

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIE JONES, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

APPENDIX –VOLUME I

DAVID A. SCHLESINGER
JACOBS & SCHLESINGER LLP
The Douglas Wilson Companies Building
1620 Fifth Avenue, Suite 750
San Diego, CA 92101
Telephone: (619) 230-0012
david@jsslegal.com

Counsel for Petitioner

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 30 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

WILLIE JONES, JR.,

Defendant-Appellant

No. 18-50079

D.C. No.
CR-16-01448-WQH-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Argued and submitted May 15, 2019
Pasadena, California

Before: WARDLAW and HURWITZ, Circuit Judges, and KORMAN, ** District Judge.

Willie Jones picked up three undocumented aliens near the United States-Mexico border and dropped them off on the side of the road approximately a quarter mile before reaching a border checkpoint on Highway 94. A passing motorcyclist observed the three men exiting Jones's silver vehicle, reported his

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

** The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

observations to border patrol agents, and then identified Jones's vehicle as it approached the checkpoint. Jones was sent to secondary inspection and held there for approximately one hour. During this time, border patrol agents found the three men hiding in the bushes, at which point they arrested Jones for alien smuggling.

Jones argued unsuccessfully in the district court that his detention and arrest were illegal and should be suppressed. Throughout the proceedings against him, Jones was appointed five different attorneys at his request. The district judge refused to substitute out his fifth attorney and denied his motion to proceed pro se at trial and at sentencing. Following Jones's conviction for transporting illegal aliens, the district judge declined to apply a minor role adjustment under the Sentencing Guidelines and imposed concurrent sentences of 21 months of incarceration and three years of supervised release. This appeal followed.

1. The district judge did not err in finding that the border patrol agents possessed reasonable suspicion sufficient to detain Jones at the border. *See United States v. Wilson*, 7 F.3d 828, 834 (9th Cir. 1993). Based on the totality of the circumstances—including the motorcyclist's in-person, eyewitness, contemporaneous tip; the border patrol agent's knowledge of alien smuggling in the area; Jones's statement that he was coming from a border city; and Jones's driver's license showing a non-local address—the district judge did not err in finding that there was reasonable suspicion to detain Jones. *See Navarette v.*

California, 572 U.S. 393, 401-04 (2014); *United States v. Palos-Marquez*, 591 F.3d 1272, 1274-77 (9th Cir. 2010); *United States v. Valdes-Vega*, 738 F.3d 1074, 1077, 1079-80 (9th Cir. 2013) (en banc).

2. The district judge did not abuse his discretion by denying Jones a sixth court-appointed attorney. Contrary to Jones's assertion, the district judge did not categorically preclude Jones from substituting his fifth attorney because he had previously substituted four. Instead, the judge made a type of "general unreasonableness" finding, *see United States v. Mendez-Sanchez*, 563 F.3d 935, 944 (9th Cir. 2009), based on the fact that Jones's "pattern [was] the same" with each of his four previous attorneys. To the extent that there was a "breakdown in communication" between Jones and his fifth attorney, it was Jones who refused to communicate, and he may not take advantage of this refusal to obtain a new attorney. *See United States v. Roston*, 986 F.2d 1287, 1292-93 (9th Cir. 1993).

3. Similarly, the district judge did not abuse his discretion in denying Jones's motion to represent himself, made on the morning of trial, after finding that his purpose was to delay proceedings. *Cf. United States v. Farias*, 618 F.3d 1049, 1052-53 (9th Cir. 2010). This was based on his pre-trial conduct—such as continually substituting attorneys and refusing to leave his holding cell on a previous trial date—and the fact that he was asking for a continuance to prepare to proceed pro se at trial. *See Fritz v. Spalding*, 682 F.2d 782, 784 (9th Cir. 1982).

Similarly, the district judge properly denied Jones's post-trial *Farettta* motion after a conference during which Jones was belligerent, disruptive, combative, and unresponsive to the questions the district judge asked in an attempt to make the appropriate *Farettta* inquiry. *See United States v. Lopez-Osuna*, 242 F.3d 1191, 1199 (9th Cir. 2001) (“[The defendant] must be able and willing to abide by rules of procedure and courtroom protocol.” (internal quotation marks and citation omitted)).

4. Lastly, the district judge did not abuse his discretion in denying Jones a minor role adjustment. The district judge considered the five non-exhaustive factors used to determine whether a defendant is entitled to a minor role reduction, *see* U.S. Sentencing Guidelines Manual § 3B1.2, cmt. n.3(C), and properly found that Jones did not carry his burden of demonstrating that these factors weighed in his favor. *See United States v. Cordova Barajas*, 360 F.3d 1037, 1042 (9th Cir. 2004).

AFFIRMED.

FILED

FEB 28 AM 11:11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIAUNITED STATES OF AMERICA
v.

WILLIE JONES JR. (1)

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

S

Case Number: 16CR1448-WQH

DAVID ZUGMAN, CJA

Defendant's Attorney

REGISTRATION NO. 56419298

THE DEFENDANT:

pleaded guilty to count(s) _____

was found guilty on count(s) 1-3 OF THE INDICTMENT
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count Number(s)</u>
8 USC 1324(a)(1)(A)(ii)	TRANSPORTATION OF CERTAIN ALIENS	1-3

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

Assessment: \$300.00 (\$100.00 EACH COUNT)

 Fine waived Forfeiture pursuant to order filed _____, included herein.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

FEBRAURY 27, 2018
Date of Imposition of SentenceHON. WILLIAM Q. HAYES
UNITED STATES DISTRICT JUDGE

DEFENDANT: WILLIE JONES JR. (1)

CASE NUMBER: 16CR1448-WQH

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of
CTS 1-3: 21 MONTHS AS TO EACH COUNT CONCURRENTLY

Sentence imposed pursuant to Title 8 USC Section 1326(b).

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a facility in the Western Region

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____
as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

16CR1448-WQH

DEFENDANT: WILLIE JONES JR. (1)
CASE NUMBER: 16CR1448-WQH

+

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
CTS 1-3: 3 YEARS AS TO EACH COUNT CONCURRENTLY

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

For offenses committed on or after September 13, 1994:

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)

The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: WILLIE JONES JR. (1)
CASE NUMBER: 16CR1448-WQH

+

SPECIAL CONDITIONS OF SUPERVISION

Submit person, property, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.

Not transport, harbor, or assist undocumented aliens.

Not associate with undocumented aliens or alien smugglers.

Not reenter the United States illegally.

