you're saying that he wasn't --  
11 he was not aware that your client had status at some point in  
12 time.

13 MR. MENNINGER: He said that there's no evidence,  
14 and he testified he doesn't know what that means, Your Honor.  
15 That goes to his credibility and his knowledge of the system.

16 THE COURT: But the thing I don't understand is  
17 that, again, if you're not challenging the lawfulness of the  
18 deportation --

19 MR. MENNINGER: Uh-huh.

20 THE COURT: -- what is the relevance of this aspect  
21 of it?

22 MR. MENNINGER: It goes to their investigation. It  
23 goes to the documents that they have looked at. It goes to the  
24 thoroughness. It shows that he only looked at the first page  
25 of CLAIMS and never looked into the rest of it, and that's what

1 that shows.

2 THE COURT: But the problem is is that the  
3 requirement is that he be deported, and if you are not  
4 challenging the deportation --

5 MR. MENNINGER: No.

6 THE COURT: -- then the fact that there's some  
7 amorphous stuff in the A-file around 2000 -- sorry, around  
8 1999 --

9 MR. MENNINGER: Uh-huh.

10 THE COURT: -- is irrelevant.

11 MR. MENNINGER: No, Your Honor, I would submit it's  
12 a reasonable inference.

13 THE COURT: What's the reasonable inference?

14 MR. MENNINGER: That there could be other evidence  
15 of citizenship.

16 THE COURT: That's pure speculation. In other  
17 words, if you are arguing a deficiency in the files as far as  
18 what occurred in 1999, and you are not challenging the  
19 lawfulness of the deportation itself in 2010, was it?

20 MR. MENNINGER: Right.

21 MR. RYAN: Correct.

22 MR. MENNINGER: Well, Your Honor --

23 THE COURT: It's irrelevant.

24 MR. MENNINGER: You know, perhaps the Court could  
25 give a limiting instruction that the jury is to presume that

1 the 2010 deportation is lawful, period.

2 THE COURT: No. I thought you already stipulated to  
3 that.

4 MR. DEMIK: Your Honor, I understand the Court's  
5 ruling, but let's be clear. The Government refers to what the  
6 defense is arguing. Let's be very clear what the Government is  
7 doing and why they asked for this sidebar. They want to  
8 prejudice this jury.

9 THE COURT: I understand that.

10 MR. DEMIK: Which introducing the fact there is a  
11 criminal. That, Your Honor, is borderline mistrial.

12 THE COURT: It is not borderline mistrial if I find  
13 that the defense has opened the door.

14 MR. DEMIK: That's true, Your Honor, but if so, they  
15 are stretching the foundation of this witness. And if the  
16 Court is inclined to allow them to introduce that before the  
17 jury, I ask that we at least have a hearing outside the  
18 presence of the jury --

19 THE COURT: We are having a hearing outside the  
20 presence of the jury.

21 MR. DEMIK: -- so they can lay the foundation of  
22 this witness. He is trying to refer to this jury, "The witness  
23 has to testify." I think even getting in the fact that this  
24 wasn't granted because of a criminal conviction is beyond this  
25 witness's foundation. So before -- if the Court disagrees with

1 me, Your Honor, and is going to allow that, I would at the very  
2 least ask foundation be laid outside the presence of the jury.

3 MR. AVEIS: We totally agree with that. That's a  
4 great idea to have a 104 hearing to see if the witness can talk  
5 about that. It's not our intent to prejudice the jury.

6 If I'm speaking too loud, I'm sorry.

7 (In open court.)

8 THE COURT: All right. Let me have the jury excused  
9 and do something outside of your presence.

10 (Out of the presence of the jury.)

11 THE COURT: All right. We are outside the presence  
12 of the jury at this point in time.

13 Let me ask the defense, you keep on arguing about the  
14 deficiency of the A-file, deficiencies of the A-file. I don't  
15 understand the relevancy of that because you haven't tied in if  
16 there is a deficiency in the A-file, how does that inure to  
17 your client's benefit in this case? So what is your offer of  
18 proof as to that?

19 MR. DEMIK: Your Honor, could we perhaps answer that  
20 question outside the presence of the witness? I would be happy  
21 to answer that.

22 THE COURT: Sure. Let me excuse the witness for a  
23 moment.

24 (The witness left the trial proceedings.)

25 MR. DEMIK: Thank you.

1           Your Honor, we are on the first witness, and the  
2 Government called this witness that has no personal knowledge  
3 of any of events that he is testifying to. We have to be clear  
4 about that. The foundation for every piece of testimony that  
5 he has offered this jury comes from a source. That source is  
6 called the A-file. I think the defense attack on that A-file  
7 is simply an attack on the Government's proof.

8           Now, the Government wants to say that this witness is able  
9 to testify to only the documents that they want him to testify  
10 to, and I think at a minimum -- I'm not trying to muddy the  
11 waters here, Your Honor. Under the rule of completeness, that  
12 makes anything in the A-file subject to cross-examination. It  
13 would be the same, Your Honor, if I was called as a witness  
14 based on reviewing another lawyer's file.

15           THE COURT: Not quite because the items have to have  
16 some relevancy to the issues in this trial. For example, the  
17 A-file can include something that references to your client's  
18 criminal history, and yet, I have made a ruling, at least  
19 initially, that that stuff is not relevant. And so, therefore,  
20 you know, they can't argue -- bring that up because it's not  
21 particularly relevant even though it is contained in the  
22 A-file. So it's not merely because of the fact that  
23 something's contained in the A-file that gives it relevance in  
24 this case. It has to be -- it has to go to the issues that we  
25 are trying in this case.



1 MR. DEMIK: Right, but, Your Honor, also the  
2 Government's proof -- one of the issues here is, and I think  
3 it's the theory that we're putting forth, is that the  
4 Government's proof is defective. That is always relevant. I  
5 think we are always able to attack the Government's proof.

6 THE COURT: But you have to identify what precisely  
7 it is that you're attacking. Like, you know, you're talking --  
8 you know, we spent some minutes now talking about his  
9 application for employment status in 1999 and -- 1998 and 1999.  
10 What is the relevance of the fact that he did have it or didn't  
11 have it?

12 MR. DEMIK: Your Honor, the relevance is that the  
13 witness that they called, based on his review of the file,  
14 testified that he saw no evidence of lawful status, period. We  
15 know that there is evidence of status acquired, that he doesn't  
16 know what that means. He testified he doesn't know what that  
17 means.

18 I think the jury should know that the witness who's called  
19 as the A-file custodian, the case agent here, doesn't know what  
20 something in the A-file means. And also, it contradicts his  
21 testimony that there was no evidence of status in the file,  
22 which we know there was.

23 Similarly, Your Honor, if I may --

24 THE COURT: But what is the evidence of the status  
25 at the relevant period of time?

1 MR. DEMIK: Well, Your Honor, again, if the Court is  
2 concerned about prejudice, we are saying a limiting instruction  
3 would follow, but that's not the point of that  
4 cross-examination, not to attack the deport. We are attacking  
5 this witness's foundation for his testimony, which is the  
6 A-file. The A-file is not reliable, Your Honor, and it's not  
7 reliable because we have already seen not only that example,  
8 but we have seen another example that the agent testified that  
9 he didn't know if there was a T-file.

10 THE COURT: But the problem that I have on all this  
11 is I can understand this line of questioning if it was  
12 connected to the fact that the defendant would testify as to  
13 some application or something of that sort, then I can  
14 understand there would be a basis for, you know, this line of  
15 questioning, but you have already indicated that he is not  
16 going to be testifying.

17 Is there going to be some witnesses who are going to be  
18 testifying that some, you know, application that was applied  
19 for him in order to grant him this status? And in which case,  
20 then, the fact that something appears to allegedly be missing  
21 from the A-file would become relevant.

22 MR. DEMIK: Well, Your Honor, we don't have a  
23 specific witness to that, no, but I think that's  
24 burden-shifting. I think you're saying if we want to question  
25 the A-file, then we have to put forth evidence of something

1 that wasn't in there. I think that's burden-shifting,  
2 Your Honor. I think it's always the Government's burden.

3 THE COURT: Let me see if I can summarize your  
4 argument. Let me ask the Government counsel, if the defense  
5 argument is going to be that one of the elements is that the  
6 defendant did not have permission from the attorney general or  
7 director of the Department of Homeland Security to come in  
8 and/or remain, that that is an element that needs to be shown.  
9 And apparently the Government is going to be relying on the  
10 A-file to establish that he does not have that. So why can't  
11 they attack the sloppiness of the A-file?

12 MR. AVEIS: They can attack the sloppiness of the  
13 A-file, but that's not what they're doing. They're totally  
14 free to try to impeach the witness by every reasonable and  
15 lawful means.

16 THE COURT: Well, why isn't this a reasonable  
17 attacking, the fact that at one point in time he said there was  
18 no status indicated in the A-file? And yet, now he's said  
19 that, well, there was some status because he was given  
20 employment authorization in '99 and '98.

21 MR. AVEIS: They are totally free to do that.

22 THE COURT: In that case, why was there an  
23 objection?

24 MR. AVEIS: That's not why we called the sidebar.  
25 The reason we called the sidebar was to front where we are

1 going on our redirect because, among other things, as Mr. Demik  
2 correctly raised --

3 THE COURT: No, but you are trying to rehabilitate  
4 him on an area that they're not -- they didn't raise that.  
5 They're not arguing. They're just basically saying that at one  
6 point in time your witness said there was no status. They  
7 pointed to an incident where there is status, even though, in  
8 fact, it's not particularly relevant status, but, you know,  
9 they're saying that. And so I've already made a ruling that,  
10 you know, the defendant's prior criminal history is not coming  
11 in since he's conceding that criminal history for purposes of  
12 the B2 portion of the case.

13 MR. AVEIS: Well, I think that's a different issue,  
14 if I may. Look, here's where we are. If we were just moving  
15 along the track that Mr. Menninger identified at the sidebar,  
16 which is that the defense concedes that the defendant was  
17 lawfully deported. Then the question would become whether the  
18 cross-examination of this witness helps try and show reasonable  
19 doubt as to whether that, among other things, occurred as to  
20 the lawful deportation.

21 THE COURT: They are not challenging the lawfulness  
22 of the deportation. They are conceding that.

23 MR. AVEIS: Then it becomes what is the purpose of  
24 the attack on the witness? And again, we admit and concede, as  
25 allowed in every trial, they are allowed to impeach the

1 witness's credibility, but then Mr. Menninger said at the  
2 sidebar that there may be something lurking around out there  
3 that shows that, in fact, the defendant was granted permission  
4 to be in the United States, in which case there's the jury  
5 struggling to know whether there's a concession that there's a  
6 lawful deportation, while at the same time there's something  
7 out there that shows that he shouldn't have been deported.

8 That's why on redirect, as we requested at the sidebar, we  
9 be permitted to ask the witness to explain this gap between  
10 when in June of '99 he asked for and was granted permission to  
11 work, and then in -- excuse me, yes, June of '99, and then in  
12 June of 2009 there's this termination on Exhibit 203, and that  
13 in July of 2010 he's then deported. As the Court has mentioned  
14 to the Government and chided the Government for its  
15 presentation, there are gaps that the jury ought to be able to  
16 know happened.

17 THE COURT: No, I didn't say there was a gap. I  
18 said there was failure on the Government's part to explain the  
19 background of this case. In other words, how is somebody  
20 deported? How is that done?

21 MR. AVEIS: We are getting there.

22 THE COURT: You have talked about being from an  
23 immigration judge. I don't know if the jury understands the  
24 difference between an immigration judge and a regular judge. I  
25 don't think that they understand the procedures that take

1 place, et cetera, et cetera, and so they have no idea what's  
2 going on, I'm pretty sure.

3 MR. AVEIS: Right. Well, there are more witnesses,  
4 including individuals who will testify that --

5 THE COURT: The problem, though, is that you really  
6 need to put the process up front because if you don't, you've  
7 already lost the jury in the beginning because they don't  
8 understand what's going on. And you constantly make references  
9 to these things, they don't understand what you're referencing.

10 So, you know, but be that as it may, the problem is that  
11 your argument, insofar as the defense's attack on this witness,  
12 their attack on the witness was only for the fact that he said  
13 that he found no evidence of status in the A-file, and yet  
14 there was status at a previous point in time.

15 Now, if the defense argues that that prior status somehow  
16 gives him some benefit after 2010, the date of his deportation,  
17 I will allow the Government to reopen the evidence and present  
18 the fact that yes, you know, he was convicted, and somehow,  
19 assuming the witness can testify to that, so we will do a 409  
20 on that. But if he can testify to that, then I will allow that  
21 to come. But if they don't make the argument, I won't allow it  
22 to come in because you can't backdoor it in in that fashion.

23 MR. AVEIS: Let me suggest, that's one possible  
24 explanation that the defense may offer. However, our view of  
25 it is that's not where they're going. Where they are going is

1 that this was an A-file that may very well have been a stone  
2 tablet, that in 2017 is an insufficient way to keep a record of  
3 an individual's right to be in the U.S.

4 And there's conflicting information that's been elicited  
5 and that this jury has heard through the cross-examination of  
6 the witness that notwithstanding there's a deport order that  
7 was received in connection with the Government's case in chief,  
8 there's also evidence that he was granted, by the U.S.  
9 government, the right to be in the U.S. to work.

10 The question then becomes: How is it that if you're  
11 granted the right to work, you later get kicked out? The jury  
12 needs to know an explanation. If this is the right witness for  
13 that, that's why we would like to have a 104 hearing so we  
14 confront and find out that answer.

15 THE COURT: I'm allowing you to do a 409 in front of  
16 me now.

17 MR. AVEIS: Very well. In terms of the argument  
18 that the Court has described the defense might later make,  
19 that's only one, but I don't believe the argument they are  
20 going to make.

21 What they're going to make is that there's something that  
22 shows that he was wrongfully deported. Notwithstanding that he  
23 was deported in July of 2010, no matter how many witnesses may  
24 say they walked him across the bridge in Del Rio, the fact is  
25 that the record shows that, sloppy keeping or what have you, he

1 should have been given a right to litigate his right to be here  
2 as shown by the 1999 document, and that is not a correct  
3 statement of the law.

4 And it's a side show that is really being presented under  
5 the ruse that the file is not complete. The Court has ruled  
6 what the elements are, and none of that goes to any of the  
7 elements or an attack on them, so that's why we would like to  
8 call the witness for that purpose.

9 THE COURT: Let me hear a response from the defense.

10 MR. DEMIK: Your Honor, if we make that argument, I  
11 agree with the Court. We are not making that argument.

12 THE COURT: All right. They are not going to make  
13 that argument.

14 MR. AVEIS: Well, I think the sands have shifted a  
15 number of times, but notwithstanding that, the Government still  
16 has a right on redirect to have the witness explain something  
17 that was raised in cross and have the witness say whether or  
18 not he knows why it is that someone who would be granted work  
19 permission in '99, would then be deported in July of 2010.

20 THE COURT: The problem is he can't testify other  
21 than on the basis of the A-file.

22 MR. AVEIS: Well, no, that's not right because  
23 during cross-examination the defense elicited a number of times  
24 that the witness is aware of things based on his training and  
25 experience and his role as a deportation officer. That's how



1 they set those questions up. That's how they qualified that  
2 witness to talk about those documents. That's what this jury  
3 is hearing and understands this witness to know about. They've  
4 laid that.

5 THE COURT: Let me ask, was there a stipulation  
6 specifically as to --

7 MR. AVEIS: Not us.

8 THE COURT: -- as to the lawfulness of the  
9 deportation?

10 MR. AVEIS: At sidebar, Mr. Menninger said the  
11 defense does not contest that the deportation was lawful.

12 MR. MENNINGER: Whether or not the deportation was  
13 lawful is not an element to the offense, Your Honor. We  
14 concede that the lawfulness of the prior deport is as cited  
15 pretrial in the 1326 reference that this Court already decided  
16 and again, as I said, Your Honor, the next time I will be  
17 arguing that motion will be in the Ninth Circuit.

18 THE COURT: Okay. But on what basis are you  
19 challenging the lawfulness of the deportation?

20 MR. MENNINGER: You mean when we litigate the 1326  
21 motion now?

22 THE COURT: Yes, I can't remember now.

23 MR. MENNINGER: That he was entitled to or that he  
24 is eligible for 212(h) relief, Your Honor. This Court found it  
25 was not plausible that he would have received that relief.

1 MR. AVEIS: As a derivative citizen.

2 MR. MENNINGER: No, Your Honor, it wasn't as a  
3 derivative citizen. It was a 212(h) relief.

4 MR. AVEIS: I'm sorry, I misspoke.

5 MR. MENNINGER: I remember because I had three  
6 hearings on it, Your Honor.

7 THE COURT: Are you going to be arguing the  
8 lawfulness of the deportation?

9 If they are not going to be arguing the lawfulness of the  
10 deportation, I don't know what your concern is.

11 MR. AVEIS: They have raised, again, what the jury  
12 has smelled is that there's something that occurred between '99  
13 and July of 2010.

14 THE COURT: That's something that you have smelled.  
15 It's not something that they have smelled because, again --

16 MR. AVEIS: Maybe I'm overreaching to say that I  
17 would bet my bar card, but I would come close to that. The  
18 closing argument consists --

19 THE COURT: I'm certainly tempted to take the bet.

20 MR. AVEIS: And if I hadn't been here before, I  
21 probably wouldn't have made that. But what I'm suggesting is  
22 that I think it's reasonable for the Court to assume that in  
23 closing, the defense is going to argue, among other things,  
24 that the A-file is incomplete, that for, among other reasons --

25 THE COURT: They are going to argue that the A-file

1 is incomplete?

2 MR. AVEIS: Yes, but that there is a document that  
3 shows the defendant was granted the right to work, and then lo  
4 and behold, 11 years later --

5 THE COURT: Let me put it this way. They already  
6 understand they have argued that the defendant's grant of a  
7 right to work in '99, if they attempt to argue that in their  
8 closing argument to some effect, I'm going to reopen at that  
9 point in time. I have already indicated I will allow to reopen  
10 for the witness to testify, if they can. But let's do the 409  
11 now. We are just repeating ourselves. Let's do the 409.

12 MR. DEMIK: Your Honor, I think it's real simple  
13 here. We are here because the Government asked for a sidebar  
14 because they want to get his prior conviction in. My  
15 understanding of the Court's ruling, you're not going to allow  
16 that unless we make that argument that you identified. So I  
17 don't think --

18 THE COURT: Or some other argument that you opened  
19 the door.

20 MR. DEMIK: Okay. But unless and until that  
21 argument is made --

22 MR. MENNINGER: We don't plan to.

23 MR. DEMIK: I don't know if we need a 409.

24 MR. AVEIS: Well, it is a 104, and we would prefer  
25 the court allow a preliminary examination.

1 THE COURT: I will allow him two minutes on it just  
2 because it will take that long to establish it. Let's just  
3 bring him in and do it.

