
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SYLVIA OLIVAS, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

Petitioner, through counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs and to proceed in forma pauperis. Counsel was appointed in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b). This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

December 1, 2023

s/ Carlton F. Gunn
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Attorney at Law

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SYLVIA OLIVAS, PETITIONER,

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UNITED STATES, RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Rule 704(b) of the Federal Rules of Evidence provides:

In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

The question is: Does Rule 704(b) permit a government expert witness to testify about certain roles in criminal activity, that people in those roles are knowing participants in the criminal activity, and then that a particular defendant played one of those roles in the case at bar?

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**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Sylvia Olivas petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The panel decision of the court of appeals is available in the Westlaw database at 2023 WL 4105308, and reprinted in the Appendix to the Petition (“App.”) at A001-09. The Ninth Circuit’s order denying en banc review is reprinted at App. A010-11. The relevant proceedings in the district court are unpublished.

JURISDICTIONAL STATEMENT

The court of appeals memorandum disposition was filed on June 21, 2023. *See* App. A001. A timely petition for rehearing en banc was denied on September 27, 2023. *See* App. A010. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

Rule 704 of the Federal Rules of Evidence provides:

(a) **In General – Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

INTRODUCTION

An essential element of most offenses – including the offenses Ms.

Olivas was convicted of in the present case – is that the defendant know she is committing the crime and intend to commit it. This element is “necessary to separate wrongful conduct from ‘otherwise innocent conduct.’” *Ruan v. United States*, 142 S. Ct. 2370, 2376-77 (2022) (quoting *Elonis v. United States*, 575 U.S. 723, 736 (2015)).

This petition concerns how this element may be proven. The case may be fairly characterized as a sister case to *Diaz v. United States*, No. 23-14 (cert. granted Nov. 13, 2023), in which the Court granted certiorari earlier this term. The question presented in *Diaz* is whether Rule 704(b) allows an expert to testify that drug couriers driving cars across the border usually know the drugs are in their cars and drug trafficking organizations usually do not use unknowing couriers. *See* Petition for Writ of Certiorari (hereinafter “*Diaz* Petition”), at i, *Diaz v. United States*, No. 23-14. The petition in *Diaz* identifies

other types of expert testimony that create comparable Rule 704(b) questions, including “expert testimony about ‘the typical roles within a drug trafficking organization’” and then ““matching those roles to individuals in the case, including the defendant.”” *Diaz Petition*, at 15-16 (quoting *United States v. Sosa*, 897 F.3d 615, 619 (5th Cir. 2018)). That is precisely the question presented here, in Ms. Olivas’s case. The expert here first testified about “secretaries” in Mexican Mafia organizations, next testified that “secretaries” “know everything,” and finally testified that Ms. Olivas “is” a “secretary.”

Rule 704(b) prohibits an expert witness in a criminal case from “stat[ing] an opinion about whether the defendant did or did not have a mental state that constitutes an element of the crime charged.” Fed. R. Evid. 704(b). The Ninth Circuit holds this rule is violated only by, as phrased in *Diaz*, an “explicit opinion” of the defendant’s state of mind, *United States v. Diaz*, No. 21-50238, 2023 WL 314309, at *2 (9th Cir. Jan. 19, 2023) (quoting *United States v. Gomez*, 725 F.3d 1121, 1128 (9th Cir. 2013)), or as phrased by the panel in Ms. Olivas’s case, a “direct opinion,” App. A004 (quoting *United States v. Freeman*, 489 F.3d 893, 906 (9th Cir. 2007)).

There are other circuits that take a different view, however. In drug courier cases like *Diaz*, the Fifth Circuit takes a different view, as detailed in the petition in that case. And there is a similar, even broader, split about “role” testimony like that in Ms. Olivas’s case. Two other circuits take the same view as the Ninth Circuit and allow such testimony, on the theory that Rule 704(b) prohibits only “direct opinions” of a defendant’s state of mind. But three other circuits, led by the First Circuit, hold such “role” testimony is not permissible, explaining it invades the province of the jury, is essentially an opinion that the

defendant is guilty as charged, and is simply dressing up argument as evidence.

Given the closely overlapping issues, this Court should either (a) hold Ms. Olivas's petition and vacate and remand to the court of appeals for reconsideration in light of the opinion in *Diaz* after that opinion is issued or (b) grant certiorari to itself consider this case in light of its opinion in *Diaz*. The Ninth Circuit's position in this case is wrong for the same reasons outlined in the petition in *Diaz* – it contravenes the text of Rule 704(b), which prohibits all opinions “about” the defendant's mental state, not just “direct” opinions; it impermissibly reads a “direct opinion” gloss into the rule when that wording is not in the rule; and it impermissibly lightens the government's burden of proof on the crucial element of mens rea. And the form of the question presented here sweeps even more broadly than in *Diaz* – as it applies to not just the single role of drug courier in drug trafficking but multiple roles in multiple types of crimes – with a split stretching across more circuits. The question presented here is thus as or more worthy of consideration than the question presented in *Diaz*.

STATEMENT OF THE CASE

A. TRIAL.

Ms. Olivas was charged in a multi-defendant case under the Racketeer Influenced and Corrupt Organizations Act (“RICO”) codified in 18 U.S.C. §

1961 et seq. *See* ROA 2240–2406.¹ The racketeering enterprise was a Southern California street gang controlled by a Mexican Mafia member named David Galvadon, *see* ROA 2246-53, who is Ms. Olivas’s brother. The racketeering enterprise engaged in drug trafficking and other criminal activities. *See* ROA 2245-46. Ms. Olivas was charged with RICO conspiracy, drug conspiracy, and money laundering conspiracy. *See* ROA 2254, 2355, 2395.

The evidence included recordings of prison visits, phone calls, and correspondence between Ms. Olivas and David Galvadon and records showing Ms. Olivas had sent \$1350 to David Galvadon over 10 years, as well as small amounts to another brother named Roy Galvadon, Sr. *See* Dkt. No. 25, at 5, 7, 8, 10. The government’s theory about Ms. Olivas was “that Sylvia Olivas was a trusted secretary to her brother, who is none other than David Galvadon, . . . a made Mexican Mafia member.” ROA 75. She allegedly passed messages to and from David Galvadon and forwarded proceeds from the organization’s criminal activities to him and others. *See* ROA 79-80. The defense theory was that Ms. Olivas visited David Galvadon because she was his older sister and loved him despite his crimes. Dkt. No. 25, at 48. She put money on his books – and the books of others when he asked her – for the same reasons. *Id.* She was acting not with criminal intent, but because David Galvadon was her brother and she loved her brother. *Id.*

One of the government’s witnesses was a former Mexican Mafia

¹ “ROA” refers to the record on appeal – specifically Ms. Olivas’s Excerpts of Record – in the Ninth Circuit, filed at Docket Entry 26. “Dist. Ct. Dkt.” refers to the docket in *United States v. Sylvia Olivas* (C.D. Cal. No. 2:16-cr-00390-DSF). “Dkt.” refers to the docket in *United States v. Sylvia Olivas* (9th Cir. No. 20-50182).

member named Rene Enriquez. *See* App. A017. He gave expert opinions about correspondence between Ms. Olivas and David Galvadon and about recorded conversations in which Ms. Olivas participated. *See* App. A117-66. He also testified about Mexican Mafia “secretaries,” explaining that “a secretary in terms of hierarchy in an organization is right under a Mexican Mafia member.” App. A083. He further testified “[t]here’s no greater power,” App. A083, because “that’s the individual who communicates with the Mexican Mafia member,” “controls the crew,” and “controls the money.” App. A083-84. When the prosecutor asked Mr. Enriquez how much secretaries know about the “crew’s” activities, he answered: “Everything. Everything goes through them.” App. A111.

Mr. Enriquez then gave specific opinions about Ms. Olivas. When the prosecutor asked whether Mr. Enriquez “determine[d] whether David Galvadon and Sylvia Olivas were passing messages regarding Mexican Mafia business” and whether she was receiving money from David Galvadon’s “crew,” Mr. Enriquez replied she was doing both, and “also ordering edicts for the crew.” App. A166. The prosecutor then asked whether Mr. Enriquez “ha[d] an opinion regarding Sylvia Olivas’s position in David Galvadon’s crew,” and Mr. Enriquez testified: “She’s a secretary for the Mexican Mafia. She’s a secretary for David Galvadon.” App. A166-67.

Based in part on this testimony, Ms. Olivas was convicted of the three offenses of RICO conspiracy, drug conspiracy – though one involving a lesser amount of drugs than those charged – and money laundering conspiracy. *See* Dist. Ct. Dkt. No. 3910.

B. APPEAL.

Ms. Olivas appealed to the United States Court of Appeals for the Ninth Circuit. One of her claims was that the “[s]he’s a secretary” testimony after the testimony that secretaries know “everything” violated the Federal Rules of Evidence. First, it violated a requirement in Rule 702(a) that expert testimony must “help the trier of fact to understand the evidence or to determine a fact in issue.” Dkt. No. 25, at 30 (quoting Fed. R. Evid. 702(a)). Second, it violated the prohibition in Rule 704(b) on “an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged.” Dkt. No. 25, at 33 (quoting Fed. R. Evid. 704(b)). The government argued the Ninth Circuit distinguishes between “opinions of guilt or innocence and expert testimony regarding the various roles played by persons involved in illegal enterprises.” Dkt. No. 41, at 69 (quoting *United States v. Freeman*, 498 F.3d 893, 906 (9th Cir. 2007)). As examples of cases allowing the latter sort of testimony, it pointed to *United States v. Fleishman*, 684 F.2d 1329 (9th Cir. 1982), *United States v. Kinsey*, 843 F.2d 383 (9th Cir. 1988), and *United States v. Bosch*, 914 F.2d 1239 (9th Cir. 1990), in which the Ninth Circuit allowed experts to testify defendants were a “lookout,” *Fleishman*, 684 F.2d at 1335-36, “involved in the distribution of cocaine,” *Kinsey*, 843 F.2d at 387, and “aid[ed] and abet[ted] cocaine trafficking,” *Bosch*, 914 F.2d at 1243. See Dkt. No. 41, at 69-70.

A Ninth Circuit panel sided with the government, on the ground that it is only “a direct opinion on the defendant’s guilt or innocence” that is prohibited. App. A004 (quoting *Freeman*, 489 F.3d at 906). It cited the “lookout”

testimony in the *Fleishman* case as an example of permissible testimony. *See* App. A004. A subsequent petition for rehearing en banc was denied without comment. *See* App. A010-11.

REASONS FOR GRANTING THE PETITION

A. THE COURT SHOULD AT LEAST HOLD THIS PETITION PENDING ITS DECISION IN THE *DIAZ* CASE AND VACATE AND REMAND TO THE COURT OF APPEALS FOR RECONSIDERATION AFTER THE OPINION IN *DIAZ* IS ISSUED.

At the very least, the Court should hold this petition until it decides the *Diaz* case and vacate and remand to the court of appeals for further consideration after the opinion in *Diaz* is issued. The overlap of issues and arguments makes it extremely likely – indeed, almost certain – that the opinion in *Diaz* will be highly relevant to Ms. Olivas’s case. This is evidenced by the fact that the very same rule of evidence is at issue – Rule 704(b). It is evidenced by the Ninth Circuit opinions’ nearly identical language limiting Rule 704(b) – requiring, in *Diaz*, an “explicit opinion” of the defendant’s state of mind, *United States v. Diaz*, No. 21-50238, 2023 WL 314309, at *2 (9th Cir. Jan. 19, 2023) (quoting *United States v. Gomez*, 725 F.3d 1121, 1128 (9th Cir. 2013)), and, here, in Ms. Olivas’s case, a “direct opinion,” App. A004 (quoting *United States v. Freeman*, 489 F.3d 893, 906 (9th Cir. 2007)). Finally, it is evidenced by the fact that the precise type of testimony at issue here was one of the examples of other types of problematic testimony given in

the *Diaz* petition for writ of certiorari. *See Diaz* Petition, at 15-16 (identifying as one example of similar types of testimony “expert testimony about ‘the typical roles within a drug trafficking organization’” and then ““matching those roles to individuals in the case, including the defendant”” (quoting *United States v. Sosa*, 897 F.3d 615, 619 (5th Cir. 2018)).

B. ALTERNATIVELY, THE COURT SHOULD GRANT MS. OLIVAS’S PETITION AND ITSELF CONSIDER THIS TYPE OF TESTIMONY IN LIGHT OF ITS OPINION IN *DIAZ*.

Alternatively, the court should grant Ms. Olivas’s petition and itself consider this type of testimony in light of its opinion in *Diaz*. There is an even deeper split in the circuits than in *Diaz*, the issue is even more important because of its broad sweep, Ms. Olivas’s case is an excellent vehicle, and the Ninth Circuit’s limitation of Rule 704(b) is equally wrong.

1. There Is a Deep Split in the Circuits.

The Ninth Circuit takes the view articulated in the panel memorandum that Rule 704(b) prohibits only “a direct opinion on the defendant’s guilt or innocence.” App. A004 (quoting *Freeman*, 489 F.3d at 906). It has thus allowed testimony such as that in the cases cited by the government in its briefing below. This includes testimony that a defendant was a “lookout.” *United States v. Fleishman*, 684 F.2d 1329, 1335-36 (9th Cir. 1982). It includes testimony that a defendant was “involved in the distribution of

cocaine.” *United States v. Kinsey*, 843 F.2d 383, 387 (9th Cir. 1988). It includes testimony that a defendant “aid[ed] and abet[ted] cocaine trafficking.” *United States v. Bosch*, 914 F.2d 1239, 1243 (9th Cir. 1990).

At least two other circuits have adopted the Ninth Circuit’s view. The Tenth Circuit, in *United States v. Pinelli*, 890 F.2d 1461 (10th Cir. 1989), cited *Fleishman* as authority for “permit[ting] law enforcement witnesses to provide both lay and expert opinions concerning the roles played by participants in a variety of illegal activities, including gambling operations.” *Pinelli*, 890 F.2d at 1474. And the Tenth Circuit has continued to allow such testimony in later cases. *See, e.g., United States v. Mendez-Zamora*, 296 F.3d 1013, 1017 (10th Cir. 2002) (testimony that drug defendant was “broker”); *United States v. McSwain*, 197 F.3d 472, 482 (10th Cir. 1999) (testimony that defendant and his then-wife were “chiefly responsible [for the sale of piperidine]”); *United States v. Richard*, 969 F.2d 849, 854-55 (10th Cir. 1992) (testimony that drug defendants were “helpers” of other conspirator whom they accompanied on trip).

The D.C. Circuit has taken the same view. It held, in *United States v. Boney*, 977 F.2d 624 (D.C. Cir. 1992), that testimony which “at most matched particular defendants and their actions with paradigm roles in an illegal enterprise, does not amount to a direct opinion on the defendants’ guilt.” *Id.* at 631. The D.C. Circuit thus has adopted the Ninth Circuit’s “direct opinion” requirement. *See also United States v. Clarke*, 24 F.3d 257, 269 (D.C. Cir. 1994) (quoting *Boney*).

The view of these circuits is hardly the only view, however – or even the best one. As one treatise explains:

Often the best thing an expert can do is to provide standards or criteria, estimates of feasibility or likelihood, and sometimes descriptions of social frameworks, that juries can then constructively use in resolving more particular issues relating to such things as due care, intent, or purpose, and who likely did what and why. Here the helpfulness standard suggests that experts should provide those standards or criteria or frameworks, and should stop short of stating their own conclusions on such points, because the jury is at least equally capable of taking this step.

3 Christopher B. Mueller and Laird C. Kirkpatrick, *Federal Evidence* § 7:9, at 774-75 (4th ed. 2013) (footnotes omitted).²

Several circuits have drawn the line suggested by this treatise. The issue has been most extensively discussed in the First Circuit. In a series of cases beginning with *United States v. Casas*, 356 F.3d 104 (1st Cir. 2004), the First Circuit has held it is error to allow testimony that particular defendants played particular roles in a drug trafficking organization. *Casas* held “testimony that particular persons were members of the conspiracy was not an appropriate subject for expert testimony.” *Id.* at 120. *United States v. Flores-de-Jesus*, 569 F.3d 8 (1st Cir. 2009), held “conclusions about the roles of the defendants in the conspiracy” was improper testimony because it was “precisely the type of testimony” *Casas* prohibited. *Flores-de-Jesus*, 569 F.3d at 24. *United States v. Meises*, 645 F.3d 5 (1st Cir. 2011), applied *Casas* and *Flores-de-Jesus* to

² The “helpfulness standard” derives from Rule 702, which requires that expert testimony “help the trier of fact to understand the evidence or to determine a fact in issue,” Fed. R. Evid. 702(a), but it overlaps with the limit in Rule 704(b). *See Boney*, 977 F.2d at 630 & n.5 (recognizing “overlapping nature of the provisions treating expert testimony can understandably produce some confusion regarding the precise rule to be applied” and contrasting appellant’s reliance on Rule 702 with government’s focus on Rule 704(b)). *See also infra* p. 13 n.4 (noting varying focus of First Circuit cases).

testimony about the “role each individual had played in the conspiracy.” *Meises*, 645 F.3d at 14. *Meises* noted multiple problems with such testimony, including that it “amounted to simply dressing up argument as evidence,” *id.* at 17, “could only have replaced, rather than aided, the jury’s assessment of the evidence,” *id.*, and “improperly endorsed the government’s theory of the case,” *id.* at 18, by telling jurors “an experienced government agent had rejected appellants’ mere presence defense and concluded that they were participants in the conspiracy,” *id.*³

The line the First Circuit draws was explained in a case where the opinion testimony fell short of the ultimate conclusion and was therefore proper.

Agent Conchin’s testimony was not disallowed by *Meises*, *Flores-de-Jesus*, or *Casas*. In those cases we “particularly condemned testimony from . . . agent[s], not based on personal knowledge, describing the roles played in the drug conspiracy by individual defendants” because “[s]uch descriptions amount to impermissible testimony from the agent[s] ‘that each of the defendants was guilty of the conspiracy charged.’” *Meises*, 645 F.3d at 13 (quoting *Casas*, 356 F.3d at 119); *see also Flores-de-Jesus*, 569 F.3d at 24 (holding that the court erred in allowing the expert witness to identify the appellants by name and role in the conspiracy, where this testimony was not based on his personal knowledge); *Casas*, 356 F.3d at 118, 120 (stating that the agent’s testimony, which identified the roles of each defendant in the drug conspiracy despite lacking personal knowledge of it was not an appropriate subject for expert testimony). Unlike in the cases cited by Appellants, Agent Conchin did not identify Appellants’ roles in the charged conspiracy, nor did he even refer to Appellants in

³ In some of the cases, the opinions were offered as lay opinion testimony, but the First Circuit has made clear such opinions are equally improper when offered by an expert. *See United States v. Garcia-Sierra*, 994 F.3d 17, 26 n.3 (1st Cir. 2021) (citing *Meises*, 645 F.3d at 18 n.20, and *Casas*, 356 F.3d at 120).

particular or to their [boat]. Rather, based on his experience in narcotics cases and international maritime interdictions, he referred to “the people that are on those boats” as he testified about the general roles involved in the transportation of drugs by vessels.

United States v. Pena-Santo, 809 F.3d 686, 695 (1st Cir. 2015).⁴

The Second Circuit has expressed similar concerns and eventually come to take the same view as the First Circuit. In the earlier case of *United States v. Brown*, 776 F.2d 397 (2d Cir. 1985), the Court questioned agent testimony about “steerers” and an ultimate conclusion that the defendant was a “steerer.” *See id.* at 400.

[T]here is something rather offensive in allowing an investigating officer to testify not simply that a certain pattern of conduct is often found in narcotics cases, leaving it for the jury to determine whether the defendant’s conduct fits the pattern, but also that such conduct fitted that pattern, at least when other inferences (footnote omitted) could have been drawn not unreasonably although perhaps not as reasonably as that to which the expert testified. [Agent] Grimball’s testimony casting Brown in the role of a steerer comes close to, although it is not within, F.R.E. 704(b),

Brown, 776 F.2d at 401. *See also United States v. Boissoneault*, 926 F.2d 230, 233 (2d Cir. 1991) (“We have repeatedly expressed our discomfort with expert testimony in narcotics cases that not only describes the significance of certain conduct or physical evidence in general, but also draws conclusions as to the significance of that conduct or evidence in the particular case.”). The Second Circuit then held in *United States v. Garcia*, 413 F.3d 201 (2d Cir. 2005), that

⁴ The earlier First Circuit cases focused more on Rule 701 or Rule 702, *see Meises*, 645 F.3d at 16; *Flores-de-Jesus*, 569 F.3d at 20; *Casas*, 356 F.3d at 120, but *Pena-Santo* recognizes it is a Rule 704(b) question as well, *see Pena-Santo*, 809 F.3d at 693.

comparable testimony – that the defendant was a “partner” in the drug distribution – was improper.

[I]f such broadly based opinion testimony as to culpability were admissible under Rule 701, there would be no need for the trial jury to review personally any evidence at all. The opinion witness could merely tell the jury what result to reach. This, however, is precisely what the second foundation requirement of Rule 701 [that the opinion be “helpful”] is meant to protect against.

Id. at 214 (citations and internal quotations omitted).⁵

The Fifth Circuit has taken the same view as the First Circuit and Second Circuit. *United States v. Sosa*, 897 F.3d 615 (5th Cir. 2018), held testimony about the roles of “supply or transportation coordinator” accompanied by testimony that the defendants were “filling those roles” was improper. *Id.* at 619, 620. The court explained, like the First Circuit, that this crossed the line.

Agent Bradford’s testimony stepped well past the fine but critical line between expert testimony concerning methods of operation unique to the drug business, and testimony comparing a defendant’s conduct to the generic profile of a drug courier. Bradford began with acceptable testimony describing the typical roles within a drug trafficking organization, such as the couriers, the wholesalers, and the distributors. But the testimony invaded the province of the jury when Bradford began matching those roles to individuals in the case, including the defendant,

Id. at 619 (citation and internal quotations omitted).⁶

⁵ Expert testimony must satisfy a comparable “helpfulness” requirement. *See supra* p. 11 n.2.

⁶ A much older Fifth Circuit case may arguably evidence an intracircuit conflict in the Fifth Circuit. That is *United States v. Masson*, 582 F.2d 961 (5th Cir. 1978), which rejected a challenge to expert testimony that appellant was a “sub-bookmaker” in an illegal bookmaking operation. *Id.* at 964.

There is thus a clear split in the circuits, with three on one side and three on the other.

2. It Is Important for the Split to Be Resolved.

It is important for the split in the circuits to be resolved— for several reasons.

To begin, Rule 704(b) embodies important values. It is rooted in our historical tradition of protecting the role of the jury as the finder of fact, *see, e.g., Duncan v. Louisiana*, 391 U.S. 145, 151 (1968) (recounting common law roots and constitutional protections of right to jury trial). This Court has consistently reaffirmed the “surpassing importance” of the jury trial right. *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000). It traces back to before this country’s independence. *See* 4 W. Blackstone, *Commentaries on the Laws of England* 343 (1769), *cited in Apprendi*, 530 U.S. at 477. It was so deeply entrenched in the colonies that a colonial Congress declared “that the trial by jury is the inherent and invaluable right of every British subject in these colonies.” Joseph Story, *Commentaries on the Constitution* § 190.

Until the mid-twentieth century, courts generally prohibited expert witnesses from expressing opinions on “ultimate issues,” believing such testimony threatened to “usurp[] the province of the jury.” Fed. R. Evid. 704 advisory committee’s note; *see also United States v. Spaulding*, 293 U.S. 498, 506-07 (1935) (applying old rule and citing other decisions doing same). The Federal Rules later eliminated this prohibition for most subjects, but Rule 704(b) sticks to our historical tradition in the especially sensitive area of mens

rea in criminal cases. *See infra* pp. 21-23 (discussing this Court’s recognition of the importance of mens rea in the criminal law).

The question presented here is one that sweeps even more broadly than the more focused question of testimony about drug couriers’ knowledge that is the question presented in *Diaz*. Where the testimony at issue there – drug couriers’ knowledge – is about a particular type of drug defendant – drug couriers – the testimony at issue here – that a defendant fits a particular role – can be given about any drug defendant. Indeed, it extends beyond drug charges to other types of charges. As just one example, the Tenth Circuit’s *Pinelli* case applied its rule in an illegal gambling prosecution. *See id.*, 890 F.2d at 1474. And the Tenth Circuit *spoke* even more broadly in *Pinelli* – of the roles played by participants in “a variety of illegal activities.” *Id. See also United States v. Boney*, 977 F.2d at 631 (speaking broadly of matching defendants and their actions with paradigm roles in “an illegal enterprise”). Ms. Olivas’s case is itself an example, for she was convicted not only of drug conspiracy, but also RICO conspiracy and money laundering conspiracy.

The broader sweep of the question presented here is further evidenced by the broader split in the circuits. Where the split at issue in *Diaz* is largely between two circuits, *see Diaz* Petition, at 8-11, albeit the two circuits in which the vast majority of drug courier cases arise, the split here sweeps nationally. It stretches from the First, Second, and Fifth Circuits through the Ninth, Tenth, and D.C. Circuits.

The broad sweep of the question presented here and the even broader split in the lower courts makes resolving the split here even more important than resolving the split in *Diaz*. Just as the question presented in *Diaz* is

worthy of this Court’s consideration, the question presented here is worthy of the Court’s consideration.

3. The Present Case Is an Excellent Vehicle for Resolving the Split.

This case is an excellent vehicle for resolving the split in the circuits because the expert testimony was improper under one view, but proper under the other view. On the one hand, the line drawn by the Ninth, Tenth, and D.C. Circuits was not crossed, because the expert did not give a “direct opinion” on Ms. Olivas’s guilt. On the other hand, the line drawn by the First, Second, and Fifth Circuits was crossed. The government expert, after properly testifying about (a) what secretaries do, (b) how to ascertain whether someone is a secretary, and (c) that secretaries “know everything,” went on to testify that Ms. Olivas “is a secretary,” which is not proper.

The case is also an excellent vehicle because the expert opinion here was unqualified. It went even further than the testimony in *Diaz*, in which the expert testimony was at least slightly qualified because it was about “most drug couriers” and did not directly speak of the defendant, *see Brief in Opposition, Diaz v. United States*, No. 23-14, at 10-11. The testimony here did directly speak of the defendant – “She’s a secretary” – and was completely unqualified – that secretaries “know everything.”

