

United States v. Ramirez-Gonzalez

United States Court of Appeals for the Ninth Circuit

March 4, 2021, Argued and Submitted, Pasadena, California; June 10, 2021, Filed

No. 19-50096, No. 19-50178

Reporter

849 Fed. Appx. 703 *; 2021 U.S. App. LEXIS 17301 **; 2021 WL 2377085

UNITED STATES OF AMERICA, Plaintiff-Appellee, v.
GERMAN RAMIREZ-GONZALEZ, Defendant-
Appellant. UNITED STATES OF AMERICA, Plaintiff-
Appellee, v. MARY ARAGON, AKA Mary Delgado,
Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [**1] Appeal from the United States District Court for the Southern District of California. D.C. No. 3:18-cr-02342-BTM-2. D.C. No. 3:18-cr-02342-BTM-3. Barry Ted Moskowitz, District Judge, Presiding.

United States v. Mambasse Koulabalo Patara, 365 F. Supp. 3d 1085, 2019 U.S. Dist. LEXIS 22835, 2019 WL 555135 (S.D. Cal., Feb. 11, 2019)

Disposition: AFFIRMED in part, REVERSED in part, and REMANDED as to Standard Supervised Release Conditions 4, 5, and 13.

Core Terms

conditions, supervised release, plain error, indictment, aiding and abetting, transportation, district court, alien, beyond a reasonable doubt, sufficient evidence, reckless disregard, co-Defendant, instructions, appointed, convicted, sufficed, novo

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee (19-50096): Lara Stingley, Timothy D. Coughlin, Esquire, Assistant U.S. Attorney, Zachary Howe, Shauna Prewitt, Daniel Earl Zipp, Assistant U.S. Attorney, Office of the US Attorney, San Diego, CA.

For GERMAN RAMIREZ-GONZALEZ, Defendant -

Appellant (19-50096): David Andrew Schlesinger, Esquire, Jacobs & Schlesinger LLP, San Diego, CA.

For UNITED STATES OF AMERICA, Plaintiff - Appellee (19-50178): Timothy D. Coughlin, Esquire, Assistant U.S. Attorney, Zachary Howe, Shauna Prewitt, Lara Stingley, Daniel Earl Zipp, Assistant U.S. Attorney, Office of the US Attorney, San Diego, CA.

For MARY ARAGON, Defendant - Appellant (19-50178): David James Zugman, Attorney, Burcham & Zugman, San Diego, CA.

Judges: Before: GRABER and MILLER, Circuit Judges, and HILLMAN, ** District Judge.

Opinion

[*703] MEMORANDUM*

Defendants German Ramirez-Gonzalez and Mary Aragon (collectively, "Defendants") [**2] appeal their convictions for transporting an illegal alien or aliens within the United States, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II), and three supervised release conditions imposed on Ramirez-Gonzalez. We affirm, except as to the challenged supervised release conditions.

1. Because the Acting United States Attorney for the Southern District of California was validly appointed under 28 U.S.C. § 546(d), the United States had the legal authority to indict and

** The Honorable Timothy S. Hillman, United States District Judge for the District of Massachusetts, sitting by designation.

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

prosecute Defendants. See *CFPB v. Gordon*, 819 F.3d 1179, 1187 (9th Cir. 2016) (applying *de novo* review to questions of constitutional law). We need not consider the constitutionality of Acting Attorney General Whitaker's appointment because, to be valid, "indictments need only be signed by 'an attorney for the government.'" See *United States v. Gantt*, 194 F.3d 987, 998 (9th Cir. 1999) (quoting *Fed. R. Crim. P. 7(c)(1)*) (overruled on other grounds by *United States v. W.R. Grace*, 526 F.3d 499, 506 (9th Cir. 2008)).

2. The Third Superseding Indictment did not prejudicially misstate the scienter element of the alien transportation statute when it charged that Defendants acted with "knowing and in reckless disregard" to violate federal immigration law. ER 1-2 (emphasis added). Defendants cannot show prejudice on plain error review because framing the indictment conjunctively to require both "knowing and in reckless disregard" worked to the Defendants' advantage by [**3] making it harder for the government to prove its case. See *United [*704] States v. Leos-Maldonado*, 302 F.3d 1061, 1064 (9th Cir. 2002) ("[R]eview of an untimely objection to the sufficiency of the indictment is limited to the plain error test.").

3. Applying plain error review, *United States v. Conti*, 804 F.3d 977, 981 (9th Cir. 2015), the district court's jury instructions on aiding and abetting liability satisfied the rule announced in *Rosemond v. United States* that an accomplice must have advance knowledge of the crime so that he or she has the requisite intent to assist in its commission. 572 U.S. 65, 77-81, 134 S. Ct. 1240, 188 L. Ed. 2d 248 (2014).

4. We review *de novo* the district court's denial of Defendants' *Rule 29* motions for judgments of acquittal. See *United States v. Goyal*, 629 F.3d 912, 914 (9th Cir. 2010). Having considered the evidence presented by the Government at trial in the light most favorable to the prosecution, we agree that there was sufficient evidence for the jury to find beyond a reasonable doubt that Aragon not only aided and abetted co-Defendant Patara in the transportation, but also that she acted as a principal. See *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) (providing standard for district courts to evaluate the sufficiency of evidence to support a criminal conviction). We also agree that there was sufficient evidence to show that Ramirez-Gonzalez aided and abetted Patara in transporting Lopez, an undocumented passenger in Patara's car. Defendants [**4] can be convicted of aiding and abetting even though one alleged principal, co-Defendant Patara, was acquitted. As noted, the evidence sufficed to show that Aragon acted as a principal, and the government pressed that alternative theory at trial. Regardless of Patara's acquittal, inconsistent verdicts are not a ground for reversal in this case because the evidence sufficed to prove beyond a reasonable doubt that someone, whether Aragon or

Patara, committed the underlying substantive crime. *United States v. Martinez*, 806 F.2d 945, 947 (9th Cir. 1986).

5. The district court committed plain error by imposing Standard Supervised Release Conditions 4, 5, and 13 on Ramirez-Gonzalez. See *United States v. Vega*, 545 F.3d 743, 747 (9th Cir. 2008) (applying plain error review to supervised release conditions not challenged at sentencing). We previously held those conditions to be unconstitutionally vague in *United States v. Evans*, 883 F.3d 1154, 1162 (9th Cir. 2018). Accordingly, we vacate Standard Supervised Release Conditions 4, 5, and 13 for Ramirez-Gonzalez and remand to the district court with instructions to issue an amended judgment consistent with our decision in *Evans*. *Id.* at 1162-64.

AFFIRMED in part, REVERSED in part, and REMANDED as to Standard Supervised Release Conditions 4, 5, and 13.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

United States of America,
Plaintiff,

v.

Mambasse Koulabalo Patara (1),
German Ramirez-Gonzalez (2),
Mary Aragon aka Mary Delgado
(3),

Defendants.

Case No.: 18-cr-2342-BTM

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS**

[ECF No. 73]

This matter comes before the Court on the Defendants' motion to dismiss the third superseding indictment for violation of the Appointments Clause of the United States Constitution, filed on November 16, 2018. (ECF No. 73 ("Def.'s MTD").)¹ The government filed a response in opposition on December 1, 2018. (ECF No. 84 ("Government's Opp'n").) Defendant filed a reply in support of the motion on December 4, 2018. (ECF No. 86 ("Def.'s Reply").) The Court held a hearing on this motion on December 18, 2018. For the following reasons, the motion to dismiss is **denied**.

¹ On November 26, 2018, Defendant Mary Aragon filed a motion to join Defendant Ramirez-Gonzalez's original motion. (See ECF No. 79-1 at 6.)

I. BACKGROUND

A. Factual Background

On April 15, 2018, the government filed a complaint charging Defendant Mambasse Koulabalo Patara with the illegal transportation of Mr. Fermin Lopez and Mr. German Ramirez-Gonzalez. (ECF No. 1.) On May 9, 2018, the grand jury indicted Defendant Patara. (ECF No. 17.) On July 5, 2018, the grand jury returned a superseding indictment charging Defendants Patara and Ramirez-Gonzalez with the illegal transportation of Mr. Lopez. (ECF No. 37.) On October 4, 2018, the grand jury returned a second superseding indictment, adding Mary Aragon as a defendant for assisting with the transportation of Mr. Lopez. (ECF No. 55.) Finally, on November 15, 2018, the grand jury returned a third superseding indictment. (ECF No. 71.) Under 8 U.S.C. §§ 1324(a)(1)(A)(ii) and (v)(II), Defendants Patara, Ramirez-Gonzalez, and Aragon are charged in count 1 with the illegal transportation of Lopez, and Defendants Patara and Aragon are charged in count 2 with the illegal transportation of Mr. Ramirez-Gonzalez. (Id.) Thus, Mr. Ramirez-Gonzalez is a defendant with respect to count 1 and an alleged smuggled alien with respect to count 2. (Id.)