4 Let me have the witness back on the stand.

5 And let me ask, does the Government have any questions for  
6 him?

7 MR. RYAN: Yes, Your Honor.

8 **REDIRECT EXAMINATION (Continued)**

9 BY MR. RYAN:

10 Q So turning your attention back to page 3 of Exhibit 209.

11 A Okay.

12 Q So it shows that he filed three applications. Two of them  
13 are applications for work authorization, correct?

14 A Yes, the 765 filing.

15 Q And one of them -- they are dated 1999 and 1998, right?

16 A Yes.

17 Q And then, I'm sorry, he also filed an application to  
18 become a lawful permanent resident in '99, right?

19 A Yes.

20 Q And then this one relates to the application for permanent  
21 resident, right?

22 A Yes.

23 Q And it says "Case terminated" --

24 A Yes.

25 Q -- is that right?

1 Same information, basically, right, on this page?

2 A "Case terminated," correct.

3 Q What is the date of the termination?

4 A Date was June 12th, 2009.

5 Q Now, are you aware of anything that occurred between 1999  
6 and 2009 that could account for that ten-year period delay?

7 A I don't work for CIS, so I can't really answer that.

8 Q Are you aware of anything in the defendant's life --

9 THE COURT: Well, again, you can't lead him. If he  
10 doesn't know, he doesn't know.

11 THE WITNESS: I don't know if I'm allowed to say it,  
12 but there is criminal convictions in his past.

13 BY MR. RYAN:

14 Q What was that criminal conviction?

15 A I know one burglary.

16 THE COURT: Let me stop you. Does criminal  
17 convictions automatically terminate employment authorization?

18 THE WITNESS: I can't say for sure, sir.

19 THE COURT: All right. What else?

20 THE WITNESS: I know there was a burglary  
21 conviction, and I just know that because it was listed on the  
22 redacted 485.

23 THE COURT: Let me indicate to the Government,  
24 that's not enough.

25 BY MR. RYAN:

1 Q Are you aware of any other convictions?

2 A Yes, there was a robbery conviction.

3 Q When was that?

4 A I have to look at the A-file, but he was sentenced to ten  
5 years. So it was sometime around 2000, 2001, I believe.

6 THE COURT: How do you know that that conviction  
7 affected his employment authorization?

8 THE WITNESS: Well, because --

9 THE COURT: Where in the A-file does it demonstrate  
10 that conviction affected his employment authorization?

11 THE WITNESS: Well, his authorization was already  
12 approved, correct.

13 THE COURT: But it automatically terminated?

14 THE WITNESS: I'm sorry?

15 THE COURT: It terminated in 1999, right?

16 THE WITNESS: I can't say for sure what happened.

17 THE COURT: I thought you indicated that the dates  
18 for the authorization was for one year.

19 THE WITNESS: Yes, they're approved in advance for  
20 one year.

21 THE COURT: Okay. So where in the record does it  
22 indicate that after that it was -- it continued after that one  
23 year?

24 THE WITNESS: Can I look at the --

25 BY MR. RYAN:

1 Q Sure. I believe -- which application was terminated in  
2 2009?

3 A The application for permanent residency.

4 Q Not the work authorization?

5 A Yes, not the work authorization.

6 Q So would someone's application for -- do you know whether  
7 an application for permanent residence would be terminated  
8 based on that type of criminal conviction?

9 A It would be, yes.

10 THE COURT: Where in the A-file does it show that it  
11 was terminated on the basis of the robbery conviction?

12 MR. RYAN: You can look at defense Exhibit 23, I  
13 believe.

14 MR. AVEIS: 203?

15 MR. RYAN: 203.

16 THE WITNESS: Yes, on 203, it's written in the  
17 action block.

18 THE COURT: I don't have book 203.

19 MR. AVEIS: May I approach?

20 MR. MENNINGER: I can provide another copy to the  
21 clerk, if you would like, Your Honor.

22 MR. AVEIS: I got it.

23 THE COURT: Where does it indicate that it was  
24 terminated because of the conviction? I understand that the  
25 case was terminated on June 12th of 2009, but where is the

1 reason for termination?

2 THE WITNESS: Reasoning is not listed on this one.

3 THE COURT: Okay. So where in the A-file is the  
4 reason shown?

5 THE WITNESS: Based on his robbery conviction, I  
6 don't believe it was shown in the A-file.

7 THE COURT: I don't understand what the Government  
8 wants to argue. You are arguing supposition that's not  
9 demonstrated by the A-file.

10 MR. RYAN: It's based on his training and experience  
11 as a deportation officer. He knows that this application would  
12 be denied based on that criminal conviction. In conjunction  
13 with the dates, they line up perfectly.

14 THE COURT: He's not been called as an expert  
15 witness, has he?

16 MR. RYAN: No, Your Honor.

17 THE COURT: Okay. Then he's not going to be  
18 testifying as an expert witness.

19 MR. RYAN: It's based on -- it's based on the facts  
20 that he knows. He knows the application was filed in 2000 --

21 THE COURT: Again, you know, what can I say? The  
22 answer is no. You're not getting it in by that means.

23 MR. RYAN: Very well, Your Honor.

24 THE COURT: But you can get it in if they open the  
25 door.



1 MR. RYAN: Thank you, Your Honor.

2 THE COURT: All right. Let's bring back the jury.

3 (Pause in proceedings.)

4 (In the presence of the jury.)

5 THE COURTROOM DEPUTY: You may be seated.

6 THE COURT: All right. We will continue with the  
7 examination.

8 MR. RYAN: We have no further questions, Your Honor.

9 THE COURT: All right. Anything else from the  
10 defense?

11 MR. MENNINGER: No, Your Honor.

12 THE COURT: All right. The witness is excused.  
13 Thank you very much.

14 The next Government witness.

15 MR. RYAN: The United States calls Deportation  
16 Officer Sonia Elsberry.

17 THE COURT: All right.

18 THE COURTROOM DEPUTY: Ma'am, please stop there, and  
19 raise your right hand.

20 **SONIA ELSBERRY, GOVERNMENT WITNESS, WAS SWORN**

21 THE WITNESS: Yes, I do.

22 THE COURTROOM DEPUTY: Thank you. Please have a  
23 seat.

24 State your name, and spell your last name for the record.

25 THE WITNESS: Sonia Elsberry, E-l-s-b-e-r-r-y.

**DIRECT EXAMINATION**

1  
2 BY MR. RYAN:

3 Q Good morning, Officer Elsberry.

4 A Good morning.

5 Q Who do you currently work for?

6 A Department of Homeland Security.

7 Q Which agency within Homeland Security?

8 A That would be ICE.

9 Q Is that Immigration and Customs Enforcement?

10 A Immigration and Customs and Enforcement.

11 Q How long have you worked for Immigration and Customs  
12 Enforcement?

13 A I was first hired in 1996. That's legacy INS, and then  
14 switched over to ICE in 2003.

15 Q So approximately 20 years?

16 A Yes.

17 Q What is your current title?

18 A Deportation officer.

19 Q What location do you currently work at?

20 A At the El Paso Service Processing Center in El Paso,  
21 Texas.

22 Q What are your current responsibilities as a deportation  
23 officer?

24 A I'm currently responsible for the new arrivals that arrive  
25 at our facility and also the removal of the individuals from

1 our facility.

2 Q Now, where were you working within ICE in July of 2010?

3 A I was working at the Otero Detention Facility Processing  
4 Center.

5 Q Where is that?

6 A In New Mexico.

7 Q I'm going to show you a document, Government Exhibit 3.

8 What is this document?

9 A This is the warrant of removal and deportation. It's the  
10 I-205.

11 Q What is the purpose of this document?

12 A It's to inform the individuals, whose name is on the top  
13 line, that he or she is going to be removed under the section  
14 of law that's printed underneath it.

15 Q And whose name is on the top line there?

16 A That would be Aceves, Cesar Raul aka Aceves, Cesar R.

17 Q Let me show you the second page.

18 What was your responsibility in relation to this document?

19 A My responsibility was to serve the individual with the  
20 warrant of removal or deportation and to take the fingerprint  
21 of the individual.

22 Q And when you take the person's fingerprint, do you  
23 identify yourself on this form in any way?

24 A Yes, I do.

25 Q How do you do that?

1 A I tell them or write down what my title would be.

2 Q And would this be your signature right here, then, where I  
3 am pointing?

4 A Yes, it is.

5 Q And next to it it says -- what does it say next to it?

6 A "IEA."

7 Q What does that stand for?

8 A Immigration enforcement agent.

9 Q And was that your previous title?

10 A That was my previous title at the time.

11 Q And there's a notation above the fingerprint. What is  
12 that?

13 A That is my call sign. It's only issued to me, and that's  
14 my Delta number, Delta 286. It's another identifier of the  
15 agents.

16 Q Now, do you recall processing the person on this form,  
17 Cesar Raul Aceves?

18 A No, I did not.

19 Q How do you actually know, then, you processed this person  
20 for deportation?

21 A Okay. It's normal routine when the individual is being  
22 served, that I ask him for his complete, correct name; his date  
23 of birth; his country of birth, and then, of course, compare  
24 the photo at the time when he's present in front of me.

25 Q There is a -- there is a signature right below the picture

1 that says "Signature of alien being fingerprinted." Whose  
2 signature is that?

3 A That would be his.

4 Q The person you're serving the warrant to?

5 A The person I was serving the warrant to at the time,  
6 Aceves, Cesar Raul.

7 Q If someone was granted a voluntary departure, would you  
8 serve them this type of form?

9 A No, I would not.

10 Q It's only served for the items on the first page, correct?

11 A Yes.

12 Q Okay. Thank you.

13 If you could take a look at Government Exhibit 4.

14 What is this document?

15 A The warning to the alien ordered removed or deported,  
16 I-296.

17 Q What is the purpose of this document?

18 A To inform the person who I am serving how many years or  
19 for life, if that's the box that's checked off, which it is,  
20 that he is being removed from the country, and that he cannot  
21 come back.

22 Q And are you familiar with the warnings that are on this  
23 page?

24 A Yes, I am.

25 Q What about this document confirms that you actually gave

1 the warnings to the person named on it?

2 A Because my signature and title is at the bottom.

3 Q And again, that title is IEA?

4 A Yes, immigration enforcement agent.

5 Q Now, there's one box checked there at the bottom. Would  
6 that be the warning that you read?

7 A Yes.

8 Q Can you please read that?

9 A "At any time because you have been found inadmissible or  
10 excludable under section 212 of the act, or deportable under  
11 section 241 or 237 of the act, and ordered deported or removed  
12 from the United States."

13 Q And after you give these warnings to the alien, what  
14 happens next?

15 A Then the alien is placed in a cell, a room, a holding room  
16 until he's removed.

17 MR. RYAN: Thank you. No further questions.

18 THE COURT: Cross?

19 MR. MENNINGER: Just a few questions, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. MENNINGER:

22 Q Agent Elsberry, you testified that you have been working  
23 with ICE or the INS, which was before there was ICE, it was the  
24 immigration enforcement organization, correct, since 1998?

25 A 1996.

1 Q 1996. My mistake. So over 20 years?

2 A Correct.

3 Q I imagine you processed a lot of these documents in your  
4 time, correct?

5 A Correct.

6 Q Would you guess in a year you probably process hundreds of  
7 them?

8 A That's fair to say.

9 Q Thousands, maybe?

10 A Possibility.

11 Q Okay. So just doing -- back at the math, that's 20,000 in  
12 the course of your 20-year employment with the immigration  
13 authorities?

14 A It's possible.

15 Q It's a really high number; we can agree on that?

16 A Okay.

17 Q And you have no memory of Mr. Aceves, correct?

18 A No, I do not, but I do remember the form.

19 Q You recognize your signature on the form?

20 A Yes.

21 MR. MENNINGER: Fair enough.

22 No further questions.

23 THE COURT: All right. Any other questions?

24 MR. RYAN: No, Your Honor.

25 THE COURT: All right. The witness is excused.

1 Thank you very much.

2 THE WITNESS: Thank you.

3 THE COURT: The next Government's witness?

4 MR. RYAN: One moment, Your Honor.

5 THE COURT: Okay.

6 MR. RYAN: The United States calls Deportation

7 Officer Roberto Villalobos.

8 THE COURT: All right.

9 THE COURTROOM DEPUTY: Stop there, and raise your  
10 right hand.

11 **ROBERTO VILLALOBOS, JR., GOVERNMENT WITNESS, WAS SWORN**

12 THE WITNESS: I do.

13 THE COURTROOM DEPUTY: Thank you. Have a seat.

14 State your name and, spell your last name for the record.

15 THE WITNESS: Roberto Villalobos, Jr.,

16 V-i-l-l-a-l-o-b-o-s.

17 **DIRECT EXAMINATION**

18 BY MR. RYAN:

19 Q Good morning, Officer Villalobos.

20 A Good morning.

21 Q Who do you currently work for?

22 A I'm currently employed with the Immigration and Customs  
23 Enforcement.

24 Q How long have you worked for ICE?

25 A Ten years, sir.



1 Q What is your current title?

2 A Current title is deportation officer.

3 Q At what location do you work?

4 A At the El Paso processing center.

5 Q What are your responsibilities as a deportation officer?

6 A My duties are -- my duties are to apprehend and remove  
7 people from the United States who are here illegally and  
8 witness the departure.

9 Q Where were you working in July of 2010?

10 A At the El Paso processing center.

11 Q I'm going to show you Government Exhibit 3, the second  
12 page.

13 Do you recognize this document?

14 A Yes, sir.

15 Q Based on this document, can you tell when this person was  
16 deported?

17 A July 29th, 2010.

18 Q How was the person on this form deported?

19 A He was deported afoot.

20 Q What does that mean?

21 A "Afoot" means we actually take them to the port of entry,  
22 the United States and the Mexican border, and we watch them  
23 walk across the bridge.

24 Q Which city in the United States was the person on this  
25 document removed from?

1 A Through Del Rio, Texas.

2 Q And how do you know that information?

3 A Because it's written here on this form here, which is an  
4 I-205.

5 Q Can you explain what the process is for deporting people  
6 at the Del Rio, Texas location?

7 A Okay. We go to work at midnight at the El Paso processing  
8 center. We load them all up on a bus. We drive all night  
9 getting to Del Rio, Texas but 9:00, 10:00 in the morning, and  
10 then we park there. We issue them all the property that they  
11 had or their medication, and then we watch them walk across the  
12 bridge.

13 Q And how exactly do they exit the United States?

14 A They walk across the bridge.

15 Q Into Mexico?

16 A Into Mexico, yes.

17 Q At what point are the aliens officially in Mexico?

18 A At the -- there's a -- there's the border, and there's  
19 like the middle of the bridge is the American flag, the Mexican  
20 flag, and that's when they cross.

21 Q That's the line that delineated the border?

22 A Yes.

23 Q Based on this warrant of removal, did anyone officially  
24 witness this person being deported?

25 A Yes, sir. There was two of us, myself and my partner.

1 Q And how can you tell that?

2 A Because of my signature on the "Departure witness" and the  
3 "Departure verified by."

4 Q Which one is your signature?

5 A "Departure verified by."

6 Q When would you have signed that line?

7 A After we deported him or witness him cross the  
8 international boundary.

9 Q Would it have been immediately?

10 A No, it doesn't have to be immediately.

11 Q When is it generally done?

12 A It all depends. On this particular deportation, we had to  
13 drive all night, so we drive all night, and then we deport him.  
14 And then we are usually pretty tired, so we check into a hotel.  
15 And then on the way back to El Paso, we usually do the  
16 signature and fill out the whole form.

17 Q Do you actually watch the aliens cross the bridge into  
18 Mexico?

19 A Yes, sir.

20 Q Referring to the top portion next to the "Port," "Date,"  
21 "Manner of entry," did you write that?

22 A No, sir.

23 Q Would you sign under the "Departure verified by" if that  
24 top portion was blank?

25 A No.

1 Q Do you actually remember seeing this defendant be deported  
2 from the United States?

3 A The one in the picture -- the one on the form, yes.

4 Q You actually remember this person being deported? Do you  
5 understand the question?

6 A I didn't understand the question.

7 Q Okay. Do you remember this actual occasion on July 29,  
8 2010?

9 A Yes, I remember the occasion.

10 THE COURT: I think he is asking you whether or not  
11 you specifically recall this particular individual, in other  
12 words, you have a memory in your mind of this date, you  
13 specifically remember this specific individual crossing the  
14 bridge.

15 THE WITNESS: No, I do not, sir.

16 BY MR. RYAN:

17 Q And why do you not remember this particular occasion?

18 A We deport approximately 40 to 80 on that trip, and for me,  
19 it's impossible to remember all of them.

20 Q Once the alien has walked across the bridge, is it  
21 possible to walk back into the United States without being  
22 detected?

23 A Not on that bridge, no, sir.

24 Q After they get off the transport bus, is it possible for  
25 the alien to just walk away?

1 A No.

2 Q Why is that?

3 A Because we're there. They get their property, and then we  
4 just send them all south. There's no way of them -- anyone  
5 else going there. What I'm saying, they all get off the bus in  
6 a group, and they all walk down to the other side of the  
7 bridge.

8 MR. RYAN: Thank you.

9 No further questions.

10 THE COURT: All right. Cross?

11 MR. MENNINGER: Just a moment, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. MENNINGER:

14 Q Officer Villalobos, you testified you have been a  
15 deportation officer for ten years, correct?

16 A Yes, sir.

17 Q And you take people to the border in big groups, correct?

18 A Yes, single -- single and big groups.

19 Q But it could be up to 40 or 80 at a time, you said?

20 A Yes, sir.

21 Q So over those ten years, you must have been involved in  
22 many, many deportations, correct?

23 A Yes, sir.

24 Q So your testimony today is based on the piece of paper  
25 that Mr. Ryan had up here on the screen, correct?

1 A Yes, sir.

2 Q And that's your routine, standard procedure, correct?

3 A Yes, sir.

4 Q So you're an ICE agent in a border district, correct?

5 A Yes, sir.

6 Q I'm sure you know all sorts of ways that people sneak  
7 illegally into the united states.

8 A Yes, sir.

9 Q Hiding in secret compartments of vehicles?

10 A I would assume. I have never caught anybody.

11 Q You know people sneak through fences?

12 A Yes.

13 Q Swim across the river?

14 A Yes.

15 Q You have done deportations in Del Rio a lot of times,  
16 correct?

17 A Yes.

18 Q Would you say 20 times?

19 A No, not 20 times.

20 Q Okay. 10?

21 A A little bit less.

22 Q Okay. So maybe between 5 and 10?

23 A Maybe less than 5.

24 Q Okay. So only a few times, then?

25 A Through Del Rio, yes.

1 Q Okay. And you testified that you take the buses to the  
2 towns down at the border, and then you park at the port of  
3 entry, correct?

