

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 II

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

1 UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

3

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
9

10

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

14 APPEARANCES:

15 For the Plaintiff: United States Attorney's Office
16 By: P. KEVIN MOKHTARI, ESQ.
MEGHAN HEESCH, ESQ.
17 880 Front Street, Room 6293
San Diego, California 92101

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

20

21

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

25 Reported by Stenotype, Transcribed by Computer

1

INDEX

2 PROCEEDINGS:

PAGE:

3 Jury Voir Dire.....	27
4 Jury Instructions.....	70
4 Opening Statement by Ms. Heesch.....	81
4 Opening Statement by Mr. Zugman.....	85

5

TESTIMONY:

6

WITNESS:

EXAMINATION BY:

PAGE:

7

Rosendo Martinez

8

9 Direct Exam by Ms. Heesch.....	87
9 Cross-Exam by Mr. Zugman.....	125
9 Redirect Exam by Ms. Heesch.....	134

10

Edward Fialkowski

11

12 Direct Exam by Mr. Mokhtari.....	135
12 Cross-Exam by Mr. Zugman.....	142

13

Alberto Rivera-Contreras

14

14 Videotaped deposition.....	170
-------------------------------	-----

15

Timothy Winchester

16

17 Direct Exam by Ms. Heesch.....	178
17 Cross-Exam by Mr. Zugman.....	200
17 Redirect Exam by Ms. Heesch.....	201

18

Jesus Rivera-Contreras

19

19 Videotaped deposition.....	202
-------------------------------	-----

20

EXHIBITS:

21

NUMBER/PAGE:

NUMBER/PAGE:

NUMBER/PAGE:

22

1/163

10/95

16/96

23

2/163

11/95

17/115

24

3/95

12/90

23/182

25

7/176

13/90

26/193

8/95

14/90

27/193

9/95

* * * *

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 witness.

2 MS. HEESCH: Yes, Your Honor. The Government is
3 calling Immigration and Customs Enforcement Agent Rosendo
4 Martinez.

5 THE COURT: Please come forward, sir, to be sworn.

6 THE CLERK: Please raise your right hand.

7 (Oath administered.)

8 THE WITNESS: I do.

9 THE CLERK: Please take the stand. Please state your
10 full name for the record and spell your last name.

11 THE WITNESS: Rosendo Martinez, M-A-R-T-I-N-E-Z.

12 ROSENDO MARTINEZ,

13 DIRECT EXAMINATION

14 BY MS. HEESCH:

15 Q. Agent Martinez, where do you presently work?

16 A. I currently work for ICE here in San Diego.

17 Q. What does ICE stand for?

18 A. Immigration and Customs Enforcement.

19 Q. Is that where you worked on June 11, 2016?

20 A. I worked for Border Patrol on that day.

21 Q. What was your position with Border Patrol on June 11, 2016?

22 A. Border Patrol Agent, working the primary at the checkpoint.

23 Q. Which checkpoint?

24 A. Highway 94 checkpoint.

25 Q. How long did you work at US Border Patrol?

1 Then off to the side of that road there is a parking lot
2 where we conduct secondary inspections.

3 Q. Where were you working on June 11, 2016?

4 A. At the Highway 94 checkpoint.

5 Q. But where at the checkpoint?

6 A. Primary.

7 Q. What is a primary agent?

8 A. The primary agent inspects commuters traveling through the
9 checkpoint to establish citizenship.

10 Q. What time did your shift begin on June 11, 2016?

11 A. At 1:30 PM.

12 Q. Where were you when your shift started?

13 A. I was working primary.

14 Q. Was anyone else in the booth with you?

15 A. Supervisor Cissarille.

16 Q. Can you spell that name for the record?

17 A. Cissarille, Charlie India Sierra Sierra Alpha Romeo India
18 Lima Lima Echo.

19 Q. What were weather conditions like on this date?

20 A. Hot and sunny.

21 Q. What about the visibility?

22 A. Clear.

23 Q. Shortly after your shift began, did anything notable
24 happen?

25 A. Approximately 1:42 PM a motorcyclist approached my position

1 at primary and stated he observed three individuals get out of
2 a silver Mazda, and as he is stating that, he is pointing, like
3 this, (indicating), looking at his rearview mirror, he says the
4 vehicle is coming up behind me now.

5 Q. As he stated this to you, where were you looking?

6 A. I was standing, of course, observing traffic coming my
7 direction slightly off to the individual on the motorcycle but
8 focused on the vehicles coming down the shoot as well.

9 Q. When you follow the direction of his gesture, did you
10 observe anything approaching?

11 A. I observed the silver Mazda.

12 Q. After making the report, did the motorcyclist then drive
13 away?

14 A. Yes.

15 Q. And did you inspect other vehicles after the motorcycle
16 left but before the Mazda stopped?

17 A. Yes. I believe there were two vehicles we inspected prior
18 to meeting up with the silver Mazda.

19 Q. And then the Mazda stopped at your booth?

20 A. Yes.

21 Q. Where exactly did the silver Mazda stop?

22 A. Right at the primary inspection point.

23 Q. Are you familiar with the exterior appearance of the silver
24 Mazda that stopped at your booth?

25 A. Yes, I am.

1 Q. Can you describe it to the jury?

2 A. It is a silver, older model Mazda, four-door sedan.

3 Q. Can you please turn in the binder that is at the witness
4 stand to Exhibits 3, 8, 9, 10, and 11? These have been
5 previously marked for identification.

6 A. All right. Exhibit 3 shows the silver Mazda Protege.

7 Q. Well, first, do you recognize Exhibits 3, 8, 9, 10, and 11?

8 A. Yes, I do.

9 Q. And what are they, just generally?

10 A. Pictures of the silver Mazda.

11 Q. Do Exhibits 3, 8, 9, 10, and 11 accurately and fairly look
12 like the silver Mazda that approached your inspection booth on
13 June 11th?

14 A. Yes.

15 MS. HEESCH: Your Honor, the Government moves to admit
16 Exhibits 3, 8, 9, 10, and 11 into evidence.

17 THE COURT: Any objection?

18 MR. ZUGMAN: No, Your Honor.

19 THE COURT: Received.

20 (Exhibits 3, 8, 9, 10, & 11 were admitted.)

