

**United States v. Ross**

United States Court of Appeals for the Ninth Circuit

April 10, 2019, Argued and Submitted, Pasadena, California; April 30, 2019, Filed

No. 16-50260, No. 16-50277, No. 16-50357, No. 16-50359

**Reporter**

771 Fed. Appx. 345 \*; 2019 U.S. App. LEXIS 13039 \*\*

**UNITED STATES** OF AMERICA, Plaintiff-Appellee, v. WILBERT **ROSS** III, AKA Coy, AKA Coy Blue, AKA Wilbert **Ross**, Defendant-Appellant. **UNITED STATES** OF AMERICA, Plaintiff-Appellee, v. TERRY CARRY **HOLLINS**, AKA Caby, AKA Caby-3 and 3, Defendant-Appellant. **UNITED STATES** OF AMERICA, Plaintiff-Appellee, v. MARCUS ANTHONY **FOREMAN**, AKA Missile, Defendant-Appellant. **UNITED STATES** OF AMERICA, Plaintiff-Appellee, v. JERMAINE GERALD **COOK**, AKA Tre-O, Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

**Subsequent History:** Rehearing denied by, Rehearing, en banc, denied by *United States v. Ross*, 2019 U.S. App. LEXIS 17206 (9th Cir. Cal., June 7, 2019)

**Prior History:** [\*\*1] Appeal from the *United States* District Court for the Southern District of California. D.C. No. 3:14-cr-01288-DMS-13, D.C. No. 3:14-cr-01288-DMS-9, D.C. No. 3:14-cr-01288-DMS-12, D.C. No. 3:14-cr-01288-DMS-10. Dana M. Sabraw, District Judge, Presiding.

*United States v. Ross*, 2019 U.S. App. LEXIS 13061 (9th Cir. Cal., Apr. 30, 2019)

**Disposition:** AFFIRMED.

## **Core Terms**

district court, self-representation, Juror

## **Case Summary**

### **Overview**

**HOLDINGS:** [1]-During trial for a RICO conspiracy to participate as gang members, defendants were not wrongly denied self-representation rights because the district court had reason for concern that self-representation would put both the trial date and a discovery limitation in jeopardy; [2]-A motion to disqualify under *28 U.S.C.S. § 455(a)* was properly denied where the court did not display a deep-seated favoritism or antagonism that would make fair judgment impossible; [3]-The court permissibly denied a Batson challenge, after the government used a peremptory challenge on the only African American who remained eligible for jury selection, where the government explained it was concerned about, inter alia, the potential juror's employment status, two children requiring childcare, and residence in a neighborhood where drug dealing was controlled by defendants' gang.

### **Outcome**

Judgment affirmed.

## **LexisNexis® Headnotes**

Criminal Law & Procedure > Search &  
Seizure > Warrantless Searches > Detainee & Inmate  
Searches

Constitutional Law > ... > Fundamental Rights > Search  
& Seizure > Scope of Protection

Criminal Law & Procedure > Search &  
Seizure > Expectation of Privacy

**HNI** [↓] **Detainee & Inmate Searches**

A convicted criminal does not have a *Fourth Amendment* expectation of privacy while incarcerated. The California Supreme Court has extended that conclusion to pretrial detainees.

Criminal Law & Procedure > Appeals > Prosecutorial Misconduct

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Fair Trial

**HN2** [↓] **Prosecutorial Misconduct**

Although the *state* must refrain from improper litigation methods calculated to produce a wrongful conviction, it is also obliged to prosecute with earnestness and vigor.

Criminal Law &  
Procedure > ... > Racketeering > Racketeer Influenced &  
Corrupt Organizations Act > Penalties

**HN3** [↓] **Penalties**

By statute, a RICO conspiracy conviction can lead to a maximum sentence of life imprisonment if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment. *18 U.S.C.S. § 1963(a)*.

Criminal Law & Procedure > Appeals > Reversible Error > Cumulative Errors

**HN4** [↓] **Cumulative Errors**

Cumulative error does not mandate reversal where defendants have not established that the combined effect of multiple trial court errors violates due process because it renders the resulting criminal trial fundamentally unfair.

**Counsel:** For *UNITED STATES* OF AMERICA (3:14-cr-01288-DMS-13, 3:14-cr-01288-DMS-9, 3:14-cr-01288-DMS-12, 3:14-cr-01288-DMS-10), Plaintiff - Appellee: Jose Castillo, Assistant *U.S.* Attorney, US Department of Justice, San Diego, CA; David Daniel Leshner, Assistant *U.S.* Attorney, Todd W. Robinson, Esquire, Senior Litigation Counsel, Stephen Hing Wong, Esquire, Assistant *U.S.* Attorney Helen H. Hong, Assistant *U.S.* Attorney, Mark R. Rehe, Assistant *U.S.* Attorney, Office of the US Attorney, San

Diego, CA.

For WILBERT *ROSS* III, AKA Coy, AKA Coy Blue, AKA Wilbert *Ross* (Reg. No. 41931-298), Defendant - Appellant (3:14-cr-01288-DMS-13): Elizabeth Armena Missakian, Attorney, Law Office of Elizabeth A. Missakian, San Diego, CA.

For TERRY CARRY *HOLLINS*, AKA Caby, AKA Caby-3 and 3 (3:14-cr-01288-DMS-9, 3:14-cr-01288-DMS-12), Defendant - Appellant: David Andrew Schlesinger, Esquire, Jacobs & Schlesinger LLP, San Diego, CA.

For JERMAINE GERALD *COOK*, AKA Tre-O, [\*\*2] Defendant - Appellant (3:14-cr-01288-DMS-10): Victor Nathaniel Pippins, Jr., Higgs Fletcher & Mack LLP, San Diego, CA.

**Judges:** Before: PAEZ and CLIFTON, Circuit Judges, and KATZMANN, \*\*Judge

**Opinion**

## [\*347] MEMORANDUM\*

Wilbert *Ross* III, Terry Carry *Hollins*, Marcus Anthony *Foreman*, and Jermaine Gerald *Cook* appeal their convictions and life sentences for conspiring to participate as gang members in violation of the *Racketeer Influenced and Corrupt Organizations Act* ("*RICO*"), *18 U.S.C. § 1962(d)*. We address each of their seven claims, and we affirm.