4 A Correct.

5 Q I assume there's a building, some sort of building there?

6 A Actually, there's like a turnaround. There's the CVP  
7 office.

8 Q Right.

9 A And then there's a turnaround.

10 Q Uh-huh.

11 A We park in that turnaround. It's like a little parking  
12 lot.

13 Q Okay. The parking lot is at the CVP office?

14 A No, no, it's further down closer to the POE, port of  
15 entry.

16 Q Fair enough.

17 And you testified that when you deport people, you don't  
18 actually go into Mexican territory?

19 A Oh, no.

20 Q In fact, as a matter of course, ICE agents don't go into  
21 Mexican territory when they are deporting people, correct?

22 A We don't, yes, sir.

23 Q And you testified that the midpoint of the bridge is the  
24 actual -- is the actual border, correct?

25 A Yes.

1 Q So that's over the river, right?

2 A Over the river, yes.

3 Q The Rio Grande River?

4 A Uh-huh.

5 Q And the bridge is about a half mile long, correct?

6 A Oh, I don't know how long it is, but it's pretty long.

7 Q It's a pretty long bridge?

8 A Yes.

9 Q So you've been there a few times, correct?

10 A Yes.

11 Q So you would probably recognize a picture of it?

12 A I would say I could probably recall.

13 Q Okay. Let me show you. Let me just show you three  
14 pictures that I have obtained from Google Earth.

15 Give me one moment. Sorry.

16 Officer Villalobos, do you recognize what's depicted in  
17 those pictures?

18 A I don't.

19 Q You don't recognize what's depicted is the picture of the  
20 Del Rio port of entry?

21 A No.

22 Q So you wouldn't say that's a fair and accurate depiction  
23 of the Del Rio port of entry?

24 A Not from the air.

25 Q So your position is this is not an accurate depiction?



1 A I would say no, sir.

2 Q Okay. One moment, please.

3 (Discussion off the record.)

4 BY MR. MENNINGER:

5 Q Mr. Villalobos, I want you to look at Exhibit 217.

6 (Exhibit 217 for identification.)

7 BY MR. MENNINGER:

8 Q The Del Rio border crossing has a toll booth, correct?

9 A Yes.

10 Q Do you see anything in that picture that looks like a toll  
11 booth or toll plaza?

12 A No.

13 Q No?

14 Maybe let's try if we can get further with Number 218 --  
15 actually, let's turn to 219. My apologies.

16 (Exhibit 219 for identification.)

17 BY MR. MENNINGER:

18 Q Do you see about midway or in the center of the picture  
19 that there's some turnouts depicted, some turnouts on that  
20 roadway?

21 A On the left-hand side?

22 Q In the center of the picture.

23 A In the center of the picture.

24 Q And there's turnouts on the right-hand side of that road?

25 A What do you mean by some "turnouts"?

1 Q You described earlier that's where you park when you are  
2 effectuating a deportation. There's little turnouts.

3 A Uh-huh.

4 Q Does that look like a depiction of the turnouts you were  
5 describing?

6 A Are there two of them right there? Is that what you are  
7 talking about?

8 Q Yes, that's what I am talking about.

9 A I would say yes.

10 Q And do you recognize a river depicted in this picture?

11 A Would it be the yellow line?

12 THE COURT: He is asking whether or not you  
13 recognize it.

14 BY MR. MENNINGER:

15 Q Do you recognize the river depicted in this picture?

16 A Oh, no.

17 Q Do you recognize the toll plaza that's depicted in this  
18 picture?

19 THE COURT: I believe that's been asked and  
20 answered.

21 MR. MENNINGER: He is looking at a different  
22 picture. I am looking at 219.

23 THE COURT: I'm looking at 219 also.

24 BY MR. MENNINGER:

25 Q Do you see a toll plaza in 219?

1 A I see a building, but I'm not sure if it's a toll plaza.

2 Q And do you see -- well, let's turn back to 217.

3 I'm sorry, Your Honor.

4 THE COURT: Never mind.

5 BY MR. MENNINGER:

6 Q Do you see anything that looks like a bridge in this  
7 picture?

8 A I would say yes.

9 Q Do you see anything that looks like turnouts in this  
10 picture?

11 A Yes.

12 Q Is this helping you recognize what's depicted in this  
13 picture?

14 A Yes.

15 Q Do you recognize it as the Del Rio border crossing?

16 A I would --

17 Q Well, it has a bridge, right?

18 A Yeah, it has a bridge.

19 Q And it has turnouts?

20 A Yes.

21 THE COURT: Counsel, there is only so much I will  
22 allow you. If he can't recognize it, he can't recognize it.

23 MR. MENNINGER: Right. That's all I am trying to  
24 make sure of, Your Honor, is if he can recognize it.

25 THE COURT: I have a quick question on sidebar.

1 (Discussion held at sidebar.)

2 THE COURT: Let me ask, I can see that 218 and 219  
3 might be the same picture.

4 MR. MENNINGER: Uh-huh.

5 THE COURT: But 217 is not the same picture, it  
6 seems to me.

7 MR. MENNINGER: It's a different view of the same.

8 THE COURT: Well, no, it seems to be a different  
9 picture.

10 MR. MENNINGER: So, I mean, if I can, Your Honor,  
11 and if our investigator who got these off of Google Earth needs  
12 to come up and testify, we can have her come up.

13 THE COURT: Let me just ask.

14 MR. MENNINGER: Uh-huh.

15 THE COURT: What I'm pointing at here it's not the  
16 same because there's no building attached here.

17 MR. MENNINGER: Well --

18 THE COURT: So --

19 MR. MENNINGER: Your Honor, it's right there. It's  
20 a building.

21 THE COURT: Okay. But then this is not here. These  
22 are the same picture.

23 MR. MENNINGER: I think it's just cut off,  
24 Your Honor. The building doesn't appear.

25 THE COURT: Well, then, you're saying that this

1 structure is not depicted on this thing?

2 MR. MENNINGER: This is right here, Your Honor.

3 THE COURT: But this is attached to a building.  
4 There is no building attached to it here, so it's not the same.

5 MR. MENNINGER: Your Honor, we can put up our  
6 investigator to testify that's where she obtained the photos.

7 THE COURT: She can say that she obtained them, but  
8 the problem is they are not the same picture.

9 MR. AVEIS: And there is no witness to authenticate  
10 if it's really the bridge.

11 THE COURT: So there's a problem.

12 MR. MENNINGER: Can I have a moment, Your Honor?

13 THE COURT: Sure.

14 (Discussion off the record.)

15 (In open court.)

16 MR. MENNINGER: Thank you, Officer Villalobos.

17 No further questions.

18 THE COURT: All right. Anything further from the  
19 Government?

20 MR. RYAN: No, Your Honor, no questions.

21 THE COURT: All right. The witness is excused.  
22 Thank you very much.

23 The next Government's witness.

24 THE COURTROOM DEPUTY: Stop right there. Raise your  
25 right hand.

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**TERRENCE RACHEL, GOVERNMENT WITNESS, WAS SWORN**

THE WITNESS: I do.

THE COURTROOM DEPUTY: Okay. Have a seat.

State your name, and spell your last name for the record.

THE WITNESS: My name is Terrence Rachel; last name is spelled R-a-c-h-e-l.

**DIRECT EXAMINATION**

BY MR. RYAN:

Q Good morning, Officer Rachel?

A Good morning.

Q Who do you work for?

A I'm sorry?

Q Who do you work for?

A I work for Immigration and Customs Enforcement.

Q How long have you worked for Immigration and Customs Enforcement?

A Since 2008.

Q Did you work for the former Immigration and Naturalization Services before then?

A I did.

Q How long?

A I worked for them from 2001 until about 2003.

Q What are your responsibilities as a deportation officer?

A To identify, locate and apprehend at-large aliens.

Q Were you working as a deportation officer in April of

1 2015?

2 A I was.

3 Q Where were you working?

4 A Los Angeles.

5 Q Do you recall if you apprehended anyone on April 10th,  
6 2015?

7 A I do.

8 Q Did you personally come into contact with the person known  
9 as Cesar Raul Aceves on that day?

10 A I did.

11 Q Do you remember that experience?

12 A I do.

13 Q Do you recognize Mr. Aceves in the courtroom here today?

14 A I do.

15 Q Can you please point him out and identify a piece of  
16 clothing he is wearing.

17 A He is sitting there in the middle with the dark gray  
18 jacket on.

19 MR. RYAN: Your Honor, may the record reflect that  
20 the witness has identified the defendant?

21 THE COURT: Yes.

22 BY MR. RYAN:

23 Q How did you come to know that the defendant was in the  
24 United States?

25 A I received information that he was residing in Long Beach,

1 California.

2 Q What did you do once you found this information?

3 A I conducted some database checks and confirmed that he had  
4 been previously deported.

5 Q Where did you eventually come into contact with the  
6 defendant?

7 A Inside of a -- in the lobby of a building in Long Beach.

8 Q What was he doing?

9 A He was entering the building.

10 Q Was he restrained in any way?

11 A No, he was not.

12 Q Was he in handcuffs?

13 A No, he was not.

14 Q Was he being escorted by law enforcement?

15 A No, he was not.

16 Q Was he with anyone?

17 A Yes, he was.

18 Q Do you know approximately how many miles Long Beach is  
19 from the Mexican border?

20 A I believe it's more than a hundred.

21 MR. RYAN: No further questions, Your Honor.

22 THE COURT: All right. Cross?

23 MR. MENNINGER: No questions, Your Honor.

24 THE COURT: The witness is excused.

25 Thank you very much.



1 MR. RYAN: Can I read the stipulation in regarding  
2 the "found in," Your Honor? It's Exhibit 21.

3 (Exhibit 21 for identification.)

4 THE COURT: I assume no objection.

5 MR. MENNINGER: No, Your Honor.

6 THE COURT: Let me state to the jury, if the parties  
7 stipulate to a fact, you have to accept that fact as true.

8 What is the stipulation?

9 MR. RYAN: "On or about November 26, 2014,  
10 defendant, Cesar Raul Aceves, was found in Long Beach, in Los  
11 Angeles County, California."

12 THE COURT: All right. And that's an exhibit.

13 MR. RYAN: That is an exhibit, Your Honor, Exhibit  
14 21.

15 THE COURT: All right.

16 MR. RYAN: We would move that into evidence, please.

17 THE COURT: Okay. Does the Government have its next  
18 witness?

19 MR. RYAN: The Government rests, Your Honor.

20 THE COURT: All right. Let me just ask, before you  
21 rest, have all the stipulations been entered?

22 MR. RYAN: If not, can we please move into evidence  
23 19, 20 and 21.

24 THE COURTROOM DEPUTY: 19 isn't in.

25 THE COURT: Why don't you read 19 to the jury.

1 MR. RYAN: Yes, Your Honor.

2 "The following government exhibits are true and correct  
3 copies of documents found in the A-file of Cesar Raul Aceves,  
4 A-number 076602456, as described below: Government Exhibit 3,  
5 Form I-205, Warrant of Removal/Deportation, dated July 27" --

6 THE REPORTER: Slow down.

7 THE COURT: You have to slow down.

8 MR. RYAN: -- "2010; Government Exhibit 11A,  
9 Tenprint Fingerprint Card, dated July 12th, 2010; and  
10 Government Exhibit 12A, Tenprint Fingerprint Card, dated April  
11 10th, 2015.

12 "The right index fingerprint on Government Exhibit 3, a  
13 Form I-205, Warrant of Removal/Deportation bearing name Aceves,  
14 Cesar Raul, is the fingerprint of defendant.

15 "The fingerprints on Government Exhibit 11A, the Tenprint  
16 Fingerprint Card bearing name Aceves, Cesar Raul, dated July  
17 12th, 2010 are the fingerprints of defendant.

18 "The fingerprints on Government Exhibit 12A, the Tenprint  
19 Fingerprint Card, bearing name Aceves, Cesar Raul, dated April  
20 10th, 2015, are the fingerprints of defendant.

21 "All of the fingerprints on Government Exhibits 3, 11A and  
22 12A belong to the same person. If called as a witness at  
23 trial, Amy K. Gordon would so testify. Ms. Gordon is a Latent  
24 Print Examiner from the Department of Homeland Security  
25 Biometric Support Center.

1 "All of the fingerprints on Government Exhibits 3, 11A and  
2 12A belong to the defendant.

3 "Government Exhibits 3, 11A and 12A are admissible without  
4 any further foundation or objection."

5 THE COURT: All right. And that is, again, Exhibit  
6 19?

7 MR. RYAN: Yes, Your Honor.

8 THE COURT: Okay. So I will admit Exhibit Number  
9 19.

10 (Exhibit 19 received into evidence.)

11 THE COURT: And at this point in time the Government  
12 rests?

13 MR. RYAN: Yes, Your Honor.

14 THE COURT: Let's take a break because my  
15 reporter -- even though the jury has been taking breaks, my  
16 reporter has not been taking breaks, so she needs a break  
17 desperately. So we will take a 15-minute break at this point  
18 in time, ladies and gentlemen.

19 (Out of the presence of the jury.)

20 THE COURT: Let me ask the defense counsel, how many  
21 witnesses does the defense have?

22 MR. MENNINGER: Your Honor, I think only one,  
23 Your Honor.

24 THE COURT: Only one?

25 MR. MENNINGER: Yes.

1 THE COURT: All right.

2 MR. AVEIS: Is it regarding the map?

3 MR. MENNINGER: It is regarding the pictures.

4 MR. AVEIS: Maybe we can meet and confer and resolve  
5 this by stip.

6 MR. MENNINGER: Yeah.

7 MR. AVEIS: Give us a few.

8 MR. MENNINGER: I'm sorry, Your Honor. Can I just,  
9 for the record -- can I just make a Rule 29 -- since we are at  
10 the close of Government's close of evidence, make a Rule 29  
11 motion as to all of the elements of the offense?

12 THE COURT: All right.

13 MR. RYAN: Your Honor, I will just go through the  
14 elements real quick. The defendant was removed or deported.  
15 We have seen the notice to appear, the motion for immediate  
16 removal, the immigration judge's order of removal, the warrant  
17 of removal and the warnings. You've heard the deportation  
18 officer testify Officer Villalobos that he only signs that form  
19 once a person has physically crossed the border into Mexico.  
20 The parties have stipulated it's the defendant's fingerprint on  
21 that warrant of removal.

22 Defendant voluntarily entered the United States.  
23 Officer Rachel testified that he found the defendant in a lobby  
24 of a building in Long Beach. He was not restrained in any way,  
25 not handcuffed, not being escorted by law enforcement. A

1 rational juror could find that he returned on his own free will  
2 based on this evidence. The defendant entered the United  
3 States and knowingly remained.

4 The fact that Long Beach is a hundred miles from the  
5 Mexican border, the circumstantial evidence, that defendant  
6 knew he was in the United States and knowing he remained.  
7 Defendant was found in the United States without having  
8 obtained the consent of the attorney general/secretary of  
9 Homeland Security. And we have a stipulation that the  
10 defendant was found in Long Beach.

11 Officer Rachel testified that he checked the defendant's  
12 A-file and immigration databases, and that there were no  
13 records of the defendant ever being granted permission to enter  
14 the United States, or that he even requested that permission,  
15 and that the defendant is an alien at the time of the entry.  
16 The birth certificate is in evidence, shows the defendant was  
17 born in Mexico. His parents and grandparents were born in  
18 Mexico. The immigration judge's order orders the defendant to  
19 be deported to Mexico. That's it.

20 THE COURT: All right. The motion is denied.

21 MR. MENNINGER: Thank you, Your Honor.

22 (Recess taken from 10:57 a.m. to 11:08 a.m.)

23 (Out of the presence of the jury.)

24 THE COURT: All right.

25 MR. AVEIS: If I may, Your Honor, on behalf of the

1 Government. With regard to the three photographs that defense  
2 showed the witness, Villalobos, at the break. We proposed to  
3 the defense that we would endeavor to stipulate to their  
4 admissibility. The problem that we face is that the pictures  
5 are somewhat misleading given that you can't tell from what --  
6 of the distance in the sky they are taken.

7 The testimony thus far is that the walk that the  
8 individuals are submitted to is about a half mile so what we  
9 would propose is either the Government recall Mr. Villalobos to  
10 ask him a couple of questions by way of reopening the case to  
11 do that, or we will let the defense do that because there is a  
12 photograph that we've showed that witness, and it would be  
13 number 218.

14 THE COURT: Okay.

15 MR. AVEIS: And the reason we suggest that's a good  
16 idea is because I think the jury would be helped by the photo.

17 THE COURT: Both sides agree, it's fine with the  
18 Court. The problem that I had was that the 219 and 218 do not  
19 appear to be the same as 217, because there is -- it shows --  
20 there's a structure that is shown on there that is not depicted  
21 in 217.

22 MR. AVEIS: So the structure that's in 217, almost  
23 in the center which has the red roof?

24 THE COURT: No, that's not what I'm referring to.

25 MR. AVEIS: I know you're referring -- right, right,

1 right, right. So I want to use that as a point of reference.

2 THE COURT: If I had a situation where things are  
3 movable and that's the difference, maybe one day it's there and  
4 the next day it's not there, all I'm saying it does not appear  
5 to be the same. And also, one of the problems is that the  
6 witness -- I don't know if the witness precisely said it, but  
7 he mentioned one time these are aerials, and he doesn't have  
8 that perspective; he's on the ground.

9 MR. AVEIS: That's precisely why we think it would  
10 be best to recall the witness, in regard to that point of  
11 reference of that building in the middle of 217 and then the  
12 one, that's the only common feature --

13 THE COURT: Why don't we just do this. Why don't we  
14 bring the witness back. What do you call them?

15 MR. AVEIS: A request to reopen that witness.

16 THE COURT: Do you call them 104s?

17 MR. AVEIS: 104 hearing.

18 THE COURT: Just do a 104. We will see what  
19 happens.

20 MR. DEMIK: There's a lot of ways we can skin this  
21 cat, Your Honor. We're not doctoring photos, Your Honor.

22 THE COURT: I know you're not doctoring photos, but  
23 the problem is that I don't want to give the false impression  
24 because if he can't lay the foundation for it, then you need to  
25 bring in somebody to lay the foundation for it, but the problem

1 is, again, you have to relate it to that witness's testimony.  
2 And so even though you can bring a witness that says this is an  
3 aerial photograph of the bridge, it's kind of like, okay, so  
4 what.

5 MR. DEMIK: How I approach to do it, Your Honor,  
6 since the government has closed, we are going to call the  
7 witness, and if they want to enter a rebuttal case to bring him  
8 back in why he didn't recognize the photos, that's fine.

9 MR. AVEIS: Well, we have no doubt that the defense  
10 investigator accurately and faithfully pulled these off Google.  
11 The issue that we are more concerned about, if they are just  
12 received into evidence through that investigator, and then we  
13 call the wit back, we are just wasting time. We can have this  
14 witness say, "I know Government 218," and he's going to point  
15 out where on 218 the bus pulls over from which the individual  
16 is to be deported are asked to exit and then walk across the  
17 bridge, simple as that.