B. Appointments Background

Mr. Adam L. Braverman served as United States Attorney in this district from November 17, 2017 to January 16, 2018. See *General Order 669, In the Matter of the Appointment of Adam L. Braverman as United States Attorney* (March 12, 2018) (hereinafter "General Order 669"); see also *Department of Justice, Robert S. Brewer, Jr. Sworn in as United States Attorney for the Southern District of California*, <https://www.justice.gov/usao-sdca/pr/robert-s-brewer-jr-sworn-united-states-attorney-southern-district-california> (last visited Feb. 7, 2019) (hereinafter "Brewer Press Release"). Initially, under 28 U.S.C. § 546(a), former Attorney General Jeff Sessions appointed Mr. Braverman to be the United States Attorney for the Southern District of California for 120 days,

1 effective on November 17, 2017. *General Order 669*. Then, upon the expiration
2 of that time period, under 28 U.S.C. § 546(d), this Court appointed Mr.
3 Braverman as United States Attorney. *Id.*

4 Mr. Robert S. Brewer is currently the United States Attorney for the
5 Southern District of California, having been sworn in by the Court on January 16,
6 2019. *See Brewer Press Release*. President Trump nominated Mr. Brewer to
7 serve as United States Attorney for this district on June 25, 2018, upon the
8 recommendation of U.S. Senators Kamala Harris and Dianne Feinstein. *Id.* The
9 full Senate unanimously confirmed his appointment on January 2, 2019. *Id.*

10 Mr. Matthew G. Whitaker is currently the acting Attorney General of the
11 United States. *See Designating an Acting Attorney General*, 42 Op. O.L.C. No.
12 1, *1 (Nov. 14, 2018) (hereinafter the "OLC Opinion"). On November 7, 2018,
13 former Attorney General Jeff Sessions resigned from office. *Id.* On the same
14 day, President Trump directed Mr. Whitaker to serve as acting Attorney General
15 under the Federal Vacancies Reform Act ("FVRA"), 5 U.S.C §§ 3345-3349d. *Id.*
16 Before Mr. Whitaker was appointed to the role of acting Attorney General, he was
17 Chief of Staff and Senior Counselor to the Attorney General, a position that did
18 not require Senate confirmation. *Id.* at 1, 4.

19 II. LEGAL STANDARD

20 Federal Rule of Criminal Procedure 12 permits a court to consider pretrial
21 motions that raise "any defense, objection, or request" that can be determined
22 "without a trial on the merits." Fed. R. Crim. P. 12(b)(1). "A pretrial motion is
23 generally capable of determination before trial if it involves questions of law
24 rather than fact." *United States v. Shortt Accountancy Corp.*, 785 F.2d 1448,
25 1452 (9th Cir. 1986).

26 III. DISCUSSION

27 Defendants bring this motion to dismiss, arguing that the appointment of
28 Mr. Whitaker as acting Attorney General is invalid. First, Defendants argue that

1 the appointment violates the Attorney General Succession Act, because under
2 that statute, the Deputy Attorney General becomes the acting Attorney General
3 when there is a vacancy in the office of Attorney General. Second, Defendants
4 argue that the appointment is in violation of the Appointments Clause of the
5 United States Constitution because Mr. Whitaker is not confirmed by the Senate.
6 Consequently, Defendants assert that the judicial appointment of Mr. Braverman
7 also violates the Appointments Clause during the time period he served as
8 United States Attorney when there was no Senate confirmed Attorney General
9 who directed and supervised his work. Thus, Defendants argue that any
10 continuation of the prosecution has no force or effect.

11 The Court disagrees. First, as a statutory matter, the appointment of
12 Mr. Whitaker was valid under the Federal Vacancies Reform Act ("FVRA"),
13 codified in 5 U.S.C. §§ 3345-3349d. Second, the Court need not reach the
14 constitutional question of whether that appointment violates the Appointments
15 Clause, because even if it does, the United States Attorney in this district has
16 had at all times the authority to prosecute the Defendants' case.

17 **A. The Appointment of the Acting Attorney General Is Statutorily Valid**

18 Defendants argue that under the Attorney General Succession Act, the
19 Deputy Attorney General is the acting Attorney General. See 28 U.S.C. § 508.
20 Defendants argue that because this statute creates the line of succession for the
21 office of the Attorney General, the President did not have authority to appoint
22 Mr. Whitaker. The government argues, however, that the President had statutory
23 authorization under a separate statute, the FVRA. See 5 U.S.C. §§ 3345-3349d.
24 Defendants argue that the FVRA is inapplicable to a vacancy in the office of the
25 Attorney General because the Attorney General Succession Act supersedes the
26 FVRA, while the government argues that the Attorney General Succession Act is
27 not the exclusive means for addressing such a vacancy. The Court agrees with
28 the government.

1 **1. Plain Meaning**

2 First, based on the plain meaning of the Attorney General Succession Act
3 and the FVRA, the Court finds that the two statutes operate as alternatives for
4 determining the succession of the Attorney General in light of a vacancy. The
5 Court focuses on the statutory text because as the Ninth Circuit has stated, “[t]he
6 preeminent canon of statutory interpretation requires us to presume that [the]
7 legislature says in a statute what it means and means in a statute what it says
8 there. Thus, our inquiry begins with the statutory text, and ends there as well if
9 the text is unambiguous.” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946,
10 951 (9th Cir. 2009) (citing *McDonald v. Sun Oil Co.*, 548 F.3d 774, 780 (9th Cir.
11 2008)); see also *Palmer v. Stassinios*, 348 F. Supp. 2d 1070, 1078 (N.D. Cal.
12 2004) (citing *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253 (1992)) (“A
13 court should first apply the plain meaning rule: if the meaning of the statute is
14 clear, no further construction is required . . .”).

15 The Attorney General Succession Act establishes a default line of
16 succession, and the FVRA provides an alternative that authorizes the President
17 to appoint an officer or employee within certain limitations. The Attorney General
18 Succession Act states:

19 (a) In case of a vacancy in the office of Attorney General, or of his
20 absence or disability, the Deputy Attorney General may exercise all
21 the duties of that office, and for the purpose of section 3345 of title 5
22 the Deputy Attorney General is the first assistant to the Attorney
23 General.

24 (b) When by reason of absence, disability, or vacancy in office,
25 neither the Attorney General nor the Deputy Attorney General is
26 available to exercise the duties of the office of Attorney General, the
27 Associate Attorney General shall act as Attorney General. The
28 Attorney General may designate the Solicitor General and the
Assistant Attorneys General, in further order of succession, to act as
Attorney General.

28 U.S.C. § 508. Based on the plain text of the Attorney General Succession

1 Act, it is clear that the Deputy Attorney General is the successor to the Attorney
2 General. *Id.* at § 508(a). Moreover, the statute further delineates a line of
3 succession when the Deputy Attorney General is not able to exercise the duties
4 of Attorney General. *Id.* at § 508(b).

5 The FVRA states, in relevant part:

6 (a) If an officer of an Executive agency (including the Executive Office
7 of the President, and other than the Government Accountability
8 Office) whose appointment to office is required to be made by the
9 President, by and with the advice and consent of the Senate, dies,
resigns, or is otherwise unable to perform the functions and duties of
the office—

10 (1) the first assistant to the office of such officer shall perform the
11 functions and duties of the office temporarily in an acting capacity
subject to the time limitations of section 3346;

12 (2) notwithstanding paragraph (1), the President (and only the
13 President) may direct a person who serves in an office for which
14 appointment is required to be made by the President, by and with
15 the advice and consent of the Senate, to perform the functions and
duties of the vacant office temporarily in an acting capacity subject
to the time limitations of section 3346; or

16 (3) notwithstanding paragraph (1), the President (and only the
17 President) may direct an officer or employee of such Executive
18 agency to perform the functions and duties of the vacant office
temporarily in an acting capacity, subject to the time limitations of
section 3346, if—

19 (A) during the 365-day period preceding the date of death,
20 resignation, or beginning of inability to serve of the applicable
21 officer, the officer or employee served in a position in such
agency for not less than 90 days; and

22 (B) the rate of pay for the position described under
23 subparagraph (A) is equal to or greater than the minimum rate
24 of pay payable for a position at GS-15 of the General
Schedule.

25 5 U.S.C. § 3345. The FVRA provides three vehicles for filling the vacancy of an
26 officer of an executive agency. The first, § 3345(a)(1), provides for an automatic
27 successor. The second and third, § 3345(a)(2)-(3), permit the President to
28

1 appoint a Senate confirmed officer or employee of the executive agency as long
2 as certain conditions are satisfied.

3 As a preliminary matter, § 3345(a)(1) determines that the first assistant to
4 the officer *shall perform* the duties of the office on a temporary basis. *Id.* at
5 § 3345(a)(1). The imperative use of *shall* indicates that the operation of
6 § 3345(a)(1) is automatic, thus establishing that the immediate successor to a
7 vacant executive office is that office's "first assistant." *Id.* There is no conflict
8 between the Attorney General Succession Act and § 3345(a)(1). Indeed, the
9 Attorney General Succession Act references § 3345(a)(1), establishing that "for
10 the purpose of" § 3345(a)(1), the Deputy Attorney General is the first assistant.

