Appendix

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DEC 06 2017

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. LEROY DONOVAN COMBS, Defendant-Appellant.	No. 16-10102 D.C. No. 1:13-cr-00362-AWI-BAM-3 MEMORANDUM*
UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CHARLES WAYNE UPTERGROVE, Defendant-Appellant.	No. 16-10115 D.C. No. 1:13-cr-00362-AWI-BAM-4
UNITED STATES OF AMERICA, Plaintiff-Appellee, v.	No. 16-10123 D.C. No. 1:13-cr-00362-AWI-BAM-5

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

LADONNA LEE MOON,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Argued and Submitted November 16, 2017
San Francisco, California

Before: W. FLETCHER and PAEZ, Circuit Judges, and WILKEN, District Judge.[**]

Leroy Donovan Combs, Charles Wayne Uptergrove and Ladonna Lee Moon appeal their convictions under 18 U.S.C. § 287. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. **All defendants:** The district court did not abuse its discretion in denying the defendants' mistrial motions based on co-defendant Gaylene Bolanos' courtroom outburst in front of the jury. *See United States v. Sarkisian*, 197 F.3d 966, 981 (9th Cir. 1999). First, the outburst was not inherently prejudicial. *See Holbrook v. Flynn*, 475 U.S. 560, 570 (1986). In contrast to the "truly rare" set of circumstances in *United States v. Mannie*, 509 F.3d 851, 857 (7th Cir. 2007), the

[**] The Honorable Claudia Wilken, United States District Judge for the Northern District of California, sitting by designation.

jury in this case witnessed only a single two- to three-minute outburst from a co-defendant, rather than a "violent courtroom brawl," or a "campaign of intimidation."

Second, the district court took reasonable steps to ensure the fairness of the proceedings and jury impartiality. *See United States v. McCormac*, 309 F.3d 623, 626 (9th Cir. 2002) (holding a "district court's assessment of the jury's ability to remain impartial despite the explosion of defiance from [a] defendant is accorded substantial weight because the district court is in the best position to ascertain whether an event is prejudicial"). The court read the jury a cautionary instruction prepared by defense counsel, and approved by all counsel, and gave the jurors an opportunity to express whether the outburst impacted their ability to be fair to all defendants. No juror expressed any concern over his or her ability to be fair and impartial.

2. <u>Uptergrove and Moon</u>: The district court properly declined to instruct the jury that a conviction for making a false claim under § 287 requires proof of willfulness or intent to defraud. Under Ninth Circuit authority, an intent to defraud is not an element of a charge under the false prong of § 287. *See United States v. Milton*, 602 F.2d 231, 234 (9th Cir. 1979) (holding "the jury need not receive an instruction on intent to defraud the government, nor is it an element of the offense, when the government prosecutes for the submission of false claims in violation of 18 U.S.C. § 287"). Uptergrove and Moon fail to cite binding authority requiring the district court to instruct the jury on a good faith defense against false claim charges under § 287.

3. <u>Combs</u>: The district court committed no error in sentencing Combs to 45 months' imprisonment. We review a sentence for reasonableness, and "only a procedurally erroneous or substantively unreasonable sentence will be set aside." *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). The district court's reference to Combs' "long, long history of failing to comply with the tax laws" is well supported by the undisputed presentence report as well as by evidence in the trial record, upon which the district court was permitted to rely in fashioning an appropriate sentence. *See United States v. Fitch*, 659 F.3d 788, 790-791 (9th Cir. 2011).

4. <u>Uptergrove</u>: The district court properly denied Uptergrove a two-level reduction for acceptance of responsibility. The court's actions were reasonable in light of Uptergrove's "decision to take the case to trial, where he vigorously denied the '[knowingly]' element of the offense." *United States v. Chastain*, 84 F.3d 321, 324 (9th Cir. 1996). The record neither shows nor suggests that the district court deemed Uptergrove ineligible for the reduction merely because he went to trial and contested his factual guilt. *United States v. Cortes*, 299 F.3d 1030, 1038 (9th Cir. 2002), *United States v. Ochoa-Gaytan*, 265 F.3d 837, 844 (9th Cir. 2001), and *United States v. McKinney*, 15 F.3d 849, 853 (9th Cir. 1994), are therefore distinguishable.

5. Uptergrove: Uptergrove's sentence was substantively reasonable. *See United States v. Ressam*, 679 F.3d 1069, 1086 (9th Cir. 2012) (en banc). The district court carefully considered the 18 U.S.C. § 3553(a) factors and imposed a reasonable sentence below the low end of the advisory Guidelines range.

AFFIRMED.

FILED

FEB 21 2018

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. CHARLES WAYNE UPTERGROVE, Defendant-Appellant.	No. 16-10115 D.C. No. 1:13-cr-00362-AWI-BAM-4 Eastern District of California, Fresno ORDER

Before: W. FLETCHER and PAEZ, Circuit Judges, and WILKEN,* District Judge.

Judge W. Fletcher and Judge Paez voted to deny the petition for rehearing en banc and Judge Wilken so recommended.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing en banc is DENIED.

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* The Honorable Claudia Wilken, United States District Judge for the Northern District of California, sitting by designation.

UNITED STATES DISTRICT COURT
Eastern District of California

UNITED STATES OF AMERICA
v.
CHARLES WAYNE UPTERGROVE

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

Case Number: **1:13CR00362-004**

Defendant's Attorney: Harry Drandell and Wade Church

THE DEFENDANT:

[ ] pleaded guilty to count(s) ___ .
[ ] pleaded nolo contendere to count(s) ___ which was accepted by the court.
[✓] was found guilty on count 12 after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense (s):

Title & Section	Nature Of Offense	Date Offense Concluded	Count Number
18 U.S.C. § 287	False Claims Against the United States (CLASS D FELONY)	10/15/2008	12

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[ ] The defendant has been found not guilty on count(s) ___ and is discharged as to such count(s).
[✓] Counts 2-11 & 13-16 are dismissed on the motion of the United States.
[ ] Indictment is to be dismissed by District Court on motion of the United States.
[✓] Appeal rights given. [ ] Appeal rights waived.

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

3/7/2016
Date of Imposition of Judgment

/s/ Anthony W. Ishii
Signature of Judicial Officer

Anthony W. Ishii, United States District Judge
Name & Title of Judicial Officer

3/10/2016
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
39 months.

[ ] No TSR: Defendant shall cooperate in the collection of DNA.

[✓] The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be incarcerated in a California facility, but only insofar as this accords with security classification and space availability. Specifically Lompoc, CA.

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

[ ] The defendant shall surrender to the United States Marshal for this district

- [ ] at ___ on ___.
- [ ] as notified by the United States Marshal.