Not enter or reside in the Republic of Mexico without written permission of the Court or probation officer.

Report all vehicles owned or operated, or in which you have an interest, to the probation officer.

Not possess any narcotic drug or controlled substance without a lawful medical prescription.

Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.

The defendant shall participate in a cognitive behavioral treatment program as directed by the probation officer, and if deemed necessary by the probation officer. Such program may include group sessions led by a counselor, or participation in a program administered by the probation office. The defendant may be required to contribute to the cost of the service rendered (copayment) in the amount to be determined by the program officer, based on the defendant's ability to pay.

Take no medication containing a controlled substance without valid medical prescription, and provide proof of prescription to the probation officer, if directed.

Provide complete disclosure of personal and business financial records to the probation officer as requested.

Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.

Seek and maintain full time employment and/or schooling or a combination of both.

Resolve all outstanding warrants within _____ days.

Complete _____ hours of community service in a program approved by the probation officer within _____.

Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of _____.

Participate in a program of drug or alcohol abuse treatment, including urinalysis or sweat patch testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

4 UNITED STATES OF AMERICA,)
5 Plaintiff,) No. 16-CR-1448-WQH
6 v.) November 7, 2017
7 WILLIE JONES, JR.,) 9:00 a.m.
8 Defendant.) San Diego, California

TRANSCRIPT OF JURY TRIAL - DAY ONE
BEFORE THE HONORABLE WILLIAM Q. HAYES
UNITED STATES DISTRICT JUDGE

13

15 For the Plaintiff: United States Attorney's Office
By: P. KEVIN MOKHTARI, ESQ.
MEGHAN HEESCH, ESQ.
16 880 Front Street, Room 6293
San Diego, California 92101

For the Defendant: Burcham & Zugman APC
18 By: DAVID ZUGMAN, ESQ.
19 1010 Second Avenue, Suite 1800
San Diego, California 92101

22 Court Reporter: Melinda S. Setterman, RPR, CRR
23 District Court Clerk's Office
24 333 West Broadway, Suite 420
San Diego, California, 92101
melinda.setterman@casd.uscourts.gov

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1 SAN DIEGO, CALIFORNIA, NOVEMBER 7, 2017, 9:00 A.M.

2 * * * *

3 (Jury not present, Defendant not present.)

4 THE CLERK: Number one on calendar, case 16-CR-1448,
5 United States of America vs Willie Jones Jr, on for jury trial,
6 Day 1.

7 MR. ZUGMAN: Good morning, Your Honor. David Zugman
8 on behalf of Willie Jones, who is not yet present.

9 THE COURT: Good morning.

10 MR. MOKHTARI: Good morning, Your Honor. Kevin
11 Mokhtari and Meghan Heesch for the United States. Along with
12 Agent Costello.

13 THE COURT: Good morning.

14 (Defendant present.)

15 THE COURT: Actually, Mr. Jones can sit right there.
16 He can sit right there.

17 All right. Mr. Zugman, are you prepared to go forward
18 with trial?

19 MR. ZUGMAN: Yes, Your Honor. However, Mr. Jones
20 informs me he wants to address the Court. I believe he's
21 written Your Honor a letter, which he wants to provide to the
22 Court, which I would be happy to take up to Your Honor.

23 THE COURT: Mr. Jones, what is the issue? Mr. Zugman
24 represents you.

25 THE DEFENDANT: Revocation of power of attorney.

1 Revoking his -- for him not to be represent me, for me to
2 exercise my citizenship, as well as my Faretta rights, to
3 represent myself. I feel that all the previous attorneys that
4 you have provided for me has damaged my case, and there is no
5 way I can get a fair trial unless I address the illegalities in
6 my case so it be can a truthful and the jury can see the whole
7 picture of what has been -- what took place on June 11th.

8 And there is a due process violation from the very
9 beginning dealing with Scott Factor when I asked to represent
10 myself because -- seemed like the more attorneys you put on my
11 case, they keep damaging my case, and you provided funds for
12 investigation, and I feel that the previous attorneys and this
13 attorney right here has stolen the money or had did something,
14 misplaced it, or not allowed an investigation to take place.

15 THE COURT: Are you prepared to go forward today
16 representing yourself, Mr. Jones?

17 THE DEFENDANT: No, I am not.

18 THE COURT: So you are requesting a continuance to
19 represent yourself?

20 THE DEFENDANT: Yes.

21 THE COURT: Well, Mr. Jones, anything else you want to
22 add about why you want to represent yourself?

23 THE DEFENDANT: For I -- there is -- there is evidence
24 -- new found evidence that needs to be investigated, dealing
25 with one of the material witnesses has been arrested, and I

1 haven't been aware of that until I asked David Zugman about it,
2 and he gave me all the transcripts about the material witness
3 Hernandez, Jose Alberto Hernandez-Hernandez.

4 He was arrested right after he got released, and he
5 told the same story in my case about his Auntie Rosa
6 providing -- I guess paying for his smuggling, so I feel he has
7 a right to be cleared of this. He is accusing her of paying
8 for him to be smuggled, and this is the same information that
9 they gave the Government that they used in a case.

10 So I have a right to have an investigator to see if
11 there is truthful to that to downplay his credibility, because
12 he is the main witness that they are using to say that he
13 provided incriminating information on June 11th at 2:30. I was
14 arrested at 2:45, and this plays a part as the probable cause
15 to have me arrested.

16 And I've been saying from the beginning with the
17 attorneys that this had not been addressed -- I feel you have
18 been misled, especially during the evidentiary hearing, where
19 Mokhtari told you there was confusion, loss of translation when
20 a specific question was asked of one of the witnesses, did they
21 give information to Agent Kratt during the field interview.

22 There was nothing in the -- in the evidence or in the
23 transcript that can say that they was corroborated, that that
24 took place, and Mokhtari had you to believe that when that
25 question was asked, that they didn't -- there was confusion in

1 that. So under for Rule 403, if there is confusion in the
2 deposition, that needs to be excluded, and this witness needs
3 to come back so I can confront them.

4 And there is an investigation of another witness named
5 Gerard Brown, who they say that supposedly hired me. I have a
6 right to have him interviewed. David Zugman has refused at
7 multiple times me asking him to do this to have -- to send an
8 investigator to investigate Gerard Brown because they are
9 saying he supposedly talked to me that day and I talked to him
10 on the cellphone and that he was the one that hired me to pick
11 up these illegal aliens, so I have a right to confront him.