11 The potential point of tension surfaces with § 3345(a)(2)-(3), which when
12 applied to the office of Attorney General would allow the President to appoint an
13 officer or employee outside of the line of succession devised in the Attorney
14 General Succession Act. President Trump appointed Mr. Whitaker under
15 § 3345(a)(3) specifically. See *OLC Opinion* at 1. There is no dispute that the
16 appointment of Mr. Whitaker comports with the requirements of § 3345(a)(3).
17 Rather, Defendants argue that in light of the Attorney General Succession Act,
18 § 3345(a)(3) does not authorize the President to appoint a successor. The Court
19 holds, however, that there is nothing in either statute that would support this
20 argument, and moreover, there is evidence to the contrary.

21 § 3345(a)(3) begins with "*notwithstanding* paragraph (1), the President (and
22 only the President) may" *Id.* at § 3345(a)(3) (emphasis added). Thus, while
23 the operation of § 3345(a)(1) is automatic, § 3345(a)(3) allows the President to
24 override § 3345(a)(1). As discussed above, § 3345 incorporates the Attorney
25 General Succession Act by way of the latter's direct reference. Thus,
26 notwithstanding the fact that § 3345(a)(1) deems the first assistant to be the
27 successor to the officer of an executive agency, and notwithstanding the fact that
28 the Attorney General Succession Act provides that the Deputy Attorney General

1 is the first assistant to the Attorney General for the purpose of § 3345, the
2 President may still direct an officer or employee to fill the vacancy of Attorney
3 General.

4 Defendants argue that the FRVA is ineffective when another statutory
5 provision expressly designates an officer or employee to fill a vacant office.
6 Because the Attorney General Succession Act is such a statutory provision,
7 Defendants contend that the FVRA does not apply to the succession of the office
8 of Attorney General. Defendants base this argument on § 3347 of the FVRA.

9 § 3347 is entitled "Exclusivity" and states in relevant part:

10 (a) Sections 3345 and 3346 are the exclusive means for temporarily
11 authorizing an acting official to perform the functions and duties of
12 any office of an Executive agency (including the Executive Office of
13 the President, and other than the Government Accountability Office)
14 for which appointment is required to be made by the President, by
15 and with the advice and consent of the Senate, unless—

16 (1) a statutory provision expressly—

17 (A) authorizes the President, a court, or the head of an
18 Executive department, to designate an officer or employee to
19 perform the functions and duties of a specified office
temporarily in an acting capacity; or

(B) designates an officer or employee to perform the functions
and duties of a specified office temporarily in an acting
capacity

20 5 U.S.C. § 3347. The plain meaning of the text does not support Defendants'
21 argument. § 3347(a) first provides that the FVRA is the *exclusive* vehicle for
22 temporarily filling a vacancy in an office of an executive agency. It then allows
23 for an exception based on the express content of two particular kinds of statutes,
24 described in § 3347(a)(1)(A) and § 3347(a)(1)(B). The office of the Attorney
25 General falls under the exception underlined in § 3347(a)(1)(B), because the
26 Attorney General Succession Act is such a statute that "designates an officer or
27 employee to perform the functions and duties of a specified office temporarily in
28 an acting capacity." Thus, the office of the Attorney General is merely excepted

1 from the requirement in § 3347(a) that the FVRA be the exclusive means for
2 filling a vacancy. In the case of the office of Attorney General, both the Attorney
3 General Succession Act and the FVRA are available for determining which officer
4 or employee will fill a vacancy. The Attorney General Succession Act may
5 provide a default rule. Nonetheless, the President may choose to rely on the
6 FVRA and fill a vacancy with an officer or employee outside the line of
7 succession delineated in the Attorney General Succession Act.

8 Moreover, the language of the Attorney General Succession Act does not
9 mandate that the Deputy Attorney General must “exercise all the duties” of the
10 office of Attorney General in the case of a vacancy. See 28 U.S.C. § 508(a).
11 Instead, the statute reads that the Deputy Attorney General “*may* exercise all the
12 duties of that office.” *Id.* (emphasis added). The permissive, rather than
13 mandatory, use of may is a further indication that the statute is one vehicle for
14 filling a vacancy but not the only option available. See *Halo Elecs., Inc. v. Pulse*
15 *Elecs., Inc.*, 136 S. Ct. 1923, 1931 (2016) (noting that when interpreting statutory
16 text, the Supreme Court has “emphasized that the word ‘may’ clearly connotes
17 discretion”) (internal quotations and citations omitted).

18 **2. Legislative History**

19 The recent legislative history of the FVRA further supports the Court's
20 reading of the plain meaning of the statutes. “When the statute is ambiguous or
21 the statutory language does not resolve an interpretive issue, ‘our approach to
22 statutory interpretation is to look to legislative history.’” *SEC v. McCarthy*, 322
23 F.3d 650, 655 (9th Cir. 2003) (quoting *Nw. Forest Res. Council v. Glickman*, 82
24 F.3d 825, 834 (9th Cir. 1996)). While the Court does not find the text of either
25 the Attorney General Succession Act or the FVRA to be ambiguous with respect
26 to which statute applies when there is a vacancy in the office of the Attorney
27 General, the Court nonetheless examines the legislative history of the FVRA as it
28 reinforces the plain meaning of the statutes.

1 The most recent amendments to the FVRA were passed in 1998. Before
2 the new amendments were voted on, the Senate Committee on Governmental
3 Affairs published a report on the amendments as devised by the Senate. See
4 S. Rep. No. 250, 105th Cong., 2d Sess. (1998) (hereinafter the "Senate Report").
5 There are several distinctions between the draft presented in the Senate Report
6 and the statute that became law. Most relevant here is the fact that the version
7 in the Senate Report contained a provision that stated "[w]ith respect to the office
8 of the Attorney General of the United States, the provisions of section 508 of title
9 28 shall be applicable." Senate Report at 25. Moreover, in the analysis of this
10 provision, the Senate Report described that "[w]ith respect to a vacancy in the
11 office of the Attorney General, 28 U.S.C. S 508 will remain applicable. That
12 section ensures that Senate confirmed Justice Department officials will be the
13 only persons eligible to serve as Acting Attorney General." *Id.* at 13. The
14 amendments that went into effect in 1998, however, excluded this particular
15 provision in its entirety. Thus, not only is there nothing explicit in the FVRA nor
16 the Attorney General Succession Act to indicate that the Attorney General
17 Succession Act supersedes the FVRA, the legislative history reflects that
18 Congress considered this question and ultimately decided not to exclude the
19 office of Attorney General from the offices covered by the FVRA.

20 //

21 **B. The United States Attorney Has Had Authority to Bring this**
22 **Prosecution At All Times**

23 In addition to his statutory argument, Defendants also argue that the
24 appointment of Mr. Whitaker violates the Appointments Clause of Art. II of the
25 U.S. Constitution because he was not Senate confirmed. The Court, however,
26 need not reach the issue of whether the appointment was constitutional. "A
27 fundamental and longstanding principle of judicial restraint requires that courts
28 avoid reaching constitutional questions in advance of the necessity of deciding

1 them." *Lee v. Walters*, 433 F.3d 672, 677 (9th Cir. 2005) (quoting *Lyng v. Nw.*
2 *Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988)); see also *United*
3 *States v. Sandoval-Lopez*, 122 F.3d 797, 802 n.9 (9th Cir. 1997) ("We avoid
4 constitutional questions when an alternative basis for disposing of the case
5 presents itself."). Notwithstanding the constitutionality of the appointment of the
6 acting Attorney General, the United States Attorney in this district has had the
7 authority to prosecute Defendants' case. Therefore, dismissal on the basis of a
8 violation under the Appointments Clause is not warranted.

9 Defendants argue that if the appointment of Mr. Whitaker is
10 unconstitutional, the judicial appointment of the former U.S. Attorney, Mr. Adam
11 Braverman, violates the Appointments Clause as well since there was no Senate
12 confirmed Attorney General who directed and supervised his work at the time of
13 the return of the third superseding indictment. The Court disagrees. Mr.
14 Braverman held a valid appointment to his office and had statutory authorization
15 to prosecute offenses in this district. Moreover, Mr. Braverman was supervised
16 and directed by the Senate confirmed Deputy Attorney General, who Defendants
17 argue should be the acting AG under the Attorney General Succession Act.

18 First, the appointment of Mr. Braverman was constitutional and statutorily
19 valid. There is no dispute that the United States Attorney is an inferior officer.
20 See *United States v. Gantt*, 194 F.3d 987, 999 (9th Cir. 1999), *overruled on other*
21 *grounds by United States v. W.R. Grace*, 526 F.3d 499 (9th Cir. 2008). The
22 Appointments Clause provides that "Congress may by law vest the appointment
23 of such inferior officers, as they think proper, in the President alone, in the courts
24 of law, or in the heads of departments." U.S. Const. art. II, § 2, cl. 2. Under
25 U.S.C. § 546(d), Congress provided that when a temporary appointment of a
26 United States Attorney by the Attorney General expires, the district court may
27 appoint a United States Attorney to serve until the vacancy is filled. 28 U.S.C.
28 § 546(d). Thus, this Court's appointment of Mr. Braverman on March 12, 2018

1 was constitutional under the Appointments Clause and statutorily valid under 28
2 U.S.C. § 546(d).