[✓] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- [✓] before 2:00 PM on 5/16/2016 .
- [ ] as notified by the United States Marshal.
- [ ] as notified by the Probation or Pretrial Services Officer.

If no such institution has been designated, to the United States Marshal for this district.

RETURN

I have executed this judgment as follows:

___

___

___

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

___
United States Marshal

___
By Deputy United States Marshal

DEFENDANT:**CHARLES WAYNE UPTERGROVE**
CASE NUMBER:**1:13CR00362-004**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
24 months.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

[✓] The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

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

[✓] The defendant shall cooperate in the collection of DNA as directed by the probation officer.

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

[ ] The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

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

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States probation officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to any unpaid restitution ordered by this Judgment.
3. The defendant shall provide the probation officer with access to any requested financial information.
4. The defendant shall not open additional lines of credit without the approval of the probation officer.
5. As directed by the probation officer, the defendant shall participate in a program of outpatient mental health treatment.
6. As directed by the probation officer, the defendant shall participate in a co-payment plan for treatment or testing and shall make payment directly to the vendor under contract with the United States Probation Office of up to $25 per month.
7. The defendant shall cooperate with the IRS in the determination and payment of any taxes which may be owed.

DEFENDANT:**CHARLES WAYNE UPTERGROVE**
CASE NUMBER:**1:13CR00362-004**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$100		

[ ] The determination of restitution is deferred until ___ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

[ ] The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment colunm below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Totals	$____	$____	

[ ] Restitution amount ordered pursuant to plea agreement $ ___

[ ] The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalities for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

[ ] The court determined that the defendant does not have the ability to pay interest and it is ordered that:

[ ] The interest requirement is waived for the [ ] fine [ ] restitution

[ ] The interest requirement for the [ ] fine [ ] restitution is modified as follows:

[ ] If incarcerated, payment of the fine is due during imprisonment at the rate of not less than $25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

[ ] If incarcerated, payment of the restitution is due during imprisonment at the rate of not less than $25 per quarter and payment shall be through the Bureau of Prisons Inmate Financial Responsibility Program.

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT:**CHARLES WAYNE UPTERGROVE**
CASE NUMBER:**1:13CR00362-004**

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A. [✓] Lump sum payment of $ 100.00 due immediately, balance due

[ ] Not later than ___, or

[ ] in accordance [ ] C, [ ] D, [ ] E,or [ ] F below; or

B. [ ] Payment to begin immediately (may be combined with [ ] C, [ ] D, or [ ] F below); or

C. [ ] Payment in equal ___ (e.g. weekly, monthly, quarterly) installments of $ ___ over a period of ___ (e.g. months or years), to commence ___ (e.g. 30 or 60 days) after the date of this judgment; or

D. [ ] Payment in equal ___ (e.g. weekly, monthly, quarterly) installments of $ ___ over a period of ___ (e.g. months or years), to commence ___ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or

E. [ ] Payment during the term of supervised release/probation will commence within ___ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendants ability to pay at that time; or

F. [ ] Special instructions regarding the payment of crimimal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

[ ] Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall pay the following court cost(s):

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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SEP 26 2013
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY M. VERDUZCO
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GAYLENE LYNNETTE BOLANOS, OSWALD GEORGNER, LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, RODNEY EDWIN MOON, LOUIE CALLES, and JAMES KARAM SCHWARTZ, Defendants.	CASE NO. 1:13 CR 00362 AWI BAM VIOLATIONS: 18 U.S.C. § 286 – CONSPIRACY TO DEFRAUD; 18 U.S.C. § 287 – FALSE CLAIMS AGAINST THE UNITED STATES (15 COUNTS)

I N D I C T M E N T

The Grand Jury charges that at all times pertinent to this indictment:

1. Defendant GAYLENE LYNNETTE BOLANOS resided in Fresno, in the State and Eastern District of California.

2. Defendant OSWALD GEORGNER resided in Fresno, in the State and Eastern District of California.

3. Defendant LEROY DONOVAN COMBS resided in Fresno, in the State and Eastern District of California.

4. Defendant CHARLES WAYNE UPTERGROVE resided in Chowchilla, in the State and Eastern District of California.

5. Defendants RODNEY EDWIN MOON and LADONNA LEE MOON resided in Sparks, in the State and District of Nevada. RODNEY EDWIN MOON and LADONNA LEE MOON were married to each other.

6. Defendant LOUIE CALLES resided in Fresno, in the State and Eastern District of California.

7. Defendant JAMES KARAM SCHWARTZ resided in Fresno, in the State and Eastern District of California.

COUNT ONE: [18 U.S.C. § 286 – Conspiracy to Defraud]

The Grand Jury charges:

GAYLENE LYNNETTE BOLANOS, and
OSWALD GEORGNER,

defendants herein, as follows:

A. INTRODUCTION

8. The allegations in paragraphs 1 through 7 are re-alleged and incorporated by reference.

9. Internal Revenue Service ("IRS") Forms 1099 were used to report, among other things, interest income and associated withholding to the IRS and are typically issued by employers or other payers such as banks. Original Issue Discount ("OID") income is a form of interest income typically realized on debt instruments that were issued at a discount to or purchased for less than the ultimate redemption value of the debt instrument, such as Treasury bills (but not U.S. savings bonds), zero-coupon bonds, and other debt instruments that pay no stated interest until maturity.

10. Individual taxpayers use U.S. Individual Income Tax Return Form 1040, with attached Schedule B, and U.S. Individual Income Tax Return Form 1040A, with attached Schedule 1, to report income, including OID taxable interest, and any associated withholding, to the IRS.

11. The IRS was and is an agency of the United States Department of the Treasury responsible for administering and enforcing the tax laws of the United States of America.

B. OBJECT OF THE CONSPIRACY

12. Beginning on or before August 2008, and continuing until at least October 16, 2008, in the State and Eastern District of California, and elsewhere, defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER, with others known and unknown to the Grand Jury, agreed, combined, and conspired with each other to defraud the United States by obtaining, and aiding, counseling, commanding, inducing, and procuring to obtain, the payment and allowance of false, fictitious, and fraudulent claims for themselves and others by submitting false claims for income tax refunds to the U.S. Treasury through the IRS.

12. Defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER caused at least nineteen false income tax returns to be filed with the IRS in furtherance of the conspiracy.

13. The nineteen returns prepared or aided by defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER claimed more than $32 million in false, fictitious, and fraudulent federal income tax refunds.

C. MANNER AND MEANS

15. Defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER recruited clients, including taxpayers LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, RODNEY EDWIN MOON, LOUIE CALLES, and JAMES KARAM SCHWARTZ, for their tax fraud scheme by falsely representing to them that they could eliminate their debts and legally receive sizable tax refunds by submitting tax returns with IRS Forms 1099-OID.

16. Defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER required that each scheme participant provide specific paperwork, including but not limited to, credit reports, credit card bills, bank statements, utilities bills, mortgage statements, and filed tax returns.

17. Defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER required that scheme participants pay them for their services, typically ten or more percent of the participant's fraudulently-obtained refund.

18. For the 2007 tax year, defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER prepared, or caused to be prepared, and filed, or caused to be filed, with the IRS, fraudulent tax returns for themselves and the participants they recruited.

19. These returns were fraudulent in that they falsely reported on Forms 1040 and 1040A and attached Schedules B and 1 that the taxpayer's total outstanding debt (including mortgage debt, credit limits from credit cards, student loans, auto loans and other debt) was actually interest income that the taxpayer had received from the lender. These returns also falsely reported that all of that interest income had been withheld by the IRS, and that the taxpayer was therefore entitled to a resulting tax refund.

20. Defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER and taxpayers LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, RODNEY EDWIN MOON, LOUIE CALLES, and JAMES KARAM SCHWARTZ knew that the claims submitted by BOLANOS and GEORGNER were false, fictitious, and fraudulent, and that they were not entitled to the refunds claimed.

21. On or about the dates listed below, defendants GAYLENE LYNNETTE BOLANOS and OSWALD GEORGNER, and others known and unknown to the Grand Jury, prepared and electronically transmitted U.S. Individual Income Tax Returns, Forms 1040 and 1040A, with attached Schedules B or 1, as set forth below, reporting fictitious interest income and tax withholdings for the 2007 tax year, and claiming a substantial refund for the taxpayer, knowing that the claims were false, fictitious, and fraudulent in that the named individuals were not entitled to the refund requested:

TAXPAYER NAME	DATE RECEIVED	FORM NUMBER	TAX YEAR	CLAIMED
L.W. & B.W.	8/13/2008	1040	2007	$97,642
Fernando & Gaylene Bolanos	10/6/2008	1040	2007	$1,914,757
W.M.	10/6/2008	1040A	2007	$9,723
J.W. & D.W.	10/8/2008	1040	2007	$223,494
B.M. & K.M.	10/9/2008	1040	2007	$2,155,524
Oswald Georgner	10/9/2008	1040A	2007	$79,113
P.G. & B.G.	10/10/2008	1040	2007	$664,267
D.G.	10/14/2008	1040A	2007	$65,958
G.L. & K.L.	10/14/2008	1040	2007	$6,315,437

D.E. & J.R.	10/14/2008	1040	2007	$1,413,019
James Schwartz	10/14/2008	1040	2007	$125,886
Louie Calles	10/14/2008	1040	2007	$389,297
T.C.	10/15/2008	1040	2007	$1,192,578
Charles Wayne Uptergrove & M.U.	10/15/2008	1040	2007	$6,282,095
B.W.	10/16/2008	1040	2007	$862,590
D.S.	10/16/2008	1040	2007	$560,452
Rodney & Ladonna Moon	10/16/2008	1040	2007	$1,454,349
P.W.	10/16/2008	1040	2007	$2,591,475
Leroy Donovan Combs	10/16/2008	1040	2007	$6,494,829

All in violation of Title 18, United States Code, Section 286.

<u>COUNTS TWO THROUGH SIXTEEN</u>: [18 U.S.C. § 287 – False Claims Against the U.S.]

The Grand Jury further charges:

GAYLENE LYNNETTE BOLANOS,
OSWALD GEORGNER,
LEROY DONOVAN COMBS,
CHARLES WAYNE UPTERGROVE,
LADONNA LEE MOON,
RODNEY EDWIN MOON,
LOUIE CALLES, and
JAMES KARAM SCHWARTZ,

22. Paragraphs 1 through 7 and 9 through 21 are incorporated herein by reference as if set forth in full.

23. On or about the dates set forth below, in the State and Eastern District of California, and elsewhere, defendants GAYLENE LYNNETTE BOLANOS, OSWALD GEORGNER, LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, RODNEY EDWIN MOON, LOUIE CALLES, and JAMES KARAM SCHWARTZ, with others known and unknown to the Grand Jury, made and presented the claims set forth below to the United States, Department of Treasury, Internal Revenue Service, for payment of fraudulent tax refunds in the amounts

set forth below, with knowledge that the claims were false, fictitious and fraudulent. Defendants GAYLENE LYNNETTE BOLANOS, OSWALD GEORGNER, LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, RODNEY EDWIN MOON, LOUIE CALLES, and JAMES KARAM SCHWARTZ made the false claims by preparing and causing to be prepared, and presenting and causing to be presented, and aiding and abetting others to prepare and cause to be presented, to the IRS, U.S. Individual Income Tax Returns, Forms 1040 and 1040A, as set forth below, with attached Schedules B or 1, reporting fictitious interest income and tax withholdings for the 2007 tax year, and claiming a substantial refund, knowing that the claims were false, fictitious, and fraudulent in that the named individuals below were not entitled to the refund requested:

COUNT	TAXPAYER NAME	DATE RECEIVED	FORM NUMBER	TAX YEAR	CLAIMED	DEFENDANT(S)
TWO	F.B. & Gaylene Lynnette Bolanos	10/6/2008	1040	2007	$1,914,757	BOLANOS
THREE	J.W. & D.W.	10/8/2008	1040	2007	$223,494	BOLANOS GEORGNER
FOUR	B.M. & K.M.	10/9/2008	1040	2007	$2,155,524	BOLANOS
FIVE	Oswald Georgner	10/9/2008	1040A	2007	$79,113	GEORGNER
SIX	P.G. & B.G.	10/10/2008	1040	2007	$664,267	BOLANOS
SEVEN	G.L. & K.L.	10/14/2008	1040	2007	$6,315,437	BOLANOS
EIGHT	D.E. & J.R.	10/14/2008	1040	2007	$1,413,019	BOLANOS
NINE	James Schwartz	10/14/2008	1040	2007	$125,886	BOLANOS GEORGNER SCHWARTZ
TEN	Louie Calles	10/14/2008	1040	2007	$389,297	BOLANOS CALLES
ELEVEN	T.C.	10/15/2008	1040	2007	$1,192,578	BOLANOS
TWELVE	Charles Wayne Uptergrove & M.U.	10/15/2008	1040	2007	$6,282,095	BOLANOS UPTERGROVE
THIRTEEN	B.W.	10/16/2008	1040	2007	$862,590	BOLANOS
FOURTEEN	Rodney & Ladonna Moon	10/16/2008	1040	2007	$1,454,349	BOLANOS RODNEY EDWIN MOON LADONNA LEE MOON
FIFTEEN	P.W.	10/16/2008	1040	2007	$2,591,475	BOLANOS
SIXTEEN	Leroy Donovan Combs	10/16/2008	1040	2007	$6,494,829	BOLANOS COMBS

//

All in violation of Title 18, United States Code, Section 287.