12 And also I have a right to confront the Auntie Rosa,
13 as well as the other smugglers that is supposed to be part of
14 the case.

15 And also with the elements of the case, dealing with
16 the cattails, I have not been provided a bills of forensic to
17 see if the cattails actually came from the material witnesses.
18 They say the cattails was left in my car due to the material
19 witnesses being in my car. I haven't been provided with
20 nothing that proved that evidence that these witnesses was in
21 my car, nothing about no forensic as the cattails supposedly
22 came from them to say if this is true or not.

23 THE COURT: So you want a continuance then; is that
24 right?

25 THE DEFENDANT: Yes, I would like to investigate more

1 to this case so the jury can see and get a full and clear and
2 truthfulness of this case, and I feel that it weighs more on
3 the prosecutor side to convict me because certain things have
4 not been brought to the surface, and I feel that you, the judge
5 before you in the grand jury has been misled with certain
6 information that was not provided to you guys when you made
7 your decision.

8 And I am asking for the grand jury transcripts to go
9 in there and show -- or to provide -- to find out if this
10 really took place, because there is information that has been
11 withheld from me about the phones. There was a -- what you
12 call -- a warrant, a search warrant to go into my phone.

13 I don't know -- I know -- I think that -- I believe
14 today that the Government went inside the phones without
15 securing a search warrant, and that right there is a violation
16 of my privacy, Fourth Amendment, bill of -- the other --
17 dealing with the other witnesses for the probable cause, the
18 Fourth Amendment.

19 There is just a lot of violations going on in this
20 case --

21 THE COURT: All right.

22 THE DEFENDANT: -- due process violation of Brady,
23 especially of Brady, withholding information from me, so I can
24 prepare a defense.

25 There is unfairness from -- since I've been

1 incarcerated, I feel that my bond been tooken away from me to
2 be forced in here, to stay in here, and allow me to take a deal
3 or to be dragged around. Because under the Rule 3142, if this
4 is temporary detention, why I am still in here if I only -- if
5 I was supposed to have been accused of smoking weed and that is
6 a dirty test?

7 You have put me in a program out there. You didn't
8 allow the program to work. I should have been released on bond
9 after ten days, but the Rule -- I mean, the 3142 says that, you
10 know, either you are going to, you know, allow me to go out --
11 because I feel I am no danger to society.

12 I was out there working. I have a son that is
13 12 years that just started school, and I was -- I wanted to be
14 there -- the day you took me in, that is the first day he
15 started school.

16 And I wanted to be there on this day coming back from
17 school to see how he -- how he program -- or how he presented
18 himself in school so I can, you know, guide him because this is
19 his first day, but, you know, you took me from my family, and
20 from my -- you made me -- basically you put me in poverty
21 because I lost my job. I was working for Lyft.

22 I was providing -- I don't have my Social Security. I
23 have a mental illness that I had just gotten better. Due to
24 this case, it has caused me to go more and more into
25 depression. You had did it -- especially you did a psych

1 evaluation on me to see where my mind was at because I decided
2 not to come in here because of the due process violations.

3 But I ask to be released today on bond because I am a
4 productive citizen. I do believe in making America great
5 again, and I can -- and I can get better access to more legal
6 stuff if I am released. There is a LA law library that I was
7 participating in, I signed up for, and that would help me put
8 my case together and do more things.

9 I thought when I had Zugman that he was going to
10 really help me in this case, but he dropped the ball on me, as
11 well as the previous, but you have been on record speaking
12 highly of these attorneys and not investigating what have they
13 done.

14 I come in here not really prepared because I believed
15 that the federal courts was going to have some type of justice
16 or fairness that I was going to be, you know, represented, as
17 you all took the oath, you know, but I don't see none of that.
18 I just see that you are all trying to rush me to trial so that
19 the Government can tell their side without certain evidence
20 being brought in.

21 Now, I have evidence that can show that I have been
22 denied a defense, and I have -- I have evidence to show that
23 there is a false reporting that has not been corrected, and I
24 believe you have been -- I've been mad at you because I am
25 thinking that you've been behind this, but I feel that you've

1 just been misled, and there is egregious error that is going on
2 in this case that needs to be brought to the surface.

3 THE COURT: All right. Well, Mr. Jones, I am going to
4 consider your request, and I am going to rule on your request
5 to represent yourself, but before I do, does the Government
6 wish to be heard?

7 MR. MOKHTARI: Does the Court wish us to address any
8 of the issues that he brought up?

9 THE COURT: No. I am going to rule on his request to
10 represent himself, and before I did, I was going to give anyone
11 an opportunity to weigh in, if they wanted to.

12 MR. MOKHTARI: Sure. The only thing that I would
13 correct are some of the factual things that he said about the
14 discovery.

15 THE COURT: I understand there is different points of
16 views to that.

17 All right. When a defendant makes an unequivocal,
18 voluntary, and intelligent request to proceed pro se, a
19 district court may refuse the request only in limited
20 circumstances. In fact, a timely request to proceed pro se
21 made unequivocally, knowingly, and intelligently must be
22 granted so long as it is not made for purposes of delay and the
23 defendant is competent.

24 In this instance I am going to deny the request
25 because I do find that it is made for purposes of delay. On

1 June 11th, 2016, the defendant was arrested. At that time he
2 was represented by Federal Defenders.

3 Scott Pactor represented the defendant starting on
4 approximately July 9th of 2016. The defendant was released on
5 bond. Mr. Pactor filed motions for the defendant.

6 The defendant had issues with Mr. Pactor. Mr. Kraus
7 was appointed. Mr. Kraus represented the defendant for a few
8 weeks. Then Mr. Cheeks in September of 2016 -- appointed in
9 September of 2016 represented -- Mr. Cheeks was appointed to
10 represent him, and he represented him through it looks like
11 February.

12 I would note that it looks like it was in April --
13 excuse me -- it was in 2017, Mr. Cheeks represented him, and
14 then motions were filed. There was a trial date that was set
15 for April 18th of 2017. Then April 10th, about eight days
16 before, defendant then requested new counsel because he had
17 issues with Mr. Cheeks, and so I granted that new counsel, and
18 vacated the trial date on April 18th because on the eve of
19 trial the defendant had issues with Mr. Cheeks and he wanted
20 new counsel.

21 I would note that certainly the issue of whether or
22 not Mr. Jones was going to represent himself I had raised on my
23 own a few times to indicate -- to inquire as to whether that
24 was the course that he wished to take.