* * *

4. The “Direct Opinion” Rule Adopted by the Ninth, Tenth, and D.C. Circuits Is Wrong.

The “direct opinion” rule adopted by the Ninth, Tenth, and D.C. Circuits also is wrong. It runs counter to the text of the rule, is unduly formalistic, and impermissibly lightens the Government’s burden to prove the crucial element of mens rea.

One can begin, “as [one] must,” *Henson v. Sangander Consumer USA Inc.*, 582 U.S. 79, 83 (2017), with the text of Rule 704(b). The rule prohibits an expert witness in a criminal case from “stat[ing] an opinion *about* whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense.” Fed. R. Evid. 704(b) (emphasis added). “About” means “[c]oncerning, regarding, with regard to, in reference to; in the matter of.” *About*, Oxford English Dictionary (3d ed. 2009). The opinions captured by this rule thus need not explicitly state that the defendant had a particular state of mind; the Rule does not prohibit stating only *that* the defendant had a certain mental state. It is enough if the expert’s testimony “concern[s]” or is “in reference to” the defendant possessing that mental state.

Id.

An expert opinion like that here – that “secretaries” “know everything,” followed by testimony that the defendant “is a secretary” – most certainly does “concern” mental state. One may look to examples outside courtroom testimony to illustrate this. A teacher who states, “My students know the rules,” and then adds, “John is one of my students,” has expressed an opinion “about” John knowing the rules. A psychiatrist who states, “The patients in

this hospital are mentally ill,” and then adds, “Susan is a patient in this hospital,” has expressed an opinion “about” Susan being mentally ill. A police officer who states, “The people I arrest for murder intended to kill the victim,” and then adds, “Smith is one of the people I arrested for murder,” has expressed an opinion “about” Smith’s intent to kill. So in the present case; the testimony that “secretaries” “know everything,” followed by testimony that “She’s a secretary,” expressed an opinion “about” Ms. Olivas “know[ing] everything.”

The Ninth, Tenth, and D.C. Circuits reject this common-sense understanding of Rule 704(b)’s text, barring not all opinions “about” mental state, but only “direct” opinions. Adding this gloss of “direct” violates the well-established principle that courts “ordinarily resist reading words or elements into a statute that do not appear on its face.” *Bates v. United States*, 522 U.S. 23, 29 (1997).

These courts’ atextual, hyper-formalistic approach also permits prosecutors and expert witnesses to evade the reach of Rule 704(b) by simply speaking artfully. In reading the rule to bar only “direct opinion[s],” the courts have effectively reduced it to a prohibition against uttering certain “magic words,” *United States v. Lipscomb*, 14 F.3d 1236, 1240 (7th Cir. 1994), or “essentially to a semantic preclusion,” *United States v. Hayat*, 710 F.3d 875, 902 (9th Cir. 2013). Compare *United States v. Gutierrez-Farias*, 294 F.3d 657, 663 (5th Cir. 2002) (holding expert testimony about drug courier knowledge improper even though expert “did not say the magic words”). The witness must simply testify in two steps – stating, first, that a certain category of persons “knows everything” and stating, second, that the defendant is in that

category of persons.

Several Ninth Circuit judges, albeit in dissent, have recognized this reliance on mere semantics. One, dissenting in a case in which the court allowed testimony that drug couriers in general know they are transporting drugs, explained:

[T]here is no principled distinction between Agent Darvas's expert testimony that a drug courier transporting precisely 151 pounds of marijuana would know about the drugs he or she was transporting because no trafficker in his right mind would entrust that amount of drugs to an unknowing drug courier and the conclusion from that testimony that Campos as a drug courier carrying 151 pounds of marijuana knew about the drugs in the van. . . . Agent Darvas's testimony necessarily lead to the conclusion that Campos . . . did . . . know about the marijuana in the van.

United States v. Campos, 217 F.3d 707, 718 (9th Cir. 2000) (Pregerson, J., dissenting) (cleaned up). Another Ninth Circuit judge, in a case in which the court allowed testimony that “the ‘kind of person’ who would carry that supplication [a note found in the defendant’s wallet] would be one ‘who perceives him or herself as being engaged in war for God against an enemy,’” *Hayat*, 710 F.3d at 900 (9th Cir. 2013), reasoned:

From the record, it is clear that Mohammed [the expert] stated an opinion as to Hayat’s mental state. The linguistic nicety of referring to “a person who would carry this supplication in his wallet” rather than “Hayat” cannot save Mohammed’s testimony. Moreover, Mohammed flatly and categorically testified that a person carrying this supplication “has to be involved in Jihad.” It is plain on the record that “a person” could have been no one but Hayat. (Footnote omitted.) The violation of Rule 704(b) is plain and obvious.

Hayat, 710 F.3d at 911-12 (Tashima, J., dissenting).⁷

The Ninth, Tenth, and D.C. Circuits’ crabbed interpretation of Rule 704(b) also drains the vitality of the mens rea element in federal criminal statutes. This Court has repeatedly emphasized that “consciousness of wrongdoing is a principle ‘as universal and persistent in mature systems of [criminal] law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil.’” *Ruan v. United States*, 142 S. Ct. 2370, 2376-77 (2022) (quoting *Morissette v. United States*, 342 U.S. 246, 250 (1952)). Consciousness of wrongdoing is so important to the just administration of criminal law that courts must construe federal criminal statutes “start[ing] from a longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state.” *Rehaif v. United States*, 139 S. Ct. 2191, 2195 (2019). Even statutes that “contain no *mens rea* provisions whatsoever” must be read to require the Government to prove scienter as part of its case-in-chief – “often that of knowledge or intent” to commit wrongdoing. *Ruan*, 142 S. Ct. at 2377. See also *Elonis v. United States*, 575 U.S. 723, 736 (2015); *Wooden v. United States*, 142 S. Ct. 1063, 1076 (2022) (Kavanaugh, J., concurring) (urging Court to “continue to vigorously apply (and where appropriate, extend) *mens rea* requirements”); *United States v. Burwell*, 690 F.3d 500, 527 (D.C. Cir. 2012) (Kavanaugh, J., dissenting) (explaining how “[t]he presumption of mens rea embodies deeply rooted principles of law and justice that the Supreme Court has emphasized time and again”).

⁷ Here, the expert went even farther than the expert in *Hayat*, by testifying the “secretary” was Ms. Olivas.

The mens rea element here and in numerous other federal statutes is particularly important because it separates criminal from “entirely innocent” conduct, *Rehaif*, 139 S. Ct. at 2197; *see also Liparota v. United States*, 471 U.S. 419, 426 (1985). To state the obvious: There is nothing inherently blameworthy about a sister putting money in a brother’s prison account – and the accounts of others when he asks her – because she loved him despite his crimes. Just as, for example, it is not necessarily improper to possess a gun, *see Rehaif*, 139 S. Ct. at 2197, or for a doctor to prescribe medication containing a controlled substance, *see Ruan*, 142 S. Ct. at 2378. It is vital, therefore, that the Government establish the particular defendant in these scenarios possesses the requisite “vicious will,” *Ruan*, 142 S. Ct. at 2376 (citations omitted).

Allowing testimony such as that allowed here undercuts this foundational requirement by establishing a rebuttable presumption of mens rea – or even an irrebuttable presumption, if the jury accepts the expert’s testimony – which raises serious constitutional concerns. The Due Process Clause forbids creating “rebuttable presumptions” regarding mens rea or another element of a criminal offense. *See Francis v. Franklin*, 471 U.S. 307, 317-18 (1985). The reason is simple: such a presumption – which posits that if certain predicate facts are present, the jury should presume a certain element is satisfied – “relieve[s] the State of the affirmative burden of persuasion on the presumed element.” *Id.* at 317. *See also Sandstrom v. Montana*, 442 U.S. 510, 521 (1979); *In re Winship*, 397 U.S. 358, 364 (1970) (prosecution must prove every element beyond a reasonable doubt).

Francis and *Sandstrom* involved jury instructions from a judge, whereas the presumption in this case is created by expert testimony. But where the

person testifying is labeled an “expert,” there is not much difference between the two. When an “expert” – testifying based on “specialized knowledge,” Fed. R. Evid. 702 – tells the jury a “secretary” “knows everything,” and the defendant “is a secretary,” he, in practical terms, “shift[s] to the defendant the burden of persuasion on the crucial element of intent.” *Francis*, 471 U.S. at 325.

Rule 704(b) should not be construed to tolerate such an incursion on elementary notions of due process. The Government must prove that the defendant committed an evil act. And that is especially so when mens rea is involved.

CONCLUSION

The Court should either hold this petition until the *Diaz* case is decided and vacate and remand for reconsideration in light of its opinion in *Diaz* or grant the petition and itself consider the question presented in light of the opinion in *Diaz*.

Respectfully submitted,

DATED: December 1, 2023

s/ Carlton F. Gunn
CARLTON F. GUNN
Attorney at Law

A P P E N D I X 1

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 21 2023

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SYLVIA OLIVAS, AKA Sylvia Lee
Gavaldon,

Defendant-Appellant.

No. 20-50182

D.C. No.
2:16-cr-00390-DSF-AB-4

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL SALINAS, AKA Beef, AKA
Just, AKA Skinny, AKA Smiley,

Defendant-Appellant.

No. 21-50270

D.C. No.
2:16-cr-00390-DSF-AB-39

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted May 8, 2023
Pasadena, California

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

Before: HURWITZ, and R. NELSON, Circuit Judges.*^{**}

Sylvia Olivas and Michael Salinas appeal convictions under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968, stemming from their involvement in criminal activities of the Canta Ranas gang. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). We affirm.

1. The district court erred by admitting expert testimony from Officer Robert Rodriguez, Rene Enriquez, and Drug Enforcement Administration Agent Steve Paris without making express reliability findings. *See United States v. Holguin*, 51 F.4th 841, 855 (9th Cir. 2022). However, the error was harmless because the record clearly demonstrates the reliability of these experts. *See United States v. Ruvalcaba-Garcia*, 923 F.3d 1183, 1190 (9th Cir. 2019) (per curiam).

Reliability can be based on experience. *See, e.g., United States v. Rodriguez*, 971 F.3d 1005, 1018 (9th Cir. 2020) (experience reliably supported testimony about gang “structure and operation”); *United States v. Hankey*, 203 F.3d 1160, 1169–70 (9th Cir. 2000) (“street intelligence” from investigations supported testimony about gang “tenets” including “code of silence”). Similarly, “[o]fficers may testify about their interpretations of ‘commonly used drug [or gang] jargon’ based solely on their

^{**} This case was decided by quorum of the panel. *See* 28 U.S.C. § 46(d); Ninth Circuit General Order 3.2(h).

training and experience.” *United States v. Vera*, 770 F.3d 1232, 1241 (9th Cir. 2014) (quoting *United States v. Bailey*, 607 F.2d 237, 240 (9th Cir.1979)).

The record reveals that the experts had ample experience. Rodriguez served as a patrol officer and member of the “Problem-Oriented Policing Team” investigating drug and gang crimes for over a decade. He received over 100 hours of gang-specific training, participated in “[w]ell over 100” criminal investigations, including Canta Ranas, and had contacts with around 50 Canta Ranas members specifically. Enriquez was inducted into the Mexican Mafia, held a position of authority within it, and was familiar with the organization’s internal politics. Paris participated in thousands of drug-related investigations related to street gangs, conducted drug-related undercover work, and worked with several confidential informants to investigate drug trafficking. The district court’s error in not making express reliability findings was thus harmless.

2. The district court did not err in admitting dual-role testimony from Officer Rodriguez and Enriquez. Although we “encourage” district courts to “clearly separate” lay and expert testimony, *Rodriguez*, 971 F.3d at 1019, there is no single prescribed method to do so. A district court may itself “clarify in the eyes of the jury the demarcation between lay and expert testimony,” but “[t]hat distinction can also be revealed through direct or cross examination.” *United States v. Freeman*,

498 F.3d 893, 904 (9th Cir. 2007). Here, the government repeatedly announced before the jury when it shifted from “lay” to “expert” testimony.

The district court also did not plainly err by giving the Ninth Circuit’s model dual-role testimony instruction, which the parties jointly proposed, at the conclusion of trial rather than during testimony. We have found plain error only where no dual-role instruction was given at all. *United States v. Torralba-Mendia*, 784 F.3d 652, 659 (9th Cir. 2015) (citing *Vera*, 770 F.3d at 1246). Even if it might be prudent to provide a dual-role instruction during witness testimony, failure to do so is not plain error. *See Holguin*, 51 F.4th at 863–64.

Enriquez’s previous involvement with the gang leader at the core of the RICO conspiracy also did not warrant exclusion. Enriquez’s testimony was grounded in his personal experiences and “rationally based on [his] perception.” Fed. R. Evid. 701(a). The record does not suggest any continued affiliation between Enriquez and the Mafia during the alleged conspiratorial acts, the earliest of which occurred two years after Enriquez left the Mafia.

Nor did the district court err in admitting Enriquez’s opinion that Olivas’s actions suggested that she acted as a secretary for the gang. Expert witnesses are “not permitted to offer a direct opinion on the defendant’s guilt or innocence,” *Freeman*, 498 F.3d at 906, but Enriquez asserted no such thing, *see United States v. Fleishman*, 684 F.2d 1329, 1335–36 (9th Cir. 1982) (expert may testify that

defendant was the “lookout” in a drug-trafficking operation). Nor was this testimony “to a defendant’s actual mental state during the charged offense or testimony which necessarily would imply that ultimate conclusion” in violation of Rule 704(b). *United States v. Morales*, 108 F.3d 1031, 1038 (9th Cir. 1997). Enriquez’s testimony merely “described a common practice of those who do have such intent.” *Freeman*, 498 F.3d at 906–07; *see also United States v. Gomez-Norena*, 908 F.2d 497, 502 (9th Cir. 1990) (finding no error in officer’s testimony that “large amounts of cocaine [were] consistent with an intent to distribute” without offering “opinion of what [defendant] actually thought”).

3. The district court did not err in permitting Case Agent Aaron Gutierrez to testify. A law enforcement officer may testify about the meaning of ambiguous recorded statements based on the officer’s “direct perception” of intercepted communications coupled with “other facts he learned during the investigation.” *United States v. Gadson*, 763 F.3d 1189, 1207 (9th Cir. 2014) (quoting *Freeman*, 498 F.3d at 904–05). “Such testimony is admissible even if the testifying officer was not a participant in the recorded conversation.” *Id.* “A lay witness’s opinion testimony necessarily draws on the witness’s own understanding, including a wealth of personal information, experience, and education, that cannot be placed before the jury.” *Id.* at 1208; *see also Holguin*, 51 F.4th at 865 (“We have allowed officers to

interpret communications based on the investigation as a whole and have not required all information supporting lay opinion to be placed before the jury.”).

Gutierrez reviewed prison correspondence that he personally collected and other materials he secured throughout his years-long investigation. The foundation laid concerning Gutierrez’s investigation sufficiently supported his lay opinions. *See United States v. Barragan*, 871 F.3d 689, 703–04 (9th Cir. 2017). This evidence was also “rationally based on the witness’s perception” from his investigative activity. *Vera*, 770 F.3d at 1242 (quoting Fed. R. Evid. 701).

4. Any error in the formulation of the instructions for the RICO conspiracy was harmless. *See Rodriguez*, 971 F.3d at 1012 (“Jury instructions must be evaluated ‘as a whole, and in context,’ rather than in piecemeal.” (quoting *United States v. Stapleton*, 293 F.3d 1111, 1114 (9th Cir. 2002)). The instructions adequately stated the mens rea necessary for conviction, requiring the jury to find an agreement between two or more persons to conduct or to participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity, and that appellants joined that conspiracy by willfully participating in it while knowing of its object and intending to help further or facilitate the scheme. The instructions therefore adequately captured the underlying offense and the role required of each appellant. *See Smith v. United States*, 568 U.S. 106, 110 (2013) (“To convict a defendant of narcotics or RICO conspiracy, the Government must prove beyond a

reasonable doubt that two or more people agreed to commit a crime covered by the specific conspiracy statute (that a conspiracy existed) and that the defendant knowingly and willfully participated in the agreement (that he was a member of the conspiracy.”); *Salinas v. United States*, 522 U.S. 52, 65 (1997) (holding that although “a conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of [the underlying] criminal offense, . . . it suffices that he adopt the goal of furthering or facilitating the criminal endeavor”).

5. Any error in the mens rea instruction for drug conspiracy redounded to Salinas’s benefit and does not warrant reversal. *See United States v. Collazo*, 984 F.3d 1308, 1318–19 (9th Cir. 2021) (en banc); *United States v. Irons*, 31 F.4th 702, 717 (9th Cir. 2022) (similar instruction “provide[d] no grounds for reversal” because “[a]t worst, the instruction required the Government to prove more than *Collazo* required, but not less”).

6. The district court did not err in refusing Olivas’s proposed “willfully” instruction for her money-laundering charge. Because the instructions noted that the jury may not find guilt if it found Olivas did not think she was engaging with unlawful activity, willfulness was adequately outlined. *See Salinas*, 522 U.S. at 65.

7. The district court did not err in its Guidelines calculation for Salinas by adopting the Presentence Report’s (PSR) factually supported recommendations. *See Gadson*, 763 F.3d at 1220. The PSR fully described Salinas’s involvement in the

conspiracies, including the type and amount of drugs he engaged with. Additionally, the PSR adequately explained why Salinas was responsible for the entire amount of drugs seized. The district court did not abuse its discretion by adopting it in determining the sentence. *See United States v. Gamez-Orduño*, 235 F.3d 453, 464 (9th Cir. 2000).

8. Salinas's lifetime term of supervised release was not substantively unreasonable. Because the court adequately considered the 18 U.S.C. § 3553(a) factors and explained its reasoning, its determination was not plainly erroneous. *See United States v. Rusnak*, 981 F.3d 697, 711 (9th Cir. 2020) (affirming imposition of a lifetime term of supervised release in part because district court had “fully considered the 18 U.S.C. § 3553(a) factors”).

9. The district court did not erroneously admit statements about “La Senora” under the co-conspirator hearsay exception. “Under Federal Rule of Evidence 801(d)(2)(E), a statement of one coconspirator is admissible nonhearsay against other coconspirators as an admission of a party-opponent, if the statement was made during the course of and in furtherance of the common objectives of the conspiracy.” *United States v. Tamman*, 782 F.3d 543, 553 (9th Cir. 2015).

The district court’s determination that these statements were made in furtherance of the conspiracy is not clearly erroneous.¹ *United States v. Anderson*, 56 F.4th 748, 755 (9th Cir. 2022) (per curiam). These statements fall under the exception because they “further the common objectives of the conspiracy or set in motion transactions that are an integral part of the conspiracy.” *United States v. Yarbrough*, 852 F.2d 1522, 1535 (9th Cir. 1988). Statements made to “higher ups” of the group may also be “in furtherance” of the conspiracy. *See id.* at 1536 (citing *United States v. Moody*, 778 F.2d 1380, 1382 (9th Cir. 1985)).

AFFIRMED.

¹ Nor were the statements unduly prejudicial, as they did not directly implicate Olivas. *See United States v. Williams*, 423 F.2d 696, 696 (9th Cir. 1970) (per curiam) (finding no error in admission of statements that did not implicate appellant).

APPENDIX 2

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEP 27 2023

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

UNITED STATES OF AMERICA,

No. 20-50182

Plaintiff-Appellee,

D.C. No.
2:16-cr-00390-DSF-AB-4

v.

ORDER

SYLVIA OLIVAS, AKA Sylvia Lee
Gavaldon,

Defendant-Appellant.

UNITED STATES OF AMERICA,

No. 21-50270

Plaintiff-Appellee,

D.C. No.
2:16-cr-00390-DSF-AB-39

v.

MICHAEL SALINAS, AKA Beef, AKA
Just, AKA Skinny, AKA Smiley,

Defendant-Appellant.

Before: HURWITZ, and R. NELSON, Circuit Judges.**

The panel has voted to deny the petition for panel rehearing.

Judge R. Nelson voted to deny the petition for rehearing en banc and Judge Hurwitz so recommended. The full court was advised of the petition for rehearing

** This case was decided by quorum of the panel. *See* 28 U.S.C. § 46(d); Ninth Circuit General Order 3.2(h).

en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. The petitions for panel rehearing and rehearing en banc are **DENIED**. No further petitions for rehearing will be accepted.

APPENDIX 3

14 | **REPORTER'S TRANSCRIPT ON APPEAL**

16 | Los Angeles, California

17 | Wednesday, February 19, 2020, 8:18 A.M.

19 Day 5 of Jury Trial, Page 878 to Page 1033, Inclusive

PAT CUNEO CSR 1600, CRR-CM
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1 as David and I, we have -- no, we have not said that. I
2 want you welcome here.

3 And, again, it's a Rule 106 request.

4 MS. PERNAS: We'll be playing this entire
5 transcript through Rene Enriquez. Do you specifically want
6 to play that clip?

7 MR. FRYE: Oh, if they're going to play it later
8 then no.

9 MS. PERNAS: I'm going to be playing all the
10 excerpts except for the very first one through Rene
11 Enriquez.

12 MR. FRYE: Okay. Thank you.

13 THE COURT: All right.

14 *(The following was in open court in the jury's presence:)*

15 MR. FRYE: That's all I have, Your Honor.

16 THE COURT: Mr. Eisner?

17 MR. EISNER: I have no questions of this witness.

18 THE COURT: Redirect?

19 MS. SONG: No redirect, Your Honor. Thank you.

20 THE COURT: Thank you, sir. You're excused.

21 Does the government have another witness?

22 MS. PERNAS: Yes, Your Honor. The government
23 calls Rene Enriquez.

24 THE COURT: Do you want to go ahead and take a
25 break first?

1 MS. PERNAS: Yes, Your Honor.

2 THE COURT: All right. Ladies and gentlemen,
3 don't talk about the case or form or express any opinions
4 about the case until it's finally submitted to you.

5 THE CLERK: All rise.

6 *(The jurors exited the courtroom.)*

7 *(The following was held outside the jury's presence:)*

8 THE COURT: Is there anything we need to discuss?

9 MR. FRYE: No, Your Honor. I apologize. Before I
10 asked for a sidebar, I should have consulted with counsel
11 and I apologize.

12 THE COURT: No, that's okay.

13 MS. PERNAS: No, Your Honor.

14 THE COURT: All right. So are we clear on the
15 kind of testimony he can give at this point with regard to
16 Mrs. Olivas or the status of secretaries or whatever you're
17 going to --

18 MS. PERNAS: We've introduced Rene Enriquez as an
19 expert on the Mexican Mafia so he will be testifying as to
20 Mexican Mafia secretaries.

21 I was planning on beginning with his lay witness
22 testimony and announcing that fact to the Court, if the
23 Court wants to read an instruction to the jury; and when I
24 begin his expert testimony portion, I was going to inform
25 the --

1 THE COURT: Well, I didn't do that with other
2 witnesses so I don't know that I need to do it with him and
3 I'm not sure what the lay testimony is. He's not a
4 percipient witness, is he?

5 MR. FRYE: Well, he and Mr. David Gavaldon go back
6 many, many years.

10 MS. PERNAS: Yes, Your Honor.

11 The questions I plan on asking Rene Enriquez are
12 very similar to the questions that have been asked of him in
13 the past trials.

14 THE COURT: But that's not -- I don't know what
15 that means because I wasn't there. I had a specific issue
16 that we've been discussing with regard to Dr. Sanders.

17 MS. PERNAS: We're just introducing MO, Your
18 Honor.

19 | THE COURT: All right.

20 MR. FRYE: Thank you.

21 THE CLERK: Court's in recess.

22 | *(Recess.)*

23 (The following was held outside the jury's presence:)

24 | (The defendant entered the courtroom.)

25 THE COURT: All right. Everyone ready?

1 MS. NORELL: The case agent will be right back.

2 He just went out for a moment.

3 (Pause in the proceedings.)

4 THE COURT: All right, Ms. Fisher.

5 THE CLERK: All rise.

6 (The jurors entered the courtroom.)

7 THE COURT: You may be seated.

8 Everyone is back.

9 Ms. Pernas.

10 MS. PERNAS: Your Honor, the government calls
11 Rene Enriquez.

12 **RENE ENRIQUEZ, GOVERNMENT'S WITNESS, SWORN**

13 THE CLERK: Please raise your right hand.

14 Do you solemnly swear that the testimony you shall
15 give in the cause now before this Court shall be the truth,
16 the whole truth, and nothing but the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please state your name spelling your
19 first and last name for record.

20 THE WITNESS: Rene Enriquez. R-e-n-e
21 E-n-r-i-q-u-e-z.

22 THE COURT: You may proceed.

23 **DIRECT EXAMINATION**

24 BY MS. PERNAS:

25 Q. Good morning, Mr. Enriquez.

1 A. Good morning, Ms. Person. Pernas. Excuse me.

2 Q. How old are you?

3 A. I am 57 years old.

4 Q. And where were you born?

5 A. I was born in Hope Hospital in Los Angeles, California.

6 Q. And where have you spent the majority of your adult

7 life?

8 A. In California Department of Corrections prison.

9 Q. Are you currently in prison?

10 A. I am.

11 Q. And how long have you been in prison for?

12 A. 30 consecutive years.

13 Q. And why are you serving a prison sentence?

14 A. I was convicted of two Mafia murders and a conspiracy

15 and an attempt to commit murder.

16 Q. And at the time you were convicted of these murders,

17 were you associated with any gangs?

18 A. I was.

19 Q. Which gangs?

20 A. The Arta street gang of which I was a member and the

21 Mexican Mafia.

22 Q. And how long were you a Mexican Mafia member?

23 A. I was a made member for 17 years.

24 Q. Did you have any nicknames or monikers while you were

25 members of these gangs?

1 A. I did. My moniker was "Boxer."

2 Q. Now, we're going to get into more detail later; but can

3 you just generally tell us, based on your experience, what

4 is the Mexican Mafia?

5 A. The Mexican Mafia is a secret criminal organization

6 that derives its finances primarily by extortion and drug

7 distribution. Participates in murders, assaults, and a

8 variety of different crimes that circulate around its

9 ability to intimidate and threaten individuals within the

10 Hispanic gang subculture.

11 Q. And where did the Mexican Mafia originate?

12 A. At the Deuel Vocational Institution in Tracy,

13 California, in 1956.

14 Q. Does the Mexican Mafia go by any other names?

15 A. Yes, ma'am.

16 Q. What other names?

17 A. *La Eme*, L-a E-m-e. *La Mafia Mexicana* spelled

18 phonetically. *Laclika*, L-a-c-l-i-k-a. *Los Famosos*, L-o-s

19 F-a-m-o-s-o-s, which means the famous ones. *Los Hermanos*,

20 the brothers, H-e-r-m-a-n-o-s. And that's about it.