TRUE BILL.

/s/ Signature on file w/AUSA

FOREPERSON

Mark E. Cullers

MARK E. CULLERS
Assistant U.S. Attorney
Chief, Fresno Office

UNITED STATES DISTRICT COURT

FILED
SEP 26 2013
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY M. VERDUZCO
DEPUTY CLERK

Eastern District of California

Criminal Division

THE UNITED STATES OF AMERICA

vs.

Gaylene Lynnette Bolanos, Oswald Georgner,
Leroy Donovan Combs, Charles Wayne Uptergrove,
Ladonna Lee Moon, Rodney Edwin Moon,
Louie Calles, and James Karam Schwartz

INDICTMENT

1: 13 CR 00362 AWI BAM

VIOLATION(S): 18 U.S.C. § 286 - Conspiracy to Defraud;
18 U.S.C. § 287 - False Claims Against the United States

A true bill,

/s/
Foreman.

Filed in open court this ______________ *day*

of ______________ *, A.D. 20* ______

____
Clerk.

NO BAIL WARRANT

Bail, $ ______________ as to all defendants

Sheila K. Oberto

GPO 863 525

AO 257 Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY

☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT

☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense: Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

GAYLENE LYNNETTE BOLANOS

Address 1:13 CR 00362 AWI BAM

Birth Date

___ Male ___ Alien
___ Female (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

☐ this person is awaiting trial in another Federal or State Court, give name of court.

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceeding or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

☐ **ADD FORFEITURE UNIT** (Check if Forfeiture Allegation)

DEFENDANT

IS *NOT* IN CUSTODY

1) ☐ Has not been arrested, pending outcome this proceeding if not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ___ Yes ___ No If "Yes" give date

DATE OF ARREST ▸ Mo. Day Year

Or ... if arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY ▸ Mo. Day Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

1: 13 CR 00362 AWI BAM

MSR
AUSA INITIALS

PENALTY SLIP

DEFENDANT: GAYLENE BOLANOS

COUNT ONE:

VIOLATION: 18 USC § 286 - Conspiracy to Defraud

PENALTY: 10 yrs imprisonment, $250,0000 fine, 3 yrs S/R

COUNTS TWO THROUGH FOUR, SIX THROUGH SIXTEEN:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

AO 257

Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

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☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense:	Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

OSWALD GEORGNER

Address {

1: 13 CR 0 0 3 6 2 AWI BAM

Birth Date

___ Male ___ Alien
___ Female (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

☐ this person is awaiting trial in another Federal or State Court, give name of court.

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on

THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

☐ **ADD FORFEITURE UNIT** (Check if Forfeiture Allegation)

DEFENDANT

IS *NOT* IN CUSTODY

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3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

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5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
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Has detainer been filed? ___ Yes ___ No If "Yes" give date

DATE OF ARREST ▸ Mo. Day Year

Or ... if arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY ▸ Mo. Day Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

1: 13 CR 00362 AWI BAM

MSR
AUSA INITIALS

PENALTY SLIP

DEFENDANT: OSWALD GEORGNER

COUNT ONE:

VIOLATION: 18 USC § 286 - Conspiracy to Defraud

PENALTY: 10 yrs imprisonment, $250,0000 fine, 3 yrs S/R

COUNTS THREE, FIVE, AND NINE:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

AO 257 Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY

☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT

☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense: Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

LEROY DONOVAN COMBS

Address

1: 13 CR 00362 AWI BAM

Birth Date

___ Male ___ Alien
___ Female (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

☐ this person is awaiting trial in another Federal or State Court, give name of court.

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21, or 40. Show District

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☐ U.S. Att'y ☐ Defense

SHOW DOCKET NO.

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

☐ **ADD FORFEITURE UNIT** (Check if Forfeiture Allegation)

DEFENDANT

IS *NOT* IN CUSTODY.

1) ☐ Has not been arrested, pending outcome this proceeding if not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ___ Yes ___ No If "Yes" give date

DATE OF ARREST Mo. Day Year

Or ... if arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY Mo. Day Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

UMSR
AUSA INITIALS

PENALTY SLIP

DEFENDANT: LEROY DONOVAN COMBS

COUNT SIXTEEN:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

AO 257 Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY

☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT

☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense: Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

CHARLES WAYNE UPTERGROVE

Address {

1:13 CR 00362 AWI BAM

Birth Date

___ Male ___ Female

___ Alien (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

☐ this person is awaiting trial in another Federal or State Court, give name of court.

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21, or 40. Show District

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☐ U.S. Att'y ☐ Defense

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on

THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

☐ **ADD FORFEITURE UNIT** (Check if Forfeiture Allegation)

DEFENDANT

IS *NOT* IN CUSTODY

1) ☐ Has not been arrested, pending outcome this proceeding if not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ___ Yes ___ No If "Yes" give date

DATE OF ARREST ▸ Mo. Day Year

Or ... if arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY ▸ Mo. Day Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

1:13 CR 00362 AWI BAM

MSR
AUSA INITIALS

PENALTY SLIP

DEFENDANT: CHARLES WAYNE UPTERGROVE

COUNT TWELVE:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY

☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT

☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense: Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

LADONNA LEE MOON

Address

1: 13 CR 00362 AWI BAM

Birth Date

___ Male ___ Female

___ Alien (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

☐ this person is awaiting trial in another Federal or State Court, give name of court.

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21, or 40. Show District

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SHOW DOCKET NO.

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

☐ **ADD FORFEITURE UNIT** (Check if Forfeiture Allegation)

DEFENDANT

IS *NOT* IN CUSTODY

1) ☐ Has not been arrested, pending outcome this proceeding if not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ___ Yes ___ No

If "Yes" give date

DATE OF ARREST ▸ Mo. Day Year

Or ... if arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY ▸ Mo. Day Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

MSR
AUSA INITIALS

PENALTY SLIP

DEFENDANT: LADONNA LEE MOON

COUNT FOURTEEN:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

AO 257

Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY

☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT

☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense: Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

RODNEY EDWIN MOON

Address {

1: 13 CR 0 0 3 6 2 AWI BAM

Birth Date

___ Male ___ Alien
___ Female (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

☐ this person is awaiting trial in another Federal or State Court, give name of court.