1. *Hollins*, *Foreman*, and *Ross* were not wrongly denied self-representation rights under *Faretta v. California*, *422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)*. The district court's finding that *Hollins* made his request for purposes of delay and not in good faith was not clearly erroneous. *Hollins* made his first self-representation request twenty months after his indictment and just a short time before trial. He made all his requests after the court, in an effort to protect witnesses, had imposed limitations on the ability of the defendants personally to receive advance information regarding the identity of government witnesses. With most requests *Hollins* indicated a desire for more time to prepare, which would have required continuing the firm trial date. Though [\*\*3] he ultimately said that he would proceed self-represented to trial

\*The Honorable Gary S. Katzmann, Judge for the *United States* Court of International Trade, sitting by designation.

\*This disposition is not appropriate for publication and is not precedent except as provided by *Ninth Circuit Rule 36-3*.

as scheduled and under the limitation imposed regarding witness information, the district court explicitly noted in denying the request that Hollins had rights to both self-representation and "meaningful representation," creating a "Hobson's choice for the court." See United States v. Farias, 618 F.3d 1049, 1053 (9th Cir. 2010). The court had reason for concern that self-representation at that point would put both the trial date and the discovery limitation in jeopardy. The request for self-representation by Foreman was no stronger. He withdrew his request for self-representation, in any event, and never renewed it. Ross made his request in the middle of trial, so the district court did not err in denying this untimely request. See United States v. Carpenter, 680 F.3d 1101, 1102 (9th Cir. 2012) (per curiam).

2. The district court also did not abuse its discretion in denying a motion to disqualify itself under 28 U.S.C. § 455(a) based on statements the district judge made while addressing Ross's concern that his attorney was not providing effective assistance. The judge expressed familiarity with the types of charges filed and the evidence presented to address Ross's concerns about his attorney's qualifications and conduct, but he did not "display a deep-seated [\*\*4] favoritism or antagonism that would make fair judgment impossible." Litek v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

3. The court permissibly denied a challenge under Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), after the government used a peremptory challenge on Juror No. 14, the only African American who remained eligible for jury selection. The government explained it was concerned about the potential juror's employment status, two children requiring childcare, residence in a neighborhood where drug dealing was controlled by defendants' gang, prior experience witnessing a crime where the victim did not press charges, and nervousness. The court's conclusion that there was no purposeful discrimination was not clearly erroneous. See Tolbert v. Page, 182 F.3d 677, 680 n.5 (9th Cir. 1999) (en banc). Although defendants suggest the government's [\*\*348] failure to strike other potential jurors with similar characteristics indicates purposeful discrimination, no other juror had the same disqualifying features. See United States v. Alvarez-Ulloa, 784 F.3d 558, 567 (9th Cir. 2015). Moreover, the government's substitution offer, while inartful, did not refute its race-neutral reasons for challenging Juror No. 14 in this context. *Id.*

4. The district court also permissibly denied a motion to suppress recordings of Hollins, Foreman, and a third alleged gang member during pretrial detention. Defendants argue [\*\*5] this court should follow United States v. Cohen, 796 F.2d 20, 23-24 (2d Cir. 1986), in which the Second

Circuit held that a pretrial detainee retained an expectation of privacy to challenge the warrantless physical search of his cell intended solely to bolster the prosecution's case. The Supreme Court has held that HNI [↑] a convicted criminal does not have a Fourth Amendment expectation of privacy while incarcerated. See Hudson v. Palmer, 468 U.S. 517, 530, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984). The California Supreme Court has extended that conclusion to pretrial detainees, rejecting the approach taken in Cohen. People v. Davis, 36 Cal. 4th 510, 31 Cal. Rptr. 3d 96, 115 P.3d 417, 428-29 (Cal. 2005). We do not have to resolve that difference because this case is unlike Cohen. There was no physical search here, and there was evidence the search was not intended solely to bolster the prosecution's case. The court did not abuse its discretion in finding that these defendants had no reasonable expectation of privacy in their jail cell conversation and that law enforcement recorded their conversation based on real concerns about witness safety. See United States v. Mayer, 560 F.3d 948, 956 (9th Cir. 2009).

5. HN2 [↑] Although the state must refrain from improper litigation methods calculated to produce a wrongful conviction, it is also "obliged to 'prosecute with earnestness and vigor.'" Cone v. Bell, 556 U.S. 449, 469, 129 S. Ct. 1769, 173 L. Ed. 2d 701 (2009) (quoting Berger v. United States, 295 U.S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314 (1935)). Defendants identify a few instances when the court sustained defense objections to government questions [\*\*6] and the government made negative statements about defendants and their counsel, but they have not established the district court abused its discretion in concluding misconduct did not occur. United States v. Nadler, 698 F.2d 995, 1001 (9th Cir. 1983). As the government concedes, its comment in rebuttal closing was improper, but it was harmless in light of its brevity and the district court's prompt curative instruction to the jury. See United States v. Barragan, 871 F.3d 689, 707-10 (9th Cir. 2017).

6. The court did not violate the Sixth Amendment or Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), in imposing life sentences based on a special verdict form requiring the jury to unanimously agree that the government had proven beyond a reasonable doubt that each defendant agreed that a co-conspirator would commit at least one of four enumerated offenses with maximum life penalties. HN3 [↑] By statute, a RICO conspiracy conviction can lead to a maximum sentence of life imprisonment "if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment." 18 U.S.C. § 1963(a). Because of the special verdict form,<sup>1</sup> this case does not raise

<sup>1</sup> The government filed an unopposed motion for judicial notice of App.3

the same [\*349] concerns as United States v. Nguven, 255 F.3d 1335, 1343-44 (11th Cir. 2001).

7. HN4[↑] Cumulative error does not mandate reversal because defendants have not established that "the combined effect of multiple trial court errors violates due process [because] it renders the resulting [\*\*7] criminal trial fundamentally unfair." Parle v. Rummels, 505 F.3d 922, 927 (9th Cir. 2007).

**AFFIRMED.**

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the same special verdict form used by the district court in another case. Although we do not rely on that form in deciding this case, we agree that we may take judicial notice of inferior court records from another case and therefore grant the motion. See United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

FILED

UNITED STATES COURT OF APPEALS

JUN 7 2019

FOR THE NINTH CIRCUIT

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U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILBERT ROSS III, AKA Coy,  
AKA Coy Blue, AKA Wilbert Ross,

Defendant-Appellant.

No. 16-50260

D.C. No. 3:14-cr-01288-DMS-13  
Southern District of California,  
San Diego

ORDER

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TERRY CARRY HOLLINS,  
AKA Caby, AKA Caby-3 and 3,

Defendant-Appellant.

No. 16-50277

D.C. No. 3:14-cr-01288-DMS-9  
Southern District of California,  
San Diego

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARCUS ANTHONY FOREMAN,  
AKA Missile,

Defendant-Appellant.

No. 16-50357

D.C. No. 3:14-cr-01288-DMS-12  
Southern District of California,  
San Diego

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JERMAINE GERALD COOK,  
AKA Tre-O,

Defendant-Appellant.