3 Second, the United States Attorney has the authority to prosecute all cases
4 in his or her district. While the Attorney General is the head of the Department of
5 Justice, 28 U.S.C. § 503, the United States Attorney is the head federal
6 prosecutor in his or her judicial district, 28 U.S.C. § 541(a). Furthermore,
7 Congress has established that each United States Attorney, within his or her
8 district "shall—(1) prosecute for all offenses against the United States." 28
9 U.S.C. § 547(1). Thus, the United States Attorney has statutory authorization,
10 independent of any authorization by the office of the Attorney General, to conduct
11 prosecutions.

12 Third, the Deputy Attorney General, who Defendants argue should be the
13 acting Attorney General, is authorized to supervise the office of the United States
14 Attorney. Under 28 C.F.R. § 0.15(a), the "Deputy Attorney General is authorized
15 to exercise all the power and authority of the Attorney General, unless any such
16 power or authority is required by law to be exercised by the Attorney General
17 personally." 28 C.F.R. § 0.15(a). Moreover, according to the Justice
18 Management Division's description of the office of the Deputy Attorney General,
19 the "Deputy Attorney, appointed by the President with the advice and consent of
20 the Senate, is the Department's second-ranking official and functions as a Chief
21 Operating Officer; 25 components and 93 U.S. Attorneys report directly to the
22 Deputy and 13 additional components report to the Deputy through the Associate
23 Attorney General." *Department of Justice, Organization, Mission & Functions*
24 *Manual: Attorney General, Deputy and Associate*,
25 [https://www.justice.gov/jmd/organization-mission-and-functions-manual-attorney-](https://www.justice.gov/jmd/organization-mission-and-functions-manual-attorney-general#ag)
26 [general#ag](https://www.justice.gov/jmd/organization-mission-and-functions-manual-attorney-general#ag), (last visited Feb. 7, 2019). The current Deputy Attorney General,
27 Mr. Rod Rosenstein, was appointed by the President and confirmed by the
28 Senate and was sworn in to office on April 26, 2017. See *Department of Justice*,

1 *Meet the Deputy Attorney General*, [https://www.justice.gov/dag/staff-profile/meet-](https://www.justice.gov/dag/staff-profile/meet-deputy-attorney-general)
2 *deputy-attorney-general*, (last visited Feb. 7, 2019). The current Senate
3 confirmed Deputy Attorney General is both authorized and expected to direct and
4 supervise the United States Attorney in this district.

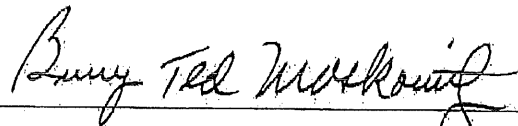
5 Thus, because Mr. Braverman was, and Mr. Brewer is, validly appointed,
6 authorized to prosecute federal offenses in this district, and supervised by a
7 Senate confirmed officer in the Department of Justice, the United States
8 Attorney's office has had the authority to prosecute the Defendants at all times
9 throughout this case, notwithstanding whether Mr. Whitaker's appointment as
10 acting Attorney General comports with the requirements under the Appointments
11 Clause.

12 IV. CONCLUSION AND ORDER

13 For the foregoing reasons, the Court **denies the motion to dismiss the**
14 **indictment.**

15 IT IS SO ORDERED.

16 Dated: February 11, 2019



Honorable Barry Ted Moskowitz
United States District Judge

Jury Verdict

947

1 MR. ZUGMAN: Your Honor, can I --

2 THE COURT: We will wait until 4:30. She has been
3 respectful to the Court so far.

4 MR. ZUGMAN: Can I take a look out in the courtyard
5 where -- thank you, your Honor.

6 (Mr. Zugman exits courtroom.)

7 (Mr. Zugman enters courtroom.)

8 MR. ZUGMAN: Your Honor, the model -- or the
9 instruction your Honor proposes is acceptable to Ms. Aragon.

10 MR. CARLOS: I agree, your Honor.

11 MR. JOHNSON: I agree.

12 THE COURT: We are in recess until 4:30 or until
13 another note.

14 I ask that Mr. Patara and Ms. Aragon wait in the
15 Pretrial Services waiting room on the sixth floor unless they
16 are with their counsel.

17 MR. ZUGMAN: Should I find her, your Honor, I will
18 make it clear.

19 (Recess taken at 3:54 p.m.)

20 (Court resumes at 4:30 p.m.)

21 THE COURT: All parties, including Ms. Aragon are
22 present and all counsel are present.

23 Rick, please state the time the note was received,
24 and read it into the record. And please show counsel the note.

25 THE CLERK: The note reads, "We have reached a

Jury Verdict

948

1 verdict. Ginger Matthews, foreperson." It was received at
2 4:14 p.m. today.

3 (Counsel handed document.)

4 THE COURT: Is there any reason we should not take
5 the verdict and individually poll the jury?

6 MR. CARLOS: No, your Honor.

7 MR. ZUGMAN: No, your Honor.

8 MR. JOHNSON: No, your Honor.

9 MS. PREWITT: No, your Honor.

10 THE COURT: Rick.

11 (Jurors enter.)

12 THE COURT: All the jurors are present.

13 We have received a note that says you have reached a
14 verdict. Who is the foreperson, and has the jury reached a
15 unanimous verdict as to all defendants and all counts?

16 JUROR MATHEWS: I'm the foreperson. And, yes, we
17 have reached a unanimous verdict on all counts for all
18 defendants.

19 THE COURT: Please say your name.

20 JUROR MATHEWS: Ginger Mathews, M-A-T-H-E-W-S.

21 THE COURT: Here is how we take the verdict.

22 First, you will hand the verdict to the clerk, and I
23 will inspect it to see that it was properly filled out.

24 Then he will return it to you, and you will read it
25 loud, verbatim. Then it will be shown to the lawyers. Then

Jury Verdict

949

1 the clerk will poll the jury by calling your names and asking
2 you individually, "Is this your verdict as presented and read,
3 as to all counts and all defendants?"

4 Here is how we take the verdict.

5 (Clerk handed document.)

6 (Judge handed document.)

7 (Clerk handed document.)

8 JUROR MATHEWS: Do I need to read the whole --

9 THE CLERK: (Nods head.)

10 THE COURT: One moment.

11 THE CLERK: One moment.

12 JUROR MATHEWS: Okay.

13 THE COURT: All parties and counsel, please stand for
14 the reading of the verdict.

15 JUROR MATHEWS: United States District Court of
16 Southern California, United States of America, plaintiff,
17 versus Mambasse Koulabalo Patara, one; German Ramirez-Gonzalez,
18 two; Mary Aragon, three, defendants. Case No. 18-CR-2342,
19 verdict.

20 We, the jury of the above-captioned case, return the
21 following unanimous verdict.

22 As to the charge in Count 1, that on or about April
23 24th, 2018, within the southern -- Southern District of
24 California, Defendants Mambasse Koulabalo Patara, German
25 Ramirez-Gonzalez, and Mary Aragon, with the intent to violate

Jury Verdict

950

1 the immigration laws of the United States, knowing and in
2 reckless disregard of the fact that an alien, namely, Fermin
3 Lopez, had come into, entered, and remained in the United
4 States in violation of the law, did transport and move said
5 alien within the United States in furtherance of such violation
6 of law, in violation of Title 8 United States Code Section
7 1324(a)(1)(A)(ii) and (v)(ii).

8 We find Mambasse Koulabalo Patara not guilty.

9 We find German Ramirez-Gonzalez guilty.

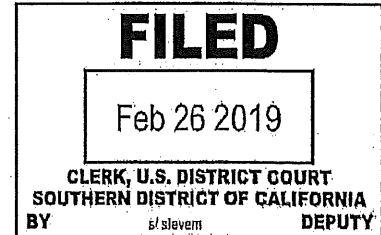
10 We find Mary Aragon guilty.

11 Two, as to the charge in Count 2, that on or about
12 April 24th, 2018, within the Southern District of California,
13 Defendants Mambasse Koulabalo Patara and Mary Aragon, with the
14 intent to violate the immigration laws of the United States,
15 knowingly and in reckless disregard of the fact that an alien,
16 namely, German Ramirez-Gonzalez, had come to, entered, and
17 remained in the United States in violation of law, did
18 transport and move said alien within the United States in
19 furtherance of such violation of law, in violation of Title 8,
20 United States Code Section 1324(a)(1)(A)(ii) and (v)(ii).

21 We find Mambasse Koulabalo Patara not guilty.

22 We find Mary Aragon guilty.

23 So say we all, dated February 22nd, 2019, in San
24 Diego, California, by myself, Ginger Mathews, foreperson of the
25 jury.



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No.: 18cr2342

Plaintiff,

VERDICT

vs.

MAMBASSE KOULABALO

PATARA (1)

GERMAN RAMIREZ-GONZALEZ

(2)

MARY ARAGON (3)

Defendants.