18 THE COURT: I really don't care which way it's done  
19 because, frankly, this is the last witness, et cetera. It's  
20 not going to take too long to do it either way. So if you guys  
21 can't agree, then the Government has rested, so it gives the  
22 defense the opportunity.

23 MR. DEMIK: I would say we would pursue that route,  
24 Your Honor. It will be very quick.

25 THE COURT: That's fine.



1 MR. AVEIS: Then we will call the witness,  
2 Your Honor.

3 THE COURT: That's fine.

4 Let me ask, are you guys ready then?

5 MR. MENNINGER: To a call our witness, Your Honor?

6 THE COURT: Yes.

7 MR. MENNINGER: Yes.

8 MR. AVEIS: If the testimony is going to be "I  
9 pulled these off of Google," we would stipulate to that.

10 THE COURT: I don't want to argue. I'm going to  
11 bring the jury in in a moment. The defense can indicate  
12 whether or not they have any additional witnesses, and either  
13 they do or they don't. If they don't, then they don't. And if  
14 they do, then they do.

15 Let me have the jury brought back in.

16 MR. MENNINGER: Your Honor, while we're waiting, are  
17 we going to talk more about jury instructions before the close  
18 of evidence?

19 THE COURT: What we are going to do, I will excuse  
20 the jury for today, and we will do jury instructions in the  
21 afternoon.

22 MR. MENNINGER: And then the closing arguments.

23 THE COURT: The instructing and closing tomorrow.

24 MR. MENNINGER: Oh, tomorrow?

25 THE COURT: Yes.

1 MR. MENNINGER: Okay. Great. Thanks, Your Honor.

2 THE COURT: You're welcome.

3 (In the presence of the jury.)

4 THE COURTROOM DEPUTY: You may be seated.

5 JUROR: He's still in the restroom.

6 THE COURT: The last juror.

7 (Discussion off the record.)

8 THE COURT: We will start again. Let me ask the  
9 defense, does the defense have any witnesses?

10 MR. DEMIK: The defense calls Mary Veral,  
11 Your Honor.

12 THE COURTROOM DEPUTY: Raise your right hand.

13 **MARY VERAL, DEFENSE WITNESS, WAS SWORN**

14 THE WITNESS: I do.

15 THE COURTROOM DEPUTY: Thank you. Have a seat.

16 State your name, and spell your last name for the record.

17 THE WITNESS: My name is Mary Veral, V-e-r-a-l.

18 **DIRECT EXAMINATION**

19 BY MR. DEMIK:

20 Q Could you tell the jury who you are.

21 A I am an investigator at the office of the federal public  
22 defender.

23 Q And that's our office?

24 A Yes.

25 Q Were you here when, I believe, Officer Villareal [sic]

1 testified?

2 A Yes, I was.

3 Q He had some trouble recognizing some photographs?

4 A Yes.

5 Q So I put three photographs in front of you, the same three  
6 that we gave him. Those are Exhibits 217, 218 and 219.

7 Could you take a look at those, please.

8 A Yes.

9 Okay.

10 Q Can you tell the jury what those photographs are?

11 THE COURT: Well, you need to lay a foundation for  
12 that.

13 BY MR. DEMIK:

14 Q Do you recognize those photographs?

15 A Yes, I do.

16 Q What are they?

17 A Two of them are Google Earth screen shots of the Del Rio  
18 border crossing, and one is a Google image picture of the  
19 border crossing.

20 MR. DEMIK: I would move to admit 217, 218 and 219,  
21 Your Honor.

22 THE COURT: Let me just ask, one you indicated --  
23 sorry, two you indicated were Google Earth --

24 THE WITNESS: Screen shots.

25 THE COURT: Screen shots. And then the other one is

1 a what?

2 THE WITNESS: It's an image, it's a Google image,  
3 like you can search on Google for images, and it's a picture.

4 THE COURT: Let me just ask this: Have you ever  
5 been to this location?

6 THE WITNESS: No.

7 THE COURT: So these are just items that you have  
8 taken from the Google system?

9 THE WITNESS: From the Internet, yeah.

10 THE COURT: Okay. Do you happen to know when these  
11 photographs were taken?

12 THE WITNESS: I know when two of them were taken.

13 THE COURT: Which -- the two -- the two that were  
14 taken, do you know which date -- well, identify the two and  
15 what date were they taken.

16 THE WITNESS: I know the date of 218 and 2 -- I  
17 believe it's 219.

18 THE COURT: Okay.

19 THE WITNESS: And that's November 21st, 2011.

20 THE COURT: Okay. Are the dates of those two, and  
21 the other one you don't have a date as to when that one was  
22 taken?

23 THE WITNESS: I do not.

24 THE COURT: Okay. So you don't know if it was  
25 before or after or during the year of 2011?

1 THE WITNESS: That's right.

2 THE COURT: Okay.

3 MR. DEMIK: I would move to admit, Your Honor.

4 THE COURT: Any objection?

5 MR. RYAN: No objection.

6 THE COURT: They are admitted.

7 (Exhibit 217, 218 and 219 received into evidence.)

8 BY MR. DEMIK:

9 Q So real quick, 218 and 219, let's look at those. This is  
10 218. You printed off Google, right?

11 A Yes.

12 Q And it has a date up here, and that's how you know when it  
13 was taken, right?

14 A That's correct.

15 Q And that date is November 21st, 2011?

16 A Yes.

17 Q And 219, 219 has the same thing, Ms. Veral?

18 A Yes, that's right.

19 Q Same date?

20 A Yes.

21 Q Now, this other one that we showed Officer Villalobos, you  
22 don't know when that one was taken?

23 A That's right.

24 Q But you did get it from the Google system. And how long  
25 ago did you get it from the Google system?

1 A I pulled it within the last two weeks.

2 Q Okay. And what do these pictures, according to Google,  
3 represent?

4 MR. RYAN: Objection; hearsay.

5 THE COURT: I will allow her to testify as to what  
6 Google Maps or Google Earth indicates what it depicts, but I  
7 don't think she can testify as to anything more than that. All  
8 right?

9 BY MR. DEMIK:

10 Q According to Google Maps, what do these pictures  
11 represent?

12 A The Del Rio border crossing.

13 Q And I want to ask you about Defendant's -- or Exhibit 220.  
14 (Exhibit 220 for identification.)

15 BY MR. DEMIK:

16 Q Do you have that?

17 MR. RYAN: No.

18 MR. DEMIK: Okay.

19 THE WITNESS: Okay.

20 BY MR. DEMIK:

21 Q I gave you a copy, right?

22 A Yes, you did.

23 THE COURT: Javier, do I have Exhibit 220?

24 MR. MENNINGER: I'm giving it to you right now.

25 BY MR. DEMIK:

1 Q Do you recognize Exhibit 220?

2 A Yes, I do.

3 Q What is it?

4 A It's a printout of Google Maps of the Del Rio border  
5 crossing.

6 MR. DEMIK: Move to admit 220, Your Honor.

7 MR. RYAN: No objection.

8 THE COURT: Sorry. No objection?

9 MR. RYAN: No objection.

10 THE COURT: All right.

11 (Exhibit 220 received into evidence.)

12 BY MR. DEMIK:

13 Q Now, 220 has a different date. Is this when you printed  
14 out the Google Maps image of the Del Rio crossing?

15 A Yes, it is.

16 Q And what is that date?

17 A March 5th, 2017.

18 Q Three days ago?

19 A Yes.

20 Q Okay. And this has distances, right?

21 A Yes, that's correct.

22 Q Can you tell the jury what those -- how you got that  
23 distance and what those two markers are?

24 A I -- I dropped a pin with my mouse on the toll bridge, the  
25 image of the toll bridge, and then I dropped a second pin at

1 the midway point of the bridge where the border -- the border  
2 is.

3 Q And so this is that bridge that Agent -- or  
4 Officer Villalobos talked about, right?

5 A Yes.

6 Q And this is the port of entry or the toll bridge we are  
7 calling it, right?

8 A Yes.

9 Q And so Google Maps gave you this distance, correct?

10 A That's correct.

11 MR. DEMIK: All right. No further questions,  
12 Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. AVEIS:

15 Q A couple of quick questions, if I may.

16 Showing you Exhibit 220 again?

17 So do you have 220 in front of you on the screen?

18 A Yes.

19 Q So when you say you dropped a pin, you're referring to a  
20 place from which or to which you want to make a measurement,  
21 right?

22 A Yes.

23 Q So my pen is pointed to one of the pins sort of in the  
24 lower left-hand corner of the photo. It's an orange pin; is  
25 that right?



1 A Yes.

2 Q Did you intend by that to show the border between Mexico  
3 and the United States?

4 A I dropped it along the line that's midway through what  
5 appear to be through the river.

6 Q Sure. And would you agree with me that the line that's  
7 shown in the photograph that I'm describing with my pen, as I'm  
8 tracing it, is kind of like right dead center through the  
9 Rio Grande River or about so?

10 A Yeah, more or less.

11 Q Right. And would you agree with me that that line is  
12 intended to show the border between the United States and  
13 Mexico at this particular location, that is, the Rio Grande  
14 River being the border between those two countries?

15 A Yes.

16 Q So that's that pin.

17 And then moving back from the pin along the road there,  
18 which is marked in blue, so we have the first of these mile --  
19 first of these waypoints, and it says -- it's got a little car  
20 insignia, and it says .6 miles 1 minute. Can you tell us, when  
21 you were putting this together, what you were intending to show  
22 by that?

23 A It just pops up when you print directions. There's  
24 different ways of movement, driving or walking, and those  
25 popped up when I printed it.

1 Q So would you agree with me that that waypoint there that  
2 says 1 minute .6 miles is intended to show the distance between  
3 that waypoint and the pin that's at the U.S./Mexico border,  
4 that's the driving distance in time?

5 A Yeah, from the pin at the top, by the toll bridge, to the  
6 second pin, that's the driving distance time.

7 Q Right. So at some speed that I suppose somebody could  
8 extrapolate -- I guess we got rid of the engineer -- you could  
9 figure out how long it would take you from that particular  
10 waypoint to that pin to drive along that bridge to the  
11 U.S./Mexico border, right?

12 A From -- yeah, it's the time it would drive --

13 Q Drive time?

14 A From the two pin points.

15 Q Okay. Great.

16 So if you move also along the blue road -- blue road,  
17 excuse me, there is no waypoint. It says "11 min," and it  
18 looks like it's got a pedestrian figure there, right? And  
19 what's the distance between that waypoint and the next  
20 waypoint? What is that intended to show?

21 A There's no purpose -- the two white bubbles are not --  
22 their distance isn't relevant. It's the same distance. It's  
23 just whether you're walking or driving.

24 Q Oh, okay. So then from either one of those two waypoints,  
25 but we don't know exactly, the point being is that from that

1 same place, whether you're driving or walking to the  
2 U.S./Mexico border, if you drive it, it will take you a minute,  
3 and if you walk it, it will take you 11 minutes; is that  
4 accurate?

5 A It's the same distance for both numbers.

6 Q Right.

7 A If you walk that distance, it's saying 11 minutes. If you  
8 drive it, it's saying 1.

9 Q That's why it says .6 miles?

10 A On both spots, yeah.

11 Q So my final area of inquiry is that as to these two  
12 bubbles, even though they're at different places on this map,  
13 which is Defense 220, they are really intending to be the same  
14 place; is that right?

15 A The point on the route that the bubbles are aren't what I  
16 was measuring. Those just pop up on the map when you print it  
17 because it's telling you the time.

18 Q So where you're measuring from this bubble to what?

19 A To the -- to the toll bridge. I think it says "Texas 239  
20 Spur."

21 Q Okay. From -- from that bubble to where along the blue  
22 route?

23 A To the -- to the toll bridge building.

24 Q Which would be in the upper right corner?

25 A Yes, yes.

1 THE COURT: The jury can't see that portion.

2 MR. AVEIS: Right, right.

3 Q So it's off the photo?

4 THE COURT: You want the jury to see that photo?

5 THE WITNESS: No, it's on the photo.

6 THE REPORTER: One at a time.

7 BY MR. DEMIK:

8 Q Sorry, I misspoke. Yes.

9 So just to be clear, this driver walk time from Texas 239  
10 Spur, which is this building where my pen is showing in the  
11 upper right-hand corner, down to the border is either a 1  
12 minute drive or 11 minute walk; is that accurate?

13 A Yes.

14 MR. DEMIK: Okay. I have no further questions.  
15 Thanks.

16 THE COURT: All right. Anything else from the  
17 defense?

18 MR. DEMIK: No, Your Honor.

19 MR. MENNINGER: No, Your Honor.

20 THE COURT: All right. Thank you.

21 Any other defense witnesses?

22 MR. MENNINGER: No, Your Honor.

23 THE COURT: The defense rests?

24 MR. MENNINGER: The defense rests, Your Honor.

25 THE COURT: All right. Let me ask the Government,

1 does the Government have any further witnesses?

2 MR. AVEIS: Yes, Officer Villalobos for rebuttal,  
3 please.

4 THE COURT: All right. Let me ask you to call him  
5 up.

6 (Pause in proceedings.)

7 THE COURT: Let me remind Mr. Villalobos, you were  
8 previously placed under oath in this matter. That oath is  
9 still applicable at this point in time. Do you understand  
10 that?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. Have a seat.

13 MR. AVEIS: May I proceed?

14 THE COURT: Yes.

15 MR. AVEIS: Thank you.

16 **ROBERTO VILLALOBOS, JR., GOVERNMENT REBUTTAL WITNESS, WAS**

17 **PREVIOUSLY SWORN**

18 **DIRECT EXAMINATION**

19 BY MR. AVEIS:

20 Q I'm going to show you, Officer Villalobos, a photograph  
21 that's been received into evidence and identified on the record  
22 as Defense 218. Please take a minute to look at this picture.  
23 And I'll remind you that this is one of the three pictures that  
24 were shown to you when you testified a few minutes ago. Take a  
25 minute to look at that.

1           Okay. So obviously, this is a bird's eye view, right?

2   A       Yes, sir.

3   Q       And I would like to draw your attention to this line in  
4   the upper right-hand corner. And I'll represent to you that  
5   there's been previous evidence in this case --

6           MR. DEMIK: Objection, Your Honor. That is not a  
7   question. Counsel is testifying.

8           MR. AVEIS: Just trying to lay a quick foundation.

9           THE COURT: He was trying to lay a foundation  
10   because he wasn't present when the last officer witness  
11   testified.

12           MR. DEMIK: Your Honor, the foundation has been  
13   laid. I don't think this witness's purpose is to lay a  
14   foundation.

15           THE COURT: I don't know because you objected before  
16   he completed his question. So let me hear the full question.

17   BY MR. AVEIS:

18   Q       So I will just represent to you that previous evidence  
19   shows this is the U.S./Mexico border. Is that consistent,  
20   looking at this photograph, with your belief and looking at the  
21   picture as well?

22           MR. DEMIK: Objection, Your Honor; compound and same  
23   objection.

24           THE COURT: Let me ask the question. Do you  
25   understand the question?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. Overruled.

3 BY MR. AVEIS:

4 Q Go ahead.

5 A It actually looks a lot further.

6 Q It looks a lot further as the crow flies or as you drive  
7 along or walk along the bridge?

8 A As the crow's flying.

9 Q Okay. Is that because this is an image taken from some  
10 distance away from the earth?

11 MR. DEMIK: Objection, Your Honor; that's leading.

12 THE COURT: I will sustain the objection. Actually,  
13 it might be better to show him -- start with 219 then go to  
14 218.

15 MR. AVEIS: There is a reason for this.

16 Q Let me ask you, does looking at this photograph, is this  
17 familiar to you? Do you recognize what's shown in 218? Do you  
18 recognize what's in this picture?

19 A Yes.

20 Q What is it?

21 A It's a POE.

22 Q It's what?

23 A Port of entry.

24 Q Port of entry from where to where?

25 A From Del Rio on the U.S. side.

1 Q And how do you recognize it? Have you been here before?

2 A I have been here before, yes, sir.

3 Q Was that part of your testimony earlier as a deportation  
4 officer?

5 A Yes, sir.

6 Q If you look in the middle of this picture, do you see some  
7 what appear to be concrete pads that flank the road?

8 A Yes, sir.

9 Q What are those, if you know?

10 A We use it as parking where we unload the detainees.

11 Q Okay. Is that the place where, if you can recall, the bus  
12 was parked out of which the defendant in this case was removed  
13 from the bus --

14 A Yes.

15 Q -- and sent across the border?

16 A Yes, sir.

17 MR. AVEIS: No further questions.

18 THE COURT: For the defense?

19 MR. DEMIK: Nothing, Your Honor.

20 THE COURT: All right. The witness is excused.

21 All right. Any further witnesses from the Government?

22 MR. AVEIS: No, thank you.

23 THE COURT: Both sides rest at this time?

24 MR. AVEIS: Yes, Your Honor.

25 MR. DEMIK: Yes, Your Honor.



1 THE COURT: All right. Ladies and gentlemen, what I  
2 need to do is I need to finalize the set of jury instructions  
3 with the attorneys. However, that is going to take some time,  
4 and also I have a meeting that I have to go to, so I'm not  
5 going to be able to do that today. We will do that, however,  
6 before tomorrow, and so we will start again tomorrow. I have  
7 my morning calendar, so we will start tomorrow at 10:30, and  
8 the case should be given to you tomorrow, which is Thursday,  
9 which is a day earlier than I said it was going to be given to  
10 you. I don't think you will complain about that; hopefully you  
11 won't.

12 Even though you have heard about all of the evidence,  
13 don't talk about the case with anyone else. Don't do any  
14 investigation about the matters in this case. Have a very  
15 pleasant rest of today, and since you have actually finished  
16 the morning session, you don't have to go back to your place of  
17 work today. You can actually take the rest of today off.

18 Have a very pleasant evening, and I will see you all back  
19 here tomorrow at 10:30. And please leave all your materials in  
20 the jury room because I will have another matter -- other  
21 matters here tomorrow morning. Okay. Have a very pleasant  
22 day.

23 (Out of the presence of the jury.)

24 THE COURT: Let me indicate to counsel, why don't  
25 you guys come back here at 3:30, and I hopefully will have the

1 draft of the jury instructions at that point in time. And then  
2 we can argue about them so that you will have a finalized set  
3 before you leave today. Okay?

4 MR. RYAN: Thank you.

5 THE COURT: Have a very pleasant afternoon, and we  
6 will see you back here at 3:30.

7 (Recess taken from 11:35 a.m. to 3:28 p.m.)

8 (Out of the presence of the jury.)

9 THE COURTROOM DEPUTY: Please remain seated and come  
10 to order. This United States District Court is again in  
11 session.

12 THE COURT: All right. Let me ask counsel, you read  
13 the proposed final set of jury instructions?

14 MR. RYAN: Yes, Your Honor.

15 MR. MENNINGER: Yes, Your Honor.

16 THE COURT: Okay. What I propose to do is go page  
17 by page and see if you guys have any objections. Obviously if  
18 I didn't include the instructions that you wanted either, one,  
19 I found they were inappropriate; or two, you withdrew it.