No. 16-50359

D.C. No. 3:14-cr-01288-DMS-10  
Southern District of California,  
San Diego

Before: PAEZ and CLIFTON, Circuit Judges, and KATZMANN,\* Judge.

The panel has unanimously voted to deny Appellants' joint petition for rehearing. Judge Paez has voted to deny Appellants' joint petition for rehearing en banc, and Judge Clifton and Judge Katzmann so recommend. The full court has been advised of Appellants' joint petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellants' joint petition for rehearing and rehearing en banc (Docket Entry No. 87) are DENIED.

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\* The Honorable Gary S. Katzmann, Judge for the United States Court of International Trade, sitting by designation.

## 18 U.S. Code § 1961. Definitions

<u>U.S. Code</u>	<u>Notes</u>
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As used in this chapter—

**(1)** "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891–894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351 (relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or naturalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections App.7

1461–1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local

law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581–1592 (relating to peonage, slavery, and trafficking in persons).<sup>[1]</sup> sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341–2346 (relating to trafficking in contraband cigarettes), sections 2421–24 (relating to white slave traffic), sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offenseApp.8



involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying,

selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

**(2)** "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

**(3)** "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

**(4)** "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

**(5)** "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

**(6)** "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

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**(7)** "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

**(8)** "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

**(9)** "documentary material" includes any book, paper, document, record, recording, or other material; and

**(10)** "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 941; amended Pub. L. 95-575, § 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub. L. 95-598, title III, § 314(g), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 98-473, title II, §§ 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub. L. 98-547, title II, § 205, Oct. 25, 1984, 98 Stat. 2770; Pub. L. 99-570, title I, § 1365(b), Oct. 27, 1986, 100 Stat. 3207-35; Pub. L. 99-646, § 50(a), Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100-690, title VII, §§ 7013, 7020(c), 7032, 7054, 7514, Nov. 18, 1988, 102 Stat. 4395, 4396, 4398, 4402, 4489; Pub. L. 101-73, title IX, § 968, Aug. 9, 1989, 103 Stat. 506; Pub. L. 101-647, title XXXV, § 3560, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 103-322, title IX, § 90104, title XVI, § 160001(f), title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 1987, 2037, 2150; Pub. L. 103-394, title III, § 312(b), Oct. 22, 1994, 108 Stat. 4140; Pub. L. 104-132, title IV, § 433, Apr. 24, 1996, 110 Stat. 1274; Pub. L. 104-153, § 3, July 2, 1996, 110 Stat. 1386; Pub. L. 104-208, div. C, title II, § 202, Sept. 30, 1996, 110 Stat. 3009-565; Pub. L. 104-294, title VI, §§ 601(b)(3), (i)(3), 604(b)(6), Oct. 11, 1996, 110 Stat. 3499, 3501, 3506; Pub. L. 107-56, title VIII, § 813, Oct. 26, 2001, 115 Stat. 382; Pub. L. 107-273, div. B, title IV, App. 10

§ 4005(f)(1), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108-193, § 5(b), Dec. 19, 2003, 117 Stat. 2879; Pub. L. 108-458, title VI, § 6802(e), Dec. 17, 2004, 118 Stat. 3767; Pub. L. 109-164, title I, § 103(c), Jan. 10, 2006, 119 Stat. 3563; Pub. L. 109-177, title IV, § 403(a), Mar. 9, 2006, 120 Stat. 243; Pub. L. 113-4, title XII, § 1211(a), Mar. 7, 2013, 127 Stat. 142; Pub. L. 114-153, § 3(b), May 11, 2016, 130 Stat. 382.)

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## 18 U.S. Code § 1962. Prohibited activities

<u>U.S. Code</u>	<u>Notes</u>
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**(a)** It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

**(b)** It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

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(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942; amended Pub. L. 100-690, title VII, § 7033, Nov. 18, 1988, 102 Stat. 4398.)



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## 18 U.S. Code § 1963. Criminal penalties

<u>U.S. Code</u>	<u>Notes</u>
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**(a)** Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

**(1)** any interest the person has acquired or maintained in violation of section 1962;

**(2)** any—

**(A)** interest in;

**(B)** security of;

**(C)** claim against; or

**(D)** property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

**(3)** any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

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The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section,

that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

**(b)** Property subject to criminal forfeiture under this section includes—

**(1)** real property, including things growing on, affixed to, and found in land; and

**(2)** tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

**(c)** All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

**(d)**

**(1)** Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

**(A)** upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

**(B)** prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the

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property and opportunity for a hearing, the court determines that

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(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

*Provided, however,* That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.



**(e)** upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

**(f)** Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

**(g)** With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission or forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the

interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the

18 U.S. Code § 1963 - Criminal penalties | U.S. Code | US Law | LII / Legal Information Institute  
 with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

**(i)** Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may—

**(1)** intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

**(2)** commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

**(j)** The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

**(k)** In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

**(l)**

**(1)** Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

**(2)** Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States App.19

... property, which has been ordered referred to the United States, pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

**(3)** The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

**(4)** The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

**(5)** At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

**(6)** If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

**(A)** the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

**(B)** the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was

App.20

subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

**(7)** Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

**(m)** If any of the property described in subsection (a), as a result of any act or omission of the defendant—

- (1)** cannot be located upon the exercise of due diligence;
- (2)** has been transferred or sold to, or deposited with, a third party;
- (3)** has been placed beyond the jurisdiction of the court;
- (4)** has been substantially diminished in value; or
- (5)** has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(Added Pub. L. 91-452, title IX, § 901(a), Oct. 15, 1970, 84 Stat. 943; amended Pub. L. 98-473, title II, §§ 302, 2301(a)-(c), Oct. 12, 1984, 98 Stat. 2040, 2192; Pub. L. 99-570, title I, § 1153(a), Oct. 27, 1986, 100 Stat. 3207-13; Pub. L. 99-646, § 23, Nov. 10, 1986, 100 Stat. 3597; Pub. L. 100-690, title VII, §§ 7034, 7058(d), Nov. 18, 1988, 102 Stat. 4398, 4403; Pub. L. 101-647, title XXXV, § 3561, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 111-16, § 3(4), May 7, 2009, 123 Stat. 1607.)

FILED

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CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

March 2015 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

RANDY ALTON GRAVES (1),  
aka "Sweets",  
TERRY CARRY HOLLINS (9),  
aka "Caby", aka "Caby-3",  
aka "3",  
JERMAINE GERALD COOK (10),  
aka "Tre-O",  
DONALD EUGENE BANDY (11),  
aka "DC",  
MARCUS ANTHONY FOREMAN (12),  
aka "Missile",  
WILBERT ROSS, III, (13),  
aka "Coy Blue", aka "Coy",  
Defendants.