21 Q. Why is it called *Eme*?

22 A. *Eme* is an M. It means M. The translation in English

23 means M. And M is the 13th letter of the alphabet so it's

24 just a designation of the organization. Abbreviation, if

25 you will.

1 Q. And when were you a member of the Mexican Mafia, what
2 was your position?

3 A. I was a made member. I was a *carnal de palabra*.
4 *Carnal de palabra* is c-a-r-n-a-l. *De* is d-e. *Palabra* is
5 p-a-l-a-b-r-a. It just means a brother of credibility or a
6 brother of word. There are no real statuses within the
7 organization in California. It's egalitarian which means
8 everybody is equal. One man, one vote, majority rules.

9 Q. Are all Mexican Mafia members considered *carnal de*
10 *palabras*?

11 A. No.

12 Q. Who is considered a *carnal de palabra*?

13 A. Typically, it's members who put in work for the
14 organization. Individuals who have some business acumen and
15 business savvy who have some social grace who have the
16 ability to function in the deep waters.

17 Q. So are these individuals considered top-tier Mexican
18 Mafia members?

19 A. I guess you could say that. In an organization without
20 ranks in California, there are some top-tier members that
21 function at this level.

22 Q. And did you have more power than most when you were a
23 Mexican Mafia member?

24 A. I would not say that. I would say that I was equally
25 as powerful as some of the other individuals that ran crews

1 and I ran a crew.

2 Q. Are you still a member of the Mexican Mafia?

3 A. Technically, you're a member until you die but I
4 defected in 2002.

5 Q. And do you remember exactly when you dropped out or
6 when you defected?

7 A. On March 22nd at 11:20 a.m. 2002.

8 Q. And why do you remember that date and time so clearly?

9 A. Because I knew my life was going to change radically;
10 that everything I knew and everything that I had devoted my
11 entire existence to was coming to a stop at that moment and
12 I was going to become a different person.

13 Q. Are you still incarcerated today?

14 A. Yes, ma'am.

15 Q. Are you being paid for your testimony today?

16 A. I've never been paid to testify in court.

17 Q. Have you been made any promises in exchange for your
18 testimony today?

19 A. No, ma'am.

20 Q. Have you received any promises of immunity?

21 A. I've never received immunity for testimony.

22 Q. What about promises of a reduction in sentence?

23 A. No.

24 Q. Are you eligible for parole?

25 A. Yes.

1 Q. Have you received any promises relating to your parole
2 proceedings?

3 A. No.

4 Q. Now, are you familiar with an individual named
5 David Gavaldon?

6 MS. PERNAS: And I apologize. Your Honor, I
7 should have informed the Court. This is the witness's lay
8 witness testimony at this point. I'll inform the Court when
9 I get into the expert witness testimony.

10 THE COURT: All right. Thank you.

11 BY MS. PERNAS:

12 Q. Are you familiar with an individual named
13 David Gavaldon?

14 A. Yes, ma'am.

15 Q. How do you know them?

16 A. We were together in Folsom State Prison. We were made
17 Mexican Mafia members about the same time.

18 Q. And what do you mean by "made"?

19 A. We were formally sponsored by a member in good standing
20 in the Mexican Mafia and we were voted into the organization
21 and became members in good standing.

22 Q. And when were you both made?

23 A. 1985 in May.

24 MS. PERNAS: Your Honor, permission to publish
25 previously admitted 196?

1 THE COURT: If it's admitted, you can publish it.
2 *(The exhibit was displayed on the screen.)*
3 BY MS. PERNAS:
4 Q. Now, Mr. Enriquez, do you see in the top left-hand
5 corner why where it says "Gavaldon David"?
6 A. I do, ma'am.
7 Q. And in the center where it says "external movements"?
8 A. Yes, ma'am.
9 Q. Now, if you look to 1985, the entry for 1985, do you
10 see F-O-L?
11 A. Yes, ma'am.
12 Q. And what does that stand for?
13 A. That's CDCR California Department of Corrections
14 abbreviation for a prison by the name of Folsom State
15 Prison.
16 Q. And you said that's where both you and David Gavaldon
17 were made?
18 A. Yes, ma'am.
19 Q. At the time were you voted in, were you introduced to
20 other members of the organization?
21 A. Yes, ma'am.
22 Q. And were you told who the other Mexican Mafia members
23 were?
24 A. Yes. That's typical practice when you're inducted in
25 the organization.

1 Q. Why is it typical practice?

2 A. The organization knows -- it's essential for all
3 members to know who the other members are because it's a
4 very secretive and exclusive organization. It's comprised
5 of about 125 guys in the entire United States.

6 So it's -- it's -- it has to be known by the
7 members who the other members in good standing are so that
8 they can function, respect specific territories, acknowledge
9 them when necessary.

10 Q. Now, you mentioned this concept members in good
11 standing. What do you mean by that?

12 A. There are members in good standing which means they're
13 in good graces of the organization and there are members in
14 bad standing which we call the *lista*, l-i-s-t-a, which means
15 the hit list that they are either placed on.

16 And a contemporary practice is to place them on
17 disregard which means that they no longer have word, they're
18 disregarded, they no longer have juice within the
19 organization, or they're placed entirely on the *lista* which
20 means they're marked for death at first opportunity. That's
21 a person in bad standing.

22 Q. Now, we'll go into that a little bit more,
23 Mr. Enriquez; but with respect to the Mexican Mafia, does
24 the Mexican Mafia have different branches?

25 A. There are different factions. They are not different

1 branches. There's a federal faction which is ran by a
2 commission. There's the Arizona faction which is ran by a
3 *mesa*, m-e-s-a, which means a table, kind of like an ad hoc
4 commission of hierarchy of members.

5 And there's California which is egalitarian. It's
6 just a majority of vote controls the procedures and rules
7 and decisions so -- but they are all part of the same
8 entity. This is not a separate organization. It gets a
9 little confusing.

10 But I'm not intending it to be that. It's all one
11 organization just with different factions.

12 Q. And the federal faction operates out of federal
13 prisons?

14 A. Yes, ma'am.

15 Q. You testified that you were in Folsom prison with
16 David Gavaldon. Were you also in Pelican Bay with
17 David Gavaldon?

18 A. I was as well.

19 Q. Do you know if he had any monikers or nicknames?

20 A. Yeah. His moniker was *araña*, a-r-a-ñ-a, from
21 Canta Ranas which is singing frogs which is a gang in Santa
22 Fe Springs.

23 Q. How did you know that information about David Gavaldon?

24 A. Oh, we commonly know each other by gang monikers.

25 That's -- before I became "Boxer" from the Mexican Mafia, I

1 was "Boxer" from Artesia or Arta. That was my gang. So
2 everybody knows that's who you are. That's kind of like
3 your profile; right? So we know those individuals for who
4 they are before they become Mexican Mafia members.

5 Q. So you know nicknames of other Mexican Mafia members
6 and you also know the gangs where they came from?

7 A. Yes.

8 Q. And I don't know if you said this, but what is *araña* in
9 English?

10 A. It means spider.

11 Q. Now, based on your personal experience, when you're
12 made a Mexican Mafia member, are you given control over
13 certain territory outside of prison?

14 A. Yes. You have an organizational entitlement; right?
15 So I was from Artesia so I could function and conduct any
16 illicit activity within Artesia or the outlying areas such
17 as Cerritos, Hawaiian Gardens, Lakewood, Cypress, La Palma,
18 all the areas that encircle my area as long as I don't
19 encroach about the territory of another -- did somebody say
20 something?

21 Q. No.

22 A. My hearing aids must be making noise. I'm sorry.

23 As long as I don't encroach on the territory of
24 another member or violate the rights of another member. So
25 I can -- I have that specific territory. Say somebody

1 was --

2 MR. FRYE: I object to the narrative.

3 THE COURT: Ask another question, Ms. Pernas.

4 BY MS. PERNAS:

5 Q. Is the territory -- you were generally given control of
6 the territory where your gang originates from?

7 A. Originally.

8 Q. And then this policy changed?

9 A. Yes.

10 Q. And how did the policy change?

11 A. Because there were a lot of territories that where no
12 Mexican Mafia members were members of. So it left a lot of
13 unclaimed territory. So they allowed other members -- oh,
14 really, it wasn't like they're going to allow it. Everybody
15 just started doing it. They just started staking their flag
16 in specific territories that weren't previously claimed by
17 members and now it's a common practice.

18 MS. PERNAS: Mr. Enriquez, I'm going to show you
19 Exhibit 88, page 2.

20 *(The exhibit was displayed on the screen.)*

21 BY MS. PERNAS:

22 Q. Do you recognize the person in this photograph?

23 A. I do.

24 Q. Who is it?

25 A. That's David Gavaldon, Spider from Canta Ranas, Mexican

1 Mafia member.

2 Q. And now, Mr. Enriquez, if you could pull out exhibit --
3 there should be in the manila folder in front of you --
4 Exhibit 105. Do you see that?

5 A. *(Looking at document.)* Yes.

6 Q. What is Exhibit 105?

7 A. It's a photograph of me and all the newly inducted
8 Mexican Mafia members in Folsom State Prison.

9 Q. And do you know roughly when this photograph was taken?

10 A. 1985.

11 Q. Is this picture a fair and accurate depiction of you
12 and other newly made Mexican Mafia members from Folsom
13 prison?

14 A. It is. I'm the individual squatting down with the
15 watch cap on.

16 MS. PERNAS: Your Honor, the government moves to
17 admit Exhibit 105 into evidence.

18 MR. FRYE: No objection.

19 MR. EISNER: No objection, Your Honor.

20 THE COURT: It's admitted.

21 *(Exhibit 105 received in evidence.)*

22 BY MS. PERNAS:

23 Q. Now, on the screen in front of you, Mr. Enriquez, can
24 you please mark where you are.

25 A. *(Witness complies.)*

1 Q. And where is David Gavaldon?

2 A. Standing right behind me (*marking*). He's standing
3 right behind me.

4 MS. PERNAS: Your Honor, let the record reflect
5 that Mr. Enriquez has identified himself as the individual
6 crouching down in the foreground wearing a black cap and
7 David Gavaldon is wearing a white shirt and standing
8 directly behind him.

9 THE COURT: It will.

10 THE WITNESS: I believe it's a blue shirt. It
11 just appears to be white.

12 BY MS. PERNAS:

13 Q. Now, for this case, did you listen to a July 14th,
14 2007, prison visit video, Mr. Enriquez?

15 A. I did.

16 Q. Did you listen to the whole video?

17 A. I listened to the whole video and then excerpts of the
18 video.

19 Q. Did you recognize the voice of the male speaker in the
20 video?

21 A. I did.

22 Q. Who was it?

23 A. David Gavaldon.

24 Q. Do you also review prison visit videos on June 22nd
25 and 23rd, 2013?

1 A. I did.

2 Q. And did you listen to these videos in their entirety?

3 A. I did.

4 Q. Did you recognize the male inmate speaking in those

5 videos?

6 A. Yes.

7 Q. Who was it?

8 A. David Gavaldon.

9 Q. Now, did you listen to a call on April 24th, 2016, in

10 which a venomous spider bite was discussed?

11 A. I did.

12 Q. Did you recognize the male speaker in that call?

13 A. Yes, I did.

14 Q. And who was it?

15 A. David Gavaldon.

16 Q. Prior to your involvement in this case, did you know

17 any other siblings of David Gavaldon?

18 A. I did.

19 Q. Which siblings?

20 A. Roy Gavaldon Jr. and that's it.

21 Q. Roy Gavaldon Jr.?

22 A. Excuse me. Roy Gavaldon Sr.

23 Q. Roy Gavaldon Sr.?

24 A. Yeah.

25 Q. And what is Roy Gavaldon Sr.'s moniker if you know it?

1 A. "Lil Roy" or "Lil Spider."

2 Q. Is he also called "Spider Roy"?

3 A. "Spider Roy," yeah.

4 MS. PERNAS: Your Honor, we will now begin the
5 expert witness testimony.

6 THE COURT: Okay.

7 Q. Now, Mr. Enriquez, you said you grew up in LA. Is
8 there a particular area where you grew up within in LA?

9 A. I grew up in Cerritos, California.

10 Q. And the gang that functioned in Cerritos I think you
11 testified previously was Artsa?

12 A. Yes, ma'am.

13 Q. And what type of a gang is Artsa?

14 A. It's a criminal Hispanic street gang.

15 Q. How old were you when you joined?

16 A. About 12 or 13 years old.

17 Q. And why did you join?

18 A. I didn't really want to join the gang. I was dragged
19 behind a gas station; and my brother was a member of the
20 gang and his homeboys beat me up and told me I was a gang
21 member. I started crying and they brushed me off and they
22 says: Okay. You're a gang member now. Don't cry. And
23 that was it. I was a gang member.

24 Q. And is this -- is this ritual called -- given a certain
25 name?

1 A. It's called initiation or jumping in. They also call
2 it courting in. That's what the process was. They jumped
3 me into the gang that day.

4 Q. And jumping in is when you get beat by other older
5 members of the gang?

6 A. Yes. It's supposed to test your mettle and you're
7 supposed to fight back. I mean, it's supposed to show what
8 kind of courage. But I was just a kid. I was afraid. I
9 didn't fight back.

10 Q. And once you were jumped in, you were considered a
11 member of Artsa?

12 A. Yes.

13 Q. And how did you get the nickname "Boxer"?

14 A. We went to train. My brother -- by older brother Mark
15 and I and a few friends went to train at Montebello Youth
16 Boxing in Montebello, California; and we attended one time
17 this training at this gym.

18 And that day we walked out. My brother looked at
19 me that said: That would be a good nickname for you,
20 "Boxer". We never went back to the gym. I never had a
21 boxing match and the name stuck with me my entire adult
22 live.

23 Q. And is "Boxer" the name other gang members know you by?

24 A. They do.

25 Q. Once you became a member of Artsa, did you commit

1 crimes on behalf of the gang?

2 A. Yes, ma'am.

3 Q. What types of crimes?

4 A. Every type of crime you can imagine. Gang crimes, drug

5 dealing, driveby shooting, robberies. You name it.

6 Q. And why did you commit these crimes for Artsa?

7 A. They enhanced my reputation as a gang member and

8 bolstered my position within the gang.

9 Q. Did it elevate your status?

10 A. Yes.

11 Q. And why was that important to you?

12 A. Because you're putting in work. It's part of your

13 reputation. As a gang member -- another person's perception

14 of you and the level of respect is all important.

15 If they respect you, they fear you; and if they

16 fear you, they're not going to hurt you. It's kind of like

17 basic survival.

18 Q. And you mentioned that you also dealt drugs for the

19 gang?

20 A. Yes, ma'am.

21 Q. What type of drugs?

22 A. Heroin -- heroin, cannabinol, cocaine, you name it. I

23 dealt PCP and I dealt PCP as well. Marijuana.

24 Q. Did you also use drugs?

25 A. I did.

1 Q. And what drugs were you using?

2 A. All of the above-mentioned.

3 Q. And you were using and selling drugs at the same time?

4 A. Yes, ma'am.

5 Q. Was it common within Arta for users to also sell drugs?

6 A. Not all had the ability to do that; to separate the

7 two. And, typically, I was a terrible drug dealer and

8 became my best customer.

9 Q. And when was the last time you used drugs?

10 A. 14 years ago. In the summer, 14 years.

11 Q. And when was the last time you sold drugs?

12 A. 15 years ago.

13 Q. Other than selling drugs, how else would you increase

14 your status in the gang?

15 A. Committing violence. It's called putting in work. And

16 you put in work for the gang. You elevate your status.

17 People respect you and you build your reputation.

18 Q. Does going to jail also increase your status?

19 A. It does as well. Being able to take a beef, to not

20 tell, to go to prison and accept your sentence. That also

21 bolsters your reputation.

22 Q. Do gang members aspire to go to jail?

23 A. I did. As crazy as it sounds, many gang members aspire

24 to go to what they call the big house and that's prison

25 because you establish part of your *bona fides* there. Your

1 reputation is established in prison as well.

2 Q. And how old were you the first time you went to jail?

3 A. I think 13 -- 13 years old.

4 Q. What crime did you commit?

5 A. I committed a burglary and a robbery, and I went to a

6 boys camp named Boys Republic. I think I was about that

7 age. I could be mistaken.

8 Q. And were you in adult or juvenile custody?

9 A. I was in juvenile custody.

10 Q. And how long were you in custody for?

11 A. Approximately a year. I was in the boys home which is

12 called a placement for about a year, maybe less. Then I

13 graduated from the program.

14 Q. Were you ever incarcerated as a juvenile after that

15 conviction?

16 A. I was.

17 Q. And how old were you then?

18 A. I was 17 years old.

19 Q. And what crime did you commit?

20 A. Sexual assault.

21 Q. Were you convicted of sodomy by force?

22 A. I was.

23 Q. And did you serve prison time for that?

24 A. I did. They tacked on that sentence to my sentence at

25 that time which was robberies.

1 Q. And are you currently registered as a sex offender
2 because of that conviction?

3 A. Yes, ma'am, I am.

4 Q. When was the first time you went to prison as an adult?

5 A. Umm, at 18 years old. I was -- I had been released
6 from Juvenile Hall for that sex offense; and while I was
7 waiting adjudication of the case, I picked up a bunch of
8 robberies at 18 years old.

9 So they sent me to prison for nine years, eight
10 months for the robberies in 1980, I believe it was, or '81.

11 Q. And about how many armed robberies were you convicted
12 of?

13 A. Oh, about 24, I think it was.

14 Q. Did you commit other robberies for which you were not
15 convicted?

16 A. Certainly.

17 Q. And about how many of those would you estimate?

18 A. Oh, a dozen or so maybe. It could be more. I think I
19 testified a dozen, two dozen. I don't know. There were
20 plenty of robberies.

21 Q. Were those robberies all on behalf of Artsa?

22 A. They were in part to enhance my personal finances but
23 also the reputation of the gang. They bolstered the
24 reputation of my gang.

25 Q. You pled guilty to the 24 robberies that you were

1 convicted of?

2 A. I did. Out of Orange County and Los Angeles County.

3 Q. After you were convicted, where did you serve your
4 sentence?

5 A. I -- multiple prisons. I first went to CIM which is
6 State of California Institution for Men. I was then sent to
7 Soledad State Prison and then to San Quentin State Prison,
8 then to DVI which is Tracy, the gladiator school, and then
9 to Folsom, and then to Tehachapi, Southern Maximum Security
10 Complex.

11 Q. So taking those one by one, while at Soledad, did you
12 continue to commit crimes on behalf of your gang?

13 A. Yes.

14 Q. What crimes?

15 A. We robbed the *Nuestra Familia*, N-u-e-s-t-r-a
16 F-a-m-i-l-i-a which is Our Family. It's a rival of the
17 Mexican Mafia. We robbed one of those individuals, Miceli,
18 and tried to kill him.

19 Q. And why did you rob and beat this *Nuestra Familia* gang
20 member?

21 A. Because he was an enemy of the Mexican Mafia.

22 Q. Were you instructed to beat him up?

23 A. No, we did it on our own. We just thought it would
24 bolster our reputations in prison. We were young. We were
25 pretty much willing to do whatever it took to establish

1 ourselves in prison.

2 Q. Were you considered *Sureños* at this time?

3 A. We were. We had become, rather than just gang members,
4 we had graduated to what is known as a *Sureño*, S-u-r-e-n-o,
5 which means a Southern California gang member who has
6 adopted the ideology and is loyal to the Mexican Mafia.

7 Q. Is it also somebody who voices a willingness to commit
8 crimes, particularly crimes of violence for the Mexican
9 Mafia?

10 A. Yes. That is a particular necessity.

11 Q. Now, when you beat up this *Nuestra Familia* gang member,
12 did you receive any punishment as a result of that crime?

13 A. Yes. I was placed in the -- what was then known as the
14 MCU, the Management Control Unit, which is something that
15 you may understand to be isolation or the hole.

16 Q. And were you sent to MCU for a specific crime?

17 A. Advocating unrest and violence among the northern and
18 southern Hispanic inmates. That's what they called it.

19 Q. And when was the first time you actually met a Mexican
20 Mafia member?

21 A. During my stay at Soledad State Prison, I was in -- I
22 believe it was J Wing. I believe that's the accurate
23 wing -- which is a housing unit.

24 And there was a Mexican Mafia member there by the
25 name of Daniel Barela, "Black Dan" from White Fence. That's

1 B-a-r-e-l-a.

2 And he was being housed there on what is called a
3 layover. People in transit, they stop at prisons en route
4 to their location of -- designated location.

5 So while he was there, he exchanged some notes
6 with me and sent me a couple of cigarettes and a greeting
7 card for my wife and sent me a note and it was there at that
8 location that I met him.

9 Q. And how did you know that he was a Mexican Mafia
10 member?

11 A. It's just known. Mexican Mafia members are known.
12 It's not -- it's a secret organization but the members are
13 not secret. Everybody in the gang subculture knows who
14 Mexican Mafia members are.

15 Q. Are they considered the celebrities of the prison
16 system?

17 A. They are. They are VIPs. They are the top, the apex
18 predators in prison. They're the most important people
19 there.

20 Q. And you said you began communicating with "Black Dan"
21 Barela using notes or kites?

22 A. Yes, we fished them on a line.

23 Q. And what is a kite?

24 A. A kite is a small written note. It's usually on a
25 piece of paper. You write a note and you send it to a

1 person. Typically, they're done in micro-script which is
2 very small writing.

3 Q. Did you have any other interactions with Daniel Barela
4 after you left the hole?

5 A. Yes.

6 Q. What were some of those interactions?

7 A. Later on in 1985, when I arrived at Folsom State
8 Prison, I went to the hole again for a stabbing, racial
9 violence. It was a racial riot. While it was known as a
10 racial riot, it was a racial stabbing.

11 We were at war. The Mexican Mafia was at war with
12 the Black Guerilla Family and I stabbed two individuals when
13 I was on the general population.

14 So when I went back to the hole, which is called
15 SHU 2, SHU, Secure Housing Unit 2 in Folsom, "Black Dan" was
16 there and he remembered me from Soledad.

17 Q. And did your interactions with Daniel Barela elevate
18 your status in the prison hierarchy?

19 A. They elevated them immediately at Soledad State Prison
20 when other *Sureños* and Southsiders saw me exchanging notes
21 with Black Dan, or Mr. Barela.

22 My position immediately elevated. I had
23 communication with a Mexican Mafia member and the Mexican
24 Mafia member was treating me cordially.

25 Q. So at some point you said then you were transferred

1 from Soledad to San Quentin?

2 A. Yes, ma'am.

3 Q. And did your involvement with the Mexican Mafia change
4 when you were at San Quentin?

5 A. It did exponentially.

6 Q. And how did it change?

7 A. Well, I got a job in what was known as North Block, and
8 North Block housed all of the Aryan Brotherhood members and
9 all of the Mexican Mafia members on the fifth tier known as
10 Hotel California.

11 And as I was a block worker, something akin to a
12 janitor or porter or something like that, I had free rein to
13 go up to the block, go up to their tier and speak to them
14 individually; and it was this trusted position that they
15 gave me to deliver notes, knives, orders, and do things for
16 them. And so I was interacting with Mexican Mafia and AB
17 members on a regular basis there.

18 Q. Did you run whatever errands they wanted you to run for
19 them?

20 A. Whatever they asked me to do, I did.

21 Q. What were some of these errands?

22 A. They asked me to get knives, they asked me to get dope,
23 they asked me to pick up dope, they asked me to distribute
24 dope, they asked me to get their laundry done, they asked me
25 to ensure that they got fresh flats of eggs, cheese, cans of

1 tuna, cigarettes when they were out of cigarettes. Just
2 anything that they needed done, I took care of. I was the
3 go-to guy for them.

4 Q. And did this elevate your status within the prison
5 hierarchy?

6 A. It was then that I really noticed an elevation in my
7 social status within the prison. I was like -- I was like
8 associating with made guys, the mobsters, and my fellow
9 prisoners -- who were just *Sureños* and soldiers -- they
10 looked at me like I was -- almost as if I had arrived. Like
11 I had achieved some position of particular status.

12 Q. And previously you said that you had promoted to the
13 role of *Sureño*; right?

14 A. Yes, ma'am.

15 Q. At this point did you promote to a different role?

16 A. Well, then, I was considered a *camarada*,
17 c-a-m-a-r-a-d-a, which is a comrade of the organization; and
18 that term used to mean something back in the day. It meant
19 that you were a trusted associate in the organization; that
20 you could do business discreetly and you could be trusted
21 with --

22 MR. FRYE: Objection. There's no pending
23 question, Your Honor. He answered the prior question.

24 THE COURT: Ask another question, Ms. Pernas.

25

1 BY MS. PERNAS:

2 Q. What are *camaradas* expected to do?

3 A. Kill for the organization.

4 Q. Were you transferred to another prison after

5 San Quentin?

6 A. I was.

7 Q. Which prison?

8 A. Gladiator School, Deuel Vocational Institution known as

9 DVI.

10 Q. And why is it called Gladiator School?

11 A. Because you learn how to kill there.

12 Q. And when were you transferred to DVI?

13 A. I believe it was 1984, late '83.

14 Q. And how long had you been in custody by that point?

15 A. About three or four years.

16 Q. And during those three or four years, you'd been

17 learning about and working on behalf of the Mexican Mafia;

18 right?

19 A. Yes.

20 Q. Is there anything you hadn't done for the Mexican Mafia

21 at that point?

22 A. I hadn't done a hit yet.

23 Q. And when you were in DVI did you conduct any murders on

24 behalf of the Mexican Mafia?

25 A. No. But I participated in attempts. I had

1 participated in a murder in San Quentin, though.

2 Q. What murder did you participate in San Quentin?

3 A. There was an individual they asked me to give him a
4 knife and I gave him the knife. I didn't know who the
5 target was. I didn't know what was going to be done with
6 it. But him and another individual ended up killing a guy
7 in a cell with it.