20 So starting on page 1, any problems with that?

21 MR. RYAN: No, Your Honor.

22 MR. MENNINGER: Your Honor, the only alteration we  
23 would have is the O'Malley jury instruction, but I assume by  
24 what you just said, you found it inappropriate, the O'Malley  
25 jury instruction.

1 THE COURT: I will tell you the problem with what I  
2 have with what you term the O'Malley instruction, basically,  
3 that's on page 4 of the defendant's proposed jury instructions.  
4 That instruction, your proposed 4, is more or less the  
5 Ninth Circuit instruction except for the last sentence.

6 MR. MENNINGER: That's right, Your Honor.

7 THE COURT: The last sentence says "If you view the  
8 evidence in the case as reasonably permitting either of two  
9 conclusions, one of innocence, the other of guilt, you must  
10 adopt the conclusion of innocence." The problem I have --  
11 well, first of all, there are Ninth Circuit cases that say it  
12 is not an error for the Court to give that type of instruction.  
13 I refer to the *United States versus Grayson*, 597 F.2d 1225,  
14 1230, and that's a 1979 case. And there's a similar decision  
15 in *United States versus Fleishman*, 648 F.2d 1329 at 1342. It's  
16 a 1982 decision.

17 There's also cases from other circuits more or less  
18 finding that the instruction is, in fact, misleading because it  
19 references, to quote, reasonably permitting and that interjects  
20 a preponderance of the evidence standard which is below the  
21 proof of beyond a reasonable doubt. Then there are those cases  
22 such as *United States versus Dowlin*, D-o-w-l-i-n, 408 F.3d 647  
23 at 666, and that's a Tenth Circuit 2005 case. *United States*  
24 *versus Khan*, 821 F.2d 90 at page 93, that's a Second Circuit  
25 1987 case, and *United States versus Jacobs*, 44 F.3d 1219 at

1 1226, and that's a Third Circuit 1995 case.

2           There's also a lot of circuit decisions saying even if it  
3 weren't for that particular problem, there are other  
4 problematic aspects of that type of instruction, and I refer to  
5 such cases as *United States versus Guerrero*, G-u-e-r-r-e-r-o,  
6 114 F.3d 332 at pages 344 and 345. That's a Third Circuit 1997  
7 case.

8           And there are also lots of cases that basically say you  
9 don't screw around too much with a reasonable doubt instruction  
10 because more often than not you will get it wrong. So that's  
11 the reason I stick with the Ninth Circuit instruction because  
12 at least I know if I get reversed, I will go down along with  
13 other -- lots of other district court judges in that situation,  
14 so I won't have myself to blame. So for that reason I'm not  
15 going to give what the defense is referring to as the O'Malley  
16 instruction.

17           Anything else on page 1?

18           MR. MENNINGER: Not from defense, Your Honor.

19           MR. RYAN: No, Your Honor.

20           THE COURT: All right. Page 2?

21           MR. RYAN: Nothing from the Government on page 2.

22           MR. MENNINGER: No, Your Honor.

23           THE COURT: All right. Page 3?

24           MR. RYAN: The only thing on page 3, Your Honor, is  
25 the second paragraph, the second sentence says "The defendant

1 is not on trial for any conduct or offense..."

2 THE COURT: Oh, that's true.

3 MR. RYAN: "Any other."

4 THE COURT: "Any conduct" should be "any other  
5 conduct or offense." All right.

6 Anything else on page 3?

7 MR. MENNINGER: Well, Your Honor, yes. We would --  
8 we believe that at least a portion of what we submitted as  
9 defense instruction number 3 is particularly appropriate in  
10 light of the testimony that we just heard before we broke. We  
11 went for lunch.

12 That is that to find he was deported, the Government must  
13 prove beyond a reasonable doubt that he was physically removed  
14 from the United States. To have been physically removed, he  
15 must have crossed the border and left the country. That is  
16 supported by two Ninth Circuit cases, Your Honor, make it very  
17 clear that, in fact, is something that the Government has to  
18 prove, and it is a similar jury instruction that has been given  
19 in these kind of cases where there is a question as to the  
20 reliability of the Government's evidence that they actually  
21 crossed the border.

22 MR. RYAN: Well, we're unclear as to what the  
23 question would be as to the unreliability of the Government's  
24 evidence. We have the warrant of removal. We have the  
25 Government's witness, Officer Villalobos, who testified that he

1 witnessed this deportation. He signed the document. It's the  
2 defendant's fingerprint on the warrant of removal. It's his  
3 picture, name and A-number. This instruction is simply not  
4 necessary in this case.

5 THE COURT: Let me ask, what's the evidence that you  
6 have that he was not deported?

7 MR. MENNINGER: He didn't -- sorry. The  
8 Government's witness didn't recognize -- didn't recognize at  
9 all, and I think --

10 THE COURT: Let me put it this way: If he did  
11 recognize him, I would have been shocked.

12 MR. MENNINGER: Right. He not only didn't recognize  
13 the defendant, he didn't recognize the scene.

14 THE COURT: Recognize what?

15 MR. MENNINGER: The scene, the picture.

16 THE COURT: Because you have an aerial picture,  
17 unless you are flying over in an airplane, you aren't going to  
18 recognize.

19 MR. MENNINGER: There was an aerial picture and one  
20 that was not an aerial picture, Your Honor.

21 THE COURT: The problem, the one that was not an  
22 aerial picture, again, you don't have any evidence that, in  
23 fact, is what it looked like at that point in time because the  
24 ones that you do have are the aerial ones which were shown to  
25 have been taken about, approximately, was it 2011? The other

1 one there is no indication as to when it was taken. And also,  
2 the one -- the aerial ones differ from the one that is shown  
3 that's sort of toward the ground, but is not actually on the  
4 ground, but is above the ground. As I pointed out to you  
5 earlier, those photos are different.

6 MR. MENNINGER: Well, Your Honor --

7 THE COURT: They are obviously different.

8 MR. MENNINGER: They are in evidence.

9 THE COURT: Yes, they are before the jury, but I  
10 don't quite understand what it is that you are arguing.

11 MR. MENNINGER: Your Honor, it goes to the  
12 credibility of this witness, which, as the Court has noted in  
13 the jury instructions, is for the jury to decide. I submit  
14 that he told me on cross he didn't recognize the scene, then  
15 when the prosecution got up on redirect, all of a sudden he did  
16 recognize the scene. That's what he said, and his credibility  
17 is absolutely at issue if the jury --

18 THE COURT: Let me put it this way.

19 MR. MENNINGER: -- if the jury doesn't believe him.

20 THE COURT: The major problem is the Government  
21 hadn't maintained the objection. If they had maintained their  
22 objection, I wouldn't have let the photos in. Because the  
23 Government waived their objections, I let it in. I let it in.  
24 The problem, again, is that you haven't shown -- I mean, I  
25 don't quite understand what your claim is.

1 MR. MENNINGER: Your Honor, we don't have to prove  
2 anything. We only have to show there is a reasonable doubt as  
3 to that witness's credibility, and I submit that there is --

4 THE COURT: You can make the argument. You can make  
5 the argument that he was not, in fact, deported. You can make  
6 the argument.

7 MR. MENNINGER: Right, Your Honor, and I think the  
8 jury deserves to know what, in fact, that means. That means he  
9 has to actually have crossed the border. That's all we are  
10 asking for. Your Honor, I can give you jury instructions from  
11 another case. And that's all we wanted to say.

12 MR. RYAN: Your Honor, these types of instructions  
13 are only given if they are actually supported by evidence in  
14 the case. There is no evidence in the case to support this  
15 instruction. The credibility of the witness is sufficiently  
16 covered by other instructions that the Court is going to give.

17 THE COURT: Wait a second. I don't understand what  
18 you just said.

19 MR. RYAN: This -- the Court only gives these type  
20 of jury instructions if they're supported by evidence in this  
21 case.

22 THE COURT: He is saying he is attacking the  
23 credibility of the witness who you produced to testify that, in  
24 fact, he was deported.

25 MR. RYAN: Right. We did produce our witness who



1 proves that the defendant was deported from the United States.

2 THE COURT: Okay. And so he's attacking that  
3 credibility.

4 MR. DEMIK: Your Honor --

5 THE COURT: Let me just ask -- what I don't  
6 understand, what is the evidence that he was not deported?  
7 Again --

8 MR. DEMIK: Your Honor, the Government has to prove  
9 that he was physically deported.

10 THE COURT: Yes.

11 MR. DEMIK: The only evidence that they have of that  
12 is the testimony of a deportation officer who testified that he  
13 saw him --

14 THE COURT: Okay.

15 MR. DEMIK: -- seven years ago cross the bridge,  
16 which is half a mile long, and he remembers our client crossing  
17 that line out of 40 to 80 people that he deported that day.  
18 This coincidentally is the same officer who, when shown  
19 photographs, aerial or not, was not able to recognize the very  
20 port of entry that he claims he remembers seven years ago with  
21 40 to 80 people, seeing our client physically cross the border.

22 THE COURT: I will actually allow the instruction,  
23 because I, frankly, do agree. The Government -- again, your  
24 presentation of this case left a lot to be desired. And again,  
25 you should have challenged the photographs more because, in

1 fact, they are different dates. There's no indication that the  
2 one that's closest to the ground when that was taken, might  
3 have been recent. The buildings are entirely different. They  
4 are in different locations. And so, therefore, it's not  
5 surprising that he didn't recognize it.

6 And so, therefore, and also their use of their person to  
7 establish this, there's no indication, necessarily, that the  
8 Google Maps are even accurate. So had you, in fact, attempted  
9 to argue that the photographs should not have been offered into  
10 evidence, I probably would have sustained the objection, but  
11 you didn't, and they're in, so I will allow the instruction.

12 MR. MENNINGER: All right. Your Honor, we would  
13 just submit, I would agree that the last sentence of defense  
14 proposed instruction number 3 is not necessary in light of the  
15 Court's earlier ruling.

16 THE COURT: What is the last sentence of --

17 MR. MENNINGER: Not sufficient to prove that he left  
18 the country voluntarily. That was in reference to the  
19 earlier --

20 THE COURT: I don't understand what you're referring  
21 to now.

22 MR. MENNINGER: It is not sufficient for the  
23 Government to prove that Mr. Aceves left the country  
24 voluntarily, we submit that's --

25 THE COURT: That's wrong. That's a matter of law.

1 MR. MENNINGER: At any rate, Your Honor, we are  
2 withdrawing that sentence.

3 THE COURT: Well, I'm glad because it's wrong as a  
4 matter of law.

5 MR. RYAN: The one right before it, I believe,  
6 Your Honor, should be taken out as well. It is not sufficient  
7 for the Government to merely prove that he was ordered to  
8 leave.

9 THE COURT: Well, let me have the defense response  
10 to the second to the last sentence. You want that one in or  
11 not?

12 MR. MENNINGER: Yes, Your Honor.

13 THE COURT: Let me do this. Let me take a look at  
14 the cases again and see if that's what exactly they say. All  
15 right?

16 Anything else?

17 MR. MENNINGER: I have extra copies of relevant  
18 cases, if that would be helpful.

19 THE COURT: I presume you cited me to the cases that  
20 are on point on page 3.

21 MR. MENNINGER: *Bahena-Cardenas*, Your Honor. The  
22 second case is relating to the second cite that we have now  
23 withdrawn. So that's not relevant at this point, the *Ortiz*  
24 *Lopez* case. *Bahena-Cardenas* is the lead case. That also  
25 relies on a former case *Romo Romo*.

1 THE COURT: I presume it's cited in that case.

2 MR. MENNINGER: Absolutely.

3 THE COURT: Okay. Anything else?

4 MR. RYAN: No, Your Honor.

5 MR. MENNINGER: Not from the defense, Your Honor.

6 THE COURT: Okay. Anything else on page 3?

7 MR. RYAN: No, Your Honor.

8 THE COURT: All right. Page 4?

9 MR. RYAN: Nothing from the Government on page 4.

10 MR. MENNINGER: No, Your Honor.

11 THE COURT: Page 5?

12 MR. RYAN: Nothing from the Government.

13 MR. MENNINGER: No, Your Honor.

14 THE COURT: Anything else?

15 MR. MENNINGER: Your Honor, I would just like to  
16 note for the record, since we did have a rebuttal witness, I  
17 would just like, for the record, to renew the Rule 29 motion as  
18 to all of the elements of the offense.

19 THE COURT: Your rebuttal witness is pretty much  
20 worthless.

21 MR. MENNINGER: It's not my rebuttal witness,  
22 Your Honor.

23 THE COURT: Oh, you're talking about their rebuttal  
24 witness.

25 MR. MENNINGER: Right, because you have to make the

1 Rule 29 motion at the close of evidence, Your Honor, and since  
2 there was some additional evidence, I'm just, for the record --

3 THE COURT: He identified the center portion of the  
4 bridge as being the part where he stopped and let the people  
5 that he's releasing out. I mean, so why would that cause you  
6 to have any other basis -- more of a basis for the motion since  
7 I denied the first one?

8 MR. MENNINGER: Your Honor, I'm just making sure I  
9 cover all of my bases for purposes of appeal, and I'm reserving  
10 the issue for appeal, Your Honor.

11 THE COURT: Okay. Great.

12 Anything else?

13 MR. RYAN: Your Honor, can I just inquire, are you  
14 going to be instructing the jury prior to closing?

15 THE COURT: Yes, and they all get written copies of  
16 the instructions.

17 Neither side is objecting to the verdict form?

18 MR. MENNINGER: It's a joint form. We already  
19 agreed to it.

20 THE COURT: So anything else?

21 MR. RYAN: No, Your Honor.

22 MR. MENNINGER: No, Your Honor.

23 THE COURT: So come in -- the jury is coming in at  
24 10:30. Let me have you come in at 10:00. The defense gave me  
25 something else that they filed in camera.

1 MR. MENNINGER: I forgot to mention this morning,  
2 you had asked us to disclose it to the Government, and I gave a  
3 copy to them this morning before we started.

4 THE COURT: So I should ignore this ex parte  
5 application then?

6 MR. MENNINGER: Wait, which one is that?

7 THE COURT: For some reason I have -- somebody gave  
8 me this today.

9 THE COURTROOM DEPUTY: That's the application that  
10 was filed.

11 THE COURT: Filed. I presume this is mooted out by  
12 what happened.

13 MR. MENNINGER: Are you referring to the trial  
14 memorandum?

15 THE COURTROOM DEPUTY: Uh-huh.

16 THE COURT: If it's an ex parte application to file  
17 in camera.

18 MR. MENNINGER: Sure, Your Honor, that's mooted out  
19 at this point. It's just to declare trial rulings.

20 THE COURT: So we can ignore this. Thank you.

21 All right. I will see you guys tomorrow at 10:00. Have a  
22 nice evening.

23 MR. MENNINGER: Thank you, Your Honor.

24 MR. RYAN: You too.

25 (Proceedings concluded at 3:44 p.m.)



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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,	)	
	)	Case No.
vs.	)	CR 15-00245-GW (SS)
	)	
CESAR RAUL ACEVES,	)	VOLUME 3
	)	(Pages 341 - 393)
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS  
TRIAL DAY 3  
THURSDAY, MARCH 9, 2017  
10:04 A.M.  
LOS ANGELES, CALIFORNIA

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1                   **LOS ANGELES, CALIFORNIA; THURSDAY, MARCH 9, 2017**

2                                   **10:04 A.M.**

3                                   **--oOo--**

4                   (Out of the presence of the jury.)

5                   THE COURTROOM DEPUTY: Please remain seated and come  
6 to order. This United States District Court is again in  
7 session.

8                   THE COURT: All right. Let me give to counsel the  
9 amended jury instructions. I added the instruction on pages 3,  
10 4 as to the requirement of establishing that the defendant  
11 physically left the United States, and also in the paragraph  
12 after that, indicated how that can be proved, both of which are  
13 from the *United States versus Bahena-Cardenas* case,  
14 411 F.3d 1067 at 1074, -75. And also let me give to counsel  
15 the portion from that case that that language is from.

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

17                   Your Honor, for the record, we would object to the amended  
18 language that's included here. It could convey to the jury  
19 that if there is an authentic government or business record,  
20 that they must find that he, in fact, crossed the border when,  
21 in fact, it is the province of the jury to evaluate the  
22 reliability of all of the records.

23                   THE COURT: Where is the word "must" implied?

24                   MR. MENNINGER: Well, Your Honor, I think it says  
25 "can be established by eyewitness testimony or authentic

1 government or business records."

2 THE COURT: All right. That's a true statement of  
3 the law, it can be.

4 MR. MENNINGER: Sure, Your Honor, but I think --

5 THE COURT: Not that it must be. It can be.

6 MR. MENNINGER: Your Honor, perhaps the issue I'm  
7 referring to could be cured if it said "can but need not be."

8 THE COURT: "Can" includes the "not be." That's the  
9 difference between "can" and "must."

10 MR. MENNINGER: Sure, Your Honor. I just think it  
11 is -- to single out specific forms of evidence suggests to the  
12 jury that if they should find that evidence, they should find  
13 this element proven, or if they see a form that meets -- that  
14 matches the description, that they need to find that element as  
15 proven.

16 THE COURT: Well, let me put it this way: The  
17 language is from the Ninth Circuit case that you cited to me  
18 before, the proposition that the Government has to prove  
19 physical --

20 MR. MENNINGER: Sure.

21 THE COURT: -- departure by a preponderance of the  
22 evidence.

23 MR. MENNINGER: And the Government can prove that  
24 any way they want, Your Honor, but the jury does not need to  
25 accept the Government's proof.

1 THE COURT: That's true. That's always true. I  
2 presume you are going to be arguing that, so I don't understand  
3 what the problem is here.

4 MR. MENNINGER: Well, Your Honor, I just think that  
5 singling out certain pieces of evidence that the Court has  
6 found meet that standard or the Ninth Circuit has found in  
7 certain cases meet that standard conveys the message that they  
8 would meet that standard in every case.

9 THE COURT: No, it doesn't. It just simply says "it  
10 can." If it is established, it can doesn't mean they have to.  
11 In other words, there is always proof beyond a reasonable  
12 doubt. That's always the standard.

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

14 THE COURT: Sure.

15 MR. MENNINGER: If I can review.

16 MR. DEMIK: Judge, I guess -- Steven Demik for the  
17 record.

18 I'm a little confused because the language I read in  
19 there, the issue was whether the warrant of deportation was  
20 admissible, and the Court held it was admissible as a  
21 noncustodial record.

22 THE COURT: Yes.

23 MR. DEMIK: We don't dispute that. I think the  
24 nature of our objection is we think it would be improper to  
25 instruct the jury that simply because a warrant of deportation

1 exists, that is sufficient proof that Mr. Aceves was physically  
2 removed across the border. I don't believe that's the correct  
3 statement of the law, Your Honor, and that's the portion that  
4 we would object to, for the record.