Case No. 14CR1288-DMS

I N D I C T M E N T  
(5th Superseding)

Title 18, U.S.C., Sec. 1962(d) - Conspiracy to Conduct Enterprise Affairs Through A Pattern of Racketeering Activity; Title 21, U.S.C., Secs. 841(a)(1), (b)(1)(A)(ii), (b)(1)(A)(iii), (b)(1)(A)(viii), and 846 - Conspiracy to Distribute Methamphetamine, Cocaine and Cocaine Base; Title 21, U.S.C., Secs. 841(a)(1), (b)(1)(A)(vii) and 846 - Conspiracy to Possess with Intent to Distribute Marijuana; Title 18, U.S.C., Sec. 1591(a), (b) and (c) - Sex Trafficking of a Minor; Title 18, U.S.C., Sec. 1591(a) and (b) - Sex Trafficking by Force, Fraud or Coercion; Title 21, U.S.C., Secs. 841(a)(1) and (b)(1)(A)(viii) - Possession with Intent to Distribute Methamphetamine; Title 18, U.S.C., Sec. 1963, Title 18, U.S.C., Sec. 924(d), Title 21, U.S.C., Sec. 853, and Title 28, U.S.C. Sec. 2461(c) - Criminal Forfeiture

The grand jury charges:

Count 1

THE ENTERPRISE

1. At various times material to this Indictment, Randy Alton Graves (charged elsewhere), defendants TERRY CARRY HOLLINS (9), aka

"  
1 "Caby", aka "Caby-3", aka "3", JERMAINE GERALD COOK (10), aka  
2 "Tre-O", DONALD EUGENE BANDY (11), aka "DC", MARCUS ANTHONY FOREMAN  
3 (12), aka "Missile", WILBERT ROSS, III, (13), aka "Coy Blue", aka  
4 "Coy" (collectively "defendants"), and others known and unknown to  
5 the grand jury, were members and associates of an organization known  
6 as the West Coast Crips ("WCC").

7 2. The WCC organization is engaged in a variety of illegal  
8 activities, including but not limited to narcotics trafficking,  
9 murder, conspiracy to commit murder, attempted murder, illegal  
10 prostitution, and sex trafficking of children. At all relevant  
11 times, the WCC operated in the Southern District of California and  
12 elsewhere. The WCC, including its leadership, membership, and  
13 associates, constituted an "enterprise," as defined by Title 18,  
14 United States Code, Section 1961(4) (hereinafter the "Enterprise"),  
15 that is, a group of individuals associated in fact. The Enterprise  
16 constituted an ongoing organization whose members functioned as a  
17 continuing unit for the common purpose of achieving the objectives of  
18 the Enterprise. The Enterprise was engaged in, and its activities  
19 affected, interstate and foreign commerce.

20 BACKGROUND ON THE WCC ENTERPRISE

21 3. The WCC is a street gang with a historical base of  
22 operations in the neighborhood of Logan Heights in San Diego,  
23 California, and current operations throughout the greater San Diego  
24 area. The WCC has existed for over thirty years and claims several  
25 hundred members.

26 4. The WCC claims territory with borders roughly defined by  
27 Interstate 94 to the north, National Avenue to the south,  
28 Interstate 5 on the west, and Interstate 15 on the east. This

1 territorial homeland shows up in various symbols such as "20's" or  
2 "30's" referencing historic ties to San Diego neighborhoods between  
3 20<sup>th</sup> Street and 40<sup>th</sup> Street. The WCC has a recognizable name, hand  
4 signs, tattoos, language, and colors, which members employ to signify  
5 their allegiance to the gang.

6 5. Membership in the WCC can be acquired in various ways.  
7 Some members claim family connections. Some members were inducted  
8 through acts of violence. All WCC members are expected to put in  
9 "work," that is, commit a criminal act for the gang when called upon.

10 6. The WCC is comprised of several sub-sets or "cliques," of  
11 smaller groups of gang members that recognize their common ties to  
12 the WCC Enterprise but also maintain a distinct identity within the  
13 larger organization. The "3-Babiez" are one such example of a  
14 particularly violent clique. It is well understood among WCC members  
15 that the cliques, while distinct, remain part of the WCC. This is  
16 due, in large part, to sheer survival. No clique could survive on  
17 its own, without drawing on the resources (such as, mutual  
18 protection, money, drugs) of the WCC.

19 7. The WCC is a hierarchical organization with seniority  
20 roughly corresponding to a member's age. At the apex are the  
21 "Original Gangsters," "OGs," or sometimes just referred to as "G."  
22 These are the "shot callers," or decision makers. Most OGs are in  
23 their forties or fifties. OGs generally assume roles that involve  
24 less risk, and higher profits, than less senior gang members. OGs  
25 maintain sources for wholesale supplies of narcotics and deal to  
26 various sub-distributors, reserving a comfortable margin of profit  
27 for themselves. OGs will also supply younger gang members with  
28 weapons, when needed, to carry out gang operations. OGs use younger



gang members to maintain discipline by enforcing violations of gang rules or responding to incursions on gang territory. Typically, such enforcement action requires an act of violence or the threat of violence.

8. Under the OGs are the "Homies." A "Homie" is a gang member, typically in his 30s or early 40s, who earned the trust of his fellow gang members often by putting in "work" [an act of violence] for the gang. While the WCC enterprise does admit women, typically any gang member at "Homie" level is male. In recognition of the trust they have earned, a gang member at this level will typically receive a reduced, "Homie price" for narcotics from other gang members.

9. Below the OGs and Homies are the "Babies," including the "3-Babiez," described above, and the "Young Ridaz." Most of the "Baby" gang members are in their twenties or thirties. This younger generation typically receives narcotics from more senior gang members and deals to street users, or street-level sub-distributors. This generation also manages prostitutes and enforces discipline on gang members and associates in conformity with gang rules. The "Young Ridaz" signifies gang members who are capable and willing of going out on "missions" [acts of violence] for more senior gang members.

10. Alongside this formal WCC hierarchy are WCC Associates. While not recognized as WCC gang members, these individuals are closely connected to the WCC and are essential to WCC operations. WCC Associates include drug cartel members, who supply the WCC with narcotics, WCC girlfriends/prostitutes who work for WCC members, and supply them with firearms, vehicles, and credit, and WCC

1 sub-distributors who channel WCC-supplied narcotics to customers that  
2 the WCC could not otherwise access.