We, the jury in the above-captioned case return the following unanimous
verdict:

1. As to the charge in Count 1 that:

1 On or about April 24, 2018, within the Southern District of California,
2 defendants Mambasse Koulabalo Patara, German Ramirez-Gonzalez and Mary
3 Aragon, with the intent to violate the immigration laws of the United States,
4 knowing and in reckless disregard of the fact that an alien, namely, Fermin Lopez,
5 had come to, entered and remained in the United States in violation of law, did
6 transport and move said alien within the United States in furtherance of such
7 violation of law, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii)
8 and (v)(ii).

9
10 We find, Mambasse Koulabalo Patara NOT GUILTY.
11 (not guilty or guilty)

12
13 We find, German Ramirez-Gonzalez GUILTY.
14 (not guilty or guilty)

15
16 We find, Mary Aragon GUILTY.
17 (not guilty or guilty)

2. As to the charge in Count 2 that:

On or about April 24, 2018, within the Southern District of California, defendants Mambasse Koulabalo Patara and Mary Aragon, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, German Ramirez-Gonzalez, 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) and (v)(ii).

We find, Mambasse Koulabalo Patara

NOT GUILTY

(not guilty or guilty)

We find, Mary Aragon

GUILTY

(not guilty or guilty)

SO SAY WE ALL,

Dated:

2/22/2019
San Diego, California

GINGER MATTHEWS

Foreperson of the Jury

AO 245B (CASDRev. 02/18) Judgment in a Criminal Case

FILED

Mar 20 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY /s/ Steven DEPUTY

UNITED STATES OF AMERICA
V.
GERMAN RAMIREZ-GONZALEZ (2)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:18-CR-02342-BTM

Knut Johnson
Defendant's Attorney

REGISTRATION NO. 01588-359

☐ -

THE DEFENDANT:

☐ pleaded guilty to count(s) of the -
☒ was found guilty on count(s) after a plea of not guilty 1 of the Third Superseding Indictment

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

Title and Section / Nature of Offense

8:1324(A)(1)(A)(II); (V)(II) - Transportation Of Certain Aliens and Aiding and Abetting

Count
155

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) are dismissed on the motion of the United States.

☒ Assessment: \$100.00
Waived and Remitted

JVTA Assessment*: \$5000 Waived

☒ *Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

☒ No fine ☐ 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.

March 20, 2019

Date of Imposition of Sentence

Barry Ted Moskowitz
HON. BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE


AO 245B (CASD Rev. 02/18) Judgment in a Criminal Case

DEFENDANT: GERMAN RAMIREZ-GONZALEZ (2)
CASE NUMBER: 3:18-CR-02342-BTM

Judgment - Page 2 of 4

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of:
Time served (259 Days) as to count 1ss.


HON. BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b);
- ☐ The court makes the following recommendations to the Bureau of Prisons:

- ☐ 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. 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:
 - ☐ on or 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

AO 245B (CASD Rev. 02/18) Judgment in a Criminal Case

DEFENDANT: GERMAN RAMIREZ-GONZALEZ (2)
CASE NUMBER: 3:18-CR-02342-BTM

Judgment - Page 3 of 4

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:
Two (2) Years as to count 1ss.

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 unless removed from the United States.

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 section 3583(a)(7) and 3583(d).
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, 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 a restitution obligation, it shall be 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 shall 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.

AO 245B (CASD Rev. 02/18) Judgment in a Criminal Case

DEFENDANT: GERMAN RAMIREZ-GONZALEZ (2)
CASE NUMBER: 3:18-CR-02342-BTM

Judgment - Page 4 of 4

SPECIAL CONDITIONS OF SUPERVISION

1. If deported, excluded, or allowed to voluntarily leave the United States, obey all laws federal, state and local and not reenter or attempt to reenter the United States illegally and report to the probation officer within 72 hours of any reentry to the United States; the other conditions of supervision are suspended while the defendant is out of the United States after deportation, exclusion, or voluntary departure.
2. Not reenter the United States illegally.
3. Not possess any narcotic drug or controlled substance without a lawful medical prescription, under federal law.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

Jun 06 2019

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES OF AMERICA

V.

MARY ARAGON (3)
aka Mary Delgado

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:18-CR-02342-BTM

David Zugman
Defendant's Attorney

DSM Number 77057-112

☐ -

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☒ was found guilty on count(s) 1 and 2 of the 3rd Superseding Indictment
after a plea of not guilty.

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

Title and Section / Nature of Offense

8:1324(A)(1)(A)(II), (V)(II) - Transportation Of Certain Aliens and Aiding and Abetting
8:1324(A)(1)(A)(II), (V)(II) - Transportation Of Certain Aliens and Aiding and Abetting

Count

1s

2s

The defendant is sentenced as provided in pages 2 through 5 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) 2nd Superseding Indictment is dismissed on the motion of the United States.

☒ Assessment: \$200.00

Pursuant to the motion of the United States under 18 USC 3573, the special assessment provided for under 18 USC 3013 is waived and remitted as uncollectible.

☒ JVT Assessment*: \$ 5000.00 Waived

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

☒ No fine ☐ Forfeiture pursuant to order filed _____, included herein.

IT IS ORDERED that the defendant must 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 must notify the court and United States Attorney of any material change in the defendant's economic circumstances.

May 20, 2019

Date of Imposition of Sentence

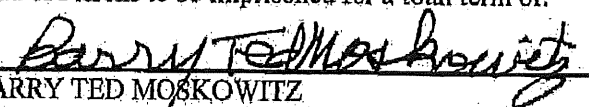
Barry Ted Moskowitz
HON. BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE

DEFENDANT: MARY ARAGON (3)
CASE NUMBER: 3:18-CR-02342-BTM

Judgment - Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Time served (126 Days) as to count 1s and count 2s to run concurrent


Hon. BARRY TED MOSKOWITZ
UNITED STATES DISTRICT JUDGE

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
- ☐ The court makes the following recommendations to the Bureau of Prisons:

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

☐ The defendant must surrender to the United States Marshal for this district:

☐ at _____ A.M. on _____

☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ on or 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

DEFENDANT: MARY ARAGON (3)
CASE NUMBER: 3:18-CR-02342-BTM

Judgment - Page 3 of 5

SUPERVISED RELEASE

Upon release from imprisonment, the defendant will be on supervised release for a term of:
Two (2) years on counts 1s and 2s to run concurrent.

MANDATORY CONDITIONS

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant must 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 the 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)
4. ☐ The defendant must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. ☐ The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7. ☐ The defendant must participate in an approved program for domestic violence. (check if applicable)

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: MARY ARAGON (3)
CASE NUMBER: 3:18-CR-02342-BTM

Judgment - Page 4 of 5

STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: MARY ARAGON (3)
CASE NUMBER: 3:18-CR-02342-BTM

Judgment - Page 5 of 5

SPECIAL CONDITIONS OF SUPERVISION

1. Submit person, property, residence, office and 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.
2. Not enter the Republic of Mexico without written permission of the Court or probation officer.
3. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
4. Not possess any narcotic drug or controlled substance without a lawful medical prescription under Federal Law.
5. Participate in a program of mental health treatment as directed by the probation officer. The Court authorizes the release of the pre-sentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. The defendant shall consent to the release of evaluations and treatment information to the probation officer and the Court by the mental health provider.

10 NOV 15 PM 4:44

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY

Sh DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

June 2017 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAMBASSE KOULABALO PATARA (1),
GERMAN RAMIREZ-GONZALEZ (2),
MARY ARAGON (3),
aka Mary Delgado,

Defendants.

Case No. 18CR2342-BTM

I N D I C T M E N T
(3rd Superseding)

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

The grand jury charges:

Count 1

On or about April 24, 2018, within the Southern District of California, defendants MAMBASSE KOULABALO PATARA, GERMAN RAMIREZ-GONZALEZ and MARY ARAGON, aka Mary Delgado, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Fermin Lopez, 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) and (v)(II).

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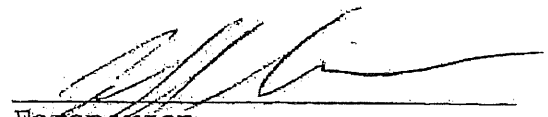
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Count 2

On or about April 24, 2018, within the Southern District of California, defendants MAMBASSE KOULABALO PATARA and MARY ARAGON, aka Mary Delgado, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, German Ramirez-Gonzalez, 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) and (v)(II).

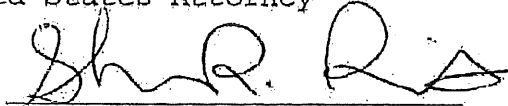
DATED: November 14, 2018.

A TRUE BILL:

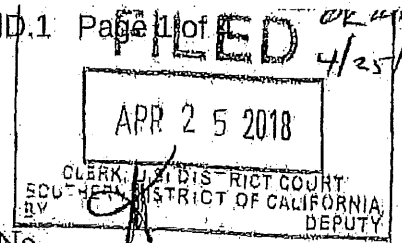

Foreperson

ADAM L. BRAVERMAN
United States Attorney

By:


SHAUNA R. PREWITT
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



UNITED STATES OF AMERICA,

Plaintiff,

v.