21 BY MS. HEESCH:

22 Q. So can we publish Exhibit 3, please?

23 Did you see any passengers in the Mazda as it approached
24 your booth?

25 A. I did not.

1 Q. Did the driver hand you anything, any form of
2 identification?

3 A. California ID.

4 Q. Can you please turn in the witness binder to Tab 16? This
5 has been previously marked for identification as Government
6 Exhibit 16. Do you recognize Exhibit 16?

7 A. Yes, I do.

8 Q. What is it?

9 A. It shows it is a California driver's license belonging to
10 Mr. Willie Jones.

11 Q. Is that a true and accurate copy of the identification card
12 that was presented to you at the 94 checkpoint?

13 A. It is, without the black markings.

14 Q. And you understand those to be redactions?

15 A. To my understanding.

16 MS. HEESCH: Your Honor, the Government moves to admit
17 Government Exhibit 16 into evidence.

18 THE COURT: Any objection?

19 MR. ZUGMAN: No, Your Honor.

20 THE COURT: Received.

21 (Exhibit 16 was admitted.)

22 MS. HEESCH: Can we publish Exhibit 16?

23 THE COURT: Yes.

24 BY MS. HEESCH:

25 Q. What is the name -- and you said the name on the

1 identification card is what?

2 A. Willie Jones Jr.

3 Q. And in what city was the address?

4 A. Out of Los Angeles.

5 Q. Was this significant to you seeing that?

6 A. Yes.

7 Q. Why?

8 A. It is not common for individuals out of Los Angeles to
9 travel through the Highway 94 checkpoint.

10 Q. Did the individual driver say anything to you while he was
11 at your inspection booth?

12 A. I asked Mr. Jones to state his citizenship. He stated he
13 was a US citizen, and I asked him where he was coming from. He
14 claimed he was coming from Tecate.

15 Q. And looking around the courtroom today, do you see the
16 driver of the silver Mazda?

17 A. No, I do not.

18 Q. Can I maybe direct your attention over towards this
19 direction of the room, (indicating)?

20 A. I am having trouble finding him.

21 Q. You want to stand up?

22 A. Is that an individual slumped over there? Is that
23 Mr. Jones there?

24 Q. I can't answer that.

25 A. Can we have the defendant please raise his head so I may

1 down, and I escorted Mr. Jones inside the checkpoint.

2 Q. Did you see him do any pushups in that time period?

3 A. I did not.

4 Q. And where did you go after that?

5 A. I went on foot to go find the individuals that were dropped
6 off.

7 MS. HEESCH: No further questions.

8 THE COURT: Anything else, Mr. Zugman?

9 MR. ZUGMAN: No, Your Honor.

10 THE COURT: May the witness be excused?

11 MR. ZUGMAN: Yes, Your Honor.

12 THE COURT: You may be excused.

13 Please call your next witness.

14 MS. HEESCH: Brian Fialkowski.

15 THE COURT: Please come forward and be sworn.

16 THE CLERK: Please raise your right hand.

17 (Oath administered.)

18 THE WITNESS: I do.

19 THE CLERK: Please take the stand. Please state your
20 full name for the record and spell your last name.

21 THE WITNESS: Edward Brian Fialkowski, last name
22 spelled F, as in Frank, I-A-L-K-O-W-S-K-I.

23 EDWARD FIAŁKOWSKI,

24 DIRECT EXAMINATION

25 BY MR. MOKHTARI:

1 Q. Good afternoon, Mr. Fialkowski. If you could just pull
2 that microphone closer since you are a little bit soft spoken.

3 Where do you live, Mr. Fialkowski?

4 A. I live in Jamul, California.

5 Q. Did you live there back in July, June of 2016?

6 A. Yes, sir.

7 Q. Where do you work?

8 A. I work in Tecate, Mexico.

9 Q. What do you do for a living?

10 A. I run a manufacturing facility.

11 Q. Are you familiar with State Route 94?

12 A. I drive it every day. It is my commute to and from work.

13 Q. What about the checkpoint that is located on State Route
14 94?

15 A. As well I pass through that every day.

16 Q. How long have you been driving through that checkpoint?

17 A. Coming upon 13 years now.

18 Q. And on mid-afternoon of June 11, 2016, did you have an
19 interaction with an officer at that checkpoint?

20 A. Yes. I told him that a small silver car had just stopped
21 around the corner and that three people had jumped out.

22 Q. Now, let's walk back towards that event.

23 A. Okay.

24 Q. So what direction were you -- first of all, what kind of
25 vehicle are you on?

1 A. I am on my motorcycle, as I am heading home from work in
2 the afternoon. It is mid-afternoon, 2:30, 3:00, somewhere in
3 there. I am coming down from Tecate, so I am driving
4 westbound. It is really hilly. It is classic Southern
5 California chaparral, scrub brush.

6 As you come down out of the mountains, it follows a water
7 course, so it is dropping in elevation, and the roads are kind
8 of weaving back and forth. And just before as it hits the
9 flats, it takes a left-hand turn, and then there is the Border
10 Patrol checkpoint.

11 Q. Before that left-hand turn you just described, did you
12 observe the silver sedan, the silver vehicle --

13 A. Yeah.

14 Q. -- that you had seen?

15 A. Yes, a small silver import. It pulled over on the right
16 side of the road in the gravel area at the last bend before it
17 is not visible to the Border Patrol checkpoint.

18 Q. Approximately how far from the Border Patrol checkpoint was
19 that bend?

20 A. Couple hundred yards, maybe 300, 400 yards, seconds as you
21 are driving.

22 Q. And how far were you -- let's take it step by step. The
23 car pulls over at some point; right?

24 A. Correct.

25 Q. Approximately how far are you from that car as it pulls

1 over?

2 A. Well -- well again. The distances change because he is
3 slowing and pulling over, and at one point I pass him, so the
4 distances start anywhere between 50 to 100 yards as we're
5 coming towards the corner. He slows down to pull over, so I
6 start closing distances on him, and he pulls over and I pass
7 him. The closest distance was probably me to the judge.

8 Q. And then when the individuals that you described got out of
9 that vehicle -- first of all, how many people did you see?

10 A. There was three.

11 Q. And where did they get out of the vehicle?

12 A. Both passenger doors, and just behind the rear passenger
13 door as well, so the person that got out of the rear passenger
14 door had to run around the back of the car, and they went off
15 into like a little gully where there is some trees off to the
16 right-hand side of the road.

17 Q. Was the vehicle a four door?

18 A. It was a four door, yes.

19 Q. It was a sedan?

20 A. It was a four door, yeah.

21 Q. Now, the three individuals, they ran into the gully. What
22 did you see them do?

23 A. Nothing after that. I saw them jump out of the car and run
24 around the back of it and head toward the broken fence and
25 towards the trees. By then I hit the corner, and I slowed down

1 and focused on the road.