25 Mr. Boesen was then appointed represent the defendant,

1 and Mr. Boesen came in and had issues -- that Mr. Jones had
2 with Mr. Boesen, and Mr. Boesen also expressed some concerns
3 about continuing to represent Mr. Jones. And then Mr. Zugman
4 was appointed to represent the defendant, and Mr. Zugman has
5 represented him.

6 And we had a trial that was scheduled, I believe it
7 was in early September. The trial was here. The jury was
8 downstairs -- or outside the courtroom, and at that point the
9 defendant then refused to leave the cell, and rather than have
10 him physically dragged out here, I thought the best course
11 would be to have him evaluated, to get a mental evaluation of
12 Mr. Jones to see whether or not there was a mental issue that
13 was causing the issues, and it came back, certainly as
14 suspected, that Mr. Jones was competent.

15 So the issue of self-representation has been raised
16 throughout the case, and Mr. Jones has always indicated he
17 didn't want to represent himself, and I do think that he's done
18 everything he can to delay the process, and I do find that this
19 is the case where it is made for purposes of delay.

20 And part of my analysis and part of my conclusion is
21 that this will be the third time that we've been on the eve of
22 trial that there's been an issue that Mr. Jones raised. On the
23 last time -- in April with Mr. Cheeks, who had done a fine job
24 representing the defendant, we had extensive motion hearings,
25 the evidentiary hearings. Mr. Cheeks is a very well-respected

1 lawyer, and then, again, Mr. Jones had issues with him which
2 necessitated in the trial being vacated.

3 And then the last time you were here, Mr. Jones, I
4 think even at the motion in limine process, indicated he didn't
5 want to go to trial, he was upset that the trial was fast
6 approaching, and then his refusal to come out of the cell was
7 in my view and certainly the mental evaluation confirms that
8 was done entirely for the purpose of delay to prevent the case
9 from going forward.

10 And so the issues now that Mr. Jones raises as to why
11 he wants to represent himself, they have been the same issues
12 that have been raised throughout the trial, the same issues
13 about -- that were either expressed at the evidentiary hearing
14 or his concerns about that he wants to explore other issues,
15 most of which are not relevant to the case.

16 THE DEFENDANT: That is not true.

17 THE COURT: Don't interrupt. Don't interrupt me.

18 But the issue is whether or not he has a right to
19 represent himself, and certainly, you know, defendants do have
20 a right. This is -- I think this is just the rare, rare case
21 where it is being made for purposes of delay, and the record
22 being what it is, is that he was arrested in June of 2016,
23 we're now the sixth lawyer, the issue whether he wanted to
24 represent himself I raised on my own at least once, if not more
25 than once.

1 This is the third trial date that we've had -- at
2 least the third, and it is the second time -- the second time
3 that we've been set to go to trial, and the most recent time he
4 absolutely just refused to come out, and rather, as I
5 indicated, have him dragged out here, I thought it was better
6 to have him evaluated.

7 So I do think that in considering the entirety of the
8 record that this is the rare, rare case where the record in my
9 view demonstrates that this request to represent himself is
10 being made entirely for the purposes of delay, and so for those
11 reasons it is denied, and Mr. Zugman will continue to represent
12 the defendant.

13 THE DEFENDANT: I would like to address that, what you
14 said, Your Honor.

15 THE COURT: No.

16 MR. ZUGMAN: May I make two quick points?

17 THE DEFENDANT: Excuse me, excuse me.

18 THE COURT: No, no. Mr. Jones, you are to remain
19 silent. You did not represent yourself. I ruled on that.

20 THE DEFENDANT: I would like to address the Court.

21 THE COURT: No.

22 MR. ZUGMAN: I would offer the option if he,
23 Mr. Jones, under Faretta, should be offered the option of
24 representing himself today. There is the third possibility.

25 THE COURT: I understand.

1 C-E-R-T-I-F-I-C-A-T-I-O-N

2

3 I hereby certify that I am a duly appointed, qualified
4 and acting official Court Reporter for the United States
5 District Court; that the foregoing is a true and correct
6 transcript of the proceedings had in the aforementioned cause;
7 that said transcript is a true and correct transcription of my
8 stenographic notes; and that the format used herein complies
9 with the rules and requirements of the United States Judicial
10 Conference.

11 DATED: November 22, 2017, at San Diego, California.

12

13 /s/ Melinda S. Setterman

14

15 Melinda S. Setterman,
16 Registered Professional Reporter
17 Certified Realtime Reporter

18

19

20

21

22

23

24

25

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 10 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WILLIE JONES, Jr.,

Defendant-Appellant.

No. 18-50079

D.C. No.
3:16-cr-01448-WQH-1
Southern District of California,
San Diego

ORDER AMENDING
MEMORANDUM AND
DENYING PETITION FOR
PANEL REHEARING AND
REHEARING EN BANC

Before: WARDLAW and HURWITZ, Circuit Judges, and KORMAN,* District Judge.

The memorandum disposition filed on May 30, 2019, is hereby amended as follows:

Page 3, lines 14-15 – change <Similarly, the district judge did not abuse his discretion in denying Jones’s motion to represent himself> to <Although “we have not yet clarified whether denial of a *Farett*a request is reviewed de novo or for abuse of discretion,” *United States v. Kaczynski*, 239 F.3d 1108, 1116 (9th Cir. 2001), the district judge did not err under either standard in denying Jones’s motion to represent himself>.

* The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

With this amendment, the panel has voted to deny the petition for panel rehearing. Judges Wardlaw and Hurwitz have also voted to deny the petition for rehearing en banc, and Judge Korman so recommends.

The full court has been advised of the 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.

The petition for panel rehearing and rehearing en banc, Dkt. 50, is **DENIED**. No additional petitions for rehearing will be entertained.

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 10 2019
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

WILLIE JONES, JR.,

Defendant-Appellant

No. 18-50079

D.C. No.
CR-16-01448-WQH-1

AMENDED MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Argued and submitted May 15, 2019
Pasadena, California

Before: WARDLAW and HURWITZ, Circuit Judges, and KORMAN, ** District Judge.

Willie Jones picked up three undocumented aliens near the United States-Mexico border and dropped them off on the side of the road approximately a quarter mile before reaching a border checkpoint on Highway 94. A passing motorcyclist observed the three men exiting Jones's silver vehicle, reported his

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

** The Honorable Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

observations to border patrol agents, and then identified Jones's vehicle as it approached the checkpoint. Jones was sent to secondary inspection and held there for approximately one hour. During this time, border patrol agents found the three men hiding in the bushes, at which point they arrested Jones for alien smuggling.