3 ROLES OF THE DEFENDANTS

4 11. At various times material to this Indictment the defendants  
5 occupied the following roles in the WCC Enterprise:

6 a. OGs or Gs: senior gang members, in their 40s or 50s,  
7 who exercise influence with regard to gang operations and control the  
8 narcotics trade. OGs typically insulate themselves from street-level  
9 dealers and use sub-distributors who, in turn, sell directly to users  
10 or to other sub-distributors.

11 b. Homies: mid-level gang members in their 30s or 40s who  
12 have established drug and/or prostitution businesses. They deal with  
13 OGs and are typically above the day-to-day violence but are able to  
14 call on younger gang members to assist their operations when needed.  
15 Homies will supply younger gang members with narcotics. Homies are  
16 regarded as reliable sources of information for operations by other  
17 WCC members. Homies receive narcotics from OGs for a reduced, "Homie  
18 price."

19 c. WCC Babiez: younger gang members, typically in their  
20 20s or early 30s, who "put in work" for the gang, typically a  
21 criminal act to include, acts of violence, robberies, assaults,  
22 pimping, and narcotics trafficking. Graves refers to certain members  
23 of the 3-Babiez clique as his "Young Ridaz." The Babiez typically  
24 deal in street-level quantities of narcotics and deal directly with  
25 end users. These younger members aid the enterprise through acts of  
26 violence by creating an atmosphere of fear and intimidation which  
27 prevents WCC members and associates from seeking assistance from, or  
28 cooperating with law enforcement, creating further dependence on the

1 gang to resolve inter-gang disputes. The Babiez in this Indictment  
2 include: (9) defendant TERRY CARRY HOLLINS, (10) defendant JERMAINE  
3 GERALD COOK, (11) defendant DONALD EUGENE BANDY, (12) defendant  
4 MARCUS ANTHONY FOREMAN, and (13) defendant WILBERT ROSS, III.

5 d. Associates: WCC associates are individuals who have  
6 knowledge of the affairs of the enterprise and support the enterprise  
7 by facilitating WCC criminal acts (such as, smuggling drugs and  
8 weapons), supplying the WCC with wholesale quantities of narcotics  
9 for wide-scale distribution, and by passing information and orders  
10 between WCC members to enable WCC operations.

11 PURPOSES OF THE WCC ENTERPRISE

12 12. The WCC Enterprise exists for both power and profit.  
13 Through acts of violence, the Enterprise intimidates, projecting  
14 power over its members and the community at large by maintaining a  
15 constant state of fear. Through various profit-driven criminal acts,  
16 it enriches its members, and funds the violence that protects the  
17 criminal Enterprise. These purposes are manifest in various  
18 acts, including:

19 a. Enriching the members and associates of the Enterprise  
20 through, among other things, distributing illegal narcotics, managing  
21 illegal prostitution, committing robberies, and conducting other  
22 profit-driven illegal activities in San Diego County, California  
23 and elsewhere;

24 b. Maintaining control over the Enterprise and its  
25 illegal activities occurring within San Diego County, California,  
26 including keeping its members, associates, and the public-at-large in  
27 fear of the Enterprise, and in fear of its members and associates  
28 through threats of violence and violence;

1 c. Preserving, protecting and expanding the power of the  
2 Enterprise through the use of intimidation, violence, threats of  
3 violence, assaults, and other violent crimes;

4 d. Coordinating the Enterprise's operations through  
5 sharing and disseminating information about the Enterprise's plans  
6 and activities, including communicating the rules that govern the  
7 Enterprise and all of its operations, and communicating requests from  
8 younger gang members to senior gang members for permission to commit  
9 acts of violence, and orders issued by the gang, such as a "green  
10 lights" or "blue lights," requiring gang members to commit violence;

11 e. Keeping crime victims, potential witnesses, and  
12 community members in fear of the Enterprise, its members, and its  
13 associates through violence and threats of violence;

14 f. Assisting the Enterprise, its members, and associates  
15 who commit crimes to avoid prosecution and punishment for such crimes  
16 by hindering, obstructing and preventing law enforcement from  
17 identifying, apprehending, and successfully prosecuting such crimes,  
18 including murdering witnesses to such crimes; and

19 g. Providing the Enterprise, its members, and associates  
20 with the resources necessary to commit crimes such as providing  
21 narcotics and controlled substances to drug dealers, providing  
22 prostitutes to pimps, providing firearms, cash, cars, and stash  
23 houses to gang members as needed to carry out the  
24 Enterprise's operations.

25 METHODS AND MEANS OF THE WCC ENTERPRISE

26 13. The Methods and Means by which WCC Enterprise members and  
27 associates conduct the affairs of the enterprise include, but are not  
28 limited to, the following:

1           a. The WCC funds itself through various racketeering  
2 activities: trafficking in narcotics and controlled substances;  
3 pimping/human trafficking; robbery; and money laundering. The WCC  
4 earns substantial profits earned from these activities, which are  
5 used to expand the WCC's power, size and geographic scope.

6           b. The WCC is governed by rules, universally understood  
7 and ruthlessly enforced. The primary WCC rule forbids any gang  
8 member or associate from cooperating with law enforcement. A  
9 violation of that rule is punishable by death.

10           c. Another WCC rule requires a gang member to act upon a  
11 violation of the primary WCC rule. The WCC finds a violation when a  
12 senior gang member announces a "green light" or, in WCC terms, a  
13 "blue light," at which time every loyal WCC member has a duty to act  
14 by murdering the violator.

15           d. A third WCC rule requires younger gang members to  
16 obtain permission from senior members before authorizing the killing  
17 of another gang member. Typically, this requires the offended gang  
18 member to produce legal documents (i.e., "paperwork"), proving the  
19 cooperation. WCC members who disrespect the WCC hierarchy and speak  
20 out against a more senior WCC member are severely punished.

21           e. WCC members receive a reduced "homie price" for drugs  
22 from senior gang members. Senior gang members use the WCC's power  
23 and influence to receive favorable prices on wholesale quantities of  
24 drugs from, among other sources, Mexican drug cartels.

25           f. WCC members respect other members' drug dealing  
26 territory and violently defend the WCC's territory from rival gangs.

27           g. WCC members assist each other in enforcing rules of  
28 prostitution, called "the game," in which a prostitute must, among

1 other requirements, act with absolute loyalty and obedience to her  
2 pimp and provide her pimp with all proceeds from prostitution. WCC  
3 members often share prostitutes and collaborate on joint ventures to  
4 profit from prostitution activities.

5 h. WCC members share with each other the tools of their  
6 trade, including firearms, cellular telephones, computers, vehicles,  
7 and residences.