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21, or 40. Show District

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SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

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DEFENDANT

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1) ☐ Has not been arrested, pending outcome this proceeding if not detained give date any prior summons was served on above charges

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3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ___ Yes ___ No If "Yes" give date

DATE OF ARREST ▸ Mo. Day Year

Or ... if arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY ▸ Mo. Day Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

1: 13 CR 00362 AWI BAM

JMSR

AUSA INITIALS

PENALTY SLIP

DEFENDANT: RODNEY EDWIN MOON

COUNT FOURTEEN:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

AO 257

Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY

☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT

☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense: Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

LOUIE CALLES

Address {

1:13 CR 00362 AWI BAM

Birth Date

___ Male ___ Alien
___ Female (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

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SHOW DOCKET NO.

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

☐ **ADD FORFEITURE UNIT** (Check if Forfeiture Allegation)

DEFENDANT

IS *NOT* IN CUSTODY

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3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ___ Yes ___ No If "Yes" give date

DATE OF ARREST ▸ Mo. Day Year

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DATE TRANSFERRED TO U.S. CUSTODY ▸ Mo. Day Year

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ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

1: 13 CR 00362 AWI BAM

MSR
AUSA INITIALS

PENALTY SLIP

DEFENDANT: LOUIE CALLES

COUNT TEN:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

AO 257

Rev. 5/2003) ___YES: SAB conflict in USAO (Before 01/01/13) ___Yes: SKO conflict in USAO (Before 4/12/10) PER 18 U.S.C 3170

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION -- IN U.S. DISTRICT COURT

BY

☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT

☐ SUPERSEDING INFORMATION ☐ SUPERSEDING

SEALED ☐ Court No.

Name of District Court, and/or Judge Magistrate

EASTERN DISTRICT OF CALIFORNIA
FRESNO, CALIFORNIA

OFFENSE CHARGED

___ Petty
___ Minor
___ Misde-meanor
___ Felony

Place of Offense: Fresno County

USC Citations:

DEFENDANT -- U.S. vs.

JAMES KARAM SCHWARTZ

Address {

1: 13 CR 0 0 3 6 2 AWI BAM

Birth Date

___ Male ___ Female

___ Alien (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Michele Casarez/IRS

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MAGISTRATE CASE NO.

Name and Office of Person Furnishing information on

THIS FORM

x U.S. Att'y ___ Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned) GRANT B. RABENN and MEGAN RICHARDS

☐ **ADD FORFEITURE UNIT** (Check if Forfeiture Allegation)

DEFENDANT

IS *NOT* IN CUSTODY

1) ☐ Has not been arrested, pending outcome this proceeding if not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction ☐ Fed'l ☐ State

6) ☐ Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? ___ Yes ___ No

If "Yes" give date

DATE OF ARREST ▸ Mo. Day Year

Or ... if arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY ▸ Mo. Day Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PENALTIES: *Please see penalty slips*
STATUS: *Please issue No Bail Warrant*

1: 13 CR 00362 AWI BAM

MSR

AUSA INITIALS

PENALTY SLIP

DEFENDANT: JAMES KARAM SCHWARTZ

COUNT NINE:

VIOLATION: 18 USC § 287 - False Claims Against the U.S.

PENALTY: 5 yrs imprisonment, $250,000 fine, 3 yrs S/R

HARRY M. DRANDELL #109293
LAW OFFICES OF HARRY M. DRANDELL
1221 VAN NESS AVENUE, SUITE 450
FRESNO, CA 93721
PHONE (559) 442-8888
FAX (559) 442-8891

ATTORNEYS FOR Defendant, Charles Wayne Uptergrove

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

* * * * * * * *

UNITED STATES OF AMERICA, Plaintiff, vs. CHARLES WAYNE UPTERGROVE, Defendant.	**CASE NO.: 1:13-CR-00362 AWI** **DEFENDANT, CHARLES WAYNE UPTERGROVE'S PROPOSED JURY INSTRUCTIONS** Date: October 20, 2015 Time: 8:30 a.m. HON. ANTHONY W. ISHII Dept: 2

Defendant, CHARLES WAYNE UPTERGROVE, by and through his attorney, HARRY M. DRANDELL, respectfully requests that this court include in its standard charged to the jury the following instructions from the Manuel of Model Criminal Jury Instructions for the Ninth Circuit:

FINAL INSTRUCTIONS

1. Ninth Circuit - 1.1 - Duty of the Jury
2. Ninth Circuit - 1.2 - The Charge–Presumption of Innocence
3. Ninth Circuit - 1.3 - What is Evidence
4. Ninth Circuit - 1.4 - What is Not Evidence
5. Ninth Circuit - 1.5 - Direct and Circumstantial Evidence
6. Ninth Circuit - 1.6 - Ruling on Objections
7. Ninth Circuit - 1.7 - Credibility of Witnesses

8. Ninth Circuit - 1.8 - Conduct of the Jury
9. Ninth Circuit - 1.9 - No Transcript Available to Jury
10. Ninth Circuit - 1.10 - Taking Notes
11. Ninth Circuit - 1.11 - Outline of Trial
12. Ninth Circuit - 1.13 - Separate Consideration for Each Defendant
13. Ninth Circuit - 2.1 - Cautionary Instruction–First Recess
14. Ninth Circuit - 2.2 - Bench Conferences and Recesses
15. Ninth Circuit - 2.3 - Stipulated Testimony
16. Ninth Circuit - 2.4 - Stipulations of Fact
17. Ninth Circuit - 2.5 - Judicial Notice
18. Ninth Circuit - 2.11 - Evidence for Limited Purpose
19. Ninth Circuit - 2.14 - Disposition of Charge Against Codefendant
20. Ninth Circuit - 3.1 - Duties of Jury to Find Facts and Follow Law
21. Ninth Circuit - 3.2 - Charge Against Defendant Not Evidence--Presumption of Innocence--Burden of Proof
22. Ninth Circuit - 3.3 - Defendant's Decision Not to Testify
23. Ninth Circuit - 3.4 - Defendant's Decision to Testify
24. Ninth Circuit - 3.5 - Reasonable Doubt--Defined
25. Ninth Circuit - 3.6 - What is Evidence
26. Ninth Circuit - 3.7 - What is Not Evidence
27. Ninth Circuit - 3.8 - Direct and Circumstantial Evidence
28. Ninth Circuit - 3.9 - Credibility of Witnesses
29. Ninth Circuit - 3.10 - Activities Not Charged
30. Ninth Circuit - 3.12 - Separate Consideration of Multiple Defendants
31. Ninth Circuit - 3.13 - Separate Consideration of Multiple Counts and Multiple Defendants
32. Ninth Circuit - 3.16 - Intent to Defraud - Defined
33. Ninth Circuit - 4.1 - Statements by Defendant