2 Q. Were there any -- was there anything nearby, sort of a
3 signpost, that suggested that you could describe where that
4 location was?

5 A. I don't understand your question.

6 Q. Were there any fixtures, like --

7 A. There is a sign at some point near there that says whether
8 or not the Border Patrol Station is open or closed, but I don't
9 really remember exactly where it is at in position to where the
10 car pulled over.

11 Q. Did you observe any fencing in the area?

12 A. There is an old three-wire barbwire fence that had been
13 kind of broken down before you left the gravel and go into the
14 gully where the trees are.

15 Q. In relation to that broken down fence, approximately how
16 close to that were these individuals?

17 A. Well, the car pulled over on the gravel shoulder, and the
18 fence is maybe a couple yards beyond that.

19 Q. Now, when you saw this, did that -- when you saw this, did
20 you then approach the Border Patrol checkpoint sometime after
21 that?

22 A. Yeah. I would say 10 to 30 seconds afterwards I arrived at
23 the Border Patrol checkpoint.

24 Q. Did you observe, if any, other vehicles passed the same
25 silver import that you described?

1 A. I couldn't say. I don't know.

2 Q. When you arrived at the Border Patrol checkpoint, what
3 exactly do you remember telling the agent?

4 A. I told the agent that three individuals had jumped out of a
5 sill silver Mazda just back behind the corner where they
6 couldn't see it.

7 Q. How long was that interaction?

8 A. About as long as I told you, about ten seconds. They
9 looked surprised. He called others, and I went on my way.

10 Q. Did you see -- how many people were in that checkpoint
11 booth?

12 A. I don't recall exactly, but there is usually two. There is
13 somebody inside that reads the license plates and the person
14 you interact with.

15 Q. And were you wearing your motorcycle helmet at the time?

16 A. Yes, but I have a three-quarter face, so I had it lifted
17 up.

18 Q. And were you wearing your motorcycle jacket?

19 A. Every day.

20 Q. Could you describe what your jacket looks like, the one you
21 would were wearing then?

22 A. Bright yellow, high visibility motorcycle jacket.

23 Q. What happened after you told the agent at the Border Patrol
24 checkpoint what had taken place?

25 A. I don't know. I mean, like I said, he looked surprised,

1 and then he called off to some other officers that were on the
2 other side of the road, and I drove away. I don't -- I don't
3 know what happened after that.

4 Q. Now, when you saw the vehicle pull over to the side of the
5 road, was that suspicious to you?

6 A. Certainly.

7 Q. Why?

8 A. Well, it looked like people were trying to avoid the
9 checkpoint.

10 Q. Why do you say that?

11 A. That is specifically why the checkpoint is there, and they
12 jumped out just before it in the last spot that you couldn't
13 see them and then ran into the brush.

14 Q. Is that why you notified the Border Patrol checkpoint
15 individuals?

16 A. Of course, yeah. The sign says if you see something, say
17 something, right?

18 Q. If we could pull up Exhibit 17.

19 I am showing you a video that has been previously admitted
20 into evidence, four videos of the Border Patrol checkpoint. Do
21 you recognize what is on the video?

22 A. Not the cars, but certainly the checkpoint, yes.

23 Q. Is that the State Route 94 checkpoint that you drive in all
24 the time?

25 A. Yes, it looks exactly like it.

1 Q. All right. If we pause it right there.

2 Do you see the bottom right-hand side of the video?

3 A. Yes.

4 Q. You see a motorcycle approaching the checkpoint?

5 A. Yes.

6 Q. We're going to continue playing.

7 And I'll direct your attention to the top left where it is
8 zoomed in on -- stop it right there.

9 Do you recognize the person in the top left-hand side of
10 Exhibit 17?

11 A. Yes, that is me.

12 Q. Is that the bright visibility jacket you described?

13 A. And my helmet.

14 Q. And the helmet. Okay. Is this where your interaction --
15 is this the interaction you just described taking place with
16 the Border Patrol agent?

17 A. Yes.

18 MR. MOKHTARI: No further questions.

19 THE COURT: Any cross-examination, Mr. Zugman?

20 MR. ZUGMAN: Briefly, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. ZUGMAN:

23 Q. Mr. Fialkowski, how fast were you going when you were
24 traveling on State Route 94?

25 A. I don't recall the exact speeds, but again, they are

1 (Oath administered.)

2 THE WITNESS: I do.

3 THE CLERK: Please be seated. Please state your full
4 name for the record and spell your last name.

5 THE WITNESS: Joseph Andre Kratt, K-R-A-T-T.

6 JOSEPH KRATT,

7 DIRECT EXAMINATION

8 BY MR. MOKHTARI:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. What do you do for a living?

12 A. United States Border Patrol Agent and Canine Handler.

13 Q. You can pull it closer, it will come further up.

14 How long have you been a Border Patrol agent?

15 A. February will be ten years.

16 Q. And how long of those ten years have you been a Border
17 Patrol agent who is a canine handler?

18 A. Since December of 2015, almost two years.

19 Q. What kind of training did you receive to become a Border
20 Patrol agent?

21 A. I did a five-and-a-half month Border Patrol Academy in
22 Artesia, New Mexico, firearms training, vehicle pursuit, law
23 classes, and immigration, first responder training, those sorts
24 of things.

25 Q. And during that time did you also receive on-the-job

1 to -- I had to confer with the supervisor and the other agents
2 that were working the case to find out exactly what we had and
3 what we were going to do from there.

4 Q. After you did that, did you have any interaction with the
5 defendant, Mr. Jones?

6 A. At that point in time, after the other agents informed me
7 of Mr. Jones was the person that the citizen's report had said
8 the vehicle -- that was the vehicle that had dropped the people
9 off, and then Mr. Jones was from LA, he wasn't really in the
10 area, and there was -- I believe they heard them say that there
11 was some brush in the back of the vehicle that kind of matches
12 some of the brush in our area at that point in time, and then
13 that the individuals that I arrested in the field had matched
14 that vehicle.

15 MR. ZUGMAN: Objection, Your Honor, as to hearsay.

16 THE COURT: Sustained.

17 BY MR. MOKHTARI:

18 Q. Just focus on -- at that point did you ultimately, based on
19 all the confluence of information you had, did you make an
20 arrest?