Mambasse Koulabalo PATARA,

Defendant.

Magistrate Docket No.

18MJ1979

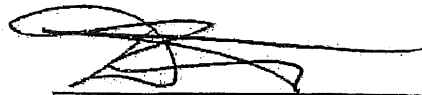
COMPLAINT FOR VIOLATION OF:

Title 8, USC 1324(a)(1)(A)(ii)
Transportation of Illegal Aliens

The undersigned complainant being, duly sworn, states:

On or about April 24, 2018, within the Southern District of California, defendant Mambasse Koulabalo PATARA, with the intent to violate the immigration laws of the United States, knowing or in reckless disregard of the fact that certain aliens, namely, Fermin LOPEZ and German RAMIREZ-Gonzalez, had come to, entered and remained in the United States in violation of law, did transport and move, said aliens 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).

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.



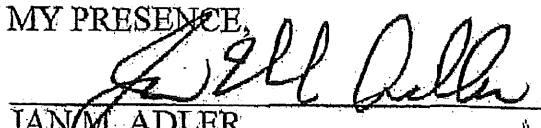
SIGNATURE OF COMPLAINANT

David R. Steiman

Border Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE,

THIS 25th DAY OF April, 2018 .



JAN M. ADLER

United States Magistrate Judge

CONTINUATION OF COMPLAINT:

Mambasse Koulabalo PATARA

PROBABLE CAUSE STATEMENT

Furthermore, the complainant states that Fermin LOPEZ and German RAMIREZ-Gonzalez, are citizens of a country other than the United States; that said aliens have admitted that they are exportable; that their testimony is material, that it is impracticable to secure their attendance at the trial by subpoena; and they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144.

On April 24, 2018, Border Patrol Agents F. Gamez and A. Moreno were assigned to the Interstate 8 Border Patrol Immigration checkpoint near Pine Valley, California. The checkpoint is located approximately twelve miles north of the United States/Mexico International Boundary, and eight miles east of the Tecate, California Port of Entry. All warnings signs, cones and lights were operational.

At approximately 12:15 AM, Agent Gamez observed a Black 2006 Toyota Corolla four door sedan approach the primary inspection area. Agent Gamez noticed the vehicle was occupied by a driver, later identified as Mambasse Koulabalo PATARA, a male front passenger, later identified as German RAMIREZ-Gonzalez, and another individual sleeping in the backseat later identified as Fermin LOPEZ.

As the vehicle came to a complete stop at the primary position, PATARA immediately stated he is a United States Citizen, an off duty police officer and showed a Los Angeles Police Department identification card. PATARA appeared to be nervous and was visibly shaking. PATARA also stated the LAPD does not give their officers badges. Agent Gamez immediately noticed RAMIREZ appeared very nervous and constantly kept looking away and avoided eye contact.

Agent Gamez asked PATARA what LOPEZ' citizenship was. PATARA said LOPEZ is a United States citizen. Agent Gamez then woke up LOPEZ, and asked him where he was from and if he was a United States citizen. LOPEZ said yes but answered as if he didnt understand the question. Agent Gamez repeated his questions in the Spanish language and LOPEZ said he is a United States citizen and did not have any kind of photographic identification.

Agent Gamez asked PATARA where they were coming from. PATARA said they were coming from the Golden Acorn Casino. PATARA and LOPEZ appeared very nervous, and due to this behavior, Agent Gamez referred the subjects and vehicle to secondary inspection for further questioning and document checks.

CONTINUATION OF COMPLAINT:

Mambasse Koulabalo PATARA

As the vehicle pulled into the secondary inspection area, Border Patrol Agent A. Moreno approached it and began to talk to the PATARA. At this point, PATARA informed Agent Moreno that he was a police officer with the Los Angeles Police Department and that he was in possession of his service issued weapon. PATARA handed Agent Moreno what appeared to be a legitimate Los Angeles Police Department identification card. Agent Moreno then had PATARA exit the vehicle. Agent Moreno performed a pat down on PATARA, discovered a pistol concealed in the rear of PATARA's waistband and secured the weapon. Agent Moreno then performed an immigration inspection on both RAMIREZ and LOPEZ. Both RAMIREZ and LOPEZ stated that they did not possess immigration documents that would allow them to enter or remain in the United States legally.

PATARA, RAMIREZ and LOPEZ were transported to the Campo Border Patrol Station for further investigation. At the station, both RAMIREZ and LOPEZ were queried through various Department of Homeland Security databases. RAMIREZ and LOPEZ were confirmed to be illegally present in the United States. At approximately 1:30 AM, PATARA, RAMIREZ, and LOPEZ were placed under arrest.

Material witnesses Fermin LOPEZ, and German RAMIREZ-Gonzalez admitted to being citizens of Mexico illegally present in the United States. Neither of the material witnesses claimed to have made any smuggling arrangements.

LOPEZ stated that he illegally entered the United States along with RAMIREZ, his nephew, on April 22, 2018 between the hours of ten and eleven in the morning. LOPEZ stated that they walked for a day and a half before reaching the Golden Acorn Casino. LOPEZ stated that once arriving at the casino, he washed up in one of the bathrooms. Shortly after exiting the bathroom, RAMIREZ informed him that he was able to procure transportation. LOPEZ was unsure how RAMIREZ was able to convince an unknown person to give them a ride. LOPEZ was instructed by RAMIREZ to get into the black four door sedan. LOPEZ sat in the rear seat until they arrived at the Border Patrol checkpoint.

RAMIREZ claimed he and LOPEZ illegally crossed the border six days prior. They were able to get a ride to Los Angeles, California by an unknown individual. RAMIREZ continued to say he has known PATARA for about five years. RAMIREZ referred to PATARA by his first name. RAMIREZ also said he has done some work on PATARA's property. Referring to his arrest with PATARA, RAMIREZ said that he decided to travel with PATARA from San Fontana, California to the Viejas Casino in Alpine, California. They gambled at the

CONTINUATION OF COMPLAINT:

Mambasse Koulabalo PATARA

Viejas Casino for approximately one hour then they decided to go to the Golden Acorn Casino in Campo, California. He stated that they were at the Golden Acorn Casino for approximately 10 to 15 minutes. They left the casino between 8:00 PM and 9:00 PM and drove towards Los Angeles. When asked if they had made any stops, RAMIREZ stated that they drove directly from the casino to the checkpoint. When asked if he knew how long the drive is from the casino to the checkpoint, he replied that we should know that since we work the area. RAMIREZ stated that the vehicle never traveled east of the Golden Acorn Casino. RAMIREZ was asked how it was possible for a 15-20 minute drive to the checkpoint took over three hours RAMIREZ stated that he does not know.

When presented with a photographic lineup Material witness German RAMIREZ-Gonzalez was able to positively identify PATARA as the driver in this smuggling event.

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U.S. DISTRICT COURT

BY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

June 2017 Grand Jury

18CR2342BTM

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAMBASSE KOULABALO PATARA,

Defendant.

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

The grand jury charges:

Count 1

On or about April 24, 2018, within the Southern District of California, defendant MAMBASSE KOULABALO PATARA, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Fermin Lopez, 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).

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Count 2

On or about April 24, 2018, within the Southern District of California, defendant MAMBASSE KOULABALO PATARA, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, German Ramirez-Gonzalez, 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).

DATED: May 9, 2018.

A TRUE BILL:


Foreperson

ADAM L. BRAVERMAN
United States Attorney

By:


LARA STINGLEY
Assistant U.S. Attorney

FILED

18 JUL -5 PM 12:11

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *WPC*

DEPUTY

June 2017 Grand Jury

UNITED STATES OF AMERICA,
Plaintiff,

v.

MAMBASSE KOULABALO PATARA (1),
GERMAN RAMIREZ-GONZALEZ (2),
Defendants.

Case No. 18CR2342-BTM

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

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

The grand jury charges:

On or about April 24, 2018, within the Southern District of California, defendants MAMBASSE KOULABALO PATARA and GERMAN RAMIREZ-GONZALEZ, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Fermin Lopez, 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) and (v)(II).

DATED: July 5, 2018.

A TRUE BILL:

[Signature]
Foreperson

ADAM L. BRAVERMAN
United States Attorney

By: *[Signature]*

LARA A. STINGLEY
Assistant U.S. Attorney

UNSEALED PER ORDER OF COURT

SEALED

10/10/18
all

18 OCT -4 PM 2:36

CLERK U.S. DISTRICT COURT
COURT DISTRICT OF CALIFORNIA

SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

June 2017 Grand Jury

UNITED STATES OF AMERICA,

Case No. 18CR2342-BTM

Plaintiff,

I N D I C T M E N T
(2nd Superseding)

v.

MAMBASSE KOULABALO PATARA (1),
GERMAN RAMIREZ-GONZALEZ (2),
MARY ARAGON (3),
aka Mary Delgado
Defendants.