34. Ninth Circuit - 4.8 - Impeachment Evidence--Witness

35. Ninth Circuit - 4.9 - Testimony of Witnesses Involving Special Circumstances--Immunity, Benefits, Accomplice, Plea

36. Ninth Circuit - 4.14 - Opinion Evidence, Expert Witness

37. Ninth Circuit - 5.1 - Aiding and Abetting

38. Ninth Circuit - 5.6 - Knowingly--Defined

39. Ninth Circuit - 6.10 - Mere Presence

40. Ninth Circuit - 7.1 - Duty to Deliberate

41. Ninth Circuit - 7.2 - Consideration of Evidence

42. Ninth Circuit - 7.3 - Use of Notes

43. Ninth Circuit - 7.4 - Jury Consideration of Punishment

44. Ninth Circuit - 7.5 - Verdict Form

45. Ninth Circuit - 7.6 - Communication With Court

46. Ninth Circuit - 9.42 - Wilfully - Defined

In addition, Defendant joins in Codefendant, Louis Calles's Proposed Special Instructions 1, 2, and 3 as set forth in his Exhibits submitted in his Response to Government's Motions in Limine:

Special Instruction #1 - Making and Presenting a False Claim to a Department of the United States (18 U.S.C. §287)

Special Instruction #2 - Good Faith Defense

Special Instruction #3 - Good Faith Explained

ADDITIONAL INSTRUCTIONS DURING TRIAL

Leave is respectfully requested to include such other and additional jury instructions as may become necessary during the course of the trial.

Dated: October 1, 2015

Respectfully submitted,

LAW OFFICES OF HARRY M. DRANDELL

/s/ Harry M. Drandell

HARRY M. DRANDELL, Attorney for Defendant
CHARLES WAYNE UPTERGROVE

DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 46

WILLFULLY DEFINED

In order to prove that the defendant acted "willfully", the government must prove beyond a reasonable doubt that the defendant knew federal tax law imposed a duty on [him] [her], and the defendant intentionally and voluntarily violated that duty.

[A defendant who acts on a good faith misunderstanding as to the requirements of the law does not act willfully even if [his] [her] understanding of the law is wrong or unreasonable. Nevertheless, merely disagreeing with the law does not constitute a good faith misunderstanding of the law because all persons have a duty to obey the law whether or not they agree with it. Thus, in order to prove that the defendant acted willfully, the government must prove beyond a reasonable doubt that the defendant did not have a good faith belief that [he] [she] was complying with the law.]

9th CIR. CRIM. JURY INSTR. 9.42 (2012)

_____GIVEN
_____GIVEN AS MODIFIED
_____REFUSED
_____REFUSED EXCEPT AS COVERED BY OTHER INSTRUCTIONS

DEFENDANT'S PROPOSED SPECIAL INSTRUCTION NO. 1

MAKING AND PRESENTING A FALSE CLAIM TO A DEPARTMENT OF THE UNITED STATES (18 U.S.C. §287)

Under 18 U.S.C. §287, the Government must establish each of the following elements beyond a reasonable doubt: That the defendant:

1. Willfully presented a false, fictitious, or fraudulent claim to a department of the United States;
2. Knowing at the time the claim was presented, it was false, fictitious or fraudulent; and
3. Did so with the specific intent to defraud the Government.
4. Also, the Government must prove that the claim was a material one, that is, it had a natural tendency to influence , or was capable of influencing, the agency to which it was addressed.

DEFENDANT'S PROPOSED SPECIAL INSTRUCTION #1

_____GIVEN
_____GIVEN AS MODIFIED
_____REFUSED
_____REFUSED EXCEPT AS COVERED BY OTHER INSTRUCTIONS

DEFENDANT'S PROPOSED SPECIAL INSTRUCTION NO. 2

GOOD FAITH DEFENSE

The good faith of a defendant is a complete defense to all charges because good faith on the part of a defendant is inconsistent with the requirement that the defendant knowingly and willfully submitted a false, fictitious or fraudulent claim.

If a defendant had an honest, good faith belief that the claim he or she presented complied with the law as they understood it, even if they were mistaken in that belief, there would be no crime because the defendant would not have knowingly and willfully submitted a false, fictitious or fraudulent claim, and could not have intended to defraud the government.

DEFENDANT'S PROPOSED SPECIAL INSTRUCTION #2

_____GIVEN
_____GIVEN AS MODIFIED
_____REFUSED
_____REFUSED EXCEPT AS COVERED BY OTHER INSTRUCTIONS

DEFENDANT'S PROPOSED SPECIAL INSTRUCTION NO. 3

GOOD FAITH EXPLAINED

A good faith belief is one that is honestly and genuinely held. A belief need not be objectively reasonable to be held in good faith. If you cannot conclude after a full appraisal of the evidence that the Government has proven beyond a reasonable doubt that a defendant's belief was not honest and genuine as to the legality of their application of the law then you must return a verdict of not guilty to the charge.

However, if you are convinced beyond a reasonable doubt that a defendant fully understood the law, knew that his or her claim violated the law but presented it anyway with the intent to defraud the Government, good faith would not be a defense. Good faith does not apply where a defendant violates the law because he or she disagrees with it.

DEFENDANT'S PROPOSED SPECIAL INSTRUCTION #3

_____GIVEN
_____GIVEN AS MODIFIED
_____REFUSED
_____REFUSED EXCEPT AS COVERED BY OTHER INSTRUCTIONS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HON. ANTHONY W. ISHII

UNITED STATES OF AMERICA, Plaintiff, vs. GAYLENE LYNNETTE BOLANOS, LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, and RODNEY EDWIN MOON, Defendants.	1:13-cr-00362 AWI JURY TRIAL Day 8

Fresno, California   Tuesday, November 3, 2015

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 8, Pages 1461 to 1618, inclusive

REPORTED BY:
GAIL LACY THOMAS, RMR-CRR
Official Court Reporter
CSR No. 3278

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Q. So thank you for that.

So when did you first hear the term, what date or what time frame approximately did you --

A. The first time I remember hearing about OIDs was, like I said, early in 2008. I can't give you an exact date. I just do not remember, I'll be honest, the exact time.

Q. That's fine. And so how did you find out about OIDs? What did you do after you heard this term?

A. After my conversation with Gaylene enlightening me about these forms, I, of course, immediately called Louie back. I talked to him frequently about --

Q. I don't want to know what he said to you. I just want to know who you spoke to, or what actions you took as a result of --

A. Well, I spoke to him, and I immediately went into some research on the Web, referring to some of the old books that I had studied prior, and, you know, and materials that I had studied and just started to conclude whether or not this form would be appropriate compared to my bonds that I -- promissory notes that I had created for various purposes and put out there.