21 A. Yes. At that point in time I went into the holding cell
22 where Mr. Jones was, and I informed him that he was under
23 arrest for smuggling humans into the United States.

24 Q. All right. Now, you mentioned some brush that was in the
25 back -- in this vehicle, okay. I direct your attention to

1 Exhibit 1 and 2 in your binder there. Do you recognize
2 Government Exhibits 1 and 2?

3 A. That looks like the interior of the silver Mazda.

4 Q. And are these fair and accurate depictions of the interior
5 of that silver Mazda back in June 11, 2016?

6 A. Yes, it is.

7 MR. MOKHTARI: At this time we would move to admit
8 Exhibits 1 and 2?

9 THE COURT: Any objection?

10 MR. ZUGMAN: No, Your Honor.

11 THE COURT: Received.

12 (Exhibits 1 and 2 were admitted.)

13 BY MR. MOKHTARI:

14 Q. We'll publish Exhibit 1 first.

15 Orient us where we're looking at here.

16 A. Number 1 looks like the front seat of the silver Mazda, has
17 some unique cloth seat covers on it.

18 Q. And then Exhibit 2.

19 A. Exhibit 2 is the backseat of the vehicle.

20 Q. All right. Now, you described some brush. Point out to
21 us, one, what you are referring to.

22 A. Well, in that area some of the tall grass like, it has a
23 little seed that attaches to just about everything, and if you
24 look to the picture here, you can see some of those seeds -- we
25 call them foxtails or cattails -- right by the seat belt

1 fastener, the red thing there. There is two of them right next
2 to it in the picture.

3 Q. Are you referring to the bottom left-hand portion of the
4 Exhibit 2?

5 A. Yes, sir.

6 Q. The portion that has been zoomed in on?

7 A. Yes. That is quite a bit of the cattails right there.

8 Q. And you said cattails, foxtails, are they synonymous?

9 A. Yes, sir.

10 Q. What drew you to that -- why are you looking for this type
11 of thing inside of a vehicle?

12 A. Those things are prevalent in our area where we work. You
13 take two or three steps into the bushes, and those are going to
14 be sticking to your clothes. It is a pretty good indicator
15 that somebody has been out hiking through the mountains or in
16 the fields if they have those in their car.

17 Q. When you observe -- did you personally observe these
18 foxtails or cattails in the backseat?

19 A. I did.

20 Q. Did you observe that before -- did you ever get into the
21 vehicle yourself?

22 A. I did eventually. After we arrested Mr. Jones, we -- we
23 have to do an inventory of all the things in the vehicle before
24 we seize the vehicle.

25 Q. Before you got into the vehicle, did you observe these

1 cattails in Exhibit 2?

2 A. Yes. Another process in the step of arresting Mr. Jones is
3 we have him take any personal items out of the vehicle before
4 we transport him to the station for processing, so when I
5 walked out with him, he was getting his personal items, I
6 opened up the back door to see what he was doing in the front,
7 and I saw them then.

8 MR. MOKHTARI: No further questions.

9 THE COURT: Any question, Ms. Zugman?

10 MR. ZUGMAN: No, Your Honor.

11 THE COURT: You may be excused. Thank you, sir.

12 Please call your next witness.

13 MR. MOKHTARI: At this time the United States would
14 call Alberto Rivera-Contreras which will be played via
15 videotape deposition.

16 MR. ZUGMAN: Your Honor, for the record, if we could
17 restate the confrontation clause objection previously stated.

18 THE COURT: May I see counsel at sidebar briefly.

19 MR. ZUGMAN: Yes, Your Honor.

20 (Sidebar proceedings begin:)

21 THE COURT: As I take it, Mr. Zugman, has the
22 Government demonstrated unavailability?

23 MR. ZUGMAN: Correct. With respect to confrontation
24 with the phones as previously made --

25 THE COURT: First, with respect to the unavailability,

1 MR. MOKHTARI: Mr. Alberto Rivera-Contreras.

2 THE COURT: All right. So the deposition of Alberto
3 Rivera-Contreras was taken on August 1, 2016, is about to be
4 presented to you. You should consider the deposition testimony
5 the same way that you would consider the testimony of the
6 witness who have appeared before you.

7 You can play the deposition.

8 (Videotaped deposition of Alberto Rivera-Contreras.)

9 MR. MOKHTARI: Your Honor, we have to load a second
10 video for the cross-examination.

11 THE COURT: All right. And do you wish to play the
12 cross-examination?

13 MR. MOKHTARI: Yes. We were going to play through it.

14 THE COURT: So what we'll do -- how long will that
15 take, a few minutes?

16 MR. MOKHTARI: It will take a few minutes, your Honor.

17 THE COURT: It is 3:05. Ladies and gentlemen, we'll
18 be in recess for 15 minutes. so we'll be in recess until 3:20.

19 So remember the admonition. Don't discuss the case
20 with anyone nor allow anyone to discuss the case with you

21 Remember you are reminded to keep an open mind until you have
22 heard all the evidence, the instructions of the Court, the
23 arguments of counsel, and the views of your fellow jurors.

24 We'll resume at 3:20.

25 (Jury not present, Defendant not present.)

1 Please call your next witness.

2 MR. MOKHTARI: Your Honor, at this time the United
3 States would call Jesus Rivera-Contreras.

4 THE COURT: All right. That is by deposition;
5 correct?

6 MR. MOKHTARI: Yes, Your Honor.

7 THE COURT: All right.

8 (Videotaped deposition of Jesus Rivera-Contreras.)

9 THE COURT: Ladies and gentlemen, we're going to stop.

10 All right. Ladies and gentlemen, it is 4:15. We're
11 going to end a little earlier. I have another case to address
12 at 4:15. We'll end a little bit early today. We'll resume
13 tomorrow morning at 9:00.

14 So a few things before you go. I ask you to take out
15 a piece of paper and just write down two phone numbers. All
16 right. Both of these numbers start with 619 557, and so the
17 first number is that of Ms. Rogers, who is the court clerk, so
18 her number is 619 557-7360, and the second number is my
19 chambers number, and that number is 619 557-6420.

20 So if anything occurs over the evening hours, any
21 emergencies over the evening hours or in the morning and you
22 need to get ahold of us, you can call Ms. Rogers first. If you
23 can't get ahold of her, you can try my number.