5 THE COURT: Okay. But the Court has also instructed  
6 the jury that it's always the Government's burden to prove  
7 beyond a reasonable doubt. So even though it can be, it only  
8 can be if the jury finds that the Government has proved the  
9 issue beyond a reasonable doubt.

10 MR. DEMIK: Of a physical removal across the border,  
11 yes. Now, if the Government --

12 THE COURT: It is also -- also, it is equally true  
13 that the Government has to prove that beyond a reasonable  
14 doubt, yes.

15 MR. DEMIK: Absolutely they do. The way the  
16 instruction is phrased, it allows the jury, by the Court's  
17 instruction, to find the element of a physical removal beyond a  
18 reasonable doubt simply because a warrant of deportation has  
19 been introduced into the record. That is not a correct  
20 statement of the law, Your Honor. The way that --

21 THE COURT: But it is true that it can be  
22 established, it can be established by that document itself.

23 MR. DEMIK: What is established, Your Honor, is that  
24 a warrant of deportation was executed, yes. Does that  
25 establish that the defendant was physically removed across the

1 border? No, it does not, Your Honor.

2 THE COURT: Much in the same way the birth  
3 certificate has been offered.

4 MR. DEMIK: Right.

5 THE COURT: And it can be used to establish  
6 alienage.

7 MR. DEMIK: Right, precisely.

8 THE COURT: So we have --

9 MR. DEMIK: What you are instructing the jury is  
10 because a birth certificate exists, that means that the person  
11 was born in this particular location. The Government can argue  
12 it, Your Honor, but for the Court to instruct the jury that the  
13 existence of a warrant of deportation means that he was  
14 physically removed is directing a verdict, Your Honor.

15 THE COURT: No, it's not.

16 MR. DEMIK: I respectfully disagree.

17 THE COURT: Let me put it this way. If there is --  
18 Let me hear from the Government.

19 MR. RYAN: Your Honor, we accept the instruction the  
20 way it is.

21 THE COURT: I understand that.

22 MR. RYAN: The instruction simply says these are the  
23 types of documents that the jury can consider, and they can  
24 find, based on these documents or not, a physical removal.  
25 They need not. They don't have to if they do not find the

1 Government has proved it beyond a reasonable doubt.

2 MR. DEMIK: Your Honor, what the instruction says is  
3 proof of such departure, which, again, let's all be clear, we  
4 are talking about a physical removal, can be established either  
5 by -- we have no objection --

6 THE COURT: In other words, you're saying I  
7 shouldn't put in credible eyewitness testimony in either. Let  
8 me ask, how is a jury supposed to know how the proof of  
9 departure can be established?

10 MR. DEMIK: That's not what I'm saying, Your Honor.  
11 We don't object to the first. There is no -- you can instruct  
12 the jury that proof of such departure can be established by  
13 credible eyewitness testimony.

14 THE COURT: Let me put it this way. Why? Doesn't  
15 that demand that they find in favor of the Government if there  
16 is -- you're saying that the word "can," it means "must" in  
17 this context. I don't see that. They don't have to accept  
18 credible eyewitness testimony. They can reject credible  
19 eyewitness testimony if there is something else that was  
20 present that would cause them to find that the Government has  
21 not proved its case beyond a reasonable doubt.

22 MR. DEMIK: Correct. What the instruction -- and  
23 there is that here, Your Honor, let's be very clear. There is  
24 reason to question the credibility of the deportation  
25 enforcement officer. That's a defense argument. But what the

1 instruction does is it says, "Okay, Jury, that's fine, maybe he  
2 has problems with his memory, but you can still find that he  
3 was physically removed because a warrant of deportation  
4 exists." A warrant of deportation does not evidence physical  
5 removal across the border, Your Honor. It simply does not.  
6 It's not a recording.

7 THE COURT: It's a recordation of the physical  
8 departure.

9 MR. DEMIK: Well, Your Honor, it's a recordation of  
10 the administrative process. As the evidence has come in,  
11 Your Honor --

12 THE COURT: No, I don't think you're reading the  
13 *Bahena-Cardenas* issue correctly.

14 MR. DEMIK: Your Honor, the issue in  
15 *Bahena-Cardenas*, the excerpts the Court gave is whether the  
16 warrant of departure is admissible as a non-testimony record.

17 THE COURT: That means it can be utilized to  
18 establish departure.

19 MR. DEMIK: They can argue that, Your Honor. They  
20 can argue whatever they want, but the Court is instructing them  
21 that is sufficient.

22 THE COURT: No, I haven't instructed them that is  
23 sufficient. I have only indicated that it can be established  
24 by such things. It doesn't necessarily mean it must be  
25 established by, et cetera. It just can be established by.



1 MR. DEMIK: Very well, Your Honor, I suppose, then,  
2 the argument comes to wording, but our objection, for the  
3 record, is that this instruction directs the jury that they may  
4 find a physical departure or physical removal across the border  
5 simply by the warrant of departure form I-205 in the phrasing  
6 of the word or --

7 THE COURT: Let me just ask you, if the Government  
8 puts in, of the authenticated record, the form I-205 warrant of  
9 removal, why can't the jury find a departure based on that  
10 alone?

11 MR. DEMIK: How is it that a jury can find  
12 reasonable doubt as to the actual departure?

13 THE COURT: Based -- no. Why can't the jury find  
14 it? I mean, the jury mustn't find it, but the jury can find  
15 it. That's what I don't understand. If the jury can find it,  
16 it is a means of proof.

17 MR. DEMIK: Your Honor, the reason is is that as the  
18 testimony has reflected in this case, Officer Villalobos filled  
19 out that paperwork after the action had been completed on his  
20 way back to the hotel. Similarly, Your Honor, he could not  
21 recognize photographs of the port of entry. That's an  
22 argument -- I'm not saying it's a point of law; it's an  
23 argument that we can make. So there is reason to question his  
24 credibility as to his actual --

25 THE COURT: Let me ask you, a doctor who signs off

1 on a birth certificate --

2 MR. DEMIK: Yes.

3 THE COURT: -- may not remember the birth --

4 MR. DEMIK: Absolutely.

5 THE COURT: -- but has signed off on it, but a birth  
6 certificate can be utilized to establish certain things about  
7 the birth.

8 MR. DEMIK: Sure. It's an argument, Your Honor, but  
9 you are instructing the jury that is evidence of the physical  
10 removal. That's what we are objecting to. Do you understand?

11 Let me use your analogy, Your Honor. A doctor attends a  
12 home birth, for example, and he fills out the paperwork the  
13 next day. The Government can argue that you look at that birth  
14 certificate and it shows that the baby was born the day before.  
15 They can argue that. But for the Court to instruct the jury  
16 that the existence of that birth certificate de facto means  
17 that the baby was born the day before, I believe is instructing  
18 the jury to make a conclusion that they're free to argue, but  
19 the Court should not be instructing them on.

20 THE COURT: What's the Government's response?

21 MR. RYAN: Your Honor, this instruction is not  
22 saying that de facto based on this document they have to find  
23 that the defendant was deported. It simply says they can  
24 consider these types of documents going to that element. Our  
25 case is extremely similar to the *Bahena-Cardenas* case. They

1 had the warrant of removal --

2 THE COURT: I will tell you what I'll do. I'll put  
3 "In deciding whether the Government has established proof of  
4 departure" -- "proof of defendant's departure, the jury can  
5 consider either, one, the credible eyewitness testimony, et  
6 cetera, et cetera; or two, authenticated government business  
7 records," because clearly there is no dispute as to that.

8 MR. DEMIK: There's no dispute they can consider  
9 that.

10 THE COURT: Okay. That's the way it will be, then.

11 MR. DEMIK: Okay. I had an alternative phrasing,  
12 Your Honor, but that's fine.

13 THE COURT: All right. Anything else from either  
14 side?

15 MR. RYAN: No, Your Honor.

16 MR. MENNINGER: Not from us, Your Honor.

17 THE COURT: We still have 13 minutes before the jury  
18 is going to come back in. What else can we argue about?

19 MR. DEMIK: For the record, Your Honor, could at  
20 least our objection to the instruction be preserved for the  
21 record? I'm not trying to re-argue.

22 THE COURT: No, no. Obviously you have made the  
23 objection. You're not agreeing to my language.

24 MR. DEMIK: Right.

25 THE COURT: So you have preserved it on the record.

1 I recognize that. That's not a problem.

2 MR. DEMIK: That's all I wanted, Your Honor.

3 THE COURT: Okay. What else? Anything?

4 How long are your opening statements going to be?

5 How long are your closing arguments going to be?

6 I have already heard the others. I just didn't remember  
7 them. How long?

8 MR. MENNINGER: Your Honor, the defense, probably  
9 about 15 minutes, 15, maybe 20, max.

10 THE COURT: Really? Okay.

11 MR. RYAN: About the same, Your Honor.

12 THE COURT: Okay. In that case, then, I will have  
13 my clerk order a bailiff for -- let's say 11:30. And I guess  
14 we will also be providing the jury with lunch.

15 (Recess taken from 10:19 a.m. to 10:37 a.m.)

16 (Out of the presence of the jury.)

17 THE COURTROOM DEPUTY: Please remain seated and come  
18 to order. This United States District Court is again in  
19 session.

20 THE COURT: All right. Let me ask counsel, can I  
21 get a stip that the court reporter doesn't have to transcribe  
22 the jury instructions as read because the jurors are going to  
23 be given copies of the jury instructions?

24 MR. RYAN: Yes, Your Honor.

25 MR. MENNINGER: Yes, as long as they are attached to

1 the record, that's fine, Your Honor.

2 THE COURT: Let me ask Javier, can you give one copy  
3 to counsel and one copy to each of the jurors.

4 Let me ask counsel, is there anything else I need to do  
5 before I bring the jury out?

6 MR. RYAN: No, Your Honor.

7 MR. MENNINGER: No, Your Honor.

8 THE COURT: All right.

9 All right. Let me ask counsel, you already went over the  
10 exhibits with my clerk, so they are ready to go to the jury  
11 room?

12 MR. MENNINGER: We did, Your Honor.

13 THE COURT: And also the verdict form, I previously  
14 asked yesterday, but let me ask. The verdict form you provided  
15 to the Court is a joint verdict form, so both sides agree that  
16 that verdict form can be given to the jury?

17 MR. RYAN: Yes, Your Honor.

18 MR. MENNINGER: It's a joint form, Your Honor.

19 THE COURT: Thank you.

20 Also, is either side going to be using the Elmo?

21 MR. MENNINGER: Yes, Your Honor.

22 THE COURT: Is it on?

23 MR. AVEIS: It's ready.

24 MR. MENNINGER: I'm just going to use the projector,  
25 Your Honor. Should I turn it on now?

1 THE COURT: You might as well turn it on now.

2 MR. AVEIS: It's all ready to go.

3 MR. MENNINGER: The Elmo is on.

4 MR. RYAN: Yes.

5 (Pause in the proceedings.)

6 (In the presence of the jury.)

7 THE COURTROOM DEPUTY: You may be seated.

8 THE COURT: All right. Good morning, ladies and  
9 gentlemen.

10 (The jury responded, "Good morning.")

11 THE COURT: At this point in time I'm going to be  
12 reading to you the final set of jury instructions. As I have  
13 indicated, these are going to be the instructions that are  
14 going to be controlling your deliberations. And if you have  
15 any questions about the instructions, please feel free to raise  
16 your hand and ask me, and I will clarify further if you have  
17 any questions. All right? And as I've indicated, you have  
18 each been given a written copy of these instructions, and you  
19 can take these instructions into the jury room for your  
20 deliberations.

21 (Jury instructions read by the Court, not transcribed  
22 herein.)

23 THE COURT: Ladies and gentlemen, any questions on  
24 those instructions?

25 No.

1           At this point in time we will start with the closing  
2 arguments of counsel. And as I've said throughout the trial,  
3 and I will remind you again at this point in time, nothing that  
4 is said by an attorney, except for a stipulation, constitutes  
5 evidence. In other words, the attorneys may characterize the  
6 evidence one way or another. They may say, for example,  
7 "Witness A said this. Witness A said that." Just because an  
8 attorney says it, doesn't necessarily make it so. They may  
9 perceive the evidence very differently than you do.

10           For example, the attorneys in the case, while they're  
11 asking questions and listening to the answers, are thinking  
12 about a lot of different things: they are thinking about their  
13 next question; they are thinking about the effect of the  
14 answer, how it might affect the jury; they are thinking about  
15 strategy in this case; they might be thinking about lunch.  
16 They are doing a lot of different things, so their perception  
17 of the evidence may be very different than yourself.

18           Merely because the attorney says the evidence is this or  
19 that does not necessarily make it so. However, if you hear a  
20 characterization of the evidence from an attorney and it really  
21 disagrees with what you remember the evidence to be, don't  
22 presume that the attorney is trying to mislead you or is trying  
23 to pull a fast one on you, because again, as I indicated, the  
24 attorneys are doing different things and thinking about  
25 different things during the course of the trial.

1           Also, the way the closing arguments are done is the  
2 Government gets a first opportunity to make a closing argument,  
3 then the defense is given the opportunity to make a closing  
4 argument, and then the Government gets a chance to do what I  
5 call a closing closing argument, or a rebuttal closing  
6 argument.

7           The reason why the Government is traditionally allowed to  
8 give two closing arguments is, one, the burden of proof always  
9 rests on the Government to prove their case beyond a reasonable  
10 doubt. It never leaves the Government. So they are given this  
11 opportunity. And also, as I've noted to you before, proof  
12 beyond a reasonable doubt is an extremely high standard of  
13 proof. And so for that reason, the Government gets two bites  
14 at the apple.

15           Finally, during the course of closing arguments, the  
16 attorneys may object to one thing or another that is said by  
17 their opponent during the closing arguments. If the objection  
18 is one that is based on a disagreement of fact, in other words,  
19 if an attorney gets up and says, "Your Honor, my esteemed  
20 opponent has mischaracterized the evidence," I will not make a  
21 ruling on that because if I were to do that, I would basically  
22 be telling you what the evidence is, and that's not my role.  
23 It's up to the jury to decide what the evidence is.

24           So if there's a dispute as to what the evidence is, I'm  
25 not going to make a ruling. I will leave it up to the jury,



1 and I will simply note to the attorney making the objection,  
2 "Well, that is an evidentiary objection, and I'm going to allow  
3 the jury to decide what the evidence was by itself."

4 If the objection is one that is based on an alleged  
5 mischaracterization of the law and that issue of law is  
6 described in the jury instructions, again, I won't make a  
7 ruling on that because, again, you can just simply refer to the  
8 jury instructions on that point. If, however, there is an  
9 objection that is based on a legal point that is not covered by  
10 the jury instructions, then I may at that stage give you  
11 something.

12 Jury Alternate No. 1, you are yawning already. The  
13 closing will be much more entertaining than this.

14 All right. Do any of you have any questions about closing  
15 arguments at this point?

16 (The jury responded, "No.")

17 THE COURT: All right. Then let me ask the  
18 Government, are you ready to give your opening closing?

19 MR. RYAN: Yes, Your Honor.

20 THE COURT: All right.

21 MR. RYAN: Thank you, Your Honor.

22 Good morning, ladies and gentlemen. So before we jump  
23 into the actual evidence in this case, I just want to note what  
24 this case is about, what it is not about. When you focus on  
25 the evidence, the case is simple. It all comes down to the

1 fact that the defendant was legally deported from the United  
2 States to Mexico in July 2010, and then he reentered the United  
3 States without permission. This case is not about anything  
4 that happened before he was deported in July 2010. It simply  
5 does not matter to the elements of the offense.

6 You just heard the judge instruct you on what is evidence.  
7 One of the things that you should consider, the sworn testimony  
8 of any witness. You've seen this on TV: witnesses walk up to  
9 the witness stand, they raise their right hand, "I swear to  
10 tell the truth." You saw it with every witness that went up  
11 there. Everything that they testified to after taking that  
12 oath is evidence, and you should consider it.

13 The exhibits which were received into evidence in this  
14 case, there were a bunch of exhibits. They kind of flew by.  
15 We put some of them up on the Elmo here. We are going to go  
16 over them a little bit more in detail during this closing  
17 argument. When you go back into the jury room, you will have  
18 those exhibits with you. Take a look at them. Go through  
19 them. Sort through them. See what each one says, and remember  
20 back to what the witnesses testified to about those exhibits.

21 The third thing, the facts that the parties agree to,  
22 these are the stipulations. What is a stipulation? A  
23 stipulation is just the parties agree to this. There's no  
24 dispute as to this. So you should consider those as well.

25 "What if" does not count. Speculation is not evidence.

1 What is speculation? Speculation is guessing. That is not  
2 evidence, and you should not consider speculation in this case.  
3 You can make reasonable inferences, though. And this is the  
4 example that the judge gave. Inferences are like  
5 circumstantial evidence. If you walk outside, the sidewalk is  
6 wet and it's cloudy outside, then you can infer that it had  
7 rained. But if there was a hose on the ground, then you  
8 wouldn't be able to infer that it had rained. That would not  
9 be reasonable in this situation.

10 One more example. Let's say you work at a pizza joint.  
11 You walk into the back room, you see one of your co-workers got  
12 a pizza sitting in front of them, pizza sauce all over his  
13 face. You can infer that person was eating pizza. That would  
14 be reasonable under the circumstances. So you look at one  
15 thing, and you know something else based on that. That's what  
16 an inference is. Reasonable common sense, you are all  
17 reasonable people, that's why you're here on this jury.

18 The judge instructed you on the standard that the  
19 Government has to prove, beyond a reasonable doubt. Proof  
20 beyond a reasonable doubt is proof that leaves you firmly  
21 convinced that the defendant is guilty. It does not require  
22 that the Government prove guilt beyond all possible doubt.  
23 Reasonable doubt, again, based on reason and common sense.

24 Common sense is going to be a theme throughout this  
25 closing. It's not based purely on speculation. It may arise

1 from a careful and impartial consideration of all of the  
2 evidence or from lack of evidence. Again, the Government does  
3 not have to prove beyond all possible doubt. It is not  
4 doubt -- reasonable doubt does not mean to a mathematical  
5 certainty. This is not an operating room. This is not a  
6 scientific laboratory. It is a courtroom. We only need to  
7 prove beyond a reasonable doubt.

8 The judge read you the charge. I'm not going to read it  
9 to you again. The important part here is the charge consists  
10 of what we call elements. You can think of elements like  
11 slices of a pie, basically, and all of these elements fit  
12 together to make a complete pie.

13 These are the elements of the offense in this case, there  
14 are six: Defendant was deported from the United States;  
15 voluntarily reentered the United States; knew he was in the  
16 U.S. and knowingly remained; was found in the United States;  
17 did not have consent; defendant was an alien.

18 Now, I know, as I said, the evidence in this case may have  
19 gone by. Some of it may have been somewhat confusing. We are  
20 going to go through each one of these elements. We are going  
21 to talk about which evidence goes to which element.