Q. So could you tell us what the initials -- what does OID mean, what does it stand for?

A. The best recollection -- and I haven't studied this stuff in a little while, but it's basically an original issue discount, and when you're studying that stuff, there was a lot of stuff going on in the world at the time. I mean, if you all remember in 2008 --

MR. CARBAJAL: Object to relevance, Your Honor.

THE COURT: Sustained.

BY MR. CHURCH:

Q. So what materials did you use to study to find out about OIDs?

A. Like I was saying, multiple sources of people would influence me, "Chuck, have you seen this or that?" I would go look up things, but ultimately a lot of stuff I read, I just couldn't compute. So it was such an obsession I was having. You know, I would get anxious about the bills, I would be obsessed about -- I've got to cure this problem. So I would just keep studying, and I kept reaching for more material, and finally, ultimately, I came into some different titles, like Title 15, "Banks and Money and Finance," and then I started paying attention to -- I'd read some of that stuff. Mostly I'd go for definitions. I was obsessed and kind of -- about definition in sections. Why does this law say things like in this -- for the purpose of this section of law or title, or whatever, it would say "definition," and then I'd go to another section, which I like to refer to is 31, which I referred to later quite often when I was creating my bonds, and it also had sections. It always went to definitions. So

the 1099.
Q. And, again, did you use these instructions when you filed your 2007 tax returns?
A. I -- they were my guides, yes.
Q. I'm going to show you Exhibit H. And, Chuck, could you tell me what that pamphlet is.
A. It came in the same package as all of them did every year. It's the 2011 instructions forms for the 1099-As, and the Cs basically. Just further instructions that come in the pamphlets when you get all the forms.
Q. Thank you.
Chuck, could you tell me what that document I just handed you is.
A. It's some of the -- it's a -- it's a copy of a book that's called "Modern Money Mechanics," and it's actually printed by the Federal Reserve Bank of Chicago. And it was research material that I had studied in preparation for preparing my bonds originally and understanding fractional banking system and how it all plays together in that.
Q. And did you use that document and rely upon it when you filed your 2007 tax returns?
A. Yeah. This is a newer model. It's not the one I actually studied, but it is an exact replica of it.
Q. And what did you do with the one that you had originally?
A. Mine was marked up and bent up, but I misplaced it. It's

2007 tax return; is that correct?

A. Yes. Yes, that's right.

Q. This would be Defense Exhibit N as in November. And so, Chuck, what's this document I have just handed you?

A. This is just more research material, which I, you know, studied and tried to compilate in my mind how I was addressing the IRS issues at my door in 2000. This is just one of the documents along with these others that I studied, and one led me to one, and this one led me to that one. It was like chasing rabbits, you know, going here and there, just trying to get data, just more of it.

Q. Now, we've shown you a number of documents that you stated you relied upon when you filed your 2007 tax return. How long of a period are we talking about? How long was your study of this -- the subject matter for lack of a better term?

A. Well, yeah, I would venture to guesstimate -- I'm going to be general here. I can't give you to the exact date, but I would safely say around -- it started seriously around 2000. The year 2000, when I was confronted with an IRS agent's notice regarding past due taxes in the year 2000. So I started making phone calls to my old attorney firms, which -- where that debt came from. At that point, some of the letters that I received were disheartening in the sense that they were asking for a large amount of money, which at that time I did not have. I just moved and relocated, so I felt like that

BY MR. CHURCH:

Q. Go ahead, Chuck.

A. Yeah, basically my main attorney who was handling the bankruptcy was the author of the letter. And there was multiple lawyers involved at the time, that I had a tax lawyer, and I had an EDD lawyer, specialized in paying what they call priority claims. Priority claims are claims that when you take money from someone's paycheck, it is sent to the Government. That's a priority claim. So if you get a deduction --

MR. CARBAJAL: Object. It's nonresponsive.

THE COURT: Sustained. Go ahead.

BY MR. CHURCH:

Q. So basically your lawyer was telling you you've done all you can do. Your bankruptcy is done.

A. That's what it says, yes.

Q. Thank you, Chuck.

A. Thank you.

Q. Next will be Defendant's Exhibit S as in Sierra. And can you tell me what this document is, Chuck.

A. This is -- it's a document that I received in the mail from my attorney. Actually the letterhead is from the bankruptcy court of Central District of California, which I believe was Santa Barbara, Los Angeles, I'm not sure, but that's where it was heard at. And it's regarding me. And

MR. CARBAJAL: I'm going to object to relevance, Your Honor. Hearsay.

THE COURT: Sustained. Go ahead and pose another question.

BY MR. CHURCH:

Q. All right. I have a few more documents here to introduce, but I want to ask you some questions right now. There's been some other exhibits produced here that has your signature on them. At the time that you signed your 2007 tax return, did you believe that to be -- did you know that that was false or fictitious?

A. No, I did not. I believed with all sincerity that my study material had led me to believe that I was doing it correctly when I filed it at that time.

Q. Next in line is Defendant's Exhibit CC, Charlie, Charlie. And, again, Chuck, could you tell me what that document is and the date, please.

A. Again, it's a standard-looking form that came -- it comes from the IRS. It was for the tax year 2011, and it was sent in March 3rd, 2014. And it took the last balance and brought it to $2 --

MR. CARBAJAL: Objection, Your Honor. Irrelevant and move to strike.

THE COURT: Sustained.

BY MR. CHURCH:

A. Yeah, that was the first time I ever met Louie.
Q. And when was the first time you ever met Miss Bolanos?
A. Ironically, that's funny. I was doing a roof for her father. I met her through her father and mother in Clovis. I believe it was in Clovis I did a roof for him.
Q. And when you first met her, did you have any discussions regarding taxes or tax issues?
A. With her?
Q. With her.
A. No, not with Gaylene. The first time I met her it was very casual. I was actually there collecting on the roof I had just finished, and she was there with her mother and father, and it was a very casual, "This is my daughter," you know, "Glad to meet you." Gaylene and I got an introduction like that.
Q. What's the time period, what time are we talking about here?
A. Again, I've got to think. This was a while ago. Somewhere between 2002 and '4, I'm going to estimate, is my best recollection. I didn't keep a diary on that. I'm sorry.
Q. Okay. No, that's fine. So you met her some years before you actually filed your 2010 taxes?
A. Oh, yes, definitely. Yes, I did, yes.
Q. So when Miss Bolanos and Louie came to your house -- what was the purpose in coming there?