24 We're going to resume tomorrow morning at 9:00 AM,
25 please be here at ten of or so, so give yourself time to get

1 MR. MOKHTARI: Yes, Your Honor.

2 THE COURT: All right. And so, Mr. Zugman, you are
3 aware that you have got -- depending on what you elect to do.

4 MR. ZUGMAN: Your Honor, Mr. Jones has stated
5 repeatedly that he intends to testify, so I don't think that is
6 going to change.

7 THE COURT: We'll bring him out first thing in the
8 morning, at 8:45 -- I am going to direct the marshals to have
9 him here no later than 8:45. We'll bring him out here at 8:45
10 and see if he is able to behave in an appropriate fashion, and
11 perhaps he will be able to do that, and so we'll address those
12 things in the morning.

13 MR. ZUGMAN: Fair enough, Your Honor.

14 THE COURT: All right. Thank you.

15 MR. MOKHTARI: Thank you.

16 MR. ZUGMAN: Thank you, Your Honor. Your Honor, can I
17 leave some of my stuff here?

18 THE COURT: Sure. Yes, you can.

19 MR. ZUGMAN: Thank you.

20 (Proceedings concluded at 4:23 p.m.)

21 -----000-----

22

23

24

25

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

/s/ Melinda S. Setterman

13

Melinda S. Setterman,
Registered Professional Reporter
Certified Realtime Reporter

14

15

16

17

18

19

20

21

22

23

24

25

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 8, 2017
7 WILLIE JONES, JR.,) 9:00 a.m.
8 Defendant.) San Diego, California

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

APPEARANCES:

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

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

25 Reported by Stenotype, Transcribed by Computer

INDEX		
PROCEEDINGS:		PAGE:
Rule 29 Motion.....		277
Jury Instruction Conference.....		284
Final Jury Instructions.....		291
Closing Argument by Mr. Mokhtari.....		304
Closing Argument by Mr. Zugman.....		326
Rebuttal Closing Argument by Mr. Mokhtari.....		335
Verdict.....		349
TESTIMONY:		
WITNESS:	EXAMINATION BY:	PAGE:
Jesus Rivera-Contreras		
	Cont'd Videotaped deposition.....	208
Rob Meyer	Direct Exam by Mr. Mokhtari.....	208
	Cross-Exam by Mr. Zugman.....	237
	Redirect Exam by Mr. Mokhtari.....	238
Jose Alberto Hernandez-Hernandez		
	Videotaped deposition.....	242
John Costello		
	Direct Exam by Mr. Mokhtari.....	246
EXHIBITS:		
NUMBER/PAGE:	NUMBER/PAGE:	NUMBER/PAGE:
4/208	20/265	30/225
15/245	21/265	31/260
18/276	24/253	32/274
19/265	28/257	
	* * * *	

1 SAN DIEGO, CALIFORNIA, NOVEMBER 8, 2017, 9:00 A.M.

2 * * * *

3 (Jury not present, Defendant not present.)

4 THE COURT: All right. Counsel, make your
5 appearances.

6 MR. MOKHTARI: Good morning, Your Honor. Kevin
7 Mokhtari and Meghan Heesch for the United States.

8 MR. ZUGMAN: Good morning. David Zugman on behalf of
9 Mr. Jones, and Melissa Bobrow is at counsel table with me.

10 THE COURT: All right.

11 Will you check to see if we have all the jurors,
12 please.

13 (Defendant present.)

14 THE COURT: All right. Mr. Jones is present.

15 Mr. Jones, as I advised you yesterday, you have the
16 right to be present at your trial. Although, you could lose
17 that right if you disrupt or conduct yourself in a manner that
18 is disorderly, disruptive, or disrespectful to the Court, such
19 that your trial cannot be carried on with you in the courtroom.

20 So I've advised you, once again.

21 Ready to go?

22 All right. Let's get the jurors.

23 (Jury present, Defendant present.)

24 THE COURT: All right. Good morning, ladies and
25 gentlemen of the jury. All the ladies and gentlemen of the

1 jury are present, along with counsel and the defendant.

2 The Government may continue in its presentation of the
3 evidence.

4 MR. MOKHTARI: Your Honor, we'll continue with the
5 videotape deposition of Jesus Rivera-Contreras.

6 THE COURT: All right. Please do so.

7 (Videotape deposition of Jesus Rivera-Contreras.)

8 MR. MOKHTARI: Your Honor, we would move into evidence
9 Exhibit 5, which was referenced in the depositions -- excuse me
10 -- 4.

11 MR. ZUGMAN: No objection, Your Honor.

12 THE COURT: All right. Received.

13 (Exhibit 4 was admitted.)

14 THE COURT: Do you have another deposition to play?

15 MR. MOKHTARI: Yes, Your Honor. Your Honor, we'll
16 break it up a little bit and call Agent Meyer.

17 THE COURT: All right.

18 THE CLERK: Please raise your right hand.

19 (Oath administered.)

20 THE WITNESS: I do.

21 THE CLERK: Please take the stand. Please state your
22 full name for the record and spell your last name.

23 THE WITNESS: Robert Meyer, M-E-Y-E-R.

24 ROBERT MEYER,

25 DIRECT EXAMINATION

1 to conform his behavior, he is able to return to the courtroom
2 at any time?

3 MR. ZUGMAN: At the beginning and the end of the
4 discussion, yes, Your Honor.

5 THE COURT: Thank you. Let's get the jury.

6 (Jury present, Defendant not present.)

7 THE COURT: All of the ladies and gentlemen of the
8 jury are present, along with counsel. Mr. Jones is not
9 physically present, but he can hear the proceedings.

10 So does the Government have an additional witness?

11 MR. MOKHTARI: Yes, Your Honor. At this time we would
12 play the videotape deposition of Jose Alberto
13 Hernandez-Hernandez.

14 THE COURT: All right. And that is marked as an
15 exhibit; is that right?

16 MR. MOKHTARI: It is marked as Exhibit 6, Your Honor.

17 THE COURT: All right.

18 (Videotape deposition of Jose Alberto Hernandez-Hernandez.)

19 MR. MOKHTARI: Your Honor, at this time we would move
20 to admitted and publish Exhibit 15 that was referenced but
21 didn't actually display on the video.

22 THE COURT: Any objection?

23 MR. ZUGMAN: No, Your Honor. Your Honor, could we
24 have a brief sidebar?

25 THE COURT: Sure.

1 MS. HEESCH: No objection.

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

3 (Jury present, Defendant not present.)

4 THE COURT: All the ladies and gentlemen of the jury
5 are present, along with counsel, and the defendant is able to
6 hear. He is not physically present.