8 Q. And at DVI, what happened? Did you conduct any murders
9 on behalf of the Mexican Mafia at DVI?

10 A. No, but I personally participated in my first hit
11 there.

12 Q. And what was your first hit at DVI?

13 A. My first day on the yard, another *camarada* by the name
14 of Roy Rivas -- his name was "Roy Boy" from San Diego --
15 walked up to me and asked me if my name was "Boxer" and I
16 says yes.

17 And they said that the *carnales*, c-a-r-n-a-l-e-s,
18 which means the brothers, Mexican Mafia members as you're
19 known, wanted me to do them a favor; and I told him okay.

20 So he hands me a big knife which is a chrome rod
21 and he identified this individual as Angel from Santa Monica
22 who was playing handball in the handball court.

23 And he then introduced another guy by the name of
24 "Poppet" Martinez from 18th Street; and he said this guy
25 is going to grab him and you stab him.

1 MR. FRYE: Objection to the narrative. There's no
2 pending question.

3 THE COURT: He can continue answering that
4 question.

5 THE WITNESS: And then he asked me to -- he said
6 that the guy would grab him, and I would stab him. And I
7 said: Okay. So we went and we whacked him.

8 BY MS. PERNAS:

9 Q. Do you know if the person you stabbed died?

10 A. He survived.

11 Q. And why did you stab this man?

12 A. Because they asked me to. I didn't know why he got
13 hit. They asked me to so did I it.

14 Q. Did you ask why he needed to be stabbed?

15 A. Oh, absolutely not. You don't ask that of the Mafia.

16 Q. You don't question an order from the Mexican Mafia?

17 A. No.

18 Q. After that stabbing, did you continue to commit crimes
19 on behalf of the Mexican Mafia?

20 A. Yes, I did.

21 Q. What crimes?

22 A. I stabbed another individual by the name of -- I think
23 it's Ronald Howard, a Vago gang member at that prison. I
24 coordinated other hits on the yard and facilitated drug
25 distribution, extortion at the prison. Essentially

1 everything that a Mafia member does; just a Mafia member
2 doesn't have to get his hands dirty.

3 Q. Were you part of a wrecking crew?

4 A. That's what we called ourselves. We were the wrecking
5 crew.

6 Q. What does that term mean?

7 A. We wreck lives.

8 Q. And what was the purpose of committing all of these
9 crimes on behalf of the Mexican Mafia?

10 A. We were elevating our position within the organization.
11 We were cementing our status as trustworthy soldiers who
12 would kill for the organization.

13 Q. Were you also spreading fear?

14 A. Yeah. That concept is called spreading the gospel. It
15 was dubbed by early members of the organization. That's
16 what they would call it. Spreading the Mafia gospel; that
17 we were spreading the terror and fear of the organization.
18 We had discovered that that was a very effective tool to
19 control the large population of inmates in the gangs that
20 functioned within Los Angeles in Southern California.

21 Q. Do violent acts and spreading fear benefit the Mexican
22 Mafia's reputation?

23 A. Oh, hugely.

24 Q. And did committing all of these crimes sort of make you
25 a fast -- put you on the fast-track to becoming a made

1 Mexican Mafia member?

2 A. Yeah, they did. They did but I -- they did. They put

3 me on the trajectory of being made. But even though I

4 didn't aspire to be that, I didn't think I was qualified to

5 be that.

6 Q. Now, were you eventually transferred to Folsom State

7 Prison?

8 A. Yes, ma'am.

9 Q. And did you continue to commit crimes on behalf of the

10 Mexican Mafia at Folsom?

11 A. Yes, I did.

12 Q. And I believe you testified earlier that you

13 participated in a race war with the Black Guerilla Family.

14 A. I did.

15 Q. And why did you participate in that war?

16 A. Because we're at war.

17 Q. With the Black Guerilla Family?

18 A. And the Crips. No, no. The Crips weren't involved

19 then. It was just the Black Guerilla Family.

20 Q. Do most Hispanic street gang members in prison

21 eventually become Mexican Mafia members?

22 A. Oh, absolutely not.

23 Q. About what percentage of gang members would you say

24 actually become Mexican Mafia members?

25 A. Less than 1 percent of all gang members in California

1 and all the states would ever even be considered for
2 membership and that membership process is further reduced by
3 the vetting process.

4 Q. And what is the vetting process?

5 A. The vetting process is the process by which you're
6 sponsored. You have to be sponsored in the organization by
7 a made guy in good standing.

8 In other words, a Mexican Mafia member has to
9 recognize something within you that would contribute to the
10 organization. Once he sees that, he begins to groom you
11 which means to educate you in terms of the Mexican Mafia and
12 he'll sponsor you to other members who are at that specific
13 facility.

14 It requires a unanimous affirmative vote by every
15 member to become a Mexican Mafia member. One no vote is a
16 veto because every member has the right to veto a
17 membership.

18 Once that happens, once your name is floated for
19 quality control and you pass the vetting process and they
20 vote, then you go through an induction ceremony.

21 Q. Were you sponsored at Folsom?

22 A. I was sponsored in May of 1985.

23 Q. Who sponsored you?

24 A. Corwin Elmore, "Black Dan" Barela, and Hueroshy
25 Shryock. Although Hueroshy Shryock and "Black Dan" Barela

1 were my unofficial sponsors.

2 Q. Could you please spell those names.

3 A. Oh, I'm so sorry. Raymond, R-a-y-m-o-n-d. Hueroshy,
4 H-u-e-r-o-s-h-y, which is his alias, and Shryock, which is
5 his last name, S-h-r-y-o-c-k.

6 And Corwin Elmore is C-o-r-w-i-n E-l-m-o-r-e, and
7 "Black Dan" Barela is just Daniel Barela, D-a-n-i-e-l,
8 B-a-r-e-l-a.

9 Q. Did these individuals then begin grooming you as you
10 previously described?

11 A. Yes. They took me through an educational process about
12 politics and how I was not to change. They're making me a
13 *carnal* or a Mexican Mafia member for the person that I was
14 and the qualities that I exhibited, and they didn't want me
15 to start acting like a brother that I thought I should be
16 once I was made.

17 They taught me about voting, about internal
18 dissension within the organization, quite a few things. But
19 they did educate me in terms of the Mexican Mafia.

20 Q. And were you eventually voted in?

21 A. I was.

22 Q. Now, Mr. Enriquez, there should be a manila folder with
23 Exhibit 106 in front of you.

24 A. Yes, ma'am.

25 Q. Do you recognize those photos?

1 A. I do.

2 Q. What are they?

3 A. They're pictures of me.

4 Q. And pictures of you from when?

5 A. This is got to be somewhere -- oh, when I was a Mexican

6 Mafia member but it's got to be early '90 or something like

7 that. I'm not sure. I'm not sure when the picture was

8 taken.

9 Q. Is this a true and accurate photo of you when you were

10 a Mexican Mafia member?

11 A. It was. It is.

12 MS. PERNAS: Your Honor, the government moves to

13 admit Exhibit 106 into evidence.

14 MR. FRYE: No objection.

15 MR. EISNER: No objection.

16 THE COURT: That's admitted.

17 (*Exhibit 106 received in evidence.*)

18 (*The exhibit was displayed on the screen.*)

19 BY MS. PERNAS:

20 Q. Now, you have quite a few tattoos in this photograph,

21 Mr. Enriquez. The first one I'd like to discuss is the

22 black handprint on your chest with an M on it. Can you

23 please describe what this tattoo represents?

24 A. It represents the black hand of death. Each finger has

25 a significant meaning as well. One is for *muerte*,

1 m-u-e-r-t-e, which is murder. *Venganza*, v-e-n-g-a-n-z-a,
2 which is vengeance.

3 *Terror*, which is terror, t-e-r-r-o-r.
4 T-e-r-r-o-r. I think I'm spelling it right. *Silencio*,
5 which is s-i-l-e-n-c-i-o, silence; and then *honor*, which is
6 h-o-n-o-r.

7 So those five meanings of the principles or the
8 tenets of the organization. But the symbol itself is the
9 black hand of death and only made Mexican Mafia can wear it
10 to wear it without being a member is punishable by death.

11 Q. Now, it's hard to see and I'm going to try to zoom in
12 on this. Are their faded letters on either side of the M?

13 A. Yes.

14 Q. What are they?

15 A. *E-m-e*.

16 Q. Is that for *Eme*?

17 A. Yes, ma'am.

18 *(The exhibit was displayed on the screen.)*

19 BY MS. PERNAS:

20 Q. Now, going to the tattoo on your bicep. What does this
21 say?

22 A. It says *Emero*, e-m-e-r-o, which means Mafioso. Mafia
23 member.

24 Q. Did you get these tattoos after you were made a Mexican
25 Mafia member?

1 A. Yes, ma'am.

2 Q. And can you only get them after you're inducted?

3 A. Yes, ma'am.

4 Q. Are you allowed to have these tattoos if you are not a

5 Mexican Mafia member?

6 A. No. You'll be killed.

7 Q. And what's the point of getting these tattoos?

8 A. Spread the fear and terror of the organization.

9 *(The exhibit was displayed on the screen.)*

10 BY MS. PERNAS:

11 Q. And there's one more tattoo I wanted to focus on. What

12 are the letters written across your stomach, Mr. Enriquez?

13 A. A-r-t-a, Arta, my street gang.

14 Q. Do you still have all these tattoos on your body?

15 A. No. The Arta is almost completely gone. The ones on

16 my neck are almost completely gone. My right bicep,

17 forearm, back arm, almost completely gone. The black hand

18 still remains. I have had one treatment on it, though. But

19 most of them are gone now including the black hand. It's

20 still -- the remnants of it are there.

21 Q. And you discussed this a little bit but you said once

22 you were made a Mexican Mafia member, did your life change?

23 A. Oh, significantly.

24 Q. How did it change?

25 A. My life became solely wrapped around the organization.

1 I mean, that was everything. The Mexican Mafia came first.
2 That was one of the rules.

3 It meant killing even family members if I had to
4 kill family members; that nobody can come before the
5 organization. Sacrifice my freedom, sacrifice my life for
6 the organization.

7 Q. Did people treat you differently after you became a
8 Mexican Mafia member?

9 A. Yeah, I was elevated. I was --

10 Q. How were you treated afterwards?

11 A. Fear, respect, honor. What I believed at the time to
12 be those things which really weren't.

13 Q. Were you given things as well?

14 A. Oh, sure. Drugs, money, commissary.

15 Q. And you discussed this previously, I believe, but which
16 territories were you given control over?

17 A. I was given control over Artesia, California.

18 Q. And what portions did that include?

19 A. My territories extended Cerritos, Lakewood, Downey,
20 Cudahy, Victorville, Riverside, West LA, Lennox. Oh, gosh.
21 Highland Park, part of Highland Park. Just so many
22 territories that I had. It was because -- you begin with
23 the initial territory of Artesia but later we're allowed to
24 expand our turf, what we call as turf.

25 Q. And how did you exert your control over these

1 territories?

2 A. I utilized a crew.

3 Q. And what was your crew?

4 A. My crew is a representative designated by me who is my

5 shotcaller, and I utilized a secretary.

6 Q. Do you also call your shotcaller your crew chief?

7 A. Crew chief, Emero, representative. They're known by a

8 variety of different names.

9 Q. And who else is part of your crew?

10 A. Crew workers, drug distributers, gang members, people

11 who relay messages, things like that.

12 Q. And you touched on the idea of secretaries. How did

13 you -- how do you communicate with your crew?

14 A. Covertly.

15 Q. Apologies. Did you communicate with your crew through

16 the secretary?

17 A. Almost exclusively. I would write to them directly

18 sometimes but they had to be very, very circumspect, very

19 careful in how I wrote letters because our mail is flagged.

20 All Mexican Mafia members' letters are flagged and they are

21 inspected by institutional gang investigators.

22 So the easiest way to communicate was to utilize a

23 visitor, a secretary, who would come visit me in which we

24 would utilize visitation to communicate my edicts to the

25 gang.

1 Q. And did you also communicate with your crew through
2 correspondence?

3 A. Yes.

4 Q. Now, did you continue to engage in violence after
5 becoming a Mexican Mafia member?

6 A. Oh, sure you do.

7 Q. And what did you do?

8 A. After I became a Mexican Mafia member?

9 Q. Yes.

10 A. I ordered hits. I acquiesced to hits. I voted in a
11 variety of different assaults and murder conspiracies that
12 occurred as a Mexican Mafia member.

13 I killed a Mexican Mafia member. I ordered the
14 death of a Cynthia Gavaldon. I stabbed two Mexican Mafia
15 members, one by the name of Henry Carlos and another by the
16 name of Salvador Buenrostro. I participated in a lot of
17 crime.

18 Q. Breaking that up a little bit, were you eventually
19 released from prison?

20 A. Yes.

21 Q. And when were you released from prison?

22 A. On 1988. I believe it was August 1988.

23 Q. And were you released on parole?

24 A. Yes.

25 Q. And once you were out, did you continue to engage in

1 criminal activities on behalf of the Mexican Mafia?

2 A. Yes.

3 Q. And did you help restructure the organization of the
4 Mexican Mafia's activities on the streets?

5 A. Yeah. It had pretty much been dormant and so myself
6 and a group of about five or six other Mexican Mafia members
7 who were on parole began respreading that fear of the
8 organization by robbing drug connections and making are
9 presence felt because for at least 10 years there were no
10 Mexican Mafia members on parole and everybody forgot really
11 what it was.

12 Q. Did you set up a new tax system?

13 A. We did. That was in '92, a few years later, but we
14 did. We created what was known as the program whereby we
15 would appoint -- stop driveby shootings and appoint
16 representatives in each gang territory and ask those
17 representatives to collect a third of all illicit monies in
18 each gang area and thereby kind of like a -- taking in all
19 the territory rather than just our crew areas.

20 Q. And were you successful in making gangs pay
21 extortionate taxes to you?

22 A. Yeah, pretty successful.

23 Q. When were you out of prison, did you still have other
24 gang members working under you?

25 A. Yeah. I had a crew on the streets as well.

1 Q. And was there a hierarchy under you?

2 A. Yes.

3 Q. What was that hierarchy?

4 A. I was the boss. Gilbert Ruiz was my right-hand man or

5 my shotcaller. Jacques Padilla was my enforcer, and

6 everybody else was just workers.

7 Q. And you mentioned Cynthia Gavaldon. Did you commit

8 this murder when you were out of prison?

9 A. Yes, ma'am.

10 Q. And do you know who Cynthia Gavaldon is?

11 A. Yes. It's the sister-in-law of Ms. Olivas.

12 Q. Is the sister-in-law also of David Gavaldon?

13 A. Yes, it is.

14 Q. Do you know who Cynthia Gavaldon was married to?

15 A. To Roy Gavaldon Sr.

16 Q. And what was your role in her murder?

17 A. I ordered her murder.

18 Q. Why?

19 A. She was stealing from the Mexican Mafia. She was

20 stealing drugs and money from the Mexican Mafia.

21 Q. And how do you know that she stole drugs from the

22 Mexican Mafia?

23 A. They were my drugs.

24 Q. Was she on your crew?

25 A. Yes. She was distributing and selling drugs for us and

1 holding drugs for us.

2 Q. And did she work for you?

3 A. Yes.

4 Q. And why is stealing drugs from the Mexican Mafia a
5 problem?

6 A. Because if you allow anybody to steal, the organization
7 loses respect and everybody will steal. If you don't
8 respect the organization, then it's not organization. It's
9 nothing. So it derives its power from violence, sheer
10 violence. So it's -- you can't allow people to steal from
11 the Mafia.

12 Q. You killed one of David Gavaldon's family members and
13 he was a Mexican Mafia member at the time. Were there any
14 consequences for this?

15 A. No. If she had been a civilian, then there would have
16 been consequences. But she was a participant which doesn't
17 justify my behavior but she was a participant and those are
18 the rules at the time. You steal from the Mafia, you're
19 killed.

20 Q. And did you ever discuss Cynthia Gavaldon's murder with
21 David Gavaldon?

22 A. I did personally. With David Gavaldon and Roy Gavaldon
23 Sr. as well.

24 Q. And what did they tell you?

25 A. Roy was the first one that was in the Los Angeles

1 County Jail in 1990, I believe it was. He was running
2 around the County Jail telling a bunch of soldiers from the
3 organization that I was going to get whacked out; that he
4 was going to have me killed and that his brother had already
5 put me on the *lista*, which is the hit list, and this wasn't
6 true.

7 And the Mexican Mafia members in the County Jail
8 had given me greenlight to have him killed; but I had
9 already inflicted enough damage on this family. I felt this
10 and I knew I needed David so I gave him a pass which is I
11 didn't have him killed.

12 I saw him, I spoke with him, and I told him
13 personally. I said: Look, I understand this is a difficult
14 thing, you know. Your wife got killed. And I understand
15 your anger but you got to knock it off or we're going to
16 have to kill you and he said okay and he knocked it off.

17 Q. And did you ever discuss Cynthia Gavaldon's murder with
18 David Gavaldon?

19 A. Yes.

20 Q. And what did he tell you?

21 A. It was, I believe, 2000, the year 2000. We were
22 allowed to walk around Pelican Bay State Prison during the
23 peace talks.

24 We were initiated peace throughout the State of
25 California, Mexican Mafia, Aryan Brotherhood, Black Guerilla

1 Family, and the *Nuestra Familia* as a concerted effort. The
2 Mexican Mafia was making a concerted effort to stop the
3 violence.

4 So they allowed us to go into Mr. Gavaldon's pod
5 which is housing unit which I saw him there; and I had heard
6 undertones from other Mexican Mafia members that David was
7 angry at me for murdering his sister-in-law, for ordering
8 her murder.

9 So I wanted to clear the air. With me were Daniel
10 Peña. D-a-n-i-e-l. Peña is P-e-n-a -- Piña -- excuse me --
11 P-i-n-a. And Jacques, J-a-c-q-u-e-s Padilla, P-a-d-i-l-l-a,
12 both Mexican Mafia members.

13 So we walked up to Mr. Gavaldon, David's cell, and
14 we're talking about, you know, the issues that we're
15 discussing with the Senate and the warden and the Department
16 of Corrections about peace treaties.

17 And I just -- I asked David in front of them
18 because I wanted there to be witnesses in the organization.
19 I wanted them to hear it out of his mouth.

20 And because if there was a beef, I wanted
21 resolution for it. If that meant stabbing each other, then
22 that was the resolution we were going to come to. But if it
23 meant we could do something less than, then I was all for
24 that as well.

25 So I asked Mr. Gavaldon if he had a problem with

1 what happened to Cynthia; and he said: No, not at all. He
2 was cool with it. I said: Because I was hearing -- there's
3 a lot of talk about you, you know, wanting some kind of
4 revenge or something and if that's the case, here I am.

5 And he said: No, there was no problem and he
6 understands it was business and that's all it was; and we
7 shook pinkies through the little hole.

8 You can't shake hands but there's these little
9 ports in the things so we touched pinkies. That's where you
10 shake hands. So we touched pinkies.

11 And it was resolved at that point. There was no
12 organizational repercussion for her murder. Her husband
13 agreed to it and her brother-in-law who was the Mexican
14 Mafia member subsequently agreed that it was okay.

15 Q. Were you involved in any other murders after Cynthia
16 Gavaldon's?

17 A. Oh, certainly. I mean, that's hard to articulate. I
18 mean, they always ask me to guesstimate but how do you
19 account for 17 years as a Mexican Mafia member and all the
20 people who were hurt in those years.

21 And although I didn't vote in some of those, I
22 didn't order them and I didn't even know they occurred. I'm
23 guilty by virtue of the fact that I was a member of the
24 organization that promoted violence that resulted in their
25 deaths so I accept responsibility in totality for all of

1 those crimes committed, even the people hurt that weren't
2 killed and the drugs distributed. I'm responsible for that
3 as well.

4 Q. You mentioned David Gallegos earlier?

5 A. Yes, ma'am.

6 Q. What was your role in his murder?

7 A. I was ordered to kill him because he was a Mexican
8 Mafia member who was on the *lista*.

9 Q. And you've mentioned the *lista* several times. What is
10 the *lista*?

11 A. It's the hit list. It is your mark for death. You're
12 going to die. If the Mexican Mafia gets a chance, they're
13 going to kill you.

14 Q. And David Gallegos was on the hit list?

15 A. He was on the hit list for showing cowardice.

16 Q. And why is cowardice something that puts you on the
17 *lista*?

18 A. Because there are like nine rules you have to follow as
19 a *carnales*, a made member.

20 You can't be a rat.

21 You can't be a homosexual.

22 You can't have sex with another member's wife or
23 girlfriend.

24 You can't raise your hand to another Mexican Mafia
25 member without organizational sanction.

1 You can't be a coward.

2 The organization comes first, even if it means
3 killing your own family.

4 You can't infringe upon the territory of another
5 brother, steal from another brother.

6 You can't create dissension in the organization or
7 politic.

8 I'm forgetting the ninth one. There's a ninth
9 one, and I think because I did them out of order, I forgot
10 it. But it's a violence, like a major violation. It's like
11 one of the hard rules. Rat, coward, homosexual. That's the
12 top three. Those are called hard rules. Hard rules
13 automatic death. Other rules are gray rules. You can break
14 them like if you've got juice, you can get away with it.

15 Q. Now, did you commit any other murders while you were in
16 custody?

17 A. No.

18 Personally commit murders?

19 Q. Yes.

20 A. No.

21 Q. Did you commit any attempted murders while you were in
22 custody?

23 A. Yeah.

24 Q. Who?

25 A. Mexican Mafia member Salvador Buenrostro.

1 S-a-l-v-a-d-o-r. Buenrostro. B-u-e-n-e-s-t-r-o. And Henry
2 Carlos. Both Mexican Mafia members who were deemed to be on
3 the hit list, and they gave me the hits to do it so I hit
4 them.

5 Q. And when did you attempt to killed Salvador Buenrostro?

6 A. In -- I think it was '91, 1991, in the Los Angeles
7 County Jail attorney visiting room. Myself and another
8 Mexican Mafia member by the name of Benjamin Peters stabbed
9 him multiple times.

10 Q. Were you convicted of any of these murders or attempted
11 murders?

12 A. I was convicted of the attempted murder of Salvador
13 Buenrostro for which I received a sentence of life without
14 the possibility of parole for 20 years; and Henry Carlos'
15 attempted murder was subsequently dismissed as part of a
16 plea agreement.

17 Q. Were you convicted of any murders.

18 A. I was convicted of the murder of David Gallegos and I
19 was also convicted of the murder of Cynthia Gavaldon.

20 Q. And as a result, did you receive three life sentences?

21 A. Yes, ma'am.

22 Q. And you've been in prison since then; right?

23 A. Yes, ma'am.

24 Q. Now, while you were in custody from 1991 until you
25 defected from the Mexican Mafia in 2002, did you continue to

1 commit acts of violence and other crimes on behalf of the
2 Mexican Mafia?

3 A. Yes, I did.

4 Q. Did you instruct others to commit crimes for the
5 Mexican Mafia?

6 A. Yes, I did.

7 Q. And in running that enterprise, were you giving orders
8 to your crew to commit crimes?

9 A. Through my secretary.

10 Q. And you continued to exercise control over your
11 territories outside of prison?

12 A. Yes.

13 Q. While you in prison?

14 A. Yes, ma'am.

15 Q. And after your conviction in -- I don't believe you
16 testified to this. When were you convicted of the murders
17 and attempted murders you mentioned earlier?

18 A. 1993 I think it was the sentence date and -- 1993.

19 Q. After your conviction, were you eventually incarcerated
20 at Pelican Bay State Prison?

21 A. Yes, I was.

22 Q. And where were you housed while you were there?

23 A. In the SHU or the Security Housing Unit, SHU.

24 Q. And about how much time did you spend in the SHU?

25 A. At Pelican Bay or all through my entire career?

1 Q. All throughout your entire career.

2 A. About 20 years.

3 Q. Now, you previously said that you defected from the
4 Mexican Mafia in 2002?

5 A. Yes, ma'am.

6 Q. Why?

7 A. You know, you get asked -- and I only -- there's no one
8 reason, you know. I just -- I'd come to the end of my
9 career, you know. I was afraid for my life. I was tired of
10 the gang politics.

11 I was -- they started talking about killing kids.
12 They started talking about killing family members. And that
13 wasn't the Mafia that I joined. They weren't killing kids.
14 There was some semblance of honor, what we thought was honor
15 back in the day.

16 The Maxson Road murders occurred, you know. And
17 they killed the entire family, a nine-month-old baby and a
18 five-year-old girl all for the Mexican Mafia.

19 And it was just this -- this continuous losing of
20 friendships and alliances and the shifting loyalties in the
21 organization.

22 I can't put my finger on any one thing but I
23 remember on one occasion I wrote down the names of the
24 people I absolutely had to kill in the organization, made
25 members who had become my enemies. They were going to kill

1 me or I was going to kill them. That's just the way it was.

2 And then on the other side I wrote the names of
3 people I could trust, absolutely trust. There were only
4 like one or two names and I couldn't even trust those guys.

5 MR. FRYE: Objection, Your Honor, to the
6 narrative. There's no question pending.

7 THE COURT: He's explaining why he defected.

8 You can continue.

9 THE WITNESS: So when I came to that
10 realization -- and then I was in a political -- endless
11 political battle after political battle; and these aren't
12 like politics that you know. Office politics or school
13 politics or local politics. These are life-and-death
14 politics.

15 People don't like you. Guys with every form of
16 personality disorder. Power control guys want to whack you
17 out. It just got tired. So I think fear had a lot to do
18 with it. There was some moral compunction as well, but I
19 was done and I knew I was done. My career was over.

20 Q. What did you actually do to defect?

21 A. Umm, I didn't do anything. They approached me. I was
22 in a visit talking to my secretary on a visiting phone; and
23 I mentioned to her. I asked her, I said: What would you do
24 if I wasn't here anymore?

25 And she said: It wouldn't matter.

1 I said: What would you if I wasn't "Boxer"
2 anymore?

3 She said: It wouldn't matter.

4 And I said: I am so f...ing tired of this S. I
5 just wish I was done with it. Something. I'm paraphrasing.
6 But that's -- I said essentially: I'm done with this stuff.

7 And unbeknownst to me they were recording my
8 conversation. They were monitoring all my communication.
9 Two days later, a gang investigator -- I was going to
10 medical. He -- I was going to medical on a routine chronic
11 care visit, and all these cops are acting weird.

12 The staff, CDC staff, are acting weird; and they
13 escort me and there's like five of them around me. And
14 like: What the heck's going on? This is not normal.