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

The grand jury charges:

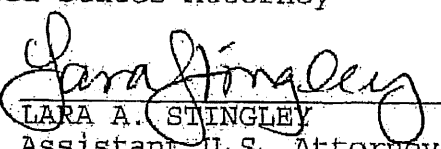
On or about April 24, 2018, within the Southern District of California, defendants MAMBASSE KOULABALO PATARA, GERMAN RAMIREZ-GONZALEZ and MARY ARAGON aka Mary Delgado, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that an alien, namely, Fermin Lopez, 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) and (v)(II).

DATED: October 4, 2018.

A TRUE BILL:


Foreperson

ADAM L. BRAVERMAN
United States Attorney

By: 
LARA A. STINGLEY
Assistant U.S. Attorney

App.41

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1 the first thing that Mr. Patara said was he was an off-duty
2 LAPD officer, and he had his -- an ID card with him stating
3 LAPD.

4 Q. And did he display that ID card?

5 A. Yes, he did.

6 Q. Had you asked him anything at that point?

7 A. No, I hadn't asked him anything.

8 Q. After he said that to you, what was your response?

9 A. I -- I went back to my immigration question, which is if
10 he -- if he was a United States citizen.

11 Q. And what was his response to that question?

12 A. He said, "Yes."

13 Q. And what did you do next?

14 A. I then asked the front passenger if he was a United States
15 citizen.

16 Q. And what was his response?

17 A. He said he was, "Yes."

18 Q. And in connection with the front seat passenger, how would
19 you describe his demeanor?

20 A. He kept avoiding eye contact, looking around our
21 checkpoint, very nervous. Really wouldn't pay attention to
22 when I was asking him the question.

23 Q. And after you finished asking the front seat --

24 THE COURT: So I'll ask the jury to disregard the
25 conclusions by the witness that the front seat passenger was

1 first?

2 Mr. Johnson, I'm glad to have you back. A couple hours,
3 and you would have gotten stuck.

4 MR. JOHNSON: Thank you very much, Your Honor. I
5 think I dodged a bullet by about eight hours,

6 THE COURT: Right.

7 Do you want to -- Mr. Zugman said you want to go first.

8 MR. JOHNSON: Yes, Your Honor.

9 I -- so we're bringing a general Rule 29 as to all the
10 elements of the offense. I do have something short I can file
11 if the Court would take it under submission.

12 My major point is that he is at all times a passenger in
13 this scheme. It's unclear to me even at this point which
14 particular acts the Government are alleging are aiding and
15 abetting, and since the indictment alleges on or about the
16 24th, I'm assuming we're talking about the travel to the
17 checkpoint on that date.

18 But with the Government -- I would ask the Government to
19 clarify that, what they intend to argue. And with that, I
20 would submit it and ask the Court permission to file a very
21 short brief on that later.

22 THE COURT: Well, if I'm going to rule on it now, the
23 briefs, I guess, would be in support of a motion once all the
24 evidence is in.

25 MR. JOHNSON: That -- that's right, and so the major

1 point I wanted to write up is the fact that he is at all times
2 a passenger. There's no evidence that he ever drove a car, and
3 we believe that, based on the simple fact that he's just a
4 passenger, he can't be part of a criminal enterprise in a 1324
5 prosecution. And I have a case that says that, and I should
6 note that Mr. Zugman found the case and shared it with me. So
7 he gets the credit for this.

8 Now, it is actually a guidelines issue as presented to the
9 Ninth Circuit where a defendant said, "You" -- "you cannot give
10 me a reckless endangerment for recklessly endangering the
11 passengers in a vehicle because they are participants in the
12 offense."

13 And the Government said -- or the Court -- or excuse me --
14 the Ninth Circuit said, "No. The people who are passengers are
15 not part of the criminal enterprise."

16 And the Government, about five or six years after that
17 fact, couldn't find any citations to that case other than the
18 United States arguing it in a case in Arizona, *United States v.*
19 *Arizona*, that went to the Supreme Court where the Government
20 made the point that Arizona's statutory scheme that
21 criminalized certain alien transportation conduct was
22 unconstitutional.

23 And one of the cases they relied upon was that specific
24 case where the Ninth Circuit had said passengers are not part
25 of the criminal enterprise, and that differed somewhat from

1 the -- the Arizona scheme.

2 So my point of all that is that -- and, again, it becomes
3 very simple. My client was a passenger, never drove a car.
4 And based on the evidence as it stands and the indictment as it
5 stands, I believe there's insufficient evidence to convict him
6 of aiding and abetting or transporting any aliens.

7 THE COURT: Let's hear from the Government.

8 MS. PREWITT: Yes, Your Honor.

9 First, I'll begin by pointing out that the statute in the
10 case, 8 U.S.C. 1324, does criminalize those who aid or abet the
11 commission of any of the preceding acts, and one of those
12 preceding acts is transporting illegal aliens.

13 The United States, of course, has charged that
14 aiding-and-abetting section of the statute as well as the
15 substantive offense, and the United States believes that
16 there's ample evidence here for the jury to conclude that
17 defendant Ramirez did aid and abet in the transportation in
18 this case.

19 Now, the indictment in this case does charge that on or
20 about April 24th that this event occurred. However, there are
21 numerous acts that the United States would argue is part and
22 parcel of the entire offense leading up to that April 24th
23 attempt to make it through the checkpoint, and the United
24 States believes that the following would be sufficient for the
25 jury to find beyond a reasonable doubt that the defendant

1 committed a transportation offense through an
2 aiding-and-abetting theory.

3 The facts and evidence show that Mr. Ramirez arranged for
4 Aragon to pick him and Mr. Lopez up in the United States after
5 they illegal -- illegally crossed on April 21st. And then they
6 were brought to El Centro, where they waited out to see how
7 they were going to get through the checkpoint.

8 He then on April 23rd, leading up to the morning of the
9 24th, arranged with Mr. Patara to be transported to the Los
10 Angeles area; that when they were at the McDonald's, he
11 directed Lopez -- Mr. Lopez to get into Mr. Patara's car; that
12 on the route from the McDonald's to the casino, he -- defendant
13 Aragon, defendant Patara, and Ms. Hernandez, Mr. Patara's wife,
14 shared information about the Border Patrol and the operational
15 status of the checkpoint.

16 They also spoke about the checkpoint at the McDonald's in
17 the parking lot, Mr. Ramirez and Mr. Patara. At the
18 checkpoint, while they were waiting in line --

19 THE COURT: I think that is enough. If the jury
20 believes what Mr. Lopez said as to what happened at the
21 McDonald's, that would be enough by itself.

22 MR. JOHNSON: Your Honor, I would -- I understand the
23 direction the Court's going. I would simply point out that the
24 Government indicted this case as on or about the 24th, and they
25 didn't indict it once. They indicted it, I think, three or

1 thank you for Your Honor's clarification with respect to the
2 transportation charge. That's exactly what Ms. Aragon intends
3 on arguing, that the Government needs to prove that she aided
4 and abetted with respect to the transportation to the
5 checkpoint.

6 And I submit that the Government at this point has mere
7 presence. All they -- the best they have is the phone call
8 between Ms. Aragon and Mr. Ramirez after Ms. Aragon goes
9 through an open checkpoint. But as I pointed out in opening
10 statement, going through an opening checkpoint isn't -- open
11 checkpoint isn't going to help the smuggling.

12 If you're scouting, you're scouting to say the checkpoint
13 is closed, not that it's open.

14 MS. PREWITT: Your Honor, we would again disagree. We
15 think that there is sufficient evidence again that Ms. Aragon
16 aided the transportation but also that she participated in a
17 transportation offense herself. She is the one that took
18 Mr. Ramirez and Mr. Lopez to the McDonald's meeting point,
19 which is where they then, Mr. Patara and Mr. Ramirez, had
20 discussions about the checkpoint.

21 And then when they were driving to the checkpoint, we have
22 those kind of text messages at issue, the one from
23 Ms. Hernandez, Mr. Patara's wife, to him stating that "Be
24 careful. Border Patrol just passed." We have one minute after
25 that text message is received Mr. Ramirez and Ms. Aragon

1 speaking to each other on the phone.

2 We then, of course, have -- once they get to the
3 checkpoint -- a couple minutes before they pass through the
4 checkpoint, Ms. Aragon and Mr. Ramirez are speaking to each
5 other. And then one minute after she passes through the
6 checkpoint, we have that very long conversation, almost nine
7 minutes, where we know that the guys are at the casino and
8 Ms. Aragon and Ms. Hernandez are -- are at the checkpoint.

9 We think that the strong inference there, Your Honor, is
10 that they are continuing the discussion that began at the
11 McDonald's, and that's the discussion about the checkpoint and
12 its status.

13 The fact that it was open, we believe, is neither here nor
14 there. The evidence established that the checkpoint had just
15 recently opened again after being closed for a long period of
16 time and that when it reopened, it was opened nearly 24/7
17 unless inclement weather was at play.

18 And so we think that it's still absolutely reasonable and
19 an inference that the jury could draw that a person could still
20 be scouting even if the information back is not "The checkpoint
21 is closed" but the information back is "Hey, I just got waved
22 through, and so did the people around me."