7 So please -- we received your note that says, "We have
8 reached a verdict," and that is from the foreperson.

9 So please retrieve the verdict. Please publish the
10 verdict.

11 THE CLERK: United States District Court, Southern
12 District of California, United States of America, plaintiff, vs
13 Willie Jones Jr, defendant. Case number 16-CR-1448-WQH.
14 Verdict.

15 We, the jury in the above-entitled cause, find the
16 defendant, Willie Jones Jr, guilty of transportation of an
17 alien, Jose Alberto Hernandez-Hernandez, as charged in Count 1
18 of the indictment.

19 Guilty of transportation of an alien, Jesus
20 Rivera-Contreras, as charged in Count 2 of the indictment.

21 Guilty of transportation of an alien, Alberto
22 Rivera-Contreras, as charged in Count 3 of the indictment.

23 Dated November 8th, 2017. Signed Michael Fouch,
24 foreperson of the jury.

25 Ladies and gentlemen of the jury, is this your verdict

1 as presented and read?

2 (Affirmative responses.)

3 THE COURT: Mr. Zugman, do you wish to have the jury
4 polled?

5 MR. ZUGMAN: No, Your Honor.

6 THE COURT: All right. Is there any reason why the
7 jury should not be discharged at this time?

8 MR. ZUGMAN: No, Your Honor.

9 MR. MOKHTARI: No, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, I want
11 to thank you for your time and attention. You have, in
12 essence, volunteered your time. We understand that you have
13 very busy lives, and that you've given up a few days of that
14 time to come down here and to perform a very important public
15 service.

16 I want to thank you for your attention to the detail,
17 your patience -- this is a case that had a few more
18 interruptions than most cases have. It is a little different
19 in some respects, so you were asked to leave the courtroom on
20 occasion and come back into the courtroom.

21 (Brief pause.)

22 THE CLERK: I wasn't close enough to the microphone,
23 so he couldn't hear me.

24 THE COURT: All right. Let's read the verdict again.

25 THE CLERK: United States District Court, Southern

1 District of California, United States of America, plaintiff, vs
2 Willie Jones Jr, defendant. Case number 16-CR-1448-WQH.

3 We, the jury --

4 THE COURT: Wait.

5 It is not loud enough?

6 THE DEPUTY: It is not coming over the microphone. We
7 can hear it from your microphone.

8 THE COURT: You can hear it on mine.

9 Here, use this.

10 THE CLERK: Okay. United States District Court,
11 Southern District of California, United States of America,
12 plaintiff, vs Willie Jones Jr, defendant. Case Number
13 16-CR-1448-WQH.

14 We, the jury in the above-entitled cause, find the
15 defendant, Willie Jones Jr, guilty of transportation of an
16 alien, Jose Alberto Hernandez-Hernandez, as charged in Count 1
17 of the indictment.

18 Guilty of transportation of an alien, Jesus
19 Rivera-Contreras, as charged in Count 2 of the indictment.

20 And guilty of transportation of an alien, Alberto
21 Rivera-Contreras, as charged in Count 3 of the indictment.

22 Dated November 8th, 2017. Signed by Michael Fouch,
23 foreperson of the jury.

24 Ladies and gentlemen of the jury, is this your verdict
25 as presented and read?

1 (Affirmative responses.)

2 THE COURT: Is it correct to say, Mr. Zugman, that you
3 do not wish to have the jury polled?

4 MR. ZUGMAN: That is correct, Your Honor.

5 THE COURT: All right. Any reason why the jury should
6 not be discharged at this time?

7 MR. MOKHTARI: No, Your Honor.

8 THE COURT: All right. Again, ladies and gentlemen, I
9 want to thank you for your time and effort throughout the
10 trial. You have performed a very valuable public service. We
11 recognize that you have very busy lives, that you come down
12 here, and you, in essence, volunteer your time.

13 You don't know what kind of case you are going to be
14 on, whether it is going to be a civil or criminal case, and you
15 don't really know how long it is going to take, and we're very
16 grateful that you take the time.

17 They can always get other judges to try the cases, and
18 there can be other lawyers that can try these cases, but we
19 simply cannot operate unless we have citizens like yourselves
20 who come down here and volunteer your time to perform a very
21 valuable public service.

22 This case had a few more interruptions than the
23 typical case. There were a few more times that I asked you to
24 leave the courtroom. Those were all for appropriate reasons,
25 and there were a few more sidebars than one would normally like

1 to have, but it was a short case, and there were a lot of legal
2 issues and some that don't arise that often, so that is why
3 there were some of the interruptions that we had.

4 The admonition that I've given you throughout the case
5 no longer applies. You are free to discuss the case with
6 whoever you like. However, you are under no obligation to
7 discuss the case with anyone. That is matter that is entirely
8 up to you.

9 Again, I want to thank you very much for your time and
10 attention. You've performed a very valuable public service,
11 and I hope that we used your time the best way that we could,
12 that we were efficient as possible considering the
13 circumstances.

14 With that I want to wish you a happy rest of the day,
15 and please report back to the juror lounge, and let them know
16 that your service in this courtroom has been completed.

17 And, again, on behalf of the parties and myself, I
18 want to thank you very much for your service in this case.

19 Thank you.

20 (Jury not present, Defendant not present.)

21 THE COURT: We'll get a sentencing date.

22 THE CLERK: Yes. January 22nd, 2018, at 9:00 AM.

23 THE COURT: All right. January 22nd, 2018, at 9:00
24 AM.

25 Mr. Zugman, with respect to any post-trial motions, if

1 you wish to file any post-trial motions, you can file by
2 January 1st, and the Government can respond by January 15th.

3 Does that work for you?

4 MR. ZUGMAN: Yes, Your Honor.

5 Is that enough time for the court reporter?

6 THE COURT: It seems like it is enough, and if not
7 I'll certainly -- if you don't have the transcript and if you
8 need more time, let me know, and I'll continue the date out, so
9 -- and I recognize that the January 1st date is right on the
10 holidays, so that really cuts off a couple weeks, so if you
11 would like, I can give you more time now, or I can give you
12 more time later, whichever you prefer.

13 MR. ZUGMAN: I am certain that Mr. Jones wants this to
14 be over with, so I think we should stick with the date that is
15 given.

16 THE COURT: That is the date. The rest will be filed,
17 any sentencing materials, in accordance with the local rule,
18 but if you have any pretrial or post-trial motions, file them
19 by the 1st. The Government is to respond by the 15th.