Jones argued unsuccessfully in the district court that his detention and arrest were illegal and should be suppressed. Throughout the proceedings against him, Jones was appointed five different attorneys at his request. The district judge refused to substitute out his fifth attorney and denied his motion to proceed pro se at trial and at sentencing. Following Jones's conviction for transporting illegal aliens, the district judge declined to apply a minor role adjustment under the Sentencing Guidelines and imposed concurrent sentences of 21 months of incarceration and three years of supervised release. This appeal followed.

1. The district judge did not err in finding that the border patrol agents possessed reasonable suspicion sufficient to detain Jones at the border. *See United States v. Wilson*, 7 F.3d 828, 834 (9th Cir. 1993). Based on the totality of the circumstances—including the motorcyclist's in-person, eyewitness, contemporaneous tip; the border patrol agent's knowledge of alien smuggling in the area; Jones's statement that he was coming from a border city; and Jones's driver's license showing a non-local address—the district judge did not err in finding that there was reasonable suspicion to detain Jones. *See Navarette v.*

California, 572 U.S. 393, 401-04 (2014); *United States v. Palos-Marquez*, 591 F.3d 1272, 1274-77 (9th Cir. 2010); *United States v. Valdes-Vega*, 738 F.3d 1074, 1077, 1079-80 (9th Cir. 2013) (en banc).

2. The district judge did not abuse his discretion by denying Jones a sixth court-appointed attorney. Contrary to Jones's assertion, the district judge did not categorically preclude Jones from substituting his fifth attorney because he had previously substituted four. Instead, the judge made a type of "general unreasonableness" finding, *see United States v. Mendez-Sanchez*, 563 F.3d 935, 944 (9th Cir. 2009), based on the fact that Jones's "pattern [was] the same" with each of his four previous attorneys. To the extent that there was a "breakdown in communication" between Jones and his fifth attorney, it was Jones who refused to communicate, and he may not take advantage of this refusal to obtain a new attorney. *See United States v. Roston*, 986 F.2d 1287, 1292-93 (9th Cir. 1993).

3. Although "we have not yet clarified whether denial of a *Faretna* request is reviewed de novo or for abuse of discretion," *United States v. Kaczynski*, 239 F.3d 1108, 1116 (9th Cir. 2001), the district judge did not err under either standard in denying Jones's motion to represent himself, made on the morning of trial, after finding that his purpose was to delay proceedings. *Cf. United States v. Farias*, 618 F.3d 1049, 1052-53 (9th Cir. 2010). This was based on his pre-trial conduct—such as continually substituting attorneys and refusing to leave his holding cell on a

previous trial date—and the fact that he was asking for a continuance to prepare to proceed pro se at trial. *See Fritz v. Spalding*, 682 F.2d 782, 784 (9th Cir. 1982). Similarly, the district judge properly denied Jones's post-trial *Faretta* motion after a conference during which Jones was belligerent, disruptive, combative, and unresponsive to the questions the district judge asked in an attempt to make the appropriate *Faretta* inquiry. *See United States v. Lopez-Osuna*, 242 F.3d 1191, 1199 (9th Cir. 2001) (“[The defendant] must be able and willing to abide by rules of procedure and courtroom protocol.” (internal quotation marks and citation omitted)).

4. Lastly, the district judge did not abuse his discretion in denying Jones a minor role adjustment. The district judge considered the five non-exhaustive factors used to determine whether a defendant is entitled to a minor role reduction, *see* U.S. Sentencing Guidelines Manual § 3B1.2, cmt. n.3(C), and properly found that Jones did not carry his burden of demonstrating that these factors weighed in his favor. *See United States v. Cordova Barajas*, 360 F.3d 1037, 1042 (9th Cir. 2004).

AFFIRMED.

FILED

2016 JUN 23 PM 2:18

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

January 2016 Grand Jury

'16CR1448 WQH

Case No. _____

I N D I C T M E N T

Title 8, U.S.C.,
Sec. 1324(a)(1)(A)(ii) -
Transportation of Certain Aliens

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIE JONES JR.,

Defendant.

The grand jury charges:

Count 1

On or about June 11, 2016, within the Southern District of California, defendant WILLIE JONES JR., with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Jose Alberto Hernandez-Hernandez, had come to, entered and remained in the United States in violation of law, did transport and move said alien within the United States in furtherance of such violation of law; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii).

Count 2

2 On or about June 11, 2016, within the Southern District of
3 California, defendant WILLIE JONES JR., with the intent to violate the
4 immigration laws of the United States, knowing and in reckless
5 disregard of the fact that an alien, namely, Jesus Rivera-Contreras,
6 had come to, entered and remained in the United States in violation of
7 law, did transport and move said alien within the United States in
8 furtherance of such violation of law; in violation of Title 8,
9 United States Code, Section 1324(a)(1)(A)(ii).

Count 3

11 On or about June 11, 2016, within the Southern District of
12 California, defendant WILLIE JONES JR., with the intent to violate the
13 immigration laws of the United States, knowing and in reckless
14 disregard of the fact that an alien, namely, Alberto Rivera-Contreras,
15 had come to, entered and remained in the United States in violation of
16 law, did transport and move said alien within the United States in
17 furtherance of such violation of law; in violation of Title 8,
18 United States Code, Section 1324(a)(1)(A)(ii).

DATED: June 23, 2016.

A TRUE BILL.

Foreperson

22 LAURA E. DUFFY
United States Attorney

24 By: P. KEVIN MOKHTARI
25 Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No.: 16cr1448-WQH

WILLIE JONES, JR.,

Defendant.