22 Okay. So the first element, the defendant was deported  
23 from the United States. You saw several different exhibits  
24 that were from the defendant's A-file. I just want to stop for  
25 a second and talk about the A-file. You saw the A-file when

1 Officer Arambulo was testifying. It was the brown folder with  
2 a bunch of documents in it. An A-file is an immigration file.  
3 It contains different types of immigration documents. When  
4 someone applies for benefits from the Department of Homeland  
5 Security, those types of documents are in the A-file. When a  
6 person is put in immigration Court proceedings, those type of  
7 documents end up in the A-file.

8 Now we are going to go through each one. The first  
9 document you saw was the notice to appear. When someone is put  
10 in immigration court proceedings, this is how the deportation  
11 process starts. This document tells the person in immigration  
12 court proceedings the reasons why the Government wants to  
13 deport that person from the United States.

14 It gives the person a chance to read over what the  
15 Government thinks, and that person can either say, "Yes, this  
16 is true. Deport me," or "No, this is not true. Don't deport  
17 me." This document was in the defendant's A-file. It has his  
18 name, you can see, next to "Respondent." The word "Respondent"  
19 is basically the defendant in an immigration court proceeding.  
20 Respondent, defendant, it's the same thing.

21 It has his name next to the word "Respondent." It has his  
22 A-number. It shows down at the bottom of this slide that it  
23 was issued on July 12th, 2010. Many of the very important  
24 events in this case took place in July 2010, as you may recall.  
25 We are going to keep a mental track of the dates here as we go

1 along.

2           So July 12th, 2010 was when he was put into the  
3 immigration court proceedings. That just means an immigration  
4 judge is going to decide whether the defendant should or should  
5 not be deported from the United States. As you may recall,  
6 Officer Arambulo testified that the number 1, 2 and 3 are  
7 called allegations. Allegations are basically just claims.  
8 The Government claims this is true. It doesn't necessarily  
9 mean it's true; it's just the Government's belief as to that  
10 issue. The defendant, the respondent, has a chance to either  
11 admit that or deny that.

12           Here, as you can see, the Government claims that the  
13 defendant is not a citizen or national of the United States,  
14 that he is a native and citizen of Mexico. That just means he  
15 was born in Mexico, and he's a citizen of Mexico.

16           One of the other documents that you saw was the motion for  
17 immediate removal. After the defendant found out that he was  
18 in immigration court proceedings, he, through his immigration  
19 attorney, filed a motion in immigration court. And in this  
20 motion, as you will see, it has his name. It has his A-number.  
21 Again, it relates to the defendant. And over here on the  
22 right, you can see it says July 26, 2010. So it's about two  
23 weeks after he was put on notice that he was in immigration  
24 court proceedings, he filed this motion with the immigration  
25 court.

1           As you can see, he admits that there's no way he can stay  
2 in the United States. He's not eligible for any form of  
3 relief. That just means he can't stay here, and that he  
4 requests immediate removal. There's no way he can stay here.  
5 He just wants to be deported immediately. The word "removal"  
6 is the same as "deportation." They're interchangeable. They  
7 mean the same thing. So if you see the word "removal" anywhere  
8 on any of the documents, it means "deportation."

9           And as you can see, he sought immediate removal to Mexico.  
10 He said, "Deport me back to Mexico." He did not say, "No, the  
11 allegations, the claims that the Government made in the notice  
12 to appear are not true." He said, "This is all true. Deport  
13 me back to Mexico as soon as possible."

14           Then you see the order of the immigration judge. This one  
15 is from July 27th, 2010, one day after the defendant filed the  
16 motion for immediate removal. The immigration judge,  
17 apparently taking the word "immediate" very seriously, decided  
18 to grant the request one day later. And as you can see right  
19 here, it has the defendant's name, his A-number.

20           It says "The respondent was ordered removed from the  
21 United States to Mexico." That means the defendant was ordered  
22 deported from the United States to Mexico. The immigration  
23 judge ordered him to be sent back to Mexico. The process  
24 worked correctly in this case. The defendant wanted to be  
25 deported immediately. The immigration judge granted that

1 request the very next day.

2           The same day as the immigration judge ordered that the  
3 defendant be sent back to Mexico, a deportation officer, who  
4 you heard testify, Officer Elsberry, gave these warnings to the  
5 defendant. You can see at the top it has the defendant's name  
6 and A-number, and it's dated July 27th, 2010, the same day as  
7 the immigration judge's order.

8           These are the actual warnings that are given to a person  
9 who's ordered deported. There's different types of warnings.  
10 The time periods differ based on different factors, as you can  
11 see. The top two say that the person cannot reenter the  
12 United States for ten years without permission. The next one  
13 down says for a period of 20 years without permission. The  
14 bottom one, the one that's marked here, says the person cannot  
15 reenter the United States ever, at any time, without  
16 permission.

17           So the warning that was given to this defendant, as you  
18 heard Officer Elsberry testify, to was the defendant was  
19 prohibited from entering, attempting to enter or being in the  
20 United States at any time ever unless he had permission.

21           Then we have the warrant of removal. This is the next  
22 step in the deportation process. After they give the warnings,  
23 they verify that they're deporting the right person.  
24 Officer Elsberry testified that she compared the photograph,  
25 she checked the A-number, the name and the date of birth to



1 make sure they had the right person that they were deporting.  
2 This form is also used to verify that the person was actually  
3 deported from the United States, so it does two things: it  
4 verifies the person's identity; it also shows the person was  
5 deported from the United States.

6 Officer Elsberry also testified that she took the  
7 defendant's fingerprint and placed it on this form. The  
8 parties have stipulated, meaning that we all agree, there's no  
9 dispute here, that this is the defendant's fingerprint. So we  
10 know that this is the defendant's fingerprint on this warrant  
11 of deportation.

12 Then you heard from Officer Villalobos who transported the  
13 defendant to the Del Rio port of entry for his deportation. He  
14 testified that the writing at the top here where it says  
15 "Del Rio, Texas, 7/29/10, afoot," simply means that the  
16 defendant was deported at the Del Rio, Texas location on July  
17 29th, 2010, and "afoot" means he walked across the bridge into  
18 Mexico.

19 Officer Villalobos testified he signed his name on this  
20 document right here next to "Departure verified by," and he  
21 testified that he only does this after he watches the alien  
22 walk across the bridge into Mexico. He watches them cross the  
23 boundary into Mexico.

24 I will switch gears for a second now. This is the  
25 defense's exhibit. They submitted this into evidence. Based

1 on this document, Officer Villalobos testified that when they  
2 drive the transport bus onto the bridge, they park in the  
3 little cement cutouts, somewhere right around there in the  
4 middle he said. Then all the aliens get out of the bus, and  
5 the officers send them on their way across the bridge into  
6 Mexico. Again, Officer Villalobos told you that he actually  
7 watches the aliens walk across the bridge and physically cross  
8 the boundary into Mexico.

9 After he sees them cross the boundary into Mexico, then he  
10 signs that document under the "Departure verified by." He also  
11 explained that there is no way the aliens can walk back across  
12 the bridge. This is no way that the aliens escape off the bus.  
13 They simply get off the bus and walk across the bridge into  
14 Mexico.

15 As you can see from this document here, the blue line is  
16 basically from all the way up here to the Mexican boundary, and  
17 that, according to this, is an 11-minute walk, .6 miles it  
18 looks like. So the whole thing is 11 minutes. But the  
19 deportation officer, Officer Villalobos, says they park the bus  
20 kind of in the middle, so the walk for the aliens is really  
21 more of about .3 miles, maybe a 5-1/2-minute walk from the bus  
22 to the international boundary.

23 And again, Officer Villalobos does not sign the form --  
24 let's go back to this -- does not sign this form until he  
25 actually sees the alien walk across the border back into

1 Mexico.

2           So just to recap, over the course of three days, between  
3 July 26th and July 29th, the defendant filed his motion. He  
4 asked to be deported. The immigration judge granted that  
5 motion. He said, "Okay, we're sending you back to Mexico."  
6 The immigration officials gave the defendant the warnings about  
7 reentering the United States without permission. Then they  
8 drove the defendant down to the border. They verified his  
9 identity. They watched him walk across the border into Mexico,  
10 and then they signed the paperwork.

11           The person on the form was deported to Mexico. There's no  
12 question the person on the form was the defendant.

13           So these next two elements have some very similar evidence  
14 that goes along with them, voluntarily entered the United  
15 States and the defendant knew he was in the United States and  
16 knowingly remained. So you heard from Deportation  
17 Officer Rachel that testified that he found the defendant in  
18 Long Beach, California. The parties all agree that the  
19 defendant was found in Long Beach, California.

20           When he found the defendant, the defendant was not  
21 restrained in any way, was not handcuffed, was not being  
22 escorted by law enforcement personnel. He was simply walking  
23 into a building in Long Beach. And this makes sense. The  
24 defendant was not brought back to the United States against his  
25 will. The Government did not force the defendant to return to

1 the United States. He came back voluntarily, and he was just  
2 going about his everyday activities in Long Beach, California,  
3 just walking into a building.

4 Also, as you will recall, Officer Rachel testified that  
5 Long Beach is pretty far away from the Mexican border. It's  
6 over a hundred miles. If a person -- let's say they were found  
7 relatively close to the border, you know, 10 feet inside the  
8 Mexican/United States border. Maybe they didn't know they were  
9 in the United States. Maybe 50 feet inside the Mexican border,  
10 maybe they still didn't know. At this point, a hundred miles  
11 in the United States, you can infer that the defendant knew he  
12 was in the United States. That would be a reasonable inference  
13 in this case, using your common sense.

14 Next element, found in the U.S., the parties agree and  
15 stipulate that the defendant was found in Long Beach,  
16 California. There is no objection as to this, so I won't spend  
17 any more time on this.

18 The defendant was found in the U.S. without consent,  
19 before we dive into this, I just want to go back to the Court's  
20 jury instructions again on what evidence you are to consider:  
21 the sworn testimony of the witnesses, the exhibits that were  
22 received into evidence, and the facts that the parties agree  
23 to.

24 You are not to consider the questions, the statements or  
25 objections of the lawyers. The lawyers are not witnesses.

1 What I say is not evidence. What Mr. Menninger says is not  
2 evidence.

3 So with that in mind, you heard the testimony of  
4 Officer Arambulo, that to reenter the United States, a person  
5 has to file what's called a Form 212. And I know we have  
6 talked about a lot of forms during this trial, but just keep  
7 this one in mind for the next few minutes, the Form 212. If  
8 the defendant had filed the Form 212, had he asked for  
9 permission to come back into the United States or been granted  
10 it, there would have been evidence, according to  
11 Officer Arambulo in two places: in the A-file and in the  
12 immigration database called CLAIMS.

13 Officer Arambulo checked both locations as recently as  
14 March 6, which was Monday of this week, and he found no  
15 evidence of a Form 212 in either location, not in the A-file,  
16 not in the CLAIMS database. For the A-file there is nothing I  
17 can show you to prove that there's no Form 212 in there because  
18 it doesn't exist; therefore, I can't show you anything.  
19 Officer Arambulo explained that if the form had been filed with  
20 the Department of Homeland Security, it would have been in the  
21 A-file. It was not.

22 We also talked about the CLAIMS database. This is the  
23 database that tracks all of the applications that people file  
24 with the Department of Homeland Security for different types of  
25 benefits. This includes applications for permissions to enter,

1 like the Form 212. It also includes work permission and  
2 applications to become lawful permanent residents.

3 As you can see from this printout from CLAIMS, this is the  
4 defendant's printout. There's three -- there's three items on  
5 here. None of them are the Form 212, which is what the  
6 defendant would have had to file to ask for permission to come  
7 back into the United States. Because it's not here, he wasn't  
8 granted permission, and he didn't even ask for it; he just  
9 reentered illegally.

10 Now, these other three, we will go over these real quick,  
11 the 181, as Officer Arambulo testified, is the application to  
12 become a lawful permanent resident. The 765, the second and  
13 third one, are the applications to work in the United States.  
14 All of these are from the late '90s. And the important part  
15 about this, as I said at the very beginning, is that anything  
16 that happened prior to the July 2010 deportation doesn't matter  
17 to this case. So none of these forms matter to this case. It  
18 only matters that there's no Form 212 on here, meaning he never  
19 asked for or got permission to reenter the United States.

20 The last element, the defendant has to be an alien at the  
21 time of his entry. As you will see on the jury instructions,  
22 "alien" just means you are not a naturalized citizen of the  
23 United States or a natural-born citizen of the United States.  
24 You saw a few pieces of evidence on this point, and you heard  
25 or you saw through the motion for immediate removal that the

1 defendant has admitted that he is a citizen of Mexico.

2           The first thing you saw -- yes, this is the first thing  
3 you saw, the translation of the defendant's birth certificate.  
4 The areas highlighted in yellow here shows it is Cesar Raul  
5 Aceves's birth certificate, born in Guadalajara, Jalisco,  
6 Mexico, on April 11, 1983. Because he was born in Mexico, he  
7 is not a natural-born citizen of the United States; he is a  
8 natural-born citizen of Mexico.

9           And a document that we have already seen today, the motion  
10 for immediate removal, previously we were looking at the fact  
11 that the defendant had requested to be deported. Now we are  
12 looking at where he says he's from and where he is asking to be  
13 deported to.

14           First highlighted area says defendant -- respondent admits  
15 he is from Mexico. Second highlighted area, he asks to be  
16 deported, removed to Mexico. United States citizens don't ask  
17 to be deported to Mexico. Mexican citizens ask to be deported  
18 to Mexico.

19           This is a later page of the same motion. It references  
20 the notice to appear, same date, July 12th, 2010, and it says  
21 "Respondent admits allegations." Now, if we think back to the  
22 notice to appear, there were those three allegations. The  
23 first two said, "You are not a citizen of the United States,  
24 and you are a citizen of Mexico." Right here this is saying  
25 the respondent admits that.

1           He says, "I'm not a U.S. citizen. I'm a citizen of  
2 Mexico," and he asked to be deported to Mexico. So as late as  
3 this motion was filed, which was July 26, 2010, the defendant  
4 has admitted he is not a United States citizen and he is a  
5 citizen of Mexico.

6           Final point on this issue, we have the immigration judge's  
7 order, the defendant's A-number. As Judge Wu has instructed  
8 you, a prior deportation order and the defendant's admissions,  
9 when taken together, are enough to show that the defendant is  
10 an alien. We just saw the defendant's admissions that he is  
11 not a United States citizen; citizen of Mexico in the prior  
12 exhibit. Here we have the judge's deportation order. Those  
13 two things together prove that the defendant is an alien, and  
14 on top of that, we have his birth certificate showing birth in  
15 Mexico.

16           It's the Government's burden to prove the elements of the  
17 case. The Government welcomes that burden. All the slices of  
18 the pie here fit together. All of the evidence demonstrates  
19 that defendant was deported to Mexico in July 2010, that he  
20 voluntarily entered the United States thereafter. He knew he  
21 was in the United States and knowingly remained, all without  
22 ever asking or getting permission from the United States  
23 government.

24           He was found here in Long Beach, and that he is and always  
25 has been a citizen of Mexico. In other words, the evidence in



1 this case supports one conclusion: the defendant is guilty of  
2 the offense of being an alien found in the United States  
3 following deportation.

4 Thank you.

5 THE COURT: All right. For the defense?

6 MR. MENNINGER: Thank you, Your Honor.

7 Sorry. Just one second.

8 Ladies and gentlemen, the prosecution wants you to believe  
9 that this is just a run-of-the-mill case, routine; they can  
10 just fly through it. They can just show you -- pick out some  
11 documents from the A-file and say, "That's all you need.  
12 Convict him of a crime. Don't need to think too hard about  
13 it." Maybe that's how things are in immigration court just  
14 processing deportations, but we aren't in immigration court  
15 today. We aren't here to decide if Mr. Aceves should be  
16 deported from the United States. That issue's been decided.

17 We are here today to decide if the federal government can  
18 take away the liberty of this human being. Mr. Aceves has pled  
19 not guilty to this crime. And as the judge has told you, when  
20 the Government tries to take someone's liberty away, it is his  
21 constitutional right to hold the prosecution to his burden of  
22 proof.

23 He doesn't have to take the stand and face the Government  
24 on his own. The burden isn't on him to prove himself innocent.  
25 The burden is on the Government to make sure, to convince you

1 of all of the elements beyond a reasonable doubt.

2 I know this trial might have been confusing. There's been  
3 a lot of interruptions. There's been a lot of technical  
4 documents and terminology. I bet you all have some questions.  
5 I think we all do. And, ladies and gentlemen, legitimate  
6 questions are reasonable doubts. And there are legitimate  
7 questions of Mr. Aceves's guilt of this offense because what  
8 the prosecution has shown you over the last three days is  
9 incomplete. It's inadequate, and it's implausible.

10 We saw that the A-file is incomplete. The investigation  
11 wasn't adequate. And we saw that the Government's proof of  
12 deportation was implausible.

13 First, the incomplete A-file. The prosecution needs you  
14 to think that the A-file is complete. That's the basis for  
15 every single uncontested element of their case. All of those  
16 elements either depend on an A-file document or the absence of  
17 an A-file document.

18 No one remembered -- on any of the contested points, no  
19 one remembered my client, but we learned that the A-file is  
20 missing documents in this case, and, in fact, the witness  
21 didn't even know how many documents could be missing.

22 Agent Arambulo, in fact, told us there were two documents  
23 that were supposed to be in the A-file that just went there.  
24 In fact, Mr. Ryan told you immigration court documents should  
25 be in the A-file, but that motion he just showed you, remember

1 when Agent Arambulo told us that wasn't in the A-file when they  
2 filed charges in this case, that the agent before him had to go  
3 hunt it down because they knew they needed to convince you that  
4 the A-file was complete?

5 And, you know, I wasn't going to bring this up, but just  
6 because Mr. Ryan said, "You know, we know the process worked in  
7 this case," you know, I tried to give you more context into how  
8 this process worked. I wasn't allowed to, but I just want to  
9 make that point to you. The larger point, though, is that the  
10 motion was not in the A-file.

11 Another document we know is missing is the decision on his  
12 green card application which was filed in 1997. Agent Arambulo  
13 told us it wasn't in the A-file. Who knows where that is. And  
14 then Agent Arambulo told us that he didn't know that  
15 immigration had a whole nother file of documents on Mr. Aceves.

16 And I just want to focus on that for a second. We heard  
17 that immigration normally keeps all of the documents in one  
18 file, an A-file, but sometimes they keep a separate file, which  
19 they call a T-file, at another location. Okay. Fair. But  
20 then Agent Arambulo told us -- Agent Arambulo told us he did  
21 not even know whether Mr. Aceves had a T-file or not.

22 He did not even know if there was a whole nother file of  
23 documents out there somewhere. Why didn't he know? Because  
24 there is no formal log when a T-file is created. There was no  
25 document in the A-file saying a T-file was created. In fact,

1 Agent Arambulo didn't even know because it was handwritten in  
2 pen in a stack of documents on the inside folder cover of that  
3 manila folder. And I think you all saw when he saw that for  
4 the first time.