8 i. When "duty calls," WCC members act and commit acts of  
9 violence to protect and expand the Enterprise's criminal operation.  
10 Those acts of violence include murder, attempted murder, assaults,  
11 intimidation, and threats of violence directed against rival gang  
12 members, WCC members who cooperate with law enforcement or who are  
13 overtly critical of senior gang members, members of law enforcement,  
14 witnesses to criminal acts, and prostitutes who disobey their  
15 WCC pimp.

16 j. The WCC protects its illegal profits by ruthlessly and  
17 vigorously suppressing any contact between WCC members and  
18 law enforcement.

19 THE RACKETEERING CONSPIRACY

20 14. Beginning in or about 2012, and continuing up to and  
21 including 2014, within the Southern District of California and  
22 elsewhere, Randy Alton Graves (charged elsewhere), defendants TERRY  
23 CARRY HOLLINS (9), aka "Caby", aka "Caby-3", aka "3", JERMAINE GERALD  
24 COOK (10), aka "Tre-O", DONALD EUGENE BANDY (11), aka "DC", MARCUS  
25 ANTHONY FOREMAN (12), aka "Missle", and WILBERT ROSS, III, (13), aka  
26 "Coy Blue", aka "Coy" (collectively "defendants"), and others known  
27 and unknown to the grand jury, being persons employed by and  
28 associated with the Enterprise (as defined above), which Enterprise

1 was engaged in, and the activities of which affected, interstate and  
2 foreign commerce, did knowingly and intentionally conspire with each  
3 other, and with other persons, to violate Title 18, United States  
4 Code, Section 1962(c), that is, to conduct and participate, directly  
5 and indirectly, in the conduct of the Enterprise's affairs through a  
6 pattern of racketeering activity involving multiple acts chargeable  
7 under the following provisions under California state law and federal  
8 law, and which are punishable by imprisonment for more than one year:

9 a. Acts and threats involving murder in violation of  
10 California Penal Code, Sections 182, 187, 189, 653f(b) and 664;

11 b. Acts involving robbery in violation of California  
12 Penal Code, Sections 182, 211, 212.5, 653f, 653f(a), 664;

13 and multiple acts indictable under the following provisions  
14 of federal law:

15 c. Title 18, United States Code, Section 1591 (sex  
16 trafficking of children or by force, fraud, and coercion);

17 d. Title 18, United States Code,  
18 Sections 1956(a)(1)(A)(i), (a)(1)(B)(i), and (h) (money laundering  
19 (promotion and concealment) and conspiracy to launder money);

20 e. Title 18, United States Code, Section 1957 (engaging  
21 in monetary transactions in property derived from specified  
22 unlawful activity);

23 f. Title 18, United States Code, Section 2421 (Mann Act);  
24 and multiple acts involving distribution of narcotics in  
25 violation of:

26 g. Title 21, United States Code, Section 841(a)(1)  
27 (possession with intent to distribute and distribution of controlled  
28 substances);

1 h. Title 21, United States Code, Sections 841(a)(1) and  
2 846 (conspiracy to distribute controlled substances);

3 15. It was a further part of the conspiracy that each defendant  
4 agreed that a conspirator would commit at least two acts of  
5 racketeering activity in the conduct of the affairs of  
6 the Enterprise.

7 OVERT ACTS

8 16. In furtherance of the conspiracy and to accomplish the  
9 objects of the conspiracy, the defendants and their co-conspirators  
10 committed the following overt acts, among others, in San Diego  
11 County, within the Southern District of California, unless otherwise  
12 specified, on or about the dates and times set forth below:

13 Overt Act No. 0.1: On July 29, 2012, in response to Joseph  
14 Hutchins' perceived association with a rival gang, defendant JERMAINE  
15 GERALD COOK participated in shooting Joseph Hutchins with a .380 auto  
16 caliber handgun, killing Joseph Hutchins.

17 Overt Act No. 1: On December 2, 2012, in response to an  
18 attack on a WCC member, defendants MARCUS ANTHONY FOREMAN, WILBERT  
19 ROSS, III, and TERRY CARRY HOLLINS participated in shooting Andres  
20 Caldera in the face with a .40 caliber handgun, killing Andres  
21 Caldera.

22 Overt Act No. 2: Following Andres Caldera's murder,  
23 defendants TERRY CARRY HOLLINS and WILBERT ROSS, III, boasted to  
24 another WCC member that they shot a Mexican gang member.

25 Overt Act No. 3: On December 6, 2012, defendants  
26 MARCUS ANTHONY FOREMAN, TERRY CARRY HOLLINS and WILBERT ROSS, III,  
27 robbed a recycling business in San Diego, California, of

28



1 approximately \$1,000 by brandishing firearms and threatening to "pop"  
2 [shoot/kill] an employee.

3 Overt Act No. 4: On December 6, 2012, after robbing a  
4 recycling business of approximately \$1,000, defendants MARCUS ANTHONY  
5 FOREMAN, TERRY CARRY HOLLINS, and WILBERT ROSS, III, fled the scene  
6 in a red Camaro and later led police officers in a high-speed car  
7 chase.

8 Overt Act No. 5: On December 6, 2012, following a high-speed  
9 car chase, defendant MARCUS ANTHONY FOREMAN led police officers on a  
10 foot-chase, and, as FOREMAN ran, FOREMAN threw a .40 caliber handgun,  
11 wrapped in a bandana, in nearby bushes.

12 Overt Act No. 6: On January 23, 2013, defendant  
13 MARCUS ANTHONY FOREMAN possessed, with the intent to distribute, ten  
14 bindle bags of methamphetamine.

15 Overt Act No. 7: On April 6, 2013, defendants WILBERT ROSS,  
16 III, TERRY CARRY HOLLINS, and JERMAINE GERALD COOK participated in  
17 the killing of Meashal Fairley over an argument regarding Fairley's  
18 suspected cooperation with law enforcement.

19 Overt Act No. 8: On August 8, 2013, Randy Alton Graves  
20 (charged elsewhere) sold approximately 33.9 grams of methamphetamine  
21 (actual) to an individual cooperating with the Government ("CI") for  
22 \$900.

23 Overt Act No. 9: On August 15, 2013, Randy Alton Graves  
24 (charged elsewhere) sold approximately 50.9 grams of methamphetamine  
25 (actual) to a CI for \$1,240.

26 Overt Act No. 10: On August 20, 2013, Randy Alton Graves  
27 (charged elsewhere) sold approximately 25.8 grams of methamphetamine  
28 (actual) and 3.9 grams of crack cocaine to a CI for \$940.