23 THE COURT: I agree with you. Ms. Prewitt's facts
24 would be sufficient for a reasonable jury to find that there
25 was actual transportation or aiding and abetting.

1 So the motion as to Mr. Ramirez and Ms. Aragon is denied.

2 MR. CARLOS: So, Your Honor, as to Mr. Patara,
3 certainly from the evidence that's been presented, he's in a
4 much different position. There's absolutely no evidence that
5 he was involved in any of the conversations in Mexico. There's
6 absolutely no evidence that he was involved in any
7 conversations that took place the week before the incident or
8 the day before the incident.

9 So the first contact that Mr. -- that Mr. Patara has is
10 really in the afternoon of the -- of the incident that we're at
11 trial for. There's no evidence of what the conversation was
12 about other than he was going to meet them. Mr. Patara at some
13 point asked them can they get to the 15, which means that he's
14 not concerned with any type of checkpoint.

15 There's -- there's really nothing here other than
16 speculation and innuendo because he's present with them, and
17 mere presence is not enough. The only thing that kind of ties
18 it all together is Mr. Lopez's testimony and his testimony now
19 for the first time that he heard something about a checkpoint
20 in the parking lot.

21 But Your Honor was present in court while this individual
22 testified under oath under questioning from one, two, three,
23 four different lawyers. He never said anything about this
24 conversation about the checkpoint. He was asked by the
25 prosecution what happened -- you know, what happened, you know,

1 **THE COURT:** All right. And so fill it out and bring
2 it into court when you come in,

3 Thank you for your attention and for your courtesy. Have
4 a safe trip home.

5 Remember the rules that govern the conduct of jurors. Do
6 not discuss the case, the people involved, or the issues
7 involved among yourselves or with anyone else. If someone
8 should try to talk to you, please report it to me as soon as
9 you can.

10 Don't do any research on the case, and you cannot look up
11 things on the Internet, even in the Dictionary. If you need a
12 word defined, I will do it for you. And avoid any news stories
13 that may even in the most remote way bear in relation to the
14 case.

15 And finally, do not form any opinion about the case. You
16 haven't heard the instructions by the Court, and most
17 importantly, you haven't heard the views of your fellow jurors.
18 Please keep an open mind until then.

19 Thank you. Have a safe trip home and an enjoyable
20 evening.

21 (Proceedings were heard out of the presence of the jury:)

22 **THE COURT:** Before we take a break, was there anything
23 you wanted to go over? We need to do the Rule 29 motion.

24 **MR. ZUGMAN:** Yes, Your Honor. I think we were just
25 waiting for you to grant the Rule 29's.

1 (Laughter)

2 MR. JOHNSON: Correct.

3 MR. CARLOS: Join, Your Honor.

4 THE COURT: Do you want to specify your grounds?

5 MR. ZUGMAN: I don't, Your Honor. I'd rather keep it
6 general as per the case law.

7 MR. JOHNSON: I'll simply submit it as argued
8 previously, Your Honor.

9 MR. CARLOS: And, Your Honor, with regard to Mr.
10 Patara, I would submit on my arguments at the close of the
11 Government's case.

12 THE COURT: The Government's position?

13 MS. PREWITT: Your Honor, I think we can submit as
14 well.

15 THE COURT: I think the Government has met the test
16 for a denial of the motion, and so it is denied.

17 MR. JOHNSON: Thank you, Your Honor.

18 MR. ZUGMAN: Thank you, Your Honor.

19 MR. CARLOS: Thank you, Your Honor.

20 THE COURT: We'll see you tomorrow at 9:30.

21 I would like you to go over the physical evidence to make
22 sure it is all there.

23 All right. We'll take a break before we begin the evening
24 session.

25 MR. JOHNSON: I think that's called night court,

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Feb 26 2019

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *sl/stevam* DEPUTY

UNITED STATES OF AMERICA,

Case No. 18cr2342-BTM

Plaintiff,

vs.

JUDGMENT OF DISMISSAL

Mambasse Koulabalo Patara,

Defendant.

IT APPEARING that the defendant is now entitled to be discharged for the reason that:

- ☐ an indictment has been filed in another case against the defendant and the Court has granted the motion of the Government for dismissal of this case, without prejudice; or
- ☐ the Court has dismissed the case for unnecessary delay; or
- ☐ the Court has granted the motion of the Government for dismissal, without prejudice; or
- ☐ the Court has granted the motion of the defendant for a judgment of acquittal; or
- ☐ a jury has been waived, and the Court has found the defendant not guilty; or
- ☒ the jury has returned its verdict, finding the defendant not guilty;
- ☒ of the offense(s) as charged in the 3rd Superseding Indictment:

Count 1: 8:1324(a)(1)(A)(ii), (v)(II) - Transportation of Certain Aliens and Aiding and Abetting

Count 2: 8:1324(a)(1)(A)(ii), (v)(II) - Transportation of Certain Aliens and Aiding and Abetting

Dated: 2/22/2019

Barry Ted Moskowitz
Hon. Barry Ted Moskowitz
United States District Judge

1 the checkpoint?

2 A. Yes.

3 Q. Okay. And what were your duties on the midnight shift?
4 where were you assigned?

5 A. I was -- I arrived at the primary inspection.

6 Q. Okay. Now, I'd like you to take a look at Government's
7 Exhibit 4. Was this -- was this a photograph that was taken on
8 the 24th a little bit after midnight?

9 A. Yes.

10 Q. And do you recognize this photograph?

11 A. Yes.

12 MR. COUGHLIN: Your Honor, at this time I'd like to
13 move into evidence Government's Exhibit 4.

14 MR. CARLOS: No objection.

15 MR. ZUGMAN: No objection.

16 MR. JOHNSON: No objection.

17 THE COURT: 4 in evidence.

18 (Government's Exhibit 4 received in evidence)

19 BY MR. COUGHLIN:

20 Q. Could you tell us what Government's Exhibit 4 depicts?

21 A. That is me on primary inspection area with the Toyota
22 Corolla, and I'm sending it through into secondary inspection.

23 Q. Is this the Toyota Corolla that was driven by Mr. Patara?

24 A. Yes.

25 Q. Okay. I'd like you to take a look at Government's

1 Exhibit 4A and ask you if you recognize it.

2 A. Yes, I do.

3 Q. And is that an accurate photograph of the area you were
4 working that evening --

5 A. Yes.

6 Q. -- at around 10 minutes after midnight?

7 A. Yes.

8 Q. It appears as though the photograph also dates and
9 timestamp; is that correct?

10 A. Yes.

11 MR. COUGHLIN: Your Honor, at this time I'd like to
12 move into evidence Government's Exhibit 4A.

13 MR. CARLOS: No objection.

14 MR. ZUGMAN: No objection.

15 MR. JOHNSON: No objection.

16 THE COURT: 4A in evidence.

17 (Government's Exhibit 4A received in evidence)

18 BY MR. COUGHLIN:

19 Q. So in connection with 4A, it looks like at this time of
20 day, is that what you meant by just one lane being operational?

21 A. Yes.

22 Q. And could you tell us who else is present in this
23 photograph?

24 A. Some of the K9 inspectors are there.

25 Q. Okay. Is that you speaking to the driver there of the

1 Toyota Corolla?

2 A. Yes, that is me.

3 Q. All right. And is this particular border patrol unit, does
4 that block the lane so just one lane can come through?

5 A. Correct.

6 Q. All right. So in connection with motorists, do they pull
7 up to where you're standing, and you're going to have contact
8 with them? Is that generally what happens?

9 A. Yes.

10 Q. Do people always pull all the way up to where you're
11 standing?

12 A. No, not always.

13 Q. What would be -- what has been some of your experience of
14 people pulling up to the checkpoint where you're standing?

15 MR. JOHNSON: Objection, relevance.

16 THE COURT: Sustained.

17 BY MR. COUGHLIN:

18 Q. When a car doesn't pull all the way up, does that raise
19 your suspicion in connection with your inspection?

20 MR. CARLOS: Objection. It's leading.

21 THE COURT: Sustained.

22 BY MR. COUGHLIN:

23 Q. Do you have cars that don't actually pull all the way to
24 your location?

25 A. Yes.

1 Q. And how often does that happen?

2 A. It's rare.

3 Q. And when that happens, what do you believe is occurring?

4 MR. CARLOS: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. COUGHLIN:

7 Q. Now, have you had a chance to view a video in connection
8 with this time period?

9 A. Yes.

10 Q. And does it accurately depict the events on April 24th
11 involving the Toyota Corolla and its occupants?

12 A. Yes.

13 Q. And have you had an opportunity to look at a disk that's up
14 there in front of you?

15 A. Yes.

16 Q. And does this accurately depict the video that we're about
17 to see?

18 A. Yes.

19 MR. COUGHLIN: Your Honor, at this time I'd like to
20 move into evidence Government's Exhibit 5, which is a video of
21 the time that Mr. Patara was in primary.

22 MR. CARLOS: No objection.

23 MR. ZUGMAN: No objection.

24 MR. JOHNSON: No objection.

25 THE COURT: I will allow it in, but first, do you have