20 Anything else from either side?

21 MR. ZUGMAN: Is Your Honor is going to order a
22 presentence report?

23 THE COURT: Yes. A presentence report will be
24 ordered.

25 Anything else?

1 MR. ZUGMAN: No, Your Honor.

2 THE COURT: I want to thank you both for your
3 presentations. The case was well-tried by both sides. I
4 thought both of your clients were well-represented.

5 With respect the Government, the case had been set a
6 couple times, so I know it was difficult to go back to your
7 witnesses and continually tell them the date had moved, and
8 that is -- sometimes that is met with disappointment or
9 annoyance, but in this instance, you know, that happened.

10 It happened at least twice. Once it was continued
11 eight days before the trial, and another one the day of, and I
12 think this is the only case that I tried that I've done that,
13 where the case did not go forward on the date set with the jury
14 outside, but I thought the reasons warranted.

15 And then, Mr. Zugman, again, I want to thank you for
16 your presentation. I thought you did an outstanding job. It
17 is, you know, challenging circumstances, but I thought the way
18 that you handled yourself, you continue to be an outstanding
19 lawyer. You are a credit to the profession and credit to the
20 criminal defense bar --

21 MR. ZUGMAN: Thank you, Your Honor.

22 THE COURT: -- as well as your co-counsel.

23 I know this is, you know, a challenging set of
24 circumstances here, and you did very, very well. Your client
25 was very well-represented, and I thought your closing

1 arguments -- I thought both sides really tried a very good
2 case. It was a pleasure to try your case, for the most part.
3 I thought you both did very, very well. The case was very
4 well-lawyered.

5 And so we'll see you back at the sentencing.

6 MR. ZUGMAN: Thank you, Your Honor.

7 THE COURT: Ms. Wlodarczyk raised an issue. She's
8 told me that some of the jurors wanted to know whether their
9 names -- whether the jurors' names were in the record.

10 MR. ZUGMAN: No, Your Honor.

11 THE REPORTER: In the impanelment they are.

12 MS. BOBROW: The foreperson's name.

13 THE COURT: Yes, but I don't know necessarily whether
14 that is something that is ordered or not, and so I just wanted
15 to bring up the question -- you know, I wanted to bring to you
16 any communication that we had gotten from the jurors --

17 MR. ZUGMAN: That is fair.

18 THE COURT: -- so we will leave it at that. Thank
19 you.

20 MR. MOKHTARI: Your Honor, does the Court wish the
21 Government to take control of the original exhibits?

22 THE COURT: Yes. We'll bring them out.

23 (Proceedings concluded at 4:03 p.m.)

24 ---000---

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

1
2 I hereby certify that I am a duly appointed, qualified
3 and acting official Court Reporter for the United States
4 District Court; that the foregoing is a true and correct
5 transcript of the proceedings had in the aforementioned cause;
6 that said transcript is a true and correct transcription of my
7 stenographic notes; and that the format used herein complies
8 with the rules and requirements of the United States Judicial
9 Conference.

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

11 /s/ Melinda S. Setterman

12

13 Melinda S. Setterman,
14 Registered Professional Reporter
15 Certified Realtime Reporter

16

17

18

19

20

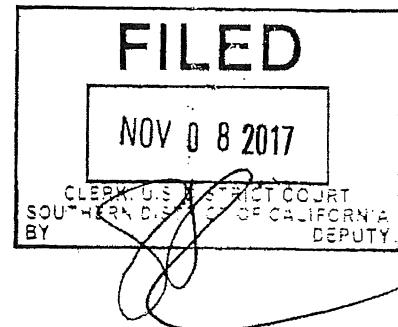
21

22

23

24

25



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11 Plain
12 vs.
13 WILLIE JONES JR.,
14 Defend

CASE NO. 16CR1448 WQH
VERDICT

14 We, the jury in the above-entitled cause, find the Defendant WILLIE JONES
15 JR.:

17 Guilty
18

of transportation of an alien, Jose Alberto Hernandez-Hernandez, as charged in Count 1 the Indictment.

19 Guilty
20

of transportation of an alien, Jesus Rivera-Contreras, as charged in Count 2 the Indictment.

21 Guilty
22

of transportation of an alien, Alberto Rivera-Contreras, as charged in Count 3 the Indictment.

24 | DATED: November 8, 2017

Mark Fonda

FOREPERSON OF THE JURY

Michael Fouch

1 SAN DIEGO, CALIFORNIA; FEBRUARY, 27 2018; 1:30 p.m.

2 -000-

3 THE CLERK: Calling number 2 on calendar. Case
4 16-cr-1448, United States of America versus Willie Jones, Jr.,
5 on for sentence with presentence report.

6 MR. ZUGMAN: Afternoon, Your Honor. David Zugman on
7 behalf of Mr. Jones, who I believe will be with us shortly.

8 THE COURT: Good afternoon. And Mr. Jones will be
9 seated at the table where he was seated during trial.

10 (Pause in the proceedings.)

11 THE COURT: All right. Mr. Zugman, Mr. Jones is
12 present, correct?

13 MR. ZUGMAN: Yes, he is, Your Honor.

14 THE COURT: Counsel, I have reviewed the presentence
15 report, the addendum to the presentence report, the defendant's
16 objections to the presentence report, the defendant's
17 sentencing summary chart, the government's sentencing summary
18 chart, and the government's sentencing memo.

19 Have you had an opportunity to discuss and review the
20 presentence report with your client?

21 MR. ZUGMAN: Yes, Your Honor.

22 THE COURT: With respect to the objections, you raise
23 two objections; one, the obstruction of justice, and second is
24 the minor role.

25 With respect to the obstruction of justice, I'll hear

1 report that certainly talk about psychological issues, issues
2 that -- he has a work history and did work during the period of
3 time and was a motivated worker and certainly has some talents.

4 So there are both mitigating and aggravating factors,
5 but having considered all of those, I think a guideline
6 sentence at the upper end is appropriate, which is 21 months,
7 so I am going to impose a sentence of 21 months in custody. I
8 think it's the minimum sentence to satisfy the 3553 factors.

9 I certainly considered the comments of counsel,
10 Mr. Jones, the advisory sentencing guidelines, as well as
11 the -- all of the 3553 factors. I haven't mentioned all of
12 3553 factors in imposing sentence, but I have considered them
13 all.