1        Overt Act No. 11:    On August 28, 2013, WCC member Darnell James  
2 Butler (charged elsewhere) agreed to sell \$40 worth of crack cocaine  
3 to an undercover police officer soon after exchanging a text message  
4 with Randy Alton Graves (charged elsewhere) regarding other drug  
5 sales.

6        Overt Act No. 12:    On October 10, 2013, Randy Alton Graves  
7 (charged elsewhere) sold approximately 20.5 grams of methamphetamine  
8 (actual) and 5.73 grams of crack cocaine to a CI for \$900.

9        Overt Act No. 13:    Between on or about October 18, 2013, and  
10 October 24, 2013, defendant WILBERT ROSS, III and WCC member Jeffry  
11 John "JJ" Rees (now deceased) travelled with SB1, a minor aged 14 or  
12 over, and SB2, a female, from San Diego to Oakland, California, in  
13 the Northern District of California, for the purpose of having SB1  
14 and SB2 work as prostitutes.

15        Overt Act No. 14:    Between on or about October 18, 2013, and  
16 October 24, 2013, defendant WILBERT ROSS, III, forced and coerced SB1  
17 and SB2 to work as prostitutes.

18        Overt Act No. 15:    On October 25, 2013, defendant WILBERT ROSS,  
19 III, and a group of WCC members assaulted and robbed AH and AG to  
20 collect a debt owed to defendant WILBERT ROSS, III; during the  
21 assault, AH pulled out a knife and stabbed WCC member Jeffry John  
22 "JJ" Rees in the heart, killing him.

23        Overt Act No. 16:    On        October        26,        2013,        defendants  
24 MARCUS ANTHONY FOREMAN and JERMAINE GERALD COOK were involved in a  
25 high speed pursuit and participated in the shooting of another  
26 vehicle.

27        Overt Act No. 17:    On        November        1,        2013,        at        4:00        a.m.,  
28 defendants MARCUS ANTHONY FOREMAN, TERRY CARRY HOLLINS and other

WCC/3-Babiez members participated in the murder of Chyrene Borgen, who was shot in head.

Overt Act No. 18: On November 2, 2013, Randy Alton Graves (charged elsewhere) agreed to sell to WCC member Leon Franklin (charged elsewhere) "two sevens [1/4 ounce of narcotics], one hard [1/4 ounce of crack cocaine] and one soft [1/4 ounce of cocaine]."

Overt Act No. 19: On November 3, 2013, Randy Alton Graves (charged elsewhere) and WCC member Andre Lamar Harrison (charged elsewhere) conducted a narcotics transaction at a fast-food restaurant.

Overt Act No. 20: On November 4, 2013, at 9:44 a.m., Randy Alton Graves (charged elsewhere) agreed to sell WCC member Leon Franklin (charged elsewhere) "seven soft" [1/4 ounce of cocaine].

Overt Act No. 21: On November 4, 2013, at 9:58 a.m., Randy Alton Graves (charged elsewhere) and WCC member Darnell James Butler (charged elsewhere) discussed acquiring methamphetamine from a different source of supply and also discussed making \$200 per day working "the spot" [a drug distribution site within the geographical territory controlled by the WCC].

Overt Act No. 22: On November 4, 2013, at 4:21 p.m., Randy Alton Graves (charged elsewhere) agreed to sell WCC member Leon Franklin (charged elsewhere) "seven soft" [1/4 ounce of cocaine] in exchange for \$320.

Overt Act No. 23: On November 4, 2013, at 5:25 p.m., WCC member Darnell James Butler (charged elsewhere) brokered the sale of an "8 ball" [1/8 ounce of narcotics] with Randy Alton Graves (charged elsewhere).

1        Overt Act No. 24:    On November 5, 2013, Randy Alton Graves  
2 (charged elsewhere) sold WCC member Leon Franklin (charged elsewhere)  
3 "seven soft" [1/4 ounce of cocaine] and "a ball hard" [1/8 ounce of  
4 crack cocaine].

5        Overt Act No. 25:    In November 2013, Randy Alton Graves  
6 (charged elsewhere) supplied WCC member Gaquayla Aunicia Lagrone  
7 (charged elsewhere) with one ounce of cocaine.

8        Overt Act No. 26:    On November 8, 2013, at the direction of  
9 Randy Alton Graves (charged elsewhere), WCC associate Solcamire  
10 Castro-Hernandez (charged elsewhere) traveled from the Southern  
11 District of California to the District of Arizona to work as a  
12 prostitute and, with her earnings, purchase a firearm and ammunition  
13 for defendant Randy Alton Graves (charged elsewhere).

14       Overt Act No. 27:    Between November 8, 2013, and November 12,  
15 2013, Randy Alton Graves (charged elsewhere) negotiated a deal with  
16 WCC member Titus Fisher (charged elsewhere), whereby Fisher would  
17 broker a deal with another person to sell defendant Randy Alton  
18 Graves (charged elsewhere) a fully automatic assault rifle for  
19 \$2,500.

20       Overt Act No. 28:    On November 9, 2013, Randy Alton Graves  
21 (charged elsewhere) sold WCC associate Brandon Lamar Whittle (charged  
22 elsewhere) 1/8 ounce of narcotics.

23       Overt Act No. 29:    On November 12, 2013, Randy Alton Graves  
24 (charged elsewhere) agreed to purchase "10" units of "good" [high-  
25 quality] marijuana from WCC member Sharod Levale Jackson (charged  
26 elsewhere) for "56" [\$5,600].

27       Overt Act No. 30:    On November 13, 2013, Randy Alton Graves  
28 (charged elsewhere) and WCC member Dameon Desean Shelton (charged

1 elsewhere) arranged to deliver a package containing "5 1/2" pounds of  
2 marijuana to a certain "drop zone."

3 Overt Act No. 31: On November 26, 2013, Randy Alton Graves  
4 (charged elsewhere) and WCC member Dameon Desean Shelton (charged  
5 elsewhere) agreed to purchase "10" pounds of marijuana from WCC  
6 member Sharod Levale Jackson (charged elsewhere) in exchange for an  
7 initial payment of "43" [\$4,300].

8 Overt Act No. 32: On November 1, 2013, Randy Alton Graves  
9 (charged elsewhere) agreed to buy two kilograms of cocaine from WCC  
10 associate Luis Salgado-Viscarra (charged elsewhere) for approximately  
11 \$26,000 per kilogram.

12 Overt Act No. 33: On November 5, 2013, Randy Alton Graves  
13 (charged elsewhere) agreed to sell KL, a sub-distributor of  
14 narcotics, one kilogram of cocaine for \$28,500.