15 They said that the guys want to talk to you. The
16 secret squirrels they called them. Secret squirrels are
17 what is known as SSU, Special Services Unit or
18 intelligence -- institutional gang investigators.

19 So I told them: I'll talk. I'll talk with them
20 no problem. We have to have rapports with these people.
21 It's normal to have rapports with CDCR staff in prison.
22 It's a symbiotic relationship. So I didn't see anything
23 odd.

24 But they started locking down the corridors, and
25 they said: We don't want anybody to see you going in there.

1 I said: No, that's okay. I don't care. You know, I ain't
2 got nothing to hide.

3 So I go to my medical and I go to the IGI's
4 office, the institutional gang investigator; and a small
5 gentleman by the name of -- small in stature. His name is
6 Lieutenant Ernie Madrid. Approaches me.

7 He's got a bolo tie on, a little cowboy shirt and
8 some beige Levis with cowboy boots. He's got a big chaw of
9 tobacco in his mouth. He says: Hey, Rene. I know you're
10 from the *Eme*.

11 And I told him: No, I'm not. I can't acknowledge
12 anything like that.

13 He said: Well, you're in trouble. I said: No,
14 I'm not trouble. I'm cool, Man. I don't know where you're
15 getting this from. Then he pulls out this little tape
16 recorder and he plays it. He says: I'm going to show you
17 something. Let's listen to something.

18 It's my voice. He plays it. It said: I'm so
19 f...ing tired of this stuff; and I, you know, what you would
20 do if I wasn't "Boxer" anymore? What would you do?

21 Here's my voice. He's playing my recorded visit
22 and he turns it off and he says: Let me change your life.
23 Q. And after he said: Let me change your life, did you
24 then debrief?

25 A. Yeah. Yeah. That day we started the process. I did

1 an interview with the Special Services Unit in Sacramento on
2 the phone and the assistant director at the time of CDCN and
3 we decided to initiate the process that day.

4 Q. And did you tell -- did you speak to the authorities
5 about your criminal history and your life?

6 A. Oh, yeah. I participated in -- at the time the process
7 was a little different so it's called debriefing. You've
8 got to divulge, write a biography and videotape and do all
9 the stuff. And I did all that.

10 Q. Did you admit to everything you've done?

11 A. I tried to include -- I was as inclusive as I could
12 remember to be.

13 Q. And did you tell them about other people's criminal
14 activities?

15 A. Oh, certainly.

16 Q. Are there any consequences for defecting from the
17 Mexican Mafia?

18 A. Yes.

19 Q. What are the consequences?

20 A. Death.

21 Q. Do you have still have any involvement either direct or
22 indirect with the Mexican Mafia?

23 A. I have plenty of involvement with the Mexican Mafia but
24 not illicit anymore.

25 Q. What's your involvement with the Mexican Mafia?

1 A. I testify as an expert witness and I'm a communications
2 analyst.

3 Q. How long have you been helping law enforcement?

4 A. About 18, 19 -- 18 years now.

5 Q. And how many investigations have you helped with?

6 A. Hundreds of them.

7 Q. You do always testify in these investigations?

8 A. No, not always.

9 Q. Sometimes you just provide analysis?

10 A. Sometimes I just do analysis or consult on other
11 matters. Sometimes I testify. It depends.

12 Q. And what generally does law enforcement have you do in
13 these investigations?

14 A. Evaluate communication and give my expert opinion on
15 informal gang code. Things of that nature. Historic
16 Mexican Mafia stuff, 101.

17 Q. Have you been paid for this assistance?

18 A. Never for testifying. I was paid by the FBI as a CHS,
19 confidential human source, for evaluating the
20 communications; and I was also a CHS for the ATF.

21 Q. And how much were you paid by the FBI?

22 A. I think cumulatively between the two agencies probably
23 about \$50,000.

24 Q. So does -- do these numbers sound right? 25,500 for
25 the FBI and 20,300 by the ATF?

1 A. Yeah, that's about right. About 50 -- I just ballpark
2 it at about 50.

3 Q. Can you estimate how many communications you've
4 reviewed in the 17 years since you've defected?

5 A. That's impossible to quantify. Thousands and thousands
6 of phone calls. Hundreds of visits. Hundreds of pieces --
7 thousands of pieces of correspondence. Just -- photographs.
8 It's just impossible to quantify. Years of it.

9 Q. Are any of these communications between Mexican Mafia
10 members?

11 A. Sometimes.

12 Q. What about between Mexican Mafia members and other gang
13 members who aren't incarcerated?

14 A. Sometimes.

15 Q. And are most of these communications, were they either
16 seized or intercepted by law enforcement?

17 A. Yes.

18 Q. Do any of these conversations include discussions about
19 Mexican Mafia internal politics?

20 A. Oftentimes. They're communications about politics of
21 the crew or politics of the organization or politics of the
22 prison, yes.

23 Q. How about Mexican Mafia members giving orders to people
24 outside of prison?

25 A. Yes, often.

1 Q. And how about Mexican Mafia members trying to exert
2 control over their territories?

3 A. Often.

4 Q. Are there other ways that you learned about the current
5 activities of the Mexican Mafia?

6 A. Yes.

7 Q. What are the other ways?

8 A. The -- like I said, I evaluate communications.

9 Communications are the life's blood of the organization; and
10 if you list the communications, every case gives you a
11 holistic view.

12 See, I have a list of communications. I speak
13 with other drop-offs. They come to my yard, which is an SNY
14 yard. It's is politically correct phrase. SNY stands for
15 sensitive needs yard.

16 And -- where previously it was called protective
17 custody. So individuals who defect from prison gangs or
18 gangs are placed on these types of yards.

19 So fresh debriefers come to my yard. I speak to
20 them, not all of them. But some of them come to me
21 immediately because they know that I've debriefed and they
22 feel some kind of kinship.

23 And they're going through the difficult process of
24 adjusting, to being a protective custody inmate, so they're
25 open with me about the Mexican Mafia.

1 So I get information that way and, obviously, I
2 speak with investigators. People that do training. I watch
3 the media. I read the media. You know, there's a
4 variety -- and then my coauthors as well. I speak with
5 coauthors and other experts in the field who keep me abreast
6 of situations as well.

7 Q. Have you testified in any other cases about the Mexican
8 Mafia?

9 A. Yes, ma'am.

10 Q. About how many?

11 A. I don't even know anymore. I keep saying 40, but I've
12 saying 40 for the last five or six times. I think 40.

13 Q. Over 40?

14 A. Oh, yeah. Over 40.

15 Q. Have you written any books or articles about the
16 Mexican Mafia?

17 A. Yes, ma'am.

18 Q. What books have you written or collaborated on?

19 A. I've collaborated in *The Black Hand* with Chris
20 Blatchford. I coauthored *Urban Street Terrorism* with
21 Professor Al Valdez from UC Irvine.

22 I coauthored *The Mexican Mafia Encyclopedia* with
23 former Mexican Mafia member Ramon Mendoza, and I coauthored
24 both *Urban Street* and *Mexican Mafia Encyclopedia, Second*
25 *Edition*, with both the same authors.

1 Q. Did you write a test bank for UC Irvine's prison gang
2 course?

3 A. Yes, ma'am.

4 Q. Have you taught courses or given lectures about the
5 Mexican Mafia?

6 A. Yes, ma'am. I also created the test bank, the
7 PowerPoints, and I do video lecturing for UC Irvine
8 currently and in a prison gang course known as prison gangs.

9 Q. Do you ever give lectures to law enforcement about the
10 Mexican Mafia?

11 A. Yes.

12 Q. Based on your review of all of these communications,
13 the investigations you've helped with, and the more recent
14 gang members who defected, do you know whether the Mexican
15 Mafia has changed since you left in 2002?

16 A. Yes.

17 Q. And how has it changed?

18 A. It's changed. There's different practices in place
19 now. I mean, it's focused most entirely on the generation
20 of revenue now.

21 Some of the utilization of female secretaries, or
22 what they were known as *señoras*, s-e-n-o-r-a-s, which are
23 wives or girlfriends of Mexican Mafia have been reduced.
24 Their roles have been greatly reduced.

25 Mexican Mafia members are now in general prison

1 population with instantaneous communications, cellphones.
2 *Mesas*, m-e-s-a-s, which are ad hoc commissions comprised
3 solely of nonmembers but soldiers of the organization, are
4 rarely used and they're only used in the event when the
5 Mexican Mafia is not present at a facility.

6 There's been a reduction in prison violence now
7 that they use what's known as removals rather than whacking
8 people. Removals are when two or three guys go in there and
9 beat a guy up off a yard so it doesn't bring focus or
10 attention to the Mexican Mafia that controls that yard.

11 That they invoked what is he known as fining where
12 individuals who commit some type of infraction, such as a
13 *Sureño*. Say you're a *Sureño* or a Southsider, a soldier or a
14 *camarada* for the organization and you get caught with a
15 knife, a cellphone, a kite.

16 You commit some kind of infraction like disrespect
17 the CO. Something that the Mexican Mafia doesn't like, they
18 tax you. They tax you as their soldier \$500 a pop.

19 So, yeah, there's a lot of changes that have
20 occurred in the organization. There's a lot of contemporary
21 trends that are leaning toward an organization that's geared
22 primarily on generating finances.

23 Q. Has the basic concept and structure remained the same?
24 A. Oh, certainly. I mean, it's the Mafia. I mean, how
25 much can it change? Mafia was the Mafia 60 years ago and

1 baseball was baseball a hundred years ago. It's the same
2 game.

3 I mean, some of the technologies have advanced and
4 some of the teams have changed their locations and players
5 are changed. Same with the Mafia. It's still the Mafia.

6 Q. And did much of the change you mentioned earlier, did
7 it come from Mexican Mafia members being released from the
8 SHU.

9 A. Yeah, that brought about like exponential growth of the
10 organization's ability to communicate, to deal directly with
11 tens of thousands of gang members that are loyal to it, and
12 communicate freely with street gangs on the streets where
13 there are like 50,000 guys in Los Angeles that they can work
14 with.

15 Q. And, again, based -- and we'll discuss some of that
16 stuff later, Mr. Enriquez; but based on your review of
17 intercepted communications and prison visits, your
18 correspondence and your conversations with other former
19 Mexican Mafia members and your assistance with law
20 enforcement investigations, are you familiar with how the
21 Mexican Mafia operates today?

22 A. Yes.

23 *(Pause in the proceedings.)*

24 MS. PERNAS: Your Honor, one moment?

25 *(Plaintiff's counsel conferred.)*

1 MS. PERNAS: Apologies, Your Honor. I just wanted
2 to be clear that I noted for the record that his expert
3 testimony portion had started earlier.

4 Q. Now, about how many made Mexican Mafia members are
5 there today?

6 A. I'd say between 125 and 150.

7 Q. Do most members come from a specific geographic area?

8 A. Yeah. Typically it's Southern California.

9 Q. And are most Mexican Mafia members today incarcerated?

10 A. Yes.

11 Q. Are there special names or terms for Mexican Mafia
12 members?

13 A. Yes.

14 Q. And what are they?

15 A. *Carnal*, c-a-r-n-a-l. Brother, *hermano*, h-e-r-m-a-n-o.
16 *Pilli*, p-i-l-l-i, which is a Nahuatl, N-a-h-u-a-t-l, an
17 ancient Aztec dialect which means like a respectful
18 honorable sir. There is *maitl*, m-a-i-t-l, which means hand
19 like black hand which is also *natwan* (phonetic).

20 Q. Can "Pops" also be a term for a Mexican Mafia member?

21 A. Those are crew specific. Crew specific terms like
22 "Tio," "Pops," "Dad." Those are all crew specific. Those
23 are familial terms that are part of a -- what's known as a
24 thematic code which often utilized in a formal gang code.

25 Q. Are there any other special symbols associated with the

1 Mexican Mafia?

2 A. Yeah. *Mactlac tomei*, m-a-c-t-l-a-c t-o-m-e-i, which is
3 the Mayan numeric symbol of two bars and three dots.
4 It's -- it totals -- each bars represents five, each dot
5 represents three for a total of 13. The 13th letter in
6 the alphabet is the letter M and pronounced in Spanish
7 that's *Eme*.

8 Individuals who wear *mactlac tomei*. Other experts
9 identify it as a *compoltatu* (phonetic) but that's a misnomer
10 because a *compol* (phonetic) is a southern person in the
11 Mayan language. So this is -- the individual is identifying
12 himself as a soldier for the organization.

13 Q. You previously testified that terms like "Pops" and
14 "Dad" are crew specific. What do you mean by that?

15 A. The crews identify individuals, their hierarchy with
16 terms of endearment; and they're intended to be innocuous so
17 they could be crew specific.

18 Where some people refer to their secretary as the
19 *Tia* or the *sis*. Others may call it my -- you know, my aunt,
20 you know, which is an English translation. So it's crew
21 specific.

22 I don't intend it to complex the interpretation of
23 these communications. It's pretty easy to discern when a
24 crew is utilizing these familial terms in terms of reference
25 to the Mexican Mafia member or crew members.

1 Q. And, briefly, you were mentioning symbols of the
2 Mexican Mafia. Are Aztec symbols also an important sign of
3 the Mexican Mafia?

4 A. Yeah. There's a shield which is called the shield of
5 the eternal warrior. Looks like a -- kind of a like a G and
6 a little stair, ladder stairs.

7 It's -- that's one that is typically utilized.
8 Most of the images such as *huitzli lopotchli* or *tezcalipo* --
9 *huitzli lopotchli*, h-u-i-t-z-l-i l-o-p-o-t-c-l-i, and then
10 *tezcalipoca* is t-e-z-c-a-l-i-p-o-c-a, which is the war gods.
11 The war gods are common symbols. Aztec symbolism is often
12 used to identify an individual's adoption of that ideology
13 in the culture.

14 MS. PERNAS: Showing you Exhibit 88, page 2.

15 (The exhibit was displayed on the screen.)

16 BY MS. PERNAS:

17 Q. You previously identified this as David Gavaldon;
18 correct?

19 A. Yes, ma'am.

20 Q. Do you see any tattoos on David Gavaldon that indicate
21 he's a member of the Mexican Mafia?

22 A. Yes, ma'am.

23 Q. Which tattoo?

24 A. The word "*Eme*" tattooed over his heart.

25 Q. And does his stomach tattoo say "Canta Ranas"?

1 A. Yes, ma'am.

2 *(The exhibit was displayed on the screen.)*

3 Q. Do you see this word right here?

4 A. Yes, ma'am.

5 Q. What is that?

6 A. That's "Spider Canta Ranas."

7 *(The exhibit was displayed on the screen.)*

8 BY MS. PERNAS:

9 Q. And what about the tattoo right above his right knee?

10 A. It's says "Canta Ranas Trece" -- 13 -- excuse me.

11 *Trece* is t-r-e-c-e. It's Spanish for 13.

12 MS. PERNAS: I'm now going to show you Exhibit 97,

13 Mr. Enriquez.

14 *(The exhibit was displayed on the screen.)*

15 BY MS. PERNAS:

16 Q. Do any of these tattoos indicate that this individual
17 is a member of the Mexican Mafia?

18 A. They indicate his affiliation with the Mexican Mafia.

19 Q. Which tattoos indicate his affiliation with the Mexican
20 Mafia?

21 A. The number 13 on his back. The Aztec -- looks like an
22 eagle warrior here on his left back arm, and the spider
23 tattoo in the center of the 13.

24 Q. What does the spider tattoo indicate to you?

25 A. Well, it indicates that -- his affiliation with

1 "Spider" -- Gavaldon from Canta Ranas.

2 Q. And what is the purpose of getting these tattoos?

3 A. To show loyalty and their dedication to the crew, to
4 that specific Mexican Mafia member.

5 Q. Can these tattoos also almost intimidate people?

6 A. Oh, certainly. Tattoos are meant to intimidate.
7 That's the whole point of tattoos. You don't get them for
8 -- I mean, now they're contemporary. It's in vogue to get
9 tattoos but back in the day it was the more tattoos you had,
10 the more menacing you were.

11 And gang tattoos specifically are advertisement
12 for the organization or gang that you represent. That's
13 what these represent. Such a large 13 is not discreet.
14 It's intended for a purpose.

15 Q. Now, you previously testified that there's a hierarchy
16 for the associates of the Mexican Mafia; right?

17 A. Yes, ma'am.

18 Q. And right at the top would be a *carnal*?

19 A. That's a member.

20 Q. That's a member?

21 A. Yes.

22 Q. So the associates below, starting with -- can you
23 please describe the various levels within the hierarchy?

24 A. Well, at the very lowest level is a resident. That can
25 be an individual who's from -- lives in a Hispanic gang

1 territory but is not a gang member.

2 They're not expected to participate in Mafia
3 violence or anything like that. But if a racial riot occurs
4 in a correctional facility, they're intended to participate.
5 Or it's demanded that they participate in the racial
6 violence, and they have to kick into the kitty which is an
7 extortion pool of money collected by the organization there
8 in prison.

9 Next are Southsiders. Southsiders are an
10 individual that hail from Southern California gangs that are
11 typically loyal or historically loyal to the organization.

12 So they're expected to participate in violence, in
13 roll calls, contribute to the kitty. But they're not
14 required to do hits for the Mexican Mafia.

15 *Sureños*, on the other hand, are individuals who
16 voice a willingness to participate in violence for the
17 Mexican Mafia. Have participated in violence and it's
18 required that they do anything that the Mexican Mafia asks
19 them including murders, assaults, distribution of drugs,
20 creation of weapons, you name it, extortion.

21 *Paisas*, p-a-i-s-a-s, which are Mexican nationals,
22 have an equal position within the organization. They
23 previously held positions on *mesas*. Those ad hoc
24 commissions that ran prison yards for Mexican Mafia members;
25 and they're treated as equals within the organization

1 because there are many Mexican Mafia members that are
2 Mexican nationals.

3 Above that is *camaradas*. *Camaradas* are the true
4 powerhouse of the organization comprised of about a
5 thousand, 2,000 guys. These are guys that have put in work
6 for the organization.

7 They've done hits and murders and they're tested,
8 vetted, and proven warriors for the Mexican Mafia and their
9 next step in elevation would be membership but not all of
10 them will be considered or even put up for membership.

11 Q. And where do the secretaries fall in this hierarchy?

12 A. Secretaries are part of the crew hierarchy which is
13 different from *camaradas*. But a secretary in terms of
14 hierarchy in an organization is right under a Mexican Mafia
15 member.

16 There's no other powerhouse in the crew other than
17 a secretary or *señora*. Those two right up there is direct
18 communication with the Mexican Mafia member, related to a
19 Mexican Mafia member. There's no greater power in that on
20 the street gang or a street crew.

21 Q. Why is there no greater power than that?

22 A. That's the individual who communicates with the Mexican
23 Mafia member. That's the individual who controls the crew.
24 That's the individual who delivers edicts. That's the
25 individual who controls the money. That is the core of the

1 crew. Without the secretary, there is no crew.

2 Q. Now, you spoke about *Sureños*, Southsiders and
3 *camaradas*. Are there any rules that the Mexican Mafia
4 imposes on them?

5 A. Sure there are rules. I mean, but they vary from
6 facility to facility. Each facility can have different
7 rules. But, essentially, they're much like the Mexican
8 Mafia's rules; and *Sureños* template their rules off of our
9 rules or what used to be my rules.

10 Q. So are there rules for *Sureños*, Southsiders, and
11 *camaradas*, is one of the rules don't cooperate with law
12 enforcement?

13 A. Yes.

14 Q. Don't snitch?

15 A. Don't tell, don't snitch, don't inform.

16 Q. And how are these rules enforced?

17 A. Terror, violence, murder.

18 Q. And what is the punishment for violating these rules?

19 A. Death.

20 Q. And who'll carry out this punishment?

21 A. The person's very own gang. The Mexican Mafia has
22 influence with street gangs; and if somebody within your
23 gang commits an infraction against the Mexican Mafia, the
24 Mexican Mafia will require your own homeboys to hit you and
25 they will.

1 Q. Now, you said that when Mexican Mafia members are
2 incarcerated they can still go about controlling their
3 territories through their secretaries and their crew; right?

4 A. Yes.

5 Q. Does a Mexican Mafia member typically appoint someone
6 who is not in prison to manage his territory?

7 A. Yes.

8 Q. Who is that?

9 A. Shotcaller.

10 Q. And how are shotcallers chosen?

11 A. Well, it depends on the specific Mexican Mafia but it's
12 usually an individual who you know, you trust, you've done
13 time with. It doesn't always have to be that they've done
14 time with you.

15 I've appointed people to the crew that I've never
16 done time with who ran my crew efficiently. But it's
17 someone that you know that you can trust because they're
18 entrusted with the collections, with the power. Under the
19 secretary, your shotcaller is the most powerful person in
20 the crew.

21 Q. Do Mexican Mafia members usually try to choose
22 shotcallers who show strong business skills?

23 A. Strong business skills, have respect in the specific
24 territories they control, have good sociopolitical skills,
25 are willing to commit violence, willing to utilize violence

1 to achieve their goals.

2 Q. So staying with the business skills for a minute, why
3 is it important to have good business skills or management
4 skills as a shotcaller?

5 A. Well, they're going to do business. They're going to
6 distribute narcotics. They're going to extort people.
7 There's just going to be monies, extortionate monies pouring
8 in from a variety of different territories.

9 This individual has to know how to get these
10 monies, collect them, deliver them, delegate authority to
11 other individuals because it's a monumental task.

12 So it has to be some organizational skills as well
13 in this individual. So it's all important that you have
14 somebody that has the ability to conduct business at this
15 level which is a high level of efficiency.

16 Q. And does a crew chief also have to be able to manage
17 other crew members effectively?

18 A. Yes.

19 Q. And what happens if a crew chief is not managing other
20 crew members effectively.

21 A. There's dissension. There's stealing. There's the
22 slow erosion of the crew.

23 Q. And is dissension -- does dissension need to be dealt
24 with immediately?

25 A. Yes. It's often -- it's often part of every crew; and

1 it's dealt with. In most of the cases that I've dealt with,
2 there's always the discussion of disgruntled workers or
3 dissension within the crew and internal politics.

4 Q. And dissension can threaten a crew?

5 A. Yes. It can threaten the existence of that revenue
6 source or multiple revenue sources, even the freedom of the
7 participants and safety of participants.

8 Q. You also mentioned the willingness to commit violence
9 as something a Mexican Mafia member would look for in a
10 shotcaller. Why is it important to have someone willing to
11 commit violence as your crew chief?

12 A. There's always going to be violence committed in a
13 crew. The Mexican Mafia, that's what it knows. It's
14 founded upon hundreds of murders so it always reverts to
15 that. The best answer, kill them. That's what the Mafia
16 reverts to, and that's the one thing that gang members
17 understand.

18 They fear death and the Mexican Mafia knows that.
19 So they're always going to revert to that. Okay. Let's
20 make an example. Let make's an example. And examples are
21 made frequently.

22 Q. Hypothetically, if the Mexican Mafia member relayed a
23 message to his crew chief through his secretary telling the
24 crew chief: Don't go soft on me, after the crew chief had
25 been injured in a shooting. What significance would that

1 hold for you?

2 A. Stay strong. Don't get weak. Don't worry about the
3 politics. You'll be fine. Be hard. Be a killer.

4 Q. Is it common for Mexican Mafia members to groom an
5 individual in prison to become their crew chief or
6 shotcaller once they're paroled?

7 A. I did the exact thing with Gilbert Ruiz. I testified
8 about him earlier today. "Lil Mole" from White Fence. He
9 was with me in Folsom State Prison and I discussed with him:
10 Hey. When we get out, we're going to take over Boyle
11 Heights. White Fence gang area. And we actually did and he
12 was my crew chief. He was my shotcaller. So it's common.
13 It's common practice.

14 Q. And why is this a common or a good practice for the
15 Mexican Mafia?

16 A. Because you can appoint somebody to run your crew who
17 you've never done time with. Somebody you've been a
18 childhood friend with, a relative or something, and they
19 don't really know -- have the ability to communicate with
20 you; right?

21 And you can relay those messages efficiently
22 through secretaries; but someone you're in a cell with that
23 you can sit down and groom and lay out your vision and your
24 expectations and your desires, that's the best way to groom
25 a crew chief or a shotcaller.

1 I mean, you sit down and tell them: Look. This
2 is how I want it done. This is what I expect of you. This
3 is how you're going to do it and these are the steps we're
4 going to take to effectuate that.

5 Q. Would a Mexican Mafia member who wanted to groom
6 someone to be his crew chief arrange to have him as a
7 cellmate?

8 A. Yes.

9 Q. Is there a formal request process at Pelican Bay where
10 you can put a request to have a cellmate within the SHU?

11 A. Yes. It's called the bed move request.

12 Q. And it's submitted to CDCR for consideration and
13 approval?

14 A. Yes.

15 Q. Now, generally, what are shotcaller's duties with
16 respect to the crew?

17 A. To enforce. To collect monies. To make sure that
18 everything within the crew is running efficiently. To make
19 sure that the monies are distributed to the secretary and up
20 to the Mexican Mafia member. To make sure the Mexican Mafia
21 member's desires are fulfilled.

22 Q. I'm going to show you a transcript, Mr. Enriquez. You
23 have a transcript binder right in front of you. If you can
24 pull it out and take a look at previously admitted Exhibit
25 31.2A. I'm going to try to put it up on the Elmo here as

1 well.

2 A. 31.2A?

3 Q. 31.2A.

4 THE COURT: We're pretty close to the break,

5 Ms. Pernas. Shall we just go ahead and break?

6 MS. PERNAS: Sure, Your Honor.

7 THE COURT: All right, ladies and gentlemen, don't
8 talk about the case or form or express any opinions about
9 the case until it's finally submitted to you.

10 We'll take our lunch break. You're ordered to
11 return by -- let's do 1:20, and you're ordered to have a
12 good lunch.

13 THE CLERK: All rise.

14 (The jurors exited the courtroom.)

15 (The following was held outside the jury's presence:)

16 THE COURT: Is there anything we need to discuss?

17 MR. FRYE: No, Your Honor.

18 MR. EISNER: No, Your Honor.

19 MS. PERNAS: No, Your Honor.

20 THE COURT: All right. We'll see you at -- how
21 about 1:10?

22 THE CLERK: Court's in recess.

23 (At 11:55 a.m. proceedings were adjourned for lunch.)