VIDEOTAPED DEPOSITION OF JESUS RIVERA-CONTRERAS

Taken at San Diego, California

August 1, 2016

Reported by Denise Vitzthum, CSR
California Certificate No. 12580

Jesus Rivera-Contreras - 8/1/2016

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www.sscourtreporters.com**

Jesus Rivera-Contreras - 8/1/2016

1 On Monday, August 1, 2016, commencing at the hour
2 of 9:53 a.m., at 880 Front Street, Fifth Floor, in the
3 City of San Diego, County of San Diego, State of
4 California, before me, Denise Vitzthum, Registered
5 Professional Reporter, Certified Shorthand Reporter, in
6 and for the State of California, personally appeared:

7 JESUS RIVERA-CONTRERAS,
8 called as a witness by the Plaintiff, who, being by me
9 first duly sworn, was thereupon examined and testified
10 in said cause:

11

12 A P P E A R A N C E S:

13 FOR PLAINTIFF:

14 UNITED STATES DEPARTMENT OF JUSTICE
15 UNITED STATES ATTORNEY'S OFFICE
16 BY: KEVIN MOKHTARI, ESQ.
17 880 Front Street, Room 6293
18 San Diego, California 92101
19 619.546.7058 tel
20 kevin.mokhtari@usdoj.gov

21

22 FOR DEFENDANT:

23 LAW OFFICES OF SCOTT PACTOR
24 BY: SCOTT PACTOR, ESQ.
25 934 Second Street
26 San Diego, California 92102
27 619.260.2636 tel
28 scottpactor@yahoo.com

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Jesus Rivera-Contreras - 8/1/2016

3 FOR MATERIAL WITNESS:
4 LAW OFFICES OF HEIDI D. COLLIER
5 BY: STEPHANIE A. LICKEL, ESQ.
6 1102 Cesar East Chavez Parkway
San Diego, California 92113
619.550.2384 tel
stephanielickel@gmail.com

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21
22 THE INTERPRETER: ANDREW HANSON
23 THE VIDEOGRAPHER: AGENT TIMOTHY WINCHESTER
24 ALSO PRESENT: AGENT JOHN COSTELLO
25 DEFENDANT WILLIE JONES, JR.
BRENDA LEYVA, Interpreter

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Jesus Rivera-Contreras - 8/1/2016

1 SAN DIEGO, CALIFORNIA; MONDAY, AUGUST 1, 2016

2 9:53 A.M.

3

4

09:53:08 5 THE VIDEOGRAPHER: August 1st, 2016. The time
09:53:10 6 is 9:53 a.m.

09:53:16 7 MR. MOKHTARI: This is the videotaped
09:53:17 8 deposition of material witness Jesus Rivera-Contreras in
09:53:26 9 the case of the United States v. Willie Jones, Jr.,
09:53:30 10 16cr1448-WQH.

09:53:39 11 Today is August 1st, 2016. This deposition is
09:53:44 12 being held in a conference room in the United States
09:53:46 13 Attorney's Office in San Diego, California.

09:53:51 14 Before we begin, I would like to introduce the
09:53:54 15 parties. Ms. Court Reporter, could you please state the
09:53:56 16 following on the record: your name, business address,
09:53:59 17 date, time and the name of the witness.

09:54:26 18 THE COURT REPORTER: Okay. My name is Denise
09:54:26 19 Vitzthum. 501 West Broadway, Suite 1330, San Diego,
09:54:26 20 California 92101. The time is 9:54 a.m. August 1st,
09:54:26 21 2016. The name of the witness is Jesus
09:54:26 22 Rivera-Contreras.

09:54:26 23 MR. MOKHTARI: And the videotape is being
09:54:28 24 operated by?

09:54:31 25 THE VIDEOGRAPHER: Border Patrol Agent Timothy

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Jesus Rivera-Contreras - 8/1/2016

10:59:00 1 A. Yes.

10:59:00 2 Q. Okay. And there was an agent who was

10:59:05 3 questioning you?

10:59:08 4 A. Yes.

10:59:08 5 Q. I mean 7:30 p.m., does that sound like the

10:59:17 6 right time?

10:59:18 7 MR. MOKHTARI: Objection. Calls for

10:59:18 8 speculation. Objection. Calls for speculation. Lacks

10:59:24 9 foundation.

10:59:27 10 THE WITNESS: Could have been, but they did

10:59:33 11 tell me that hour, but I don't remember.

10:59:36 12 BY MR. PACTOR:

10:59:37 13 Q. Okay. I mean, but were you at the border

10:59:39 14 patrol station for some amount of time for several hours

10:59:43 15 before they interviewed you?

10:59:55 16 A. Yes, that same day.

10:59:58 17 Q. Okay. Now, when they interviewed you, they

11:00:03 18 showed you -- do you remember seeing a photographic

11:00:07 19 lineup of six people?

11:00:10 20 A. Yes.

11:00:11 21 Q. And they asked you if you could identify the

11:00:14 22 driver?

11:00:16 23 A. Yes.

11:00:17 24 Q. And you couldn't?

11:00:19 25 A. No.

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Jesus Rivera-Contreras - 8/1/2016

11:25:46 1 back that your attorney drafted.

11:25:48 2 (Brief discussion held between the witness and
11:25:48 3 his counsel out of the hearing of the
11:25:48 4 reporter.)

11:27:18 5 MR. MOKHTARI: Okay. Can the court reporter
11:27:19 6 please declare the time and the video operator announce
11:27:29 7 the time and date on the video.

11:27:35 8 THE VIDEOGRAPHER: August 1st, 2016. The time
11:27:35 9 is 11:27 a.m.

11:27:36 10 THE COURT REPORTER: And the deposition is
11:27:36 11 completed.

11:27:42 12 MR. MOKHTARI: Thank you.

11:27:42 13 (The deposition was concluded at 11:27 a.m.)

11:27:42 15

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Jesus Rivera-Contreras - 8/1/2016

1 | **REPORTER'S CERTIFICATE**

2

3 I, Denise Vitzthum, Certified Shorthand Reporter,
4 in and for the State of California, Certificate Number
5 12580, do hereby certify that the deponent was by me
6 first duly sworn to testify to the truth, and that the
7 foregoing testimony was reported by me in shorthand and
8 was thereafter transcribed with computer-aided
9 transcription; that the foregoing is a true, correct,
0 and complete record of said proceedings.

11 I further certify that I am not in any way
12 interested in the outcome of the cause in said caption.

13 The dismantling, unsealing or unbinding of the
14 original transcript will render the Reporter's
15 Certificate null and void.

16 | Reading and signing was requested.

17 Reading and signing was waived.

18 Reading and signing was not requested.

19 In witness whereof, I have hereunto set my hand
20 this 10th day of August, 2016.

21

22

23

Denise Vitzthum, CSR No. 12580

24

25

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No.: 16cr1448-WQH

WILLIE JONES, JR.,

Defendant.