15 Overt Act No. 34: On November 8, 2013, Randy Alton Graves  
16 (charged elsewhere) and WCC associated Luis Salgado-Viscarra (charged  
17 elsewhere) picked up two kilograms of cocaine from an individual  
18 located in the Central District of California.

19 Overt Act No. 35: On November 9, 2013, Randy Alton Graves  
20 (charged elsewhere) picked up a parcel package that contained  
21 approximately \$28,000 in U.S. currency, which was a payment for a  
22 kilogram of cocaine to be sent by GRAVES from a post office in  
23 Santee, California.

24 Overt Act No. 36: On November 12, 2013, Randy Alton Graves  
25 (charged elsewhere) mailed a package containing approximately 1.13  
26 kilograms of cocaine from a San Diego-area post office.

27 Overt Act No. 37: On November 30, 2013, Randy Alton Graves  
28 (charged elsewhere) boasted about his status within the WCC by

1 stating that he was "highly decorated" within the WCC because over  
2 his 35-year career as a WCC member, he had "5, 6 bodies" [killed 5 or  
3 6 people] and, as a result, defendants TERRY CARRY HOLLINS, MARCUS  
4 ANTHONY FOREMAN, and WCC member Leon Franklin (charged elsewhere)  
5 respected him as a "G" [senior member of the WCC].

6 Overt Act No. 38: On December 3, 2013, Randy Alton Graves  
7 (charged elsewhere) and WCC associate Solcamire Castro-Hernandez  
8 (charged elsewhere) mailed a package containing narcotics from a San  
9 Diego-area Federal Express office.

10 Overt Act No. 39: On December 3, 2013, Randy Alton Graves  
11 (charged elsewhere) and WCC associate Solcamire Castro-Hernandez  
12 (charged elsewhere) mailed a package containing narcotics from a San  
13 Diego-area post office.

14 Overt Act No. 40: On November 19, 2013, Randy Alton Graves  
15 (charged elsewhere) announced to a WCC associate that 3-Babiez  
16 members were going to "get" [kill] KS.

17 Overt Act No. 41: On December 6, 2013, Randy Alton Graves  
18 (charged elsewhere) approved WCC member Antoine Roberts's (charged  
19 elsewhere) December 1, 2013, attempt to murder WCC member KS (who was  
20 pregnant) by shooting KS multiple times in the torso, stating: "the  
21 message has been that for years - you snitch you go, period. You keep  
22 running your mouth and the nigger catch you slipping, the mother  
23 fucker knock [kill] you . . . we live by that - we all understand and  
24 know that regardless."

25 Overt Act No. 42: On December 6, 2013, Randy Alton Graves  
26 (charged elsewhere) gave WCC member Darnell James Butler (charged  
27 elsewhere) a loaded .357 Smith & Wesson revolver.  
28

1        Overt Act No. 43:    On December 6, 2013, after picking up a  
2 loaded .357 Smith & Wesson revolver, WCC member Darnell James Butler  
3 (charged elsewhere) led police officers on a high-speed car chase,  
4 and threw the loaded firearm out of the car window.

5        Overt Act No. 44:    On December 6, 2013, Randy Alton Graves  
6 (charged elsewhere) attempted to locate and pick up a loaded .357  
7 Smith & Wesson revolver that WCC member Darnell James Butler (charged  
8 elsewhere) threw from a car window during a high-speed car chase.

9        Overt Act No. 45:    On December 24, 2013, Randy Alton Graves  
10 (charged elsewhere) delivered to WCC member Andre Lamar Harrison  
11 (charged elsewhere) three grams of crack cocaine, consistent with  
12 multiple prior transactions, for redistribution.

13       Overt Act No. 46:    On December 30, 2013, Randy Alton Graves  
14 (charged elsewhere) sold WCC associate Brandon Lamar Whittle (charged  
15 elsewhere) a "ball" [1/8 of an ounce of narcotics] for  
16 redistribution.

17       Overt Act No. 47:    Between December 23, 2013 and December 30,  
18 2013, Randy Alton Graves (charged elsewhere) and WCC associate Luis  
19 Salgado-Viscarra (charged elsewhere) agreed to distribute  
20 approximately 5,000 pounds of marijuana by bringing it into the  
21 United States from Mexico via boat.

22       Overt Act No. 48:    On December 30, 2013, Randy Alton Graves  
23 (charged elsewhere) recruited Cleotha Young (charged elsewhere) and  
24 WCC member Dameon Desean Shelton (charged elsewhere) to distribute  
25 5,000 pounds of marijuana by unloading the marijuana from a boat and  
26 loading it onto vehicles for further distribution.

27       Overt Act No. 49:    On January 3, 2014, Randy Alton Graves  
28 (charged elsewhere), in a car rented by WCC associate Solcamire

1 Castro-Hernandez (charged elsewhere), who knew the purpose of the  
2 trip, traveled from San Diego, California to Lompoc, California, for  
3 the purpose of scouting several remote beaches where approximately  
4 5,000 pounds of marijuana could be covertly unloaded.

5 Overt Act No. 50: On January 10, 2014, at 8:14 a.m., Randy  
6 Alton Graves (charged elsewhere) and Cleotha Young (charged  
7 elsewhere) planned the transportation of 5,000 pounds of marijuana  
8 from Lompoc, California, to San Diego, California.

9 Overt Act No. 51: On January 10, 2014, WCC members Randy Alton  
10 Graves (charged elsewhere), Cleotha Young (charged elsewhere), Dameon  
11 Desean Shelton (charged elsewhere), WCC associate Luis  
12 Salgado-Viscarra (charged elsewhere), and another WCC member,  
13 traveled from San Diego, California, to Lompoc, California, for the  
14 purpose of unloading 5,000 pounds of marijuana from a boat and  
15 transporting that marijuana back to San Diego.

16 Overt Act No. 52: On January 14, 2014, in coordination with  
17 WCC associate Luis Salgado-Viscarra (charged elsewhere), unknown  
18 conspirators left a boat containing approximately 4,400 pounds of  
19 marijuana on a remote beach north of Lompoc, California, for Randy  
20 Alton Graves (charged elsewhere), Cleotha Young (charged elsewhere),  
21 WCC member Dameon Desean Shelton (charged elsewhere), and WCC  
22 associate Luis Salgado Viscarra (charged elsewhere).

23 Overt Act No. 53: On January 16, 2014, Randy Alton Graves  
24 (charged elsewhere) and WCC associate Luis Salgado-Viscarra (charged  
25 elsewhere) agreed to pick up approximately 330 kilograms of marijuana  
26 from San Bernardino, California.

27 Overt Act No. 54: On January 16, 2014, Randy Alton Graves  
28 (charged elsewhere) recruited WCC member Dameon Desean Shelton