24 -oo-

25 **CERTIFICATE**

12 REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
13 TRIAL DAY 5 AFTERNOON SESSION
14 WEDNESDAY, FEBRUARY 19, 2020
15 1:15 P.M.
16 LOS ANGELES, CALIFORNIA

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WITNESS INDEX

* * *

3 WITNESS: PAGE

4 RENE ENRIQUEZ

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7	Cross-Examination by Mr. Frye	77

1 **EXHIBIT INDEX**

2 * * *

3 EXHIBIT NO.

(None received.)

4 PAGE

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LOS ANGELES, CALIFORNIA; WEDNESDAY, FEBRUARY 19, 2020

1:15 P.M.

--oOo--

5 THE COURT: Is there anything we need to discuss?

6 MR. FRYE: No, Your Honor.

7 MS. PERNAS: No, Your Honor.

8 THE COURT: Are you ready with whatever transcript?

9 Does the witness have what you want him to look at?

10 MS. PERNAS: Yes, Your Honor. I'm going to do a
11 little bit more preliminary set up, but 31.2-A, Mr. Enriquez?

12 THE WITNESS: 31.2-A, 31.3, 31.2-A, I have got it.

13 THE COURT: Okay. We're ready.

14 THE COURTROOM DEPUTY: All rise.

15 (JURY ENTERS COURTROOM AT 1:19 P.M.)

16 THE COURT: You may be

17 The witness is back on the stand.

18 Sir, you are still under oath

19 MS. Pernas, you may continue.

20 THE WITNESS: Thank you, Your Honor.

21

DIRECT EXAMINATION

23 BY MS. PERNAS:

24 Q Mr. Enriquez, we were discussing shot callers' duties when
25 we left off.

1 Did you mention that one of the shot callers' duties is
2 collecting taxes?

3 A Yes, ma'am.

4 Q What are some of the -- what are some of the other duties
5 of a shot caller?

6 A Sending money to co-participants, delivering orders,
7 distributing narcotics or identifying drug dealers to tax.
8 There is a broad range.

9 Q Is relaying messages to a secretary one of a shot caller's
10 duties?

11 A Yes.

12 Q What about making sure payments are going to a Mexican
13 Mafia member?

14 A Yes. That -- taking care of the Mexican Mafia members'
15 family in terms of providing for traveling expenses. There is
16 a variety of different responsibilities.

17 Q Now, looking at Exhibit 32.1-A in front of you. I'm going
18 to put the face page of that exhibit on the Elmo.

19 Do you see that this is a call on September 11th, 2013?

20 A Yes.

21 Q Between Jose Loza and Ian Casillas?

22 A Yes, ma'am.

23 Q Now, in your participation in this investigation,
24 Mr. Enriquez, do you review a number of wiretap calls, prison
25 correspondence, recorded prison calls, and recorded prison

1 visits and photos?

2 A Yes, ma'am.

3 Q From about -- is this the type of evidence that you would
4 review in forming an expert opinion regarding the Mexican Mafia
5 and the crews loyal to them?

6 A Yes. This is almost exclusively what I do.

7 Q From about 2011 to 2016, did you form an understanding as
8 to who was the leader of David Gavaldon's crew?

9 A Yes.

10 Q How did you form that understanding?

11 A I listened to -- well, my knowledge of the Mexican Mafia
12 first.

13 And I listened to the communications and I ferreted out
14 who was the shot caller, who was Mexican Mafia members and what
15 the hierarchy of the crew was.

16 Q Who was the shot caller in the time period that I
17 mentioned?

18 A The shot caller was Jose Loza.

19 Q Now, turning your attention to this call, specifically the
20 bottom of page 3, and the top of page 4, you can see that Jose
21 Loza -- Jose Loza starts speaking at the very bottom.

22 It says: Anybody else would have. I mean, he doesn't
23 want to hear fucking all of this bullshit. He doesn't want to
24 hear none of this homie.

25 In his mind -- all the way down to -- of everything.

1 Do you see that excerpt?

2 A Yes.

3 Q Now, assuming -- what is Jose Loza conveying here?

4 A That David Gavaldon, in his mind thinks everything is run
5 sufficiently and his orders are being followed.

6 Q Who are the people taking care of Mr. Gavaldon?

7 A His crew.

8 Q Is this his crew taking care of him?

9 A Yes, this is him explaining -- he's explaining the reality
10 of what is occurring. This crew ends up taking care of him.

11 Q Are some people in the crew not taking care of David
12 Gavaldon?

13 A Yes. There are common behaviors in the crew. There are
14 some slackers, what we call slackers -- not producers, they use
15 name only, utilize the name for enhancing of the reputations
16 and other people really produce.

17 Q You see the line about taking care of the visits? Right
18 down there. If you look up on the screen?

19 A Yes.

20 Q Mr. Enriquez?

21 A Yes.

22 Q Taking care of the visits?

23 A Oh, yes, I see that.

24 Q What is that in reference to?

25 A Commonly when a Mexican Mafia member secretary or family

1 member goes to visit, at whatever respective prison they are
2 housed at, the crew will pay for their expenses for travel.

3 Q Now, does the Mexican Mafia have any financial interests?

4 A Do they have any financial interest in what?

5 Q In making profit or generating revenue?

6 A Almost solely. Mexican Mafia focuses on generating money.
7 Yeah, it's contract, farming out murders or extorting people,
8 distributing narcotics in prison, running mesas, running
9 kitties.

10 Q What types of -- is drug trafficking another crime that
11 generates revenue for the Mexican Mafia?

12 A Hugely.

13 Q What about collecting taxes?

14 A Collecting taxes.

15 Q If somebody said, hypothetically, that one of their big
16 homies was overlooking a lot of things out in our area, what
17 does that mean to you?

18 A It means that a Mexican Mafia member is overlooking a lot
19 of criminal activity in that specific region.

20 Q Now, with respect to collecting taxes, what does
21 collecting taxes mean?

22 A It means to extort. To extort drug dealers or gang
23 members for monies generated from illicit activities.

24 Q That would be from illicit activities that are in the
25 territory that a Mexican Mafia member controls?

1 A Territories that those individuals have interest in.

2 Q Now, is it common for a Mexican Mafia member to take
3 control of a neighboring territory if that territory is not
4 already controlled by another Mexican Mafia man?

5 A I didn't hear the first part of your question.

6 Q Is it common for a Mexican Mafia member to take
7 control of a neighboring territory if that territory is not
8 controlled by the Mexican Mafia?

9 A Yes, he has a right to do that, that is very common.

10 Q How does a Mexican Mafia member claim an unclaimed
11 territory for himself?

12 A He sets up shop. He has his crew there, and he lets other
13 Mexican Mafia members know he's running that area.

14 Q So does he place a representative there?

15 A He places a representative there. He can ask an
16 individual from that specific gang to do it, or he can ask his
17 shot caller to go there and represent him by proxy.

18 Q Would his representative then be allowed to tax in his
19 name?

20 A Yes.

21 Q Are you familiar with the concept of thirds?

22 A Yes.

23 Q What are thirds?

24 A Thirds are the expected contribution that gang members and
25 drug dealers are supposed to pay from their profits.

1 The Mexican Mafia requires one-third of their profits,
2 it's not always paid, but that's what they ask.

3 Q It's a standard tax?

4 A It's standard, flat tax.

5 Q Why are people outside of jail willing to pay this tax?

6 A They benefit from it as well. Being taxed is not just
7 one-sided. It's not the Mexican Mafia member victimizing me,
8 you are extorting me. The Mexican Mafia provides them with
9 exclusivity, protection, collection, placing themselves beneath
10 underneath the organization.

11 If somebody comes and tries to rip them off, they have the
12 Mexican Mafia behind them. Pay the Mexican Mafia for their
13 service. It's kind of like an insurance as well.

14 Q Are there consequences for falsely collecting extortion of
15 taxes on behalf of the Mexican Mafia member?

16 A Are the consequences for what?

17 Q Falsely collecting extortion of taxes on behalf of a
18 Mexican Mafia member?

19 A Yes, ma'am.

20 Q Why are there consequences for that?

21 A Because if the Mexican Mafia allowed that to occur, it's
22 stealing.

23 The Mexican Mafia would allow people to steal from them.
24 It's pretty simple.

25 Q And how does the money from tax collection and drug

1 dealing eventually get from the shot caller up to the Mexican
2 Mafia member?

3 A Usually, they give it to a family member, a secretary, or
4 wife of the Mexican Mafia member, and they funnel it to them.

5 Very little of the money actually gets to the Mexican
6 Mafia member, the majority stays with the family.

7 Q For the money that typically goes to the Mexican Mafia
8 member, how does it usually get there?

9 A Usually by money order. You deposit in the Eme account.
10 If you are in the SHU, it's like 55 bucks, it's kind of like a
11 draw.

12 If you are in county jail you can get, you know, any
13 number up to \$300. They deposit in your trust account known as
14 your books.

15 Q There is a couple of concepts you just discussed I want to
16 flesh out.

17 First you said the amount that goes for Mexican Mafia is
18 small. Why is that?

19 A There is quite a bit of scrutiny in terms of Mexican Mafia
20 members in revenue they generate.

21 In the last decade or so, Mexican Mafia members had
22 upwards of \$90,000 in their individual accounts.

23 For individuals who have been housed in maximum security
24 prison with no legitimate source of income having \$90,000 in
25 your account is a red flag.

1 The other guy had \$30,000 on his account. Some of them
2 had 10 or \$12,000, so the CDC seized funds, so Mexican Mafia
3 members make a conscious effort to have only small increments
4 of money placed in their account so they won't be seized.

5 Q You also mentioned a Cadillac draw. What is that?

6 A That is the maximum amount allowable in terms of what you
7 can spend in the SHU. Because you are on this privileged
8 status called D1D, which means you are in the hole, you are max

9 A. For that privilege status, you are allowed to spend \$55 per
10 month. I believe it's still 55, so that's the maximum amount
11 and it is called Cadillac, you are spending the maximum.

12 Q Do payments to Mexican Mafia members sometimes be split up
13 into smaller increments?

14 A Sure they can.

15 Q Will these smaller payments sometimes be spent from
16 different people in the same household?

17 A Yes.

18 Q Now, is it typically the shot caller who puts money on the
19 Mexican Mafia members' books?

20 A Typically no. They don't -- you don't want direct
21 communication with the shot caller and the Mexican Mafia
22 member. It does occur, but you want to insulate the shot
23 caller from law enforcement scrutiny on the streets.

24 So writing the Mexican Mafia member directly might expose
25 him to law enforcement investigation and scrutiny.

1 Q You mentioned sometimes a secretary will put money on
2 Mexican Mafia members' books?

3 A Yes.

4 Q And do Mexican Mafia members and their associates
5 sometimes use certain euphemisms to refer to these payments
6 being paid to Mexican Mafia members?

7 A Yes.

8 Q What are some of these euphemisms?

9 A They will tell to give from the heart, tell them to show
10 some love. It could be any number of euphemisms, but they all
11 mean tell them to pay me.

12 Q And now earlier you mentioned that drug trafficking was
13 one of the primary source of revenue streams for the Mexican
14 Mafia.

15 Were you referring to drug trafficking outside of prison?

16 A No. There is drug trafficking -- well, in prison as well.
17 It's inside a prison, outside of prison, transnational drug
18 trafficking as well.

19 Q What are some techniques for smuggling drugs into prison?

20 A On the person or through correspondence?

21 Q Are those both possible?

22 A There is correspondence. There is introduction through
23 staff. There is -- for the person visiting a Mexican Mafia
24 associate or what they call a mule, right, they will insert the
25 drugs in a body cavity, the rectum or vagina, or if it is a

1 male they put it in the mouth or rectum. They come to the
2 visit, extract it while in the restroom, and then give it to
3 the prisoner. The prisoner will then insert it to his rectum
4 and smuggle it back into the prison. That is a physical way to
5 get it through the visit.

6 Q It can also be brought in through correspondence, you
7 said?

8 A There is a variety of ways of bringing it through
9 correspondence. You could do a drawing, say, for example, you
10 have a drawing that is done by a kid like for second or third
11 grade, it looks like a kid's drawing, and it says happy
12 birthday, Dad or whatever on it, the kid's scrawl or writing,
13 you get that in an envelope. It looks like your kid or
14 grandkid sent you a drawing.

15 But the reality, that whole page is saturated in
16 methamphetamine, so you can cut the drawing up and sell it.
17 And the paint is actually methamphetamine. It's based, so
18 there are Suboxone trips they put beneath stamps, and they sell
19 those, and there are other ways to secrete heroin or
20 methamphetamine in the folds of an envelope.

21 I mean, the number of ways you can smuggle in narcotics to
22 correspondence are endless.

23 Q Are drugs more expensive in prison, generally?

24 A There is a huge premium on drugs in prison.

25 MS. PERNAS: Your Honor, permission to publish? I

1 will be showing the witness, Exhibit 46.2-A.

2 BY MS. PERNAS:

3 Q Mr. Enriquez, if you could please turn to 46.2-A in the
4 binder in front of you.

5 A I'm there.

6 Q Now, you see this call is dated May 10th, 2013. It's
7 between David Gaitan and Michael Salinas?

8 A Yes.

9 Q Do you remember listening to this call?

10 A I don't know what it says, but I'm quite sure I remember
11 it.

12 Q I will show you the following excerpts.

13 A I recall it now.

14 Q Do you see where Mr. Salinas says: Like, he will give me
15 ounces, quarter pounds?

16 A Yes.

17 Q What significance does that hold for you?

18 A Those are weights in drugs.

19 Q And if you read down a little bit further, Mr. Salinas
20 says: Me personally, don't gotta pay a third. I don't gotta
21 pay a third because that belongs to him.

22 And he explains this concept a little bit down here as
23 well.

24 What is Mr. Salinas conveying here?

25 A That he's not subject to the third tax because he's

1 dealing directly with the -- for Mexican Mafia member.

2 But out of respect for the Mesa, or the Mexican Mafia
3 member that controls that yard, he's going to provide them with
4 a gratuity out of respect.

5 Q So breaking that down a little bit. You mentioned a mesa
6 before. What is a mesa?

7 A A mesa is an ad hoc commission. It is where no Mexican
8 Mafia members are present. They appoint 3 to 5 individuals to
9 run the prison yard and represent, and each individual a
10 Mexican Mafia member.

11 Each of those mesa members collect an illicit share of
12 monies that generate on that yard and provide them with the
13 Mexican Mafia member they represent.

14 Q Is Mr. Salinas on a mesa here, can you tell?

15 A No. He's not on the mesa. He is dealing directly for a
16 Mexican Mafia member. It is my belief in this limited excerpt
17 that is what I would assume.

18 Q And is he saying that he doesn't have to pay a third
19 because he is operating under David Gavaldon?

20 A Yes.

21 Q Is he going to pay some money anyway out of respect?

22 A Yes. He's going to pay the Mexican Mafia member who
23 controls that yard.

24 Q Turning to excerpt 46.1-A.

25 A You said 46.1?

1 Q 46.1. This is part of the same call, Mr. Enriquez. The
2 cover you can see it's May 10th, 2013, it's between David
3 Gaitan and Michael Salinas?

4 A Okay.

5 Q Now, if you would like to refresh your memory by reviewing
6 the transcript, I want to focus specifically on page 7 where
7 David Gaitan says at the top?

8 A I remember this call.

9 Q "But they are going to want proof and they are going to
10 probably want this and that."

11 What is David Gaitan referring to?

12 A He's referring to bona fides, like, asking for bona fides.
13 They want proof this guy is representing a Mexican Mafia
14 member. And that is usually done through correspondence or
15 communication with the secretary or a family member's phone
16 number and having the ability to call that family member's
17 phone number to verify, hey Jim here says he works for your
18 brother or your sister or your cousin.

19 Is that true? Yes, it's true.

20 Those are the proofs, they want pictures, there is a
21 variety of different ways to establish this.

22 Q You said pictures is one of them?

23 A Pictures is a big one.

24 Q Photos with a Mexican Mafia member would be proof?

25 A Yes.

1 Q Photos with Mexican Mafia member's family could also be
2 proof?

3 A Hugely.

4 Q Now, you touched on this earlier, but in prison or out of
5 prison, is it acceptable to say that you work for a Mexican
6 Mafia member if he hasn't given you permission to work for him?

7 A Is it possible?

8 Q Is it acceptable to say that you work for a Mexican Mafia
9 member if he hasn't given you permission to work for him?

10 A It's not acceptable. You get killed, you get whacked out
11 for it.

12 Q Now, turning to transcript 54-A. Are you there,
13 Mr. Enriquez?

14 A Yes, ma'am.

15 Q This call is on May 18th, 2013, and it's between David
16 Gaitan, Michael Jaimez, Michael Salinas, Jose Loza.

17 Starting here at the bottom of page 2, Michael Salinas
18 says: This fool Johnny Boy, I told him to keep Pop's name out
19 of his mouth, right.

20 They continue to discuss Johnny Boy until the next page
21 where Mr. Salinas adds: He is saying that he does, he does
22 work for him though.

23 And Loza says: No, he don't do nothing.

24 What is being conveyed here?

25 A This guy, Johnny Boy, is claiming to represent David

1 Gavaldon, and he's claiming to work for him, distribute drugs,
2 collect taxes. And Loza, the shot caller, is reaffirming that
3 he is not on the crew.

4 Q Why is it important to prevent somebody from claiming that
5 he works for David Gavaldon?

6 A Stealing. It comes down to money.

7 Q Can you explain that a little bit more?

8 A Individuals who claim to work for Mexican Mafia members
9 collect taxes.

10 And if this individual is claiming at a different location
11 or at this location to represent David Gavaldon, that means
12 he's collecting taxes as well or he's been given a pass to deal
13 drugs and not pay taxes.

14 So the reality is David Gavaldon is losing money.

15 Q And the same excerpt, turning to page 4, when Jose Loza
16 says: I am -- I'm the right channel homie.

17 What is Jose Loza conveying there?

18 A That he's the man.

19 Q He's the boss?

20 A He's the boss. He's the shot caller.

21 Q Now, turning to the subject of secretaries.

22 You mentioned that secretaries put money on Mexican Mafia
23 members' prison books.

24 What is a secretary?

25 A A secretary is an individual who is well trusted by the

1 Mexican Mafia member and visits him frequently.

2 An individual who handles his -- almost exclusively his
3 communication with the crew and is trusted with the collection
4 of his monies. Typically it's a female who appears to be
5 non-threatening, who has no criminal history, who is able to
6 get approved to visit and has no arrest record, and who doesn't
7 have a drug habit.

8 You have to be able to trust this individual, and they are
9 like I said, usually it's the wife, girlfriend, or female
10 family member of a Mexican Mafia member.

11 Q Now, you mentioned certain qualities, like female, no
12 criminal history. Were those qualities you looked for when you
13 chose your own secretary?

14 A Yes.

15 Q And what are the advantages of using a female family
16 member as a Mexican Mafia secretary?

17 A Well, the family member can be more trusted.

18 Somebody outside of your family can run off with your
19 money, can violate your trust, can abuse your authority. They
20 could have affairs, there is a whole host of problems that can
21 occur.

22 Q How much do secretaries know about the activities of the
23 crew?

24 A Everything. Everything goes through them.

25 Q Do they need to know in order to be effective at what they

1 do?

2 A It would be akin to being the CFO of a corporation and not
3 knowing any of its function -- not knowing any of its
4 operation, not knowing its key leadership and what business
5 they have an interest in.

6 The CEO would be ineffective at serving that company so
7 the secretary necessarily has to be involved in the
8 micromanagement and minutiae of the crew on a regular basis.

9 Q Do secretaries also arrange the scheduling of visits for
10 Mexican Mafia members?

11 A Yes, typically. May I add to that?

12 Q Yes.

13 A The secretaries are the gatekeeper. She controls the ebb
14 and flow to the communication to the Mexican Mafia member and
15 in that there is a great deal of power.

16 Q And how does the secretary you mentioned you testified
17 earlier that the secretary communicates with Mexican Mafia
18 members through letters and in-person visits.

19 Do these letters and in-person visits generally involve
20 the use of informal gang code?

21 A Yes, ma'am.

22 Q And you also mentioned that secretaries played a vital
23 role within the crew.

24 Was this especially true when Mexican Mafia members were
25 still in the SHU?

1 A Yes. It was the Mexican Mafia was almost completely
2 dependent on secretaries because they were isolated in maximum
3 security prison, 1,000 miles away from Los Angeles, with no
4 phone calls, extremely limited with correspondence, so the only
5 people that can conduct business for them were their
6 secretaries. The individuals they appointed to come visit
7 them, they are married and they had to come represent them.

8 And these individuals would then take the messages back to
9 Los Angeles and conduct business for them.

10 Q Now, the policy Mexican Mafia members all being in the
11 SHU, did this change a couple of years ago?

12 A Yes.

13 Q Do you know about when it changed?

14 A Probably three years ago. Once the Mexican Mafia members
15 started being released as a result of *Ashker versus Brown*,
16 which is a settlement between inmates of the CDC and the CDCR.
17 Multiple Mexican Mafia members, Aryan Brotherhood members were
18 released to the general population in prisons.

19 As a result, the Mexican Mafia was no longer dependent
20 upon secretaries and mesas to run these prison yards and their
21 crews. Mexican Mafia members had access to their cellular
22 phones. They conduct their business themselves.

23 Now, they still function, there are still some
24 secretaries and mesas in existence. They are necessary in some
25 instances, but by and large Mexican Mafia members handle most

1 of Mexican Mafia business today.

2 Q Were communications in the SHU monitored more closely than
3 communications in the general population?

4 A Yes.

5 Q Were visits in the SHU recorded?

6 A Yes. They were audio and video recorded.

7 Q Was mail screened in the SHU?

8 A It was not only screened in but it was photocopied and
9 writing samples were taken from all Mexican Mafia members.

10 Q Now, did you run a large crew when you in the SHU at
11 Pelican Bay?

12 A Yes.

13 Q Were -- you said that prison visits and letters were your
14 exclusive method of communication with your secretaries and
15 your crew members, correct?

16 A Yes.

17 Q And you have mentioned we have discussed the concept of
18 informal gang code before.

19 What is informal gang code?

20 A Informal -- people think of code as changing symbols, and
21 like, it's called a cypher. Cyphers are different than codes.
22 Codes are words or word phrases.

23 An informal gang code is an improvised form of
24 communication where two individuals are predisposed to
25 understand the underlying content.

1 Basically it's a schematic, you will use a theme, right?
2 And the other individuals understand what you are saying and
3 respond in the same way.

4 Let me give you an example. Sally came by last night.
5 And I typically give this example because it's very simple.

6 Sally came by last night with the girls, and she dropped
7 off four bags of groceries. It was wonderful because the
8 fridge was empty and we were starving and she came at such a
9 great time, it was such a blessing.

10 Me and Sally and all the girls went out to dinner, we had
11 a great time, and the girl says they will start helping around
12 the house more, and Sally said if I ever need anything done to
13 call her.

14 And then I will say: Okay, tell me, I appreciate it, man,
15 God bless them.

16 To an average individual, it sounds like, hey the girls
17 came over, bought some groceries because my wife is broke and
18 they all went to dinner.

19 To me, it means that Sally is actually Sam and the girls
20 are the crew. They dropped off five bags of grocery, which is
21 \$5,000, and they went out to dinner, which is a meeting. And
22 the crew said they do more around the house, which is to pay me
23 more money, and Sally said if I needed anything else, just let
24 her know. She was in charge of the crew, Sally is crew chief.
25 It's very simple to follow.

1 So, it's very simple code to follow because the individual
2 is predisposed. In other words, they know how to communicate
3 so it's not difficult for that person to understand what I'm
4 saying. Anybody can do it.

5 Anybody -- and we use it all of the time. We 86 them.
6 Wrong file that. You understand what wrong file means, it
7 means to throw it away.

8 86 that person means get them out of here.

9 We use these informal codes all of the time. In this
10 sense they have a more nefarious underlying tone.

11 Q Now, are these communications designed to appear mundane
12 or innocent?

13 A Yes.

14 Q That is the purpose, right?

15 A That's the purpose.

16 Q Is informal gang code also person specific?

17 A Typically they are. They are person specific. A crew
18 specific. It's what the individual -- his intellectual level
19 and his communication skills, that is what dictates their
20 ability to relay a message effectively.

21 Q The better you know someone, the better you can engage in
22 informal gang code?

23 A Yes.

24 Q And the purpose of informal gang code is to avoid
25 detection by law enforcement?

1 A Yes.

2 Q Now, you mentioned that -- I forget exactly what you said,
3 but I think Sally can be Sam. You mentioned gender switching.

4 Is gender switching an informal gang technique?

5 A It's one of the dead giveaways. It's commonly done, and
6 the more -- the bigger sample you get when you listen to it,
7 you start understanding this is being done.

8 Q Mr. Enriquez, I'm going to show you Exhibit 87, page 9.

9 A This doesn't go to 87.

10 Q It will be right up on the screen right now.

11 A Oh.

12 Q Do you see in the top left-hand corner, it says:

13 Ms. Sylvia Olivas?

14 A Yes.

15 Q In the center, can you see what that name appears to be?

16 A It says Ed Gavaldon, Sr., I believe that is David
17 Gavaldon, Sr.

18 Q It appears to have part of an address. Do you know what
19 that address is?

20 A P O Box 7500, he is in Delta 3, Cell 109, in Crescent
21 City, California, which is the city where Pelican Bay is
22 located.

23 Q Now, turning to page 12 of this exhibit, do you see this
24 excerpt right here where it says: We went to Vic's funeral?

25 A Yes, ma'am.

1 Q Then I met Lora's sister, Jessica.

2 A Uh-huh.

3 Q Jessica said Lora will be helping with computer, and the
4 excerpt trails off.

5 If I were to tell you that Lora is a Canta Ranas associate
6 and she does not have a sister named Jessica, what would that
7 tell you about this? What information would that convey about
8 this excerpt?

9 A The individuals are speaking of Jessica as actually Canta
10 Ranas gang member, former crew member of David Gavaldon, Jesse
11 Hernandez, Jesse "Little Man" Hernandez.

12 Q Now, you testified that Mexican Mafia members communicate
13 with their secretaries through a variety of methods.

14 Have you reviewed prison correspondence, prison visits,
15 and phone calls involving or mentioning Sylvia Olivas?

16 A Yes, I have.

17 Q And you testified earlier that prior to today, you
18 remember watching a prison visit on July 14th, 2007, between
19 David Gavaldon and Sylvia Olivas?