5 You know, imagine if the IRS had such sloppy bookkeeping.  
6 And it's not Mr. Aceves's job to hunt down any missing  
7 documents. We don't know where they might be. That's the  
8 Government's job. That's the Government's burden of proof.  
9 The A-file is incomplete, and the Government's investigation  
10 was incomplete and inadequate.

11 Now, a perfect illustration of the Government's inadequate  
12 investigation is the CLAIMS system. CLAIMS, you remember, is  
13 the Government's -- as Mr. Ryan explained, it's immigration's  
14 database of all immigration applications, all applications for  
15 lawful status. And Agent Arambulo told you he looked up  
16 Mr. Aceves in the CLAIMS system, and he told you that there was  
17 no evidence that Mr. Aceves had or has ever had lawful status.  
18 And they showed you one page from the CLAIMS system.

19 If they had just turned the page, if they had simply  
20 turned the page on that, ladies and gentlemen, they would have  
21 seen this. All they had to do was turn the page. And because  
22 the investigation was so incomplete and inadequate, how can we  
23 be sure of the elements of the Government's case? And, you  
24 know, we're just public defenders. They have the entire  
25 resources of the federal government and the attorney general of

1 the United States. They could have done a lot more to make  
2 sure in this case. And because they didn't make sure, now we  
3 don't know for sure.

4 So the A-file is incomplete. The Government's  
5 investigation is incomplete and inadequate, and the proof of  
6 deportation is incomplete, it's inadequate, and it's  
7 implausible. The judge told you today in order to be deported,  
8 in order for the Government -- in order for you to be firmly  
9 convinced in this case, you have to be firmly convinced that  
10 Mr. Aceves set foot across the border in Mexico. And what we  
11 saw before lunch yesterday, the Government's proof was  
12 incomplete and inadequate and implausible.

13 So Mr. Ryan just showed this document, and, yes,  
14 Officer Villalobos signed saying he witnessed the departure,  
15 but he also told us he had no memory of Mr. Aceves seven years  
16 back. Actually, he kind of wavered in that a little bit, but,  
17 I guess, eventually he got back to his first answer, which is  
18 "Yes, I have no memory of him."

19 And then he didn't even recognize a picture of the border  
20 that came from Google that we all agreed was an accurate  
21 picture. He only recognized it later after the prosecution  
22 basically told him he had to recognize it. You all saw that  
23 exchange.

24 And he did not seem to have any real idea where he had  
25 stood while he waited to watch that group of 40 to 80 people

1 walk across that bridge. I mean, he said something about  
2 standing somewhere where he parked his car, like a parking lot,  
3 but he didn't really seem very sure of it. And then he told us  
4 he didn't even fill out this document until he was on his way  
5 back to the hotel in Del Rio.

6 I mean, by the time he signed later, how could he even  
7 remember who was who in a crowd of 40 to 80 people, across a  
8 half mile bridge, after being up all night driving to the  
9 border? I mean, at this distance, how could anyone say beyond  
10 a reasonable doubt that any one person crossed?

11 The prosecutor didn't talk about this right now, I don't  
12 think, I didn't hear Mr. Ryan say it, but this form was signed  
13 by two people. And as the judge told you, you can make any  
14 reasonable inference from the evidence or from the lack of  
15 evidence. And after Officer Villalobos was unable on the stand  
16 to really back up his signature, they could have called this  
17 other officer, Officer Madrid, but they didn't. The  
18 prosecution didn't want us to hear anything from  
19 Officer Madrid.

20 Isn't it reasonable that the prosecutors knew  
21 Officer Madrid's signature would hold up no better than  
22 Officer Villalobos's? The proof of deportation is incomplete.  
23 And I'm not saying these guys are liars. Officer Villalobos  
24 didn't remember one way or the other. But isn't it reasonable  
25 to believe that sometimes at work people cut corners with

1 paperwork?

2           When Officer Villalobos signed, isn't it reasonable to  
3 believe that he meant, "Yeah, I probably saw that guy cross the  
4 border." But the standard isn't probably. The Constitution  
5 does not allow the Government to take away somebody's liberty  
6 for "probably." The Constitution requires that the prosecution  
7 eliminate any reasonable question from your mind. And they  
8 haven't done that here because their investigation of this  
9 element was totally inadequate. I mean, it seemed like they  
10 hadn't even looked at a map of the border.

11           If they really took seriously their burden to firmly  
12 convince you that Mr. Aceves stepped across that line, they  
13 could have done a lot more. They left a lot of questions  
14 unanswered, and not just exactly where he was standing, not  
15 just what Officer Madrid might have known or didn't know, but  
16 questions like how many people sneak across this bridge every  
17 month? Every day? How many guards were even around then? Was  
18 it a clear day or a foggy day? Are there even any fences or  
19 barriers on the bridge or the roadway that leads up to it? How  
20 tall are the trees around there? Were there a lot of cars on  
21 the bridge that day?

22           Ladies and gentlemen, the federal government has the  
23 resources. They have people on the ground there. They could  
24 have taken time to make sure. And because they didn't make  
25 sure, now we don't know for sure. The proof of deportation is

1 incomplete. Their investigation of it was inadequate, and  
2 ultimately, the Government's evidence is just implausible.

3 And, you know, the Government itself is saying that  
4 Mr. Aceves crossed the border and then snuck back into the  
5 United States. So isn't it reasonable to assume that maybe he  
6 never even crossed in the first place? That's a reasonable  
7 inference. And we're not here to decide today whether  
8 Mr. Aceves should have walked across that border. You know,  
9 maybe some of you think he should be deported after this. I  
10 get it, I get it, but that is not a reason to convict him of  
11 the offense he was charged with today.

12 Again, the Government is not just trying to deport  
13 Mr. Aceves. They are asking you to convict him of a federal  
14 offense. They are asking you to vote to take away his liberty.

15 MR. RYAN: Objection. This goes to punishment,  
16 Your Honor.

17 THE COURT: Well, I will indicate that I don't think  
18 he's arguing about punishment. I think he's making an argument  
19 about the difference between a civil matter and a criminal  
20 case.

21 MR. RYAN: He mentioned the word "liberty,"  
22 Your Honor.

23 THE COURT: Well, I will excuse that portion, but  
24 technically -- okay. Technically you're right, but I don't  
25 think it's a significant point other than the point that he



1 wishes to make.

2 MR. MENNINGER: Sorry, Your Honor.

3 THE COURT: Don't do that again.

4 MR. MENNINGER: I won't talk about liberty anymore.

5 So the Government is asking you to convict him of a  
6 federal offense, and they are asking you to do that with  
7 evidence that is incomplete, inadequate and implausible. But  
8 you don't have to let them. You have the power to take the  
9 burden beyond a reasonable doubt seriously.

10 Send a message to the federal government. Tell them that  
11 "We intend to hold them to the Constitution." Stay firm in  
12 your beliefs because once you enter a decision, there's no  
13 taking it back. And even though this might not be the biggest  
14 decision in your life, it is the biggest decision in  
15 Mr. Aceves's life and his family's life.

16 I ask that you return the only evidence that is consistent  
17 with what we did -- I'm sorry. I ask that you return the only  
18 verdict that is consistent with the evidence that we did and we  
19 didn't see in this trial, and that's a verdict of not guilty.

20 Thank you.

21 THE COURT: All right. Let's have the closing  
22 closing argument.

23 MR. RYAN: So the defense is making two inconsistent  
24 arguments here: one, that Mr. Aceves somehow escaped while he  
25 was being deported at the Del Rio bridge, and then after he

1 escaped, he applied for consent to come back in. That would be  
2 like escaping from prison and then turning yourself back in,  
3 basically.

4 As the judge has instructed you, the defense has no burden  
5 of any kind in this case. The defense counsel can raise the  
6 question, "What if the defendant somehow knew where the  
7 international boundary was exactly, and before he got there, he  
8 jumped off the Del Rio bridge? And, of course, there are  
9 deportation officers there, but no one saw him, and then he  
10 evaded detection by the border patrol and came back in the  
11 United States, never deported."

12 The defense can ask that question, and they have no duty  
13 to produce any evidence on that point. You should not punish  
14 them for that. It's up to you to decide whether that question  
15 is mere speculation, guessing, or somehow rises to the level  
16 beyond a reasonable doubt.

17 The defense has no burden of producing evidence, but just  
18 raising questions, it's not reasonable doubt. You saw multiple  
19 pieces of evidence showing that the deportation process worked  
20 quickly and efficiently in this case. You saw the notice to  
21 appear. You saw the defendant's motion for immediate removal.

22 Then things went really quickly. The immigration judge  
23 granted the motion. The deportation officers gave the  
24 warnings. Two days later, they signed the warrant of removal,  
25 transported him to Del Rio, Texas. And Officer Villalobos

1 testified it is his standard practice to always watch the alien  
2 walk across the border before he signs on a departure verified  
3 by him.

4 Is it possible that the defendant somehow pulled off some  
5 sort of Ninja-style escape from the Del Rio bridge? I suppose  
6 it's possible, but again, there's no evidence to indicate  
7 that's the case. In fact all the evidence points to the exact  
8 opposite, that the defendant simply walked across the bridge to  
9 Del Rio, Texas. He asked to be deported, and then he was  
10 deported.

11 The defense brought up the difference between an A-file  
12 and a T-file. Officer Arambulo testified that T-files are  
13 often combined into the A-file, so those documents are all in  
14 the A-file now. T-file, it's another red herring in this case.

15 The fact that Mr. Aceves applied for lawful permanent  
16 residence in the claims database in 1999, which was terminated  
17 in 2009, also irrelevant. Nothing in this case matters before  
18 July 2010 because, as I showed you in the elements, the first  
19 element that has to be met is the deportation. Everything  
20 flows from there. Everything that happened before that,  
21 whether he was a lawful permanent resident, which he wasn't,  
22 doesn't matter in this case.

23 Imagine you're on a baseball field: three outfielders,  
24 left, center, right, usually. Now pretend you are the only one  
25 out there, and the batter is just hitting foul balls. He's

1 hitting foul balls to the left; he's hitting foul balls to the  
2 right. What do you do? It doesn't matter. You don't need to  
3 catch the foul balls. They don't matter. That's exactly what  
4 the defense is doing, they are hitting foul balls: Maybe he  
5 ran across the bridge, maybe he had consent, maybe it's  
6 missing. None of those things matter to this case. Maybe he  
7 was lawful permanent resident. It doesn't matter because he  
8 was lawfully deported in July 2010.

9 You heard Officer Arambulo testify about two places that  
10 this Form 212, this consent to come back into the United  
11 States, would have been: the A-file and the CLAIMS. It wasn't  
12 in either one, so they both back each other up.

13 Now, the fact that the motion for immediate removal was  
14 not in the A-file makes sense. It was filed with the  
15 immigration court, not with the Department of Homeland  
16 Security. The Form 212 that Officer Arambulo testified about,  
17 the consent to come back in is filed directly with the  
18 Department of Homeland Security. Thus, if it existed, it would  
19 have been in the A-file, which it was not.

20 It's the Government's burden to prove beyond a reasonable  
21 doubt all of the elements of the case. The Government has done  
22 so. Look at the evidence, the actual evidence before you, not  
23 the speculation and the guessing that the defense is asking you  
24 to engage in. Use your common sense when reviewing the  
25 evidence. When you do, you will reach the only conclusion that

1 is consistent with the evidence: a verdict of guilty.

2 Thank you.

3 THE COURT: All right. At this point in time, let  
4 me have the clerk swear in the bailiff.

5 THE COURTROOM DEPUTY: Please state your name, and  
6 spell your last name for the record.

7 THE BAILIFF: Louis Smith, S-m-i-t-h.

8 LOUIS SMITH, THE BAILIFF, WAS SWORN

9 THE BAILIFF: I do.

10 THE COURT: All right. Let me ask the jury to  
11 accompany the bailiff and my clerk, and also, I think there's  
12 going to be lunch -- you will be provided lunch now that you  
13 have been sworn in as the jury.

14 (Out of the presence of the jury.)

15 THE COURT: Let me ask counsel, have you notified my  
16 clerk where you're going to be?

17 MR. AVEIS: No, but we will, Your Honor.

18 MR. MENNINGER: I will. Yes, Your Honor.

19 THE COURT: The rule is 10 minutes. So if you're  
20 not back within 10 minutes of the number you left with my  
21 clerk, we will proceed without you.

22 MR. MENNINGER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 (Recess taken from 11:45 a.m. to 2:46 p.m.)

25 THE COURTROOM DEPUTY: Please remain seated and come

1 to order. This United States District Court is again in  
2 session.

3 THE COURT: All right. Let me ask counsel, is there  
4 anything I need to do before I bring the jury out?

5 MR. RYAN: No, Your Honor.

6 MR. MENNINGER: No, Your Honor.

7 THE COURT: All right. Let me have the clerk bring  
8 in the jury, please.

9 (Pause in proceedings.)

10 THE COURTROOM DEPUTY: All rise for the jury.

11 (In the presence of the jury.)

12 THE COURTROOM DEPUTY: You may be seated.

13 THE COURT: All right. Let me ask the jury, has the  
14 jury selected a foreperson?

15 JUROR: Yes.

16 THE COURT: All right. Who is the foreperson?

17 All right. Let me ask, has the jury reached a verdict?

18 JUROR: Yes, sir.

19 THE COURT: All right. Let me have you hand the  
20 verdict form to my clerk.

21 All right. Let me have the clerk read the verdict.

22 THE COURTROOM DEPUTY: United States District Court  
23 for the Central District of California, the United States of  
24 America versus Cesar Raul Aceves; CR15-245; Verdict Form.

25 "We, the jury, in the above-entitled action, unanimously

1 find defendant Cesar Raul Aceves guilty of being an alien found  
2 in the United States following deportation, as charged in the  
3 single-count indictment. Dated: March 9th, 2017 Los Angeles,  
4 California," by the foreperson of the jury.

5 Ladies and gentlemen of the jury, is the verdict as  
6 presented and read the verdict of each of you, so say you all?

7 (The jury responded "Yes.")

8 THE COURT: All right. Let me ask counsel, do you  
9 want to have the jury polled?

10 MR. MENNINGER: No, Your Honor.

11 MR. RYAN: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, before  
13 I let you go, there's a couple of things I want to talk to you  
14 about, and then I will let you go. First of all, let me thank  
15 you very much for serving as jurors in this case. Obviously,  
16 if it was not for the services of persons such as yourself to  
17 act on juries, at least my work would come to a grinding halt.  
18 And so, therefore, I'm very appreciative of the fact that you  
19 have taken the time to serve as jurors on this case.

20 Also, I recently placed on you an order that you were not  
21 to talk about this case with anyone. At this point in time I  
22 will lift that order from you. You are free to talk about this  
23 case with anyone, or you are equally free not to talk about  
24 this case with anyone. It's entirely up to you.

25 The only two things I would ask you, after I excuse you, I

1 will be excusing the attorneys in this matter, and some of them  
2 may want to talk to you. I do find it is helpful for jurors to  
3 talk to attorneys for two reasons: one, they may have  
4 questions about their work on the case, in other words, what  
5 did you like about the things they did, what it is that you did  
6 not like about what they did. So that, really, is probably the  
7 best type of training that they can get is because they will  
8 find out the things that you thought were good, the things you  
9 thought were bad, and that's better than my telling them things  
10 they may have done wrong because I think jurors have a better  
11 perspective than judges do about the performance of attorneys.

12 The other thing is they may ask you about what you thought  
13 about particular arguments that were raised in this case, and  
14 there's no problem for you to respond to that, if you so  
15 desire. So if you decide that you do want to talk with them,  
16 you are free to do so.

17 The only thing I would say, however, if you do talk with  
18 persons about this case, sometimes jurors have, for lack of a  
19 better term, a unique sense of humor, and sometimes you may say  
20 something that you intend to be humorous, but it may not be  
21 taken that way by the person you are talking to. So the only  
22 thing I would ask you, don't say anything you would not want to  
23 read in the newspaper the next day, not that it would ever  
24 appear in the newspaper the next day, but just think to  
25 yourself, "Well, if it were to appear in the newspaper the next



1 day, would I look kind of weird?"

2 So that's the only thing I would caution you, but you are  
3 otherwise free to say whatever you want to anybody you want to  
4 about this case.

5 Also, for those of you who need to get anything for your  
6 employers, just go back down to the jury room. First of all,  
7 you have to go back down to the juror room to return your  
8 badges, but initially to that, downstairs you can get whatever  
9 you need to show to your employer that you were, indeed,  
10 serving as a juror in this case.

11 Also, I would ask you, as a favor to the Court, to just  
12 take the notes -- if you took any notes, just take those notes  
13 and take them either with you or take them and throw them in  
14 the trash can because nobody is going to be reading those  
15 notes.

16 At this point, let me ask, do any of you have any  
17 questions?

18 No questions. All right.

19 In that case, for those who do not mind speaking to the  
20 attorneys, as I said, I will let them go in about two minutes  
21 after I let you go now. So if you just wait in the jury room,  
22 I will send them into the jury room and they can talk to you.  
23 And if you do not want to talk to them, feel free to go  
24 downstairs to the jury room downstairs -- actually, I said  
25 "jury room" twice. My jury room here, as opposed to the larger

1 jury room downstairs.

2 So if you don't mind talking to the attorneys, be in my  
3 jury room, the smaller one, or if you don't want to, go down to  
4 the larger jury room downstairs.

5 Thank you very much, and thank you for serving again.

6 (Out of the presence of the jury.)

7 THE COURT: All right. Let me ask counsel, when are  
8 we going to do the D2 portion of the case?

9 MR. RYAN: At sentencing, Your Honor.

10 THE COURT: At sentencing?

11 MR. MENNINGER: Yes, Your Honor.

12 THE COURT: When should I schedule the matter for  
13 sentencing?

14 MR. RYAN: 90 days, Your Honor.

15 THE COURT: Take at least ten weeks, they say. So  
16 let me just do ten weeks, and we will see where that falls. So  
17 it would be -- how about if I put it for the 25th of May? Is  
18 that a doable date for counsel? That would be at 8:00.

19 MR. MENNINGER: Yes, Your Honor.

20 MR. RYAN: Yes, Your Honor.

21 THE COURT: And sentencing positions no later than  
22 the 18th of May.

23 And defendant's currently out on bond?

24 MR. MENNINGER: That's correct, Your Honor.

25 THE COURT: I will leave him out on bond under all

1 terms and conditions and have him return back to this courtroom  
2 at 8:00 on the 25th of May.

3 Okay. Anything else? Who's keeping the exhibits?

4 MR. AVEIS: We will sign the release form.

5 THE COURT: Okay. So the Government will keep the  
6 exhibits.

7 Okay. Thank you very much. And the jury will talk to you  
8 if they so desire to talk to you. Thank you very much.

9 MR. MENNINGER: Thank you, Your Honor.

10 (Proceedings concluded at 2:55 p.m.)

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