/

VIDEOTAPED DEPOSITION OF ALBERTO RIVERA-CONTRERAS

Taken at San Diego, California

August 1, 2016

Reported by Denise Vitzthum, CSR
California Certificate No. 12580

Alberto Rivera-Contreras - 8/1/2016

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Alberto Rivera-Contreras - 8/1/2016

1 On Monday, August 1, 2016, commencing at the hour
2 of 11:55 a.m., at 880 Front Street, Fifth Floor, in the
3 City of San Diego, County of San Diego, State of
4 California, before me, Denise Vitzthum, Registered
5 Professional Reporter, Certified Shorthand Reporter, in
6 and for the State of California, personally appeared:

7 ALBERTO RIVERA-CONTRERAS,
8 called as a witness by the Plaintiff, who, being by me
9 first duly sworn, was thereupon examined and testified
10 in said cause:

11

12 A P P E A R A N C E S:

13 FOR PLAINTIFF:

14 UNITED STATES DEPARTMENT OF JUSTICE

15 UNITED STATES ATTORNEY'S OFFICE

16 BY: KEVIN MOKHTARI, ESQ.

17 880 Front Street, Room 6293

18 San Diego, California 92101

19 619.546.7058 tel

20 kevin.mokhtari@usdoj.gov

21

22 FOR DEFENDANT:

23 LAW OFFICES OF SCOTT PACTOR

24 BY: SCOTT PACTOR, ESQ.

25 934 Second Street

26 San Diego, California 92102

27 619.260.2636 tel

28 scottpactor@yahoo.com

29

30

31

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Alberto Rivera-Contreras - 8/1/2016

1 APPARENCE
(continued)

3 FOR MATERIAL WITNESS:
4
5
6
LAW OFFICES OF HEIDI D. COLLIER
BY: STEPHANIE A. LICKEL, ESQ.
1102 Cesar East Chavez Parkway
San Diego, California 92113
619.550.2384 tel
stephanielickel@gmail.com

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22 THE INTERPRETER: LOURDES LEON
23 THE VIDEOGRAPHER: AGENT TIMOTHY WINCHESTER
24 ALSO PRESENT: AGENT JOHN COSTELLO
25 DEFENDANT WILLIE JONES, JR.
BRENDA LEYVA, INTERPRETER

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Alberto Rivera-Contreras - 8/1/2016

12:37:45 1 CROSS-EXAMINATION

12:37:47 2 BY MR. PACTOR:

12:37:50 3 Q. Do you recognize the man sitting next to me?

12:37:56 4 A. (No audible response.)

12:37:57 5 Q. Have you ever seen him before?

12:37:59 6 A. I don't remember.

12:37:59 7 Q. Okay. Do you recognize him as the person who

12:38:02 8 picked up you in the vehicle? Yes or no?

12:38:08 9 A. No, because I didn't see him.

12:38:10 10 Q. And the vehicle pictured in Exhibit 3, do you

12:38:17 11 know for sure if that was the vehicle that picked up?

12:38:22 12 Yes or no? Is that the car?

12:38:27 13 A. Not for sure.

12:38:29 14 MR. JONES: Is that the car?

12:38:31 15 BY MR. PACTOR:

12:38:31 16 Q. Is that the car? Yes or no?

12:38:34 17 A. I don't know. I don't recall very well.

12:38:38 18 MR. JONES: Yes or no.

12:38:39 19 BY MR. PACTOR:

12:38:39 20 Q. Yes or no, please.

12:38:42 21 A. I cannot answer that because I'm not sure.

12:38:46 22 Q. Did you see that vehicle when you were in

12:38:49 23 Tecate?

12:38:52 24 A. No.

12:38:52 25 Q. Did anybody ever tell you or did you have any

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Alberto Rivera-Contreras - 8/1/2016

12:59:06 1 THE WITNESS: That's fine.

12:59:07 2 MR. MOKHTARI: Okay. I now ask the court

12:59:09 3 reporter to state the deposition is completed and ask

12:59:11 4 the video operator to announce the time and date.

12:59:14 5 THE COURT REPORTER: The deposition is

12:59:14 6 concluded.

12:59:20 7 THE VIDEOGRAPHER: August 1st, 2016. The time

12:59:22 8 is 12:59 p.m.

12:59:24 9 (The deposition was concluded at 12:59 p.m.)

12:59:24 10 *****

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12:59:24 13

12:59:24 14

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12:59:24 22

12:59:24 23

12:59:24 24

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Alberto Rivera-Contreras - 8/1/2016

1 REPORTER'S CERTIFICATE
2

3 I, Denise Vitzthum, Certified Shorthand Reporter,
4 in and for the State of California, Certificate Number
5 12580, do hereby certify that the deponent was by me
6 first duly sworn to testify to the truth, and that the
7 foregoing testimony was reported by me in shorthand and
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9 transcription; that the foregoing is a true, correct,
10 and complete record of said proceedings.

11 I further certify that I am not in any way
12 interested in the outcome of the cause in said caption.

13 The dismantling, unsealing or unbinding of the
14 original transcript will render the Reporter's
15 Certificate null and void.

16 Reading and signing was requested.

17 X Reading and signing was waived.

18 Reading and signing was not requested.

19 In witness whereof, I have hereunto set my hand
20 this 10th day of August, 2016.

21

22

23 Denise Vitzthum, CSR No. 12580
24

25

SHELBYNE SHERR COURT REPORTERS, INC. (619) 234-9100
www.ss court reporters.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No.: 16cr1448-WQH

WILLIE JONES, JR.,

Defendant.

/

VIDEOTAPED DEPOSITION OF JOSE ALBERTO
HERNANDEZ-HERNANDEZ

Taken at San Diego, California

August 1, 2016

Reported by Denise Vitzthum, CSR
California Certificate No. 12580

Jose Alberto Hernandez-Hernandez - 8/1/2016

1	I N D E X		
2	VIDEOTAPED DEPOSITION OF JOSE ALBERTO		
	HERNANDEZ-HERNANDEZ		
3	August 1, 2016		
4			
5	EXAMINATION	PAGE	
6	BY MR. MOKHTARI, ESQ.	7	
7	BY MR. PACTOR, ESQ.	35	
8			
9	E X H I B I T S		
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12	EXHIBIT 16	Waiver of Right to Review and Sign the Deposition Transcript by the Material Witness	36
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Jose Alberto Hernandez-Hernandez - 8/1/2016

1 On Monday, August 1, 2016, commencing at the hour
2 of 1:22 p.m., at 880 Front Street, Fifth Floor, in the
3 City of San Diego, County of San Diego, State of
4 California, before me, Denise Vitzthum, Registered
5 Professional Reporter, Certified Shorthand Reporter, in
6 and for the State of California, personally appeared:

7 JOSE ALBERTO HERNANDEZ-HERNANDEZ,
8 called as a witness by the Plaintiff, who, being by me
9 first duly sworn, was thereupon examined and testified
10 in said cause:

11

12 A P P E A R A N C E S:

13 FOR PLAINTIFF:

14 UNITED STATES DEPARTMENT OF JUSTICE

15 UNITED STATES ATTORNEY'S OFFICE

16 BY: KEVIN MOKHTARI, ESQ.

17 880 Front Street, Room 6293

18 San Diego, California 92101

19 619.546.7058 tel

20 kevin.mokhtari@usdoj.gov

21

22 FOR DEFENDANT:

23 LAW OFFICES OF SCOTT PACTOR

24 BY: SCOTT PACTOR, ESQ.

25 934 Second Street

26 San Diego, California 92102

27 619.260.2636 tel

28 scottpactor@yahoo.com

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Jose Alberto Hernandez-Hernandez - 8/1/2016

3 FOR MATERIAL WITNESS:
4 LAW OFFICES OF HEIDI D. COLLIER
5 BY: STEPHANIE A. LICKEL, ESQ.
6 1102 Cesar East Chavez Parkway
San Diego, California 92113
619.550.2384 tel
stephanielickel@gmail.com

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21
22 THE INTERPRETER: ANDREW HANSON
23 THE VIDEOGRAPHER: AGENT TIMOTHY WINCHESTER
24 ALSO PRESENT: AGENT JOHN COSTELLO
25 DEFENDANT WILLIE JONES, JR.
BRENDA LEYVA, INTERPRETER

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Jose Alberto Hernandez-Hernandez - 8/1/2016

02:07:17 1 A. Well, yes, but since he told us "Don't move
02:07:24 2 because the dog could bite you, we didn't do anything.
02:07:30 3 Since he was on the fence side inside and he crossed the
02:07:40 4 fence from there to where we were, and he -- then we
02:07:45 5 didn't do anything.

02:07:46 6 Q. Okay. But did you see him ask the other two
02:07:50 7 individuals as to their citizenship as well?

02:07:56 8 A. Well, really I didn't notice, but I did see him
02:08:02 9 ask them for their IDs.

02:08:07 10 Q. But you couldn't hear what was going on?

02:08:11 11 A. I didn't pay that much attention.

02:08:14 12 Q. And then were you taken then to the checkpoint?

02:08:18 13 A. Yes. That's right, yes.

02:08:24 14 Q. Now, you were shown a six-pack of pictures,
02:08:27 15 right?

02:08:33 16 A. About what?

02:08:35 17 Q. To try identify the driver.

02:08:39 18 A. Oh, yes.

02:08:40 19 Q. But you couldn't identify the driver?

02:08:44 20 A. No, because some of the photos were very
02:08:50 21 similar.

02:08:51 22 Q. But you remember that he was black?

02:08:56 23 A. Yes.

02:08:57 24 Q. Dark-skinned?

02:08:58 25 A. Yes. Yes. Yes.

Jose Alberto Hernandez-Hernandez - 8/1/2016

02:20:05 1 MR. MOKHTARI: It's not a trick or anything.
02:20:06 2 Your attorney can probably explain it to you.
02:20:10 3 THE WITNESS: Very well. Thank you.
02:20:10 4 MR. MOKHTARI: I now ask the court reporter to
02:20:11 5 state the deposition is completed and ask the video
02:20:15 6 operator to announce the time and date.
02:20:15 7 THE COURT REPORTER: The deposition is
02:20:15 8 completed.
02:20:20 9 THE VIDEOGRAPHER: August 1st, 2016. The time
02:20:22 10 is 2:20 p.m.
02:20:24 11 (The deposition was concluded at 2:20 p.m.)
02:20:24 12 *****
02:20:24 13
02:20:24 14
02:20:24 15
02:20:24 16
02:20:24 17
02:20:24 18
02:20:24 19
02:20:24 20
02:20:24 21
02:20:24 22
02:20:24 23
02:20:24 24
02:20:24 25 ///

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Jose Alberto Hernandez-Hernandez - 8/1/2016

02:20:24 1

REPORTER'S CERTIFICATE

02:20:24 2

02:20:24 3

I, Denise Vitzthum, Certified Shorthand Reporter,

02:20:24 4

in and for the State of California, Certificate Number

02:20:24 5

12580, do hereby certify that the deponent was by me

02:20:24 6

first duly sworn to testify to the truth, and that the

02:20:24 7

foregoing testimony was reported by me in shorthand and

02:20:24 8

was thereafter transcribed with computer-aided

02:20:24 9

transcription; that the foregoing is a true, correct,

02:20:24 10

and complete record of said proceedings.

02:20:24 11

I further certify that I am not in any way

02:20:24 12

interested in the outcome of the cause in said caption.

02:20:24 13

The dismantling, unsealing or unbinding of the

02:20:24 14

original transcript will render the Reporter's

02:20:24 15

Certificate null and void.

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 Reading and signing was requested.

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 X Reading and signing was waived.

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 Reading and signing was not requested.

02:20:24 19

In witness whereof, I have hereunto set my hand

02:20:24 20

this 10th day of August, 2016.

02:20:24 21

02:20:24 22

02:20:24 23

Denise Vitzthum, CSR No. 12580

02:20:24 24

02:20:24 25

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIE JONES, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ of *Certiorari* To The United States Court of Appeals
for the Ninth Circuit**

PROOF OF SERVICE

I, David A. Schlesinger, declare that on October 8, 2019, as required by Supreme Court Rule 29, I served Petitioner Willie Jones, Jr.'s MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to him, and with first-class postage prepaid.

The name and address of counsel for Respondent is as follows:

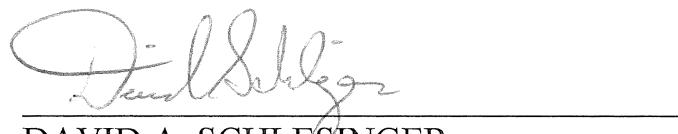
The Honorable Noel J. Francisco, Esq.
Solicitor General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001
Counsel for Respondent

Additionally, I mailed a copy of the motion and the petition to my client, Petitioner Willie Jones, Jr., by depositing an envelope containing the documents in the United States mail, postage prepaid, and sending it to the following address:

Willie Jones, Jr.
13920 Chadron Avenue, Apt. 17
Hawthorne, California 90250

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 8, 2019



DAVID A. SCHLESINGER
Declarant