20 A Yes, ma'am.

21 MS. PERNAS: Your Honor, I believe Exhibit 77 was
22 previously admitted through the certification of Exhibit 96.
23 Permission to play exhibit 77.1?

24 THE COURT: It's been admitted.

25 MR. FRYE: That hasn't been played before.

1 THE COURT: Does counsel agree?

2 MR. FRYE: I'm sorry?

3 THE COURT: Do you agree it was admitted, Renee?

4 THE COURTROOM DEPUTY: Yes.

5 THE COURT: You can play it, 77.

6 MS. PERNAS: 77.1.

7 THE COURT: You may look at 77.1-A, ladies and
8 gentlemen.

9 (Audio played in open court.)

10 BY MS. PERNAS:

11 Q Based on your expertise, what can you tell about Bryan's
12 role in David Gavaldon's crew based on this clip?

13 A Bryan is a shot caller.

14 Q How can you tell?

15 A Because he's grooming him on how to run the crew and how
16 to wield power.

17 Q What is David Gavaldon conveying in this clip to Ms.
18 Olivas?

19 A Don't control with an iron fist.

20 Q Where do you see that?

21 A He's a little harsh on these guys. This is page 3, top of
22 the page. But another thing, let Bryan know.

23 May I read from this, please.

24 THE COURT: If you do it slowly.

25 THE WITNESS: I'm so sorry, ma'am. Usually when I'm

1 on the stand I get a little nervous, I apologize to the court
2 reporter because I tend to talk fast when I'm nervous.

3 But I will start at page 3, top of the page.

4 But another thing, let Bryan know, because I know he's a
5 little harsh on these guys, so he has to understand, man, he
6 cannot be harsh with these guys. Just because they don't
7 succumb and do what he says, so what, uh-huh, leave them alone,
8 because I'm not going to tolerate that from him either.

9 It reflects bad on the Mexican Mafia member when you have
10 a guy with an iron fist that is totalitarian not knowing how to
11 run a crew correctly.

12 BY MS. PERNAS:

13 Q Do you also see this reflected where David Gaitan says:
14 He has to respect these kids, you know?

15 A Yes.

16 Q These kids are referenced to the other crew members?

17 A Yes. David Gavaldon is making a reference to the kids as
18 the crew, because the crew, in reality, is the Mexican Mafia.

19 We have talked about Mexican Mafia being these 100 guys
20 but the real Mexican Mafia are the Sureños and individuals that
21 work for the organization.

22 David Gaitan understands that in this excerpt here.

23 Q When David Gavaldon is saying -- he says a number of times
24 they are scared to death right now, they are writing me all of
25 these kites.

1 What does that mean?

2 A Oh this -- the issue that they went to his house, he
3 believes these individuals went to the house of his sister,
4 Ms. Olivas.

5 And that is a violation of protocol, Mexican Mafia
6 protocol. You can't just go to a Mexican Mafia member's house,
7 particularly if it pertains to crew issues, you are not welcome
8 if you are not invited. That is a huge violation of the
9 behavior in terms of Mexican Mafia crew behavior and Sureños
10 behavior.

11 Q Going to the house, is that something that happens later
12 in this excerpt?

13 A I believe so.

14 Q When David Gavaldon says: But another thing, let Bryan
15 know and he has to understand.

16 Is he telling Ms. Olivas to do something?

17 A Yes. She's telling him to -- he's telling her to relay
18 the message to him.

19 Q He's telling her to relay the message to crew chief?

20 A To Bryan, yes.

21 Q I'm going to continue to play, and we're right about the
22 middle of page 3.

23 (Audio played in open court.)

24 BY MS. PERNAS:

25 Q What does it mean when David Gavaldon says: I don't want

1 to pay favors to him if I find out he's abusing my kindness in
2 a wrong way.

3 A He's either stealing or abusing his authority as a crew
4 chef, as a shot caller.

5 He won't -- he won't withhold punishment from him either.

6 Q So he will punish Bryan for that as well?

7 A Yes.

8 (Audio played in open court.)

9 BY MS. PERNAS:

10 Q Who speaks on David Gavaldon's behalf in a crew?

11 A Beg your pardon?

12 Q Who speaks on David Gavaldon's behalf in a crew?

13 A The shot caller.

14 (Audio played in open court.)

15 BY MS. PERNAS:

16 Q Now, earlier you mentioned this knocking on the door
17 incident.

18 Based on your expertise, why is David Gavaldon infuriated
19 that somebody came and knocked on Sylvia Olivas's door?

20 A If somebody came to the house of family member of Mexican
21 Mafia member and knocked on the door, which is an implied
22 threat, like, nobody can just go there. They are protected.
23 They are protected by the Mafia, No. 1.

24 And that in itself is a huge violation, just to pop up at
25 a Mexican Mafia member's house, knock on the door, particularly

1 about crew business, if you are uninvited and unknown, if there
2 is dissension within the crew or politics within the crew, it's
3 an implied threat, they are coming there to block it, your
4 authority or authority of the Mexican Mafia member or to do
5 harm to you.

6 Q Is there usually protocol for situations like this?

7 A Yes, ma'am.

8 Q What is that protocol?

9 A To contact a secretary Mexican Mafia member to come with a
10 known crew member, to get permission from the person that is
11 being visited.

12 There is a whole series of protocols that are done that
13 make it okay for somebody or not okay to go to the house of a
14 Mexican Mafia member.

15 MS. PERNAS: I'm going to continue playing the
16 excerpt.

17 (Audio played in open court.)

18 BY MS. PERNAS:

19 Q Is crew dissension what is being discussed here?

20 A Yes. That is exactly what is being discussed that the
21 shot caller was confronted and they were being misled, and the
22 individual that was suspected of going to the house and
23 knocking on the door was leading them astray.

24 And he had a following, that individual.

25 MS. PERNAS: I will continue to play.

1 (Audio played in open court.)

2 BY MS. PERNAS:

3 Q What is David Gavaldon conveying in this excerpt?

4 A That there is no excuse for what they did.

5 They involved themselves in this business and they weren't
6 asked to go there and they committed the ultimate sin.

7 (Audio played in open court.)

8 BY MS. PERNAS:

9 Q What does the statement, based on your expertise, what
10 does the statement mean: "I will spank his ass" to mean?

11 A I'm going to whack him, he will punish him, he will
12 discipline in some way.

13 Q Are there different degrees of discipline?

14 A Yeah, there are different degrees of discipline.

15 Q David Gavaldon asked Sylvia Olivas to relay this
16 information to Bryan, and at the end of the excerpt she says:
17 I will tell him.

18 What is the significance of this?

19 A She is agreeing to relay the entirety of the message, from
20 the crew stuff, those guys visiting down, to his expected
21 behavior of representation of David Gavaldon.

22 Q What does this indicate to you about Sylvia Olivas's role
23 in David Gavaldon's crew?

24 A She was a secretary for her brother, Mexican Mafia member,
25 David Gavaldon.

1 MS. PERNAS: Your Honor, I would be publishing
2 Exhibit 77.2.

3 THE COURT: All right. You can turn to 77.2.

4 (Audio played in open court.)

5 BY MS. PERNAS:

6 Q What is the significance of her statement -- of
7 Ms. Olivas's statement when he says: Junior wants to talk to
8 you about how you turned, you know, turned his girlfriend away.

9 Assuming that Junior is David Gavaldon's son?

10 A Yeah. He turned her away for tax collection.

11 He won't help her financially, and then Junior wants to
12 resolve this issue with Bryan, because Bryan is controlling the
13 crew.

14 Q So Bryan is not paying any money to Junior's girlfriend?

15 A Yes.

16 Q He's not paying any taxes?

17 A He's not paying -- allowing her to extract taxes from him.

18 Q What does "he is not my homeboy" mean?

19 A That David Gavaldon, Jr., is actually from another gang
20 known as Jim Town. He's not his homeboy, he is not from Canta
21 Ranas.

22 Q Is that based on your past knowledge?

23 A My past knowledge of the Gavaldon family, David Gavaldon,
24 and his son.

25 (Audio played in open court.)

1 BY MS. PERNAS:

2 Q When David Gavaldon says: You just tell him what you told
3 me, and then that he's not obligated to do anything.

4 What is David Gavaldon conveying?

5 A He's instructing Ms. Olivas to go to the shot caller and
6 explain the circumstances that his son, David, wants to
7 confront him, but he's not obligated to do anything.

8 He's not obligated to do anything, and that is coming from
9 him, the Mexican Mafia member, directly it's coming out of his
10 mouth, he doesn't have to do anything for her.

11 Q Did David Gavaldon initially ask Bryan to take care of the
12 girlfriend?

13 A Yes. He said he initially asked him and then David later
14 discovered she was collecting thousands of dollars in taxes
15 from multiple people. That is when he put a stop to it.

16 Q So, in other words, is she triple taxing?

17 A Triple taxing.

18 Q Using David's name?

19 A Yes.

20 MS. PERNAS: Your Honor, I'm going to play Exhibit
21 clip 77.3.

22 THE COURT: You can turn to 77.3-A, ladies and
23 gentlemen.

24 (Audio played in open court.)

25 BY MS. PERNAS:

1 Q Mr. Enriquez, Ms. Olivas stated on this call that Bryan's
2 wife was pretty ignorant as to what kind of work Bryan did.

3 Just in brief, what kind of work does a shot caller do?

4 A He's a crew boss. He runs all of the activities, taxes,
5 distribution, extortion for the Mexican Mafia member.

6 He commits assaults and murders if they have to be done.

7 That is the kind of work he does. He is the first go-to guy
8 from the Mexican Mafia member through the secretary.

9 MS. PERNAS: Your Honor, permission to play
10 Exhibit 77.4.

11 THE COURT: You can look at 77.4-A.

12 (Audio played in open court.)

13 BY MS. PERNAS:

14 Q What is Ms. Olivas conveying to David Gavaldon in this
15 clip?

16 A That Julie wrote a hot letter to the house.

17 Q What is a hot letter?

18 A Containing illicit descriptions, overt, like being open
19 about criminal activity and sensitive matter in the letter.

20 Q So is it fair to say Julie was not using good informal
21 gang code?

22 A Apparently not.

23 Q And why would Julie be mailing a letter to Sylvia Olivas's
24 house?

25 A Because secretaries also act as mail drops as well.

1 Q What's a mail drop?

2 A A mail drop is a location where crew members who are
3 incarcerated can send correspondence in hopes to have it
4 forwarded to Mexican Mafia members or other crew members.

5 Q And will a secretary sometimes forward that correspondence
6 to a Mexican Mafia member?

7 A Forward that specific piece of correspondence or
8 incorporate that message, that correspondence, into their own
9 writing and interweave it into their own letter.

10 MS. PERNAS: Your Honor, I will be playing a portion
11 of Exhibit 59.1.

12 THE COURT: All right. You can look at 59.1-A.

13 BY MS. PERNAS:

14 Q Mr. Enriquez, this clip -- this call happened, if you look
15 at the cover page, this call happened on May 13, 2013?

16 A Hold on a second, I am having technical difficulties. My
17 binder is coming apart. I'm sorry.

18 Q Would you like another binder?

19 A If you can.

20 MS. PERNAS: Your Honor, permission -- I think that
21 one fell apart.

22 THE WITNESS: This thing just imploded on me. I
23 don't know why. I'm sorry, I think these are out of order.
24 Which one are we at?

25 MS. PERNAS: We are on 59.1-A.

1 THE WITNESS: All right.

2 BY MS. PERNAS:

3 Q So on the front of this excerpt, you could see it's a
4 May 13th, 2013 call between David Gaitan and Roy Gavaldon, Jr.

5 If you turn to page 4, starting at the line on page 4
6 about midway down the page where David Gaitan says: Here is
7 the other thing. Pumpkin said you can call your aunt.

8 A Yes.

9 Q One moment.

10 (Audio played in open court.)

11 BY MS. PERNAS:

12 Q Earlier you mentioned a protocol for visiting.

13 Is this what we're seeing here?

14 A Yes. You are seeing an individual who wants to go see
15 Ms. Olivas, but will not just go there.

16 He's asking him to set it up with Ms. Olivas that the
17 introduction is going to be made and he goes down there with
18 Roy Gavaldon, Jr.

19 Q Why is David Gaitan coaching Roy Gavaldon, Jr., as to what
20 to say to Ms. Olivas?

21 MR. FRYE: Objection, speculation on that question.

22 THE COURT: Don't speculate. If you have some basis
23 based on your expertise and experience to answer that, you can
24 answer.

25 THE WITNESS: Because he's a member of the crew.

1 BY MS. PERNAS:

2 Q Generally, is it important to be properly introduced to
3 somebody in a Mexican Mafia member's inner circle?

4 A Particularly to establish a second tier of leadership.
5 That is part of what is going on here. You have to know all of
6 the members of the crew.

7 If one person disappears through incarceration or someone
8 has a mishap, then you have people you can go to within the
9 crew who can pick up the reigns, where Bryan or Steve or Jim or
10 Bob left off.

11 You have people that you can go to. You need to be in
12 contact with these individuals. It's important to have those
13 communications with crew members.

14 MS. PERNAS: And we see this later in the clip,
15 which I'm going to play.

16 (Audio played in open court.)

17 BY MS. PERNAS:

18 Q So is this a secondary tier of leadership that you
19 referenced earlier?

20 A Yes.

21 Q Is Jose Loza making David Gaitan essentially his second in
22 command?

23 A Yes.

24 Q If Pumpkin disappears, what does that mean?

25 A If he gets arrested or if he gets killed, if he is no

1 longer able to function as the shot caller.

2 Q David Gaitan will be the shot caller?

3 A David Gavaldon will be next in line. He has been tapped
4 as being the next in line of the crew.

5 Q He would have to be meeting with Ms. Olivas?

6 A He will be interacting with her personally. It is
7 necessary for him to know him, meet him and go through the
8 proper channels so she knows she can trust him.

9 MS. PERNAS: Your Honor, I will be playing
10 Exhibit 61.2.

11 THE COURT: All right. You can turn to 61.2-A.

12 BY MS. PERNAS:

13 Q Now, Mr. Enriquez, you see on the front cover of this
14 transcript, this is a June 14th, 2013 call?

15 A Yes, ma'am.

16 Q It is David Gaitan and Roy Gavaldon, Jr.?

17 A Yes, ma'am.

18 (Audio played in open court.)

19 BY MS. PERNAS:

20 Q Is Pumpkin delegating responsibilities to different
21 individuals in his crew?

22 A Yes.

23 Q Why would money from a shot caller be sent to Roy, Jr.,
24 instead of going directly to the aunt?

25 A Because they can get to her -- or in the event that -- it

1 depends, there is a variety of reasons, based on this limited
2 excerpt, there is a variety of reasons.

3 Q What are the variety of reasons?

4 MR. FRYE: Speculation, if there is a variety of
5 reasons, Your Honor.

6 THE COURT: Sustained.

7 BY MS. PERNAS:

8 Q Turning to -- and Mr. Enriquez, if you could watch -- do
9 you recall watching a June 22nd, 2013 visit between David
10 Gavaldon and Sylvia Olivas?

11 A I do.

12 MS. PERNAS: Your Honor, I will be publishing
13 Exhibit 79.1.

14 THE COURT: You can turn to 79.1, ladies and
15 gentlemen.

16 (Audio played in open court.)

17 BY MS. PERNAS:

18 Q Mr. Enriquez, what is the significance of what was just
19 conveyed here?

20 A Did Joseph, the shot caller, pay for her traveling
21 expenses.

22 Q Is that something that a crew is required to do for a
23 secretary?

24 A Yes.

25 Q Why?

1 A Because the secretary is traveling at the request of the
2 Mexican Mafia member to conduct business.

3 The secretary should not have to absorb those expenses on
4 their own. It should be paid for by the crew.

5 Q Now, Mr. Enriquez, do you recall watching a June 23rd,
6 2013 visit between David Gavaldon and Sylvia Olivas?

7 A Yes.

8 MS. PERNAS: Your Honor, I will be playing
9 Exhibit 81.2.

10 THE COURT: You can look at 81.2-A.

11 (Audio played in open court.)

12 BY MS. PERNAS:

13 Q Now, based on this excerpt, the person that David Gavaldon
14 wants to be taken care of, can you tell where they are?

15 A Yes.

16 Q Where are they?

17 A They are in jail or prison.

18 Q Is that based on the canteen and stuff?

19 A Yes.

20 Q Now, assuming that Joseph -- assuming that Joseph, the
21 shot caller, is -- strike that.

22 Assuming that the individual who David Gavaldon wants to
23 be taken care of is a Canta Ranas associate, what is David
24 Gavaldon conveying here?

25 MR. FRYE: Objection to the assumption. There is no

1 basis for that, Your Honor.

2 THE COURT: There some basis for that.

3 BY MS. PERNAS:

4 Q Mr. Enriquez, have you seen the entire visit?

5 A Yes.

6 Q Did they discuss an individual in that visit?

7 A Yes.

8 Q Is that individual that they discussed, can you tell
9 anything about their role in the Canta Ranas gang or
10 organization?

11 A Yes.

12 MR. FRYE: Objection. Asking about facts that
13 aren't in evidence, Your Honor.

14 THE COURT: Well, it's the basis for his expert
15 opinion, I suppose. You can ask.

16 BY MS. PERNAS:

17 Q Why would David Gavaldon want another Canta Ranas
18 associate to be taken care of in prison?

19 A Because she is a member of the crew.

20 Q And would taking care of her include sending her money or
21 visiting her?

22 A Visiting -- sending her money, sending her packages,
23 accepting her phone calls when they call.

24 Q Did Ms. Olivas indicate that she had relayed this order to
25 the crew chief?

1 A Yes.

2 MS. PERNAS: Your Honor, I'm moving to Exhibit 81.3,
3 excerpt 81.3.

4 THE COURT: You can look at 81.3-A.

5 (Audio played in open court.)

6 BY MS. PERNAS:

7 Q Is Lora the individual that David Gavaldon wants taken
8 care of?

9 A Yes.

10 Q What is the significance of Joseph giving Sylvia Olivas
11 money to give to a third party?

12 A Basically, Roy is acknowledging that she's a member of the
13 crew, the orders have been adhered to and they are taking care
14 of her because she is in good standing.

15 Q Sylvia Olivas is serving as the intermediary between the
16 crew and the intended recipient of David Gavaldon's favor?

17 A Yes. Not only that, she is independently making a --

18 MR. FRYE: He has answered the question, Your Honor.

19 THE COURT: Ask another question.

20 (Audio played in open court.)

21 BY MS. PERNAS:

22 Q Based on your expertise, Mr. Enriquez, why would a Canta
23 Ranas gang member associate have reason to worry if they aren't
24 delivering money where it should be going?

25 A Because it's the Mexican Mafia member's money.

1 If they are not delivering the money and they are not
2 paying it up, it means they are stealing from a Mexican Mafia
3 member and that is punishable by death.

4 MS. PERNAS: Your Honor, I will be playing
5 Exhibit 69.

6 THE COURT: You can turn to 69-A.

7 BY MS. PERNAS:

8 Q Mr. Enriquez, briefly in the clip we just saw, is
9 Ms. Olivas playing any other role?

10 A Yes.

11 Q What other role?

12 A She is making independent decisions as to what to do with
13 the money based on her own decisions and where to distribute
14 that money within the crew.

15 Q Are you at Exhibit 69-A?

16 A Yes, ma'am.

17 (Audio played in open court.)

18 BY MS. PERNAS:

19 Q The phrase, "my aunt was leaving the bay."

20 What does that mean?

21 A That Ms. Olivas was leaving Pelican Bay.

22 Earlier I testified to euphemisms and familial terms such
23 as "thee are my aunt."

24 They often refer to secretaries or family members of
25 Mexican Mafia members as aunt.

1 Q And when Roy, Jr., says: She said that she had heard that
2 that fool just got out, and she was just saying she hopes like
3 he doesn't come by and visit or whatever.

4 What is being conveyed here?

5 A That he's not welcome in the crew because he is in bad
6 standing.

7 Q So a Canta Ranas gang member is being discussed who is in
8 bad standing?

9 A Yes.

10 (Audio played in open court.)

11 BY MS. PERNAS:

12 Q What does "told to kick back" mean?

13 A No longer cease and desist. No longer participate in the
14 activity he is participating in.

15 Q No longer participate in any extortion?

16 A Extortion, correct, activities.

17 MR. FRYE: Objection. Speculation.

18 THE COURT: You can answer based on your expertise.

19 Don't speculate.

20 THE WITNESS: Participate in activities, extort,
21 represent himself to be a member of the crew or member of
22 Mexican Mafia.

23 (Audio played in open court.)

24 BY MS. PERNAS:

25 Q Based on your expertise, what does the phrase "she was

1 hoping he doesn't come by or anything" mean?

2 A He's not welcome. It's pretty clear she does not want him
3 at the house.

4 It's not like, well I hope this guy comes by, it is like,
5 he's not welcome here, make sure it's known.

6 (Audio played in open court.)

7 Q And the phrase "that's what she heard from up there," is
8 that a reference to Pelican Bay?

9 A Yeah, she got it straight from the horse's mouth.

10 (Audio played in open court.)

11 BY MS. PERNAS:

12 Q Mr. Enriquez, I'm going to be showing you correspondence
13 at Exhibit 87, page 13.

14 Do you see the date on the top of this letter?

15 A Yes.

16 Q Does it say December 8th, 2013?

17 A Yes.

18 Q Is it to David Gavaldon?

19 A Yes.

20 Q Is it from Sylvia Olivas?

21 A Yes, ma'am.

22 Q You previously reviewed this letter, right?

23 A I have.

24 Q Looking at this first paragraph: Heard from Lora in a
25 letter today. She wrote to thank us for the \$100.

1 What is the significance of what Ms. Olivas is conveying
2 to David Gavaldon?

3 A That she received a payment from the crew, and that she is
4 appreciative. She's expressing her appreciation to the Mexican
5 Mafia member, David Gavaldon, through his secretary,
6 Ms. Olivas.

7 Q I'm focusing on this second paragraph:

8 Julie is about to get notice that her relationship is
9 coming to an end. I hope that is the real truth.

10 She's a troubled woman. I told her you didn't like her
11 nicely and not to be asking favors in your name.

12 What significance does that statement have to you?

13 A That she told her to knock it off. She told her to stop
14 collecting money in David's name.

15 Q Asking favors in your name is collecting money in David
16 Gavaldon's name?

17 A The favor is not a favor as you know it in the Mexican
18 Mafia. There was a previous exhibit that said Julie had
19 collected about \$3,000 in one month from multiple individuals.
20 This is a reference or a continued reference to that, so that
21 is my opinion on this.

22 Q There are a number of letters and there is a number of
23 correspondence about Julie that Julie referenced in this
24 letter. I think the clip we saw earlier referenced Junior's
25 girlfriend?

1 A I'm sorry, I made a mistake. I misspoke.

2 MS. PERNAS: Now, Your Honor, permission to publish
3 transcript 13.2-A.

4 THE COURT: You can turn to 13.2-A.

5 MS. PERNAS: I was also going to put it up on the
6 Elmo, Your Honor. I'm not going to play this one.

7 THE COURT: Okay.

8 THE WITNESS: I don't have that binder.

9 Is this, this one?

10 MS. PERNAS: It's the transcript binder.

11 No, that binder in front of you, I believe Mr. Enriquez,
12 is the transcript binder. If you can turn to transcript
13 13.2-A.

14 THE WITNESS: I'm there.

15 BY MS. PERNAS:

16 Q Now, on the face page of this transcript, it indicates
17 that it's a March 28th, 2014 prison call between Roy Gavaldon,
18 Sr., and Sylvia Olivas.

19 Do you see that?

20 A Yes. Yes, ma'am.

21 Q Looking at the first page of this transcript, do you
22 recall listening to this call, Mr. Enriquez?

23 A Yes.

24 Q Do you see where Ms. Olivas says: You know, and David,
25 you know, David said, you know, he asked me when I was over

1 there a year or two ago, if you could ever help her, help her
2 for me.

3 Who -- who is Ms. Olivas referring to in this -- strike
4 that.

5 The individual that Ms. Olivas is referring who needs
6 help. Who is that in this excerpt.

7 MR. FRYE: Objection. Calls for speculation.

8 THE COURT: If you know, sir, based on something
9 else you have reviewed or your experience and expertise.

10 THE WITNESS: So what is the question again?

11 BY MS. PERNAS:

12 Q Is there a Canta Ranas associate who is being asked who
13 David Gavaldon is asking Ms. Olivas to help?

14 A Yes.

15 Q Is that Lora?

16 A Yes.

17 Q And do you see where Ms. Olivas says: David asked me when
18 I was over there a year ago or two years ago?

19 A Uh-huh.

20 Q Is there ever an expiration date on a Mexican Mafia
21 member's order?

22 A No. It's when he asked for it to be done. It doesn't
23 matter if it's done a year from now, or ten years from now. If
24 it's important to him and he wants it done, it will be done.

25 Q It's only if he rescinds an order, that it matters?

1 A Yes.

2 Q Now, based on your review of this call, and if you need to
3 refresh your memory, Mr. Enriquez, and read through the whole
4 call, please do, but based on your review of this call, can you
5 tell who the individual that is talking trash about people is?

6 A May I read this real quick?

7 Q Yes. Roy, Sr., refers to him as he's greedy.

8 A Yes. I know who they are talking about.

9 Q So what is the significance of what Ms. Olivas is
10 conveying in this excerpt?

11 A That David Gavaldon asked Mr. Loza to take care of Lora
12 Hernandez. And Mr. Loza doesn't want to do it.

13 He has a different attitude.

14 And Roy Gavaldon, Sr., starts to speak bad about him, that
15 he's greedy, he's power hungry, and it goes to his head.

16 Q Now switching to a May 5th, 2014, letter. I'm showing you
17 Exhibit 87, page 15.

18 Do you see in the top left-hand corner where it says
19 Sylvia Olivas?

20 A Yes, ma'am.

21 Q And who is the letter addressed to?

22 A David Gavaldon, Sr.

23 Q Turning to the second page of this letter, at 87, page 16,
24 focusing on these first two paragraphs: Visited Lora. I found
25 out that someone has been giving money to her daughter and son

1 for her about ten times, and they either haven't given to her
2 or didn't tell her that it wasn't their money. I will find out
3 when I visit her later in May.

4 What information is Ms. Olivas conveying here?

5 A That David's request for her to be taken care of is being
6 done, but somebody is keeping the money within the line of
7 conveyance.