14 Therefore, pursuant to the Sentencing Reform Act of
15 1984, it's the judgment of this Court that the defendant is
16 committed to the custody of the Bureau of Prisons to be
17 imprisoned for a period of 21 months.

18 Court does not impose a fine, finding defendant does
19 not have the financial ability to pay a fine.

20 The Court does impose a required \$100 mandatory
21 special penalty assessment.

22 I also find that, based upon the defendant's financial
23 position, he's unable to \$5,000 special assessment, so the
24 Court does not impose that.

25 The Court imposes the mandatory and standard

1 conditions of supervision, and the following special condition:

2 That you not enter or reside in the Republic of Mexico
3 without permission of the Court or probation officer.

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

6 Submit your person, property, residence, office, or
7 vehicle to a search conducted by a United States probation
8 officer at a reasonable time, in a reasonable manner, and based
9 upon reasonable suspicion of contraband or evidence of a
10 violation of a condition of release.

11 Failure to submit to a search may be grounds for
12 revocation.

13 Defendant shall warn any other residents that the
14 premises may be subject to searches pursuant to this condition.

15 Defendant shall participate in a cognitive behavioral
16 treatment program as directed by the probation officer, and if
17 deemed necessary by the probation officer, such program may
18 include group sessions led by a counselor or participation in a
19 program administered by the probation officer.

20 Defendant may be required to contribute to the cost of
21 services rendered in an amount to be determined by the
22 probation officer based on ability to pay.

23 Counsel, would you come forward and take a copy of the
24 terms of supervised release, and please provide a copy of those
25 to Mr. Jones?

1 Supervised release is three years. I should note that
2 the sentences on each count -- the sentences on Counts One,
3 Two, and Three, the custodial portions of the sentences are to
4 be served concurrently.

5 The supervised release is to be served concurrently.

13 You must specify what it is you're appealing from,
14 whether it's the whole judgment or just part of the judgment.

15 If you appeal and you do not have the financial
16 ability to retain the services of an attorney to represent you
17 on appeal, the appellate authorities will appoint counsel to
18 represent you.

19 Do you understand that unless you file your written
20 notice of your intention to appeal in this Court, and not the
21 Court of Appeals, within 14 days from the entry of judgment,
22 you'll lose that right forever? Do you understand that,
23 Mr. Jones?

24 THE DEFENDANT: Yes.

25 THE COURT: All right.

1 THE DEFENDANT: (Inaudible).

2 THE COURT: Thank you, sir.

3 I will recommend the defendant be designated to a
4 facility in the Western Region as close to Southern California
5 and Los Angeles area as possible so he can maintain contact
6 with his family.

7 MR. ZUGMAN: Your Honor, there's two small
8 administrative matters.

9 The first is, is bond exonerated on this case?

10 THE COURT: Yes. Does government oppose?

11 MR. MOKHTARI: No, Your Honor.

12 THE COURT: So the bond will be ordered exonerated.

13 MR. ZUGMAN: I will prepare the order to get Keysha
14 her money back.

15 The second is, Your Honor, could we schedule a hearing
16 before the magistrate judge for the appointment of appellate
17 counsel? Mr. Jones has made it clear he doesn't want me to be
18 his attorney anymore.

19 THE COURT: Right. What would typically happen?

20 MR. ZUGMAN: I always get it on the other end. So I'm
21 appointed to these cases, and what happens is the magistrate
22 judge's clerk, who used to be Judge Storms, now Judge Adler,
23 calls you up and asks you if you can accept the appointment.

24 I think it would be easier just to go in court because
25 there are so many balls in the air on this particular case. If

1 we could just go in front of Judge Adler, and I could
2 explain -- because I've spoken with Mr. Cosarilas who has the
3 contempt case.

4 THE COURT: So you would intend to appear at the
5 magistrate court to then --

6 MR. ZUGMAN: To tell them exactly what's going on.
7 Yes, Your Honor.

8 THE COURT: All right. So who is the duty magistrate?

9 THE CLERK: Judge Adler.

10 THE COURT: We'll have it on for later this week or
11 early next week to get it on before the duty magistrate. That
12 way you'll appear with Mr. Jones, and then you'll advise the
13 Court that you were trial counsel, but that new appellate
14 counsel needs to be appointed, and that way -- can you just
15 confirm or ensure me that you'll make sure that the notice of
16 appeal is filed within the 14 days? If for some reason
17 something falls through the cracks, that the notice of appeal
18 will be filed.

19 MR. ZUGMAN: Unquestionably, Your Honor, yes.

20 THE COURT: All right. So we'll get that on calendar.
21 We'll request it be put on the duty magistrate's calendar for
22 appointment of appellate counsel to make sure that appellate
23 counsel is filed, and then after that happens, then you would
24 be relieved from this case.

25 MR. ZUGMAN: Thank you, Your Honor.

1 THE COURT: Anything else, counsel?

2 MR. ZUGMAN: No, Your Honor.

3 THE COURT: All right. Thank you.

4 THE CLERK: So it's \$100 each count?

5 THE COURT: It's \$100 each count, for a total of \$300.

6 MR. ZUGMAN: Thought I got that one.

7 THE COURT: All right, thank you.

8 Mr. Zugman, I have to say, I have to thank you for
9 your work on the case. You were a great credit to the legal
10 profession to do what you did. And in particular, a great
11 credit to the defense bar. But I think in general, just the
12 legal profession alone, you handled yourself with dignity and
13 class. There's no question that you preserved your client's
14 rights.

15 It was a very difficult -- I can imagine it was a very
16 difficult experience. You never let it show. I mean, you
17 always were very professional to your client. You were
18 professional to the Court. . .

19 And I understand this was a difficult, difficult
20 assignment, but you did an outstanding job, and you're a credit
21 to the legal profession.

22 MR. ZUGMAN: Thank you, Your Honor.

23 (End of proceedings at 2:12 p.m.)

24 -000-

25

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

11 Dated: May 9, 2018, at San Diego, California.

12

13

14

15

16

/s/ Ellen L. Simone

17

Ellen L. Simone, RMR, CRR
Official Court Reporter

18

19

20

21

22

23

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:

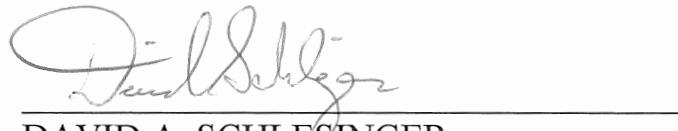
The Honorable Noel J. Francisco, Esq.
Solicitor General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001
Counsel for Respondent

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