8 Somebody is keeping the money and it's not being paid to
9 Lora. She's not receiving it.

10 Q Is Ms. Olivas relaying that she's going to investigate the
11 issue?

12 A Yes.

13 Q Do you see where it says in the third paragraph down in
14 this letter: People seem to sabotage Joseph's name. People
15 must hate him or are jealous. Too many liars in this life.
16 It's terrible people are so stupid.

17 Assuming that Sylvia sent this letter the same day that
18 Jose Loza complied with David Gavaldon's order to order to pay
19 taxes to his brother, what does this letter convey to David
20 about Jose Loza?

21 MR. FRYE: Object to the assumption, Your Honor.

22 THE COURT: I don't even know what is going on, so
23 do something else.

24 BY MS. PERNAS:

25 Q What is the significance of this statement, Mr. Enriquez?

1 A That people are sabotaging Joseph. There is dissension
2 within the crew.

3 Q Is she acknowledging that people have been talking badly
4 about Joseph Loza?

5 A Yes.

6 Q What is she relaying to David about Jose Loza?

7 Is she saying the information is true?

8 MR. FRYE: Objection. Let him answer the question,
9 please.

10 MS. PERNAS: I will move on, Your Honor.

11 THE COURT: Thank you.

12 BY MS. PERNAS:

13 Q Now, Mr. Enriquez, do you remember reviewing a video
14 recording of a meeting between a confidential informant and
15 Sylvia Olivas?

16 A I do.

17 Q Did this meeting take place on November 21st, 2014?

18 A I will have to take your word on that. I don't remember
19 the date. I remember the video.

20 Q If you can turn to 73.2-A in your transcript binder.

21 MS. PERNAS: Your Honor, permission to play excerpt
22 73.2?

23 THE COURT: You can look at 73.2-A.

24 THE WITNESS: 72.2-A?

25 THE COURT: 73.2-A.

1 THE WITNESS: 73.2-A. I'm there.

2 (Audio played in open court.)

3 | BY MS. PERNAS:

4 Q Mr. Enriquez, based on your expertise, why is it a cause
5 for concern if a gang member or associate hasn't heard from a
6 Mexican Mafia member after sending them money?

7 A Because it could be -- it's akin to being excommunicated.
8 It means they are out of favor with a specific member.

9 It could also mean that the correspondence was
10 intercepted.

11 Q That is what Sylvia Olivas was explaining to the
12 informant?

13 A Yes. She elaborates some letters get taken and
14 Mr. Gavaldon has to demand the letter that is being held by the
15 institutional gang investigators. It is a common occurrence.

16 MS. PERNAS: Your Honor, permission to publish 73.3.

17 THE COURT: You can look at 73.3-A.

18 (Audio played in open court.)

19 BY MS. PERNAS:

20 Q What is the significance of Ms. Olivas saying: No, that's
21 not true?

22 A That it's not true. She is still a welcome member of the
23 crew.

24 She even emphasizes that she wouldn't come over to the
25 house because she wasn't wanted there. That would be a

1 violation of that protocol, which is not true.

2 She's emphasizing that you are still welcome and you are
3 still part of our crew.

4 Q Is she speaking for David Gavaldon here?

5 A She's speaking directly for David Gavaldon. She is --
6 what they call *eminence grise*. In Latin, it's great cardinal,
7 right?

8 She represents all the power of the papacy, but she's not
9 a pope. She has all David's power, but she's not David, she
10 speaks for him, and she has his power.

11 (Audio played in open court.)

12 BY MS. PERNAS:

13 Q What is Ms. Olivas instructing the informant to do here?

14 A How to use informal gang code.

15 She's telling her how to write him and address this issue
16 in a way that David will understand without raising the
17 suspicion of the investigators who are reading the letter.

18 (Audio played in open court.)

19 BY MS. PERNAS:

20 Q "Well, maybe it's best you don't come."

21 What is the significance of that statement?

22 A He's persona non grata, don't come around here anymore.

23 Q Did we see an earlier version of that in Exhibit 69 where
24 Mr. Roy, Jr., said his aunt said: She hopes, like, he doesn't
25 come by and visit or whatever?

1 A Yes.

2 (Audio played in open court.)

3 BY MS. PERNAS:

4 Q This idea they just want to have that control, why would
5 having a connection to a Mexican Mafia member give you power or
6 control?

7 A It's -- it's like I said, it's your -- it's your
8 credentials rather than using bona fides.

9 Let's say credentials, he becomes your credential.

10 Mexican Mafia members and their names are huge financial
11 windfalls.

12 A Mexican Mafia is a franchise, his name is a franchise.
13 If you are communicating with that person, you are gaining
14 financially; you are gaining politically, you are gaining power
15 with the Hispanic subculture. You are gaining power within the
16 crew.

17 (Audio played in open court.)

18 Q What is the significance of that?

19 A She is speaking for David Gavaldon. "You are hearing it
20 straight from me, I'm his representative and I'm telling you
21 that you are in good standing."

22 That is exactly what Ms. Olivas is saying here.

23 (Audio played in open court.)

24 BY MS. PERNAS:

25 Q And what is the significance of what Ms. Olivas just

1 conveyed here?

2 A That again, his mail is being scrutinized, and if he
3 didn't want to correspond with her, he just wouldn't write back
4 and she is again reemphasizing how to utilize the informal gang
5 code. Discuss your health, your family, your dog, your cat,
6 that's what he really cares about, because she understands that
7 the mail is being scrutinized.

8 (Audio played in open court.)

9 BY MS. PERNAS:

10 Q And we saw mention of this earlier but what is Ms. Olivas
11 conveying here?

12 A That Jesse is no longer part of the crew, and he's not
13 welcome.

14 He's not to function as a crew member.

15 She's affirming that right here.

16 Q And again, is she speaking for David Gavaldon here?

17 A Yes.

18 (Audio played in open court.)

19 BY MS. PERNAS:

20 Q And what does that mean, Mr. Enriquez, based on your
21 expertise?

22 A I think it's pretty plain. She says she wants to come
23 around extorting and collecting money.

24 She doesn't get anything, she's not welcome, she is not
25 entitled to have any money.

1 She's telling her who does and who doesn't belong in the
2 crew.

3 (Audio played in open court.)

4 BY MS. PERNAS:

5 Q And what is the significance of the reference to this
6 letter?

7 MR. FRYE: Objection. Speaks for itself, Your
8 Honor.

9 THE COURT: Overruled. You can answer.

10 THE WITNESS: It's important for people that
11 represent -- to be speaking for a Mexican Mafia member, doing
12 business on his behalf, have some sort of credentials.

13 Usually, and this is one of the methods is having a
14 letter, and that she cannot produce this letter, means he is
15 not in communication with her.

16 That's what Ms. Olivas is trying to relay right there.

17 BY MS. PERNAS:

18 Q And you mentioned these bona fides before. Is a photo
19 also another example?

20 A Yes.

21 Q Bona fides.

22 (Audio played in open court.)

23 BY MS. PERNAS:

24 Q Mr. Enriquez, based on your expertise what is the problem
25 being discussed here?

1 A That Lora -- Ms. Olivas believes that Lora is
2 double-dipping here. She is getting paid multiple payments.

3 Q Would this be a problem that needs to be investigated?

4 A Apparently.

5 Q Why?

6 A Again, it's money out of David Gavaldon's pocket. It's
7 money out of her pocket.

8 Q Lora is being taken care of at David Gavaldon's request?

9 A Yes. She says that here: I give her David on his behalf,
10 so does Joseph. Joseph gives about \$50 every other month. I'm
11 paraphrasing on the page we just listened to.

12 But David asks Joseph to take care of her, which he is,
13 and David is doing it directly through Ms. Olivas, himself.

14 Q Is Ms. Olivas keeping track of payments being made to
15 other crew members?

16 MR. FRYE: Objection. Speculation.

17 THE COURT: Sustained.

18 (Audio played in open court.)

19 BY MS. PERNAS:

20 Q Based on your expertise, what is the significance of
21 Ms. Olivas stating: It's hard to know who to believe, you are
22 right it's scary.

23 MR. FRYE: Document speaks for itself, the
24 conversation, Your Honor.

25 THE COURT: Well, is it something other than just

1 what appears there, based on your expertise, sir?

2 THE WITNESS: Yes.

3 THE COURT: You can explain.

4 THE WITNESS: There are consequences to these
5 actions. There is severe consequences, because there is
6 dissension, there is lies, there is deception in the crew, so
7 there can be consequences for these things.

8 BY MS. PERNAS:

9 Q So if different messages are being conveyed that could
10 indicate dissension within the crew?

11 A Somebody is overtly circumventing Ms. Olivas's authority
12 or David Gavaldon's authority.

13 (Audio played in open court.)

14 BY MS. PERNAS:

15 Q What is this concept about taking all of the credit? What
16 is the importance of that?

17 A If you are doing a favor directly for a Mexican Mafia
18 member and taking care of one of the crew members at his
19 request, it enhances your position.

20 So if one person is taking all of the credit, they are
21 receiving all of the praise from the Mexican Mafia member, not
22 the other crew members who are actually doing the work.

23 It is kind of glory stealing.

24 (Audio played in open court.)

25 BY MS. PERNAS:

1 Q What is Ms. Olivas conveying here?

2 A That the individual who was considered persona non grata,
3 that guy that was pushed out, Jesse, he has no right to ask her
4 to do a favor. She believes and she suspects it may have been
5 him that offered this, taking care of his sister, Lora, and
6 that he could ask a personal favor of her to do it for his
7 sister, but not on behalf of David Gavaldon, because he's not
8 welcome in the crew.

9 MS. PERNAS: I will continue to play.

10 (Audio played in open court.)

11 BY MS. PERNAS:

12 Q Is this the same concept that you mentioned earlier?
13 Welcome in her house conveys status on this Canta Ranas gang,
14 member associate?

15 A Yes. In fact she encourages it. Tell them we're friends
16 and you came to our house. It's hugely significant in terms of
17 the crew.

18 (Audio played in open court.)

19 BY MS. PERNAS:

20 Q What is the significance of posting a photo on Facebook
21 with Ms. Olivas?

22 A Social media -- it goes out to the crew. Anybody who has
23 access to that person's account can see the personal
24 relationship with the secretary of the Mexican Mafia member,
25 David Gavaldon.

1 That is -- it's important. It's another part of those
2 bona fides or the credentials of the specific crew.

3 There is a variety of different ways to do it, but a photo
4 is very good.

5 (Audio played in open court.)

6 MS. PERNAS: Your Honor, permission to play Exhibit
7 6.1?

8 THE COURT: Ladies and gentlemen, you can look at
9 6.1-A.

10 BY MS. PERNAS:

11 Q Mr. Enriquez, do you see that this is an October 24th,
12 2015 call or rather recorded inmate visit between Lora
13 Hernandez and Sylvia Olivas?

14 A Yes.

15 Q Have you previously listened to this visit?

16 A I did.

17 (Audio played in open court.)

18 BY MS. PERNAS:

19 Q What is Lora Hernandez conveying when she says: One of my
20 friends took it home for me.

21 A That an inmate who is housed with Lora Hernandez at the
22 women's facility smuggled a letter out of jail and circumvented
23 the evaluation process and had it directly mailed to Lora
24 Hernandez from the streets -- I mean, Ms. Olivas to the
25 streets.

1 Q I'm sorry, could you say that one more time? I didn't
2 hear you.

3 A It's okay. That Ms. Hernandez had a letter smuggled out
4 of jail through an inmate who was with her to circumvent the
5 inspection process, and had the letter sent directly to
6 Ms. Olivas on the streets.

7 Q And is this sometimes a practice that happens when an
8 inmate's friend paroles?

9 A Yeah, sometimes they even take written notes known as
10 kites and secretes them in their rectums or mouths or other
11 body cavities, and they take them out when they parole.

12 They take letters out, hidden in their papers and
13 hand-deliver them because they are sensitive in nature.

14 MS. PERNAS: Continuing to play.

15 (Audio played in open court.)

16 BY MS. PERNAS:

17 Q What is the significance of what Ms. Olivas just said?

18 A She usually writes, what she puts in her letters -- she
19 never writes anything criminal, like go beat up that girl with
20 the white hair. It's just mundane and innocuous.

21 (Audio played in open court.)

22 BY MS. PERNAS:

23 Q Now, Mr. Enriquez, I'm going to show you a letter.

24 THE COURT: Let's wait until after the break.

25 Ladies and gentlemen, don't talk about the case or form or

1 express any opinions about the case until it is finally
2 submitted to you.

3 We will take a 15-minute break.

4 THE COURTROOM DEPUTY: All rise.

5 (JURY EXITS COURTROOM AT 3:19 P.M.)

6 THE COURT: Is there anything we need to discuss?

7 MS. PERNAS: No, Your Honor.

8 MR. FRYE: Not from us, Your Honor.

9 THE COURT: All right. See you in 15 minutes.

10 (Recess.)

11 THE COURT: All right.

12 THE COURTROOM DEPUTY: All rise.

13 (JURY ENTERS COURTROOM AT 3:35 P.M.)

14 THE COURT: You may be seated. Everyone is back.

15 The witness is back on the stand. Sir, you are still under
16 oath.

17 Ms. Pernas, you may continue.

18 MS. PERNAS: Thank you, Your Honor.

19 BY MS. PERNAS:

20 Q Mr. Enriquez, I'm showing you Exhibit 122, page 1.

21 Do you see that this is an envelope on the screen?

22 A Yes, ma'am.

23 Q And in the left-hand corner of the envelope, what does it
24 say?

25 A It says "mailed 5/21/15."

1 Q At the top does it -- is there a name?

2 A David Gavaldon, Sr.

3 Q And the letter is addressed to who?

4 A Joe Olivas.

5 Q Turning to page 2 of this letter. This might be a little
6 hard to read.

7 So here it says: As for the visits I have been getting
8 from Lori and her daughter, Christy, Lori is an old friend from
9 -- continuing on to the next page.

10 It says: From the barrio, she and Christy want to meet
11 you and Sylvia. They are real good people. They should be
12 coming by to see you soon.

13 Now, in your experience, why might you want to introduce
14 one Mexican Mafia secretary to another?

15 A It enhances not only your political benefit by having
16 wives or señoritas and secretaries join together, but it enhances
17 your own -- your relationship with the other Mexican Mafia
18 member. It can also open up opportunities.

19 Q What about one Mexican Mafia member introducing one of his
20 secretaries to a new secretary?

21 A A new secretary within his crew?

22 Q Yes.

23 A So they can educate them and set up secretarial
24 leadership. It can be that as well.

25 Q And explain what you mean by "secretarial leadership"?

1 A In the event that something happens there is already
2 someone to take the place of another person.

3 It would allow them to delegate authority to another
4 person in the event, say, the secretary left or was new at the
5 job, she could be shown how to do it or be trained.

6 MS. PERNAS: Your Honor, I'm going to be publishing
7 transcripts 2.2-A on the Elmo.

8 THE COURT: All right.

9 BY MS. PERNAS:

10 Q On the face page of this transcript, Mr. Enriquez, it says
11 that it's a call that took place on March 6, 2016, between
12 David Gavaldon and Christy Arizmendi.

13 Do you see that?

14 A Yes.

15 Q Excerpt of the record states as follows: Hey, did Sylvia
16 tell Joey about sending me the \$200 every month?

17 Christy Arizmendi: I don't know.

18 What is the significance of that, Mr. Enriquez?

19 A That David Gavaldon relayed a message to his sister,
20 Sylvia Olivas, that he wanted \$200 payment every month for
21 those individuals.

22 Q What is that \$200 payment?

23 A Taxes.

24 MS. PERNAS: Your Honor, permission to play
25 Exhibit 12.3?

1 THE COURT: You can look at 12.3-A.

2 MS. PERNAS: One moment, Your Honor. I think I'm
3 having technical difficulties.

4 (Audio played in open court.)

5 BY MS. PERNAS:

6 Q Now, Mr. Enriquez, you previously testified that arranging
7 scheduling of visits is one of the duties of a Mexican Mafia
8 secretary?

9 A Yes.

10 Q And what is Ms. Olivas conveying about Joseph in this
11 call, if you know?

12 A That he was shot.

13 Q Why do you think that?

14 A It's just the manner in which she is relaying the message.

15 No. 1, they are using a three-way phone call. It's not an
16 official three-way phone call where you quietly create a
17 conference call on your phone, but she's speaking to Sylvia
18 Olivas on a different phone.

19 This is a three-way call, and it's circumventing the
20 inspection process for CDCR. You are not supposed to do it.

21 Then in the cryptic manner they are saying he got sick. A
22 spider bit him in the leg. Why is that so significant to tell?

23 It's the context of the conversation, and the context of
24 all of the past conversations. This stands out to me as
25 communication that he was shot in the leg.

1 Q And does the fact that David Gavaldon say he wants Christy
2 to come up instead of Kimi also a fact that you considered?

3 A That is another factor. He is canceling a visit with his
4 family member in exchange for this person who is going to come
5 see him. It's a significant issue that he needs to see this
6 visitor.

7 Q I'm going to show you some more present correspondence,
8 Mr. Enriquez. I'm going to go back to 87, page 1.

9 Do you see here that this letter appears to be addressed
10 to David Gavaldon, Sr.?

11 A Yes.

12 Q And is that Pelican Bay, where it's addressed to?

13 A Yes. That's P.O. Box 7500, Crescent City, California.

14 Q Do you see a date on this letter right underneath where it
15 says "Long Beach"?

16 A I see the postage dated December 15th, 2008.

17 Q I'm going to show you page 87, page 3 of this letter.

18 Do you see at the top where it says: Hello Compa?

19 A Yes.

20 Q What is Compa?

21 A It's abbreviation for comadre. It's a term of endearment
22 sometimes, but it has a more significant meaning.

23 It's a religious relationship that this individual had
24 baptized his son or one of them baptized his son or daughter.
25 They have become compadres.

1 Q Have you seen this letter before?

2 A I have.

3 Q Have you reviewed it?

4 A I have.

5 Q Based on review of the contents of the letter, can you
6 tell what role this person had in David Gavaldon's
7 organization?

8 A He was a shot caller.

9 Q Do you see how this individual signed the letter?

10 A Yes. J.

11 Q I'm going to page 6 or page 4 of this letter.

12 Do you see here where the individual says: I still keep
13 in touch with Sylvia, and Big Foot sidekick sends his to you
14 from Soledad?

15 A Yes.

16 Q You previously testified Soledad is a prison?

17 A Yes.

18 Q The Sylvia here, do you believe this refers to Sylvia
19 Olivas?

20 A Yes.

21 Q Turning to correspondence at page 22.

22 Do you see the same compa reference up top?

23 A Yes, ma'am.

24 Q Do you see the same signature?

25 A I do, ma'am.

1 Q Going to page 23 of the exhibit where it says: I speak to
2 Sylvia, and we're looking into that person who needs -- I
3 didn't highlight the other portion.

4 A I think it says, needs to be placed in a home?

5 Q Yes.

6 A Yeah, I remember that.

7 Q What does that mean to you?

8 A It could mean being housed.

9 MR. FRYE: Objection. Could mean means he's
10 speculating about what it means.

11 THE COURT: Sustained.

12 BY MS. PERNAS:

13 Q Sylvia is referenced here, correct?

14 A Yes.

15 Q Who do you believe this Sylvia is?

16 A Ms. Olivas.

17 Q And finally turning to another letter, I'm going to try to
18 find the front of it. One moment.

19 Okay. 87, page 34, do you see where it says: *Estimata*
20 *compa*?

21 A Yes.

22 Q Then if we go to 87, page 38.

23 Do you see the signature?

24 A Yes, ma'am.

25 Q And do you see where it says: And is the signature a J

1 again?

2 A Yes, ma'am.

3 Q Do you see where it says right here: Take care, I called
4 sis, I will call again very soon.

5 A Yes, ma'am.

6 Q Who do you believe is sis?

7 A The defendant, Ms. Olivas.

8 Q Based on your expertise, is a shot caller expected to stay
9 in touch with a Mexican Mafia member's secretary?

10 A Yes.

11 Q Now, going to exhibit -- same Exhibit 87, page 29.

12 And in the upper left-hand corner it says: Fernie
13 Holguin, right?

14 A Yes, ma'am.

15 Q The letter is addressed to Dave Gavaldon at Pelican Bay?

16 A Yes, ma'am.

17 Q The date of the postage on this letter appears to be
18 February 26, 2013?

19 A Yes, ma'am.

20 Q I'm going to this portion right here where it starts:
21 Rick was supposed to let you know I'm not home. I'm living by
22 Magic Mountain. Got a one-year lease on a big house. The
23 lease is up around October, so let Sylvia know, okay.

24 What significance does this have for you?

25 A The individual writing the correspondence is letting

1 Mr. Gavaldon know that he is currently incarcerated at Pitchess
2 Honor Ranch in Castaic, California, and they are doing a year
3 and that he wants Ms. Olivas to know that he's incarcerated.

4 Q So when he says: I'm living by Magic Mountain, which
5 prison did you say that actually refers to?

6 A It's commonly referred to Way Side among inmates, but the
7 real name is Pitchess Honor Ranch or Pitchess Detention
8 Facility.

9 Q Why did Mr. Holguin refer to it as Magic Mountain?

10 A Because it's directly across the street from Magic
11 Mountain. The jail is located directly across the street from
12 Magic Mountain.

13 Q "Got a one-year lease on a big house." What does that
14 mean?

15 A He got a one-year sentence, he's going to do a year.

16 Q His time will be up around October?

17 A Yes, ma'am.

18 Q And why is it important for Mexican Mafia members and
19 Mexican Mafia secretaries to know where their crew members are
20 housed, or in which prisons they are at?

21 A Well, it's important so they can take care of them.
22 No. 2, to know what crew members are in case there are
23 business ventures. They needed to be protected or represented.
24 The Mexican Mafia member needs to be represented, and it's just
25 essential to know where all your crew members are.

1 Q Is it also important for financial reasons?

2 A Yes, they can collect. There is money to be made there in
3 the county jail, particularly the county jail.

4 It's one of the most lucrative territories there are
5 within the Mexican Mafia. County jails are hugely profitable.

6 Q Why are they hugely profitable?

7 A They have a number of things, like, kitty scan, dope,
8 thirds, what they call dirty thirds or hot money.

9 There is a lot of drugs that pour into the county jail.
10 It's one of the largest county jail systems in the country.

11 And it just generates a lot of money for Mexican Mafia
12 members and crews that are housed there.

13 We're talking -- one guy made six figures in one year, and
14 we're talking \$350,000, so, that is --

15 MR. FRYE: Objection to continuing narrative, Your
16 Honor.

17 THE COURT: Ask another question, Ms. Pernas.

18 MS. PERNAS: Moving on, Your Honor.

19 BY MS. PERNAS:

20 Q Exhibit 101, Mr. Enriquez, page 3.

21 A I don't have 101.

22 THE COURT: It is on the screen.

23 BY MS. PERNAS:

24 Q Up at the top, it says: David Gavaldon, Sr., right?

25 A Yes.

1 Q It's a letter that he is sending to somebody named Christy
2 Gavaldon?

3 A Yes, ma'am.

4 Q Now, assuming this is Christy Arizmendi, what is the
5 significance of David Gavaldon addressing her as Christy
6 Gavaldon?

7 A That they are in a romantic relationship or he is trying
8 to disguise her name, one of the two.

9 Q Is he also conferring on her the power of the Gavaldon
10 name?

11 MR. FRYE: Objection. It was asked and answered,
12 Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: Yes. He's placing his family name on
15 her.

16 BY MS. PERNAS:

17 Q Now, turning to page 6 of this exhibit, and this is going
18 to be very difficult to read because it's written diagonally.

19 So if you look, starting right here, where it says: My
20 sisters are coming up on the 2nd and 3rd of April, and Delores
21 is coming up on the 9th and 10th of April, so you can come up
22 any time after that, just let Sylvia know. I want you to come
23 up, okay? Let JC know not to be doubting himself.

24 Again, you said previously that Mexican Mafia secretaries
25 arrange scheduling for other members of the crew?

1 A Yes.

2 Q Is this what Sylvia is doing here?

3 A That is a prime example of it. David wants her to be
4 aware so she can schedule visits.

5 Q Now, based on your expertise and your review of all of the
6 information provided to you with respect to this case, did you
7 determine whether David Gavaldon and Sylvia Olivas were passing
8 messages regarding Mexican Mafia business?

9 MR. FRYE: Objection. It is the ultimate issue of
10 the case, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: Yes.

13 BY MS. PERNAS:

14 Q What was your conclusion?

15 A That David Gavaldon utilized his sister, Ms. Olivas, the
16 defendant, to pass illegal messages regarding Mexican Mafia
17 activities on a number of occasions utilizing visits.

18 Q Was she receiving money from David Gavaldon's crew?

19 A Yes. She was collecting money; she was also ordering
20 edicts for the crew as well.

21 Q Do you have an opinion regarding Sylvia Olivas's position
22 in David Gavaldon's crew?

23 A I do.

24 Q What is your opinion?

25 A She's a secretary for the Mexican Mafia. She's a

1 secretary for David Gavaldon.

2 MS. PERNAS: May I have a moment, Your Honor?

3 THE COURT: Yes.

4 MS. PERNAS: No further questions, Your Honor.

5 THE COURT: Cross-examination?

6 MR. FRYE: Yes.

7

8 CROSS-EXAMINATION

9 BY MR. FRYE:

10 Q Good afternoon, Mr. Enriquez.

11 A Good afternoon, sir.

12 Q Okay. I believe you testified earlier today about your
13 prior criminal record, correct?

14 A Yes, sir.

15 Q All right. So as I understand it, that began in -- you
16 were arrested on a sexual assault charge in 1979, when you were
17, correct?

18 A Yes, sir.

19 Q That was resolved in 1981, correct?

20 A Yes, sir.

21 Q In conjunction with a number of robberies, you also
22 pleaded guilty to at the same time, correct?

23 A Yes, sir.

24 Q And the actual official charge that you pleaded guilty to
25 was forcible rape, was it not?

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SYLVIA OLIVAS, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

CERTIFICATE OF SERVICE

I, Carlton F. Gunn, hereby certify that on this 1st day of December, 2023, a copy of the Petitioner's Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit were mailed postage prepaid, to the Solicitor General of the United States, Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, counsel for the Respondent.

Respectfully submitted,

December 1, 2023

s/ Carlton F. Gunn
CARLTON F. GUNN
Attorney at Law