A. Well, like I stated before, I was just sharing with Louie my problem that I was trying to execute the -- the -- my liabilities were greater than my assets, and I wanted to file the '09 bankruptcy, but I was really complexed on how I could get the bonds in there in my returns, and he just -- my recollection is that he said he was going to get back --

MR. CARBAJAL: Object to hearsay, Your Honor.

THE COURT: Sustained.

BY MR. CHURCH:

Q. And why did you think that Mr. Calles would have any idea about how to do this?

A. Well, because he was a tax preparer, and at that time, I knew he was a tax preparer. And I know he worked for the post office at one time and he worked for the IRS years before that. And he was -- when he spoke about things that I brought to him, he was extremely knowledgeable, he was -- it -- you know, when I had my book with me, he could go in there, and I'd look at it, and I go, yeah, that's what that says. I understand that. And I was -- I met him before any of the tax issues was -- you know, defending my property, trying to understand how to deal with the bankruptcy of 1988. So once I met him, and I learned that he had that experience, I queried him quite often.

Q. So earlier, I showed you Exhibit K. And it's Title 31, The Money and Finance Treasury, 31 CFR. And in there, there's regarding it.

Q. Chuck, as you sit here today, do you want to clear your debt up? Do you want to become current with your taxes?

MR. CARBAJAL: Objection. Relevance, Your Honor.

THE COURT: Sustained.

BY MR. CHURCH:

Q. Okay, Mr. Uptergrove, Chuck, did you at any time submit a claim to the IRS knowing that it was false?

A. No, I did not.

Q. Did you at any time in 2007 sign a document and submit it to the IRS knowing that it was false or fictitious?

A. No, I did not.

Q. Did you have a good -- at the time, have a good faith belief, an honest and sincere belief, that you filed your taxes, and you were not submitting a fraudulent claim to the IRS?

A. That is correct.

MR. CHURCH: Thank you. Thank you, Your Honor. I have no further questions.

THE COURT: All right, members of the jury, we'll take our evening recess. You'll return tomorrow morning at 9:00.

(The jury was excused.)

THE COURT: All right, the jury has left. You can step down.

A. You got it.
Q. All right. Now, I think you indicated that you worked with Miss Bolanos, Mr. Calles, and Mr. -- was it Mr. Georgner as well?
A. No.
Q. You worked primarily with Mr. Calles and Miss Bolanos.
A. That is correct.
Q. On your 2007 tax return.
A. That is correct.
Q. And I think you indicated that you're the one that came up with the entries, and Miss Bolanos pressed the button for you.
A. All the mathematics and data came from my file cabinet, yes.
Q. Listen to my question. You're the one that came up with the entries for the Schedule B on the return; is that right?
A. That would be correct.
Q. Okay. So you're responsible for each and every entry on there on the Schedule B, isn't that right?
A. That would be correct.
Q. Okay. And you worked with Miss Bolanos on it, right?
A. Yes.
Q. You sent her your personal information?
A. Yes, I did.
Q. Okay. You worked with her to make sure that what you wanted listed was actually listed on the return?

A. Yes, I do.

Q. And it says, "Under penalty of perjury, I declare that I have examined a copy of my electronic individual income tax return and accompanying schedules and statements for the tax year ending December 31, '07 -- 2007. And to the best of my knowledge and belief it is true, correct, and complete." Do you see that?

A. Yes, I do.

Q. Okay. And you signed it.

A. And I believed it was true and correct.

Q. And you signed it?

A. Absolutely. I signed it.

Q. And you mailed it into the IRS?

A. I did do that.

MR. CHURCH: Objection. Misstates the witness' testimony.

THE COURT: Sustained.

BY MR. CARBAJAL:

Q. After you signed this document, did you mail it into the IRS?

A. Yes, I recall doing so.

Q. And if we could zoom out. And can we go back to 12A. Can we go to the next page, Schedule B? All right.

I want to focus in on the Schedule B that is listed in your 2007 tax return. Okay?

going down. If you loan somebody money, your pocketbook in theory goes down. As soon as I signed it, they deposited the loan, the application, created an asset. Their bank assets went up.

MR. CARBAJAL: I object as nonresponsive, Your Honor.

THE COURT: Sustained.

BY MR. CARBAJAL:

Q. Okay. You were paying the monies every month on the mortgage?

A. That is correct.

Q. And you knew it was improper when you listed your mortgage loan debt as income in this document?

MR. CHURCH: Objection. The witness has not testified he knew it was improper.

THE WITNESS: Yes.

THE COURT: Overruled. Go ahead and please state the question.

BY MR. CARBAJAL:

Q. You knew it was improper when you listed your mortgage balance as income on this return.

A. No, I did not.

Q. You thought that was totally fine.

A. At this time, I believed that all loans that I created, all my sweat equity that I created, anything that was coming to me was appropriate for me to put into this return to create

which continues on to page 5 and 6. Do you see that?
A. Yes, I do.
Q. Okay. Now, let me ask you this: You never received a 1099-OID from any of the entities you listed in the Schedule B; is that right?
A. No, I don't think I ever did.
Q. You don't remember ever getting any?
A. That's right.
Q. Okay. And if we can bring up 12A.A. If we could zoom in on the Jurat signature.
Showing you what's been marked -- showing you what's on the screen is a 12A.A. Mr. Uptergrove, at the time you signed this document, the 8453, you knew it was a crime to put false information on a tax return and send it to the IRS, didn't you?
MR. CHURCH: Objection, Your Honor. That misstates the witness' testimony.
THE COURT: Overruled.
THE WITNESS: No, I believed that if you deliberately put false information on there, it would have been wrong.
BY MR. CARBAJAL:
Q. Okay.
A. I did not believe that. When I did this, I believed it was truthful and correct.
Q. Is it fair to say at the time you signed this document,

you knew it was a crime to deliberately put false information in a tax return and send it to the IRS?

MR. CHURCH: Objection, Your Honor. Again, misstates the witness' testimony.

THE COURT: Overruled. Go ahead, if you can answer.

THE WITNESS: I'm going to repeat it. I believe that knowingly, yeah. But I did not believe what I was doing was a crime at the time. I believed that this was true and correct and by my belief.

BY MR. CARBAJAL:

Q. Listen to my question. At the time you signed the return, you knew it was unlawful to deliberately put false information in a tax return and send it to the IRS.

A. I'm going to state the same thing. I believed that I wouldn't have put any false information on this return if I believed it to be false.

Q. Okay. I'm not asking about your return specifically. I'm asking about your knowledge.

A. Okay.

Q. At the time you signed the return, you knew it was unlawful to deliberately put false information on a return and send it to the IRS?

A. I'm going to state the same thing. I would not put false information on a return deliberately. I would not do that.

Q. And you wouldn't do that because you knew it was a crime

if you did do that.
A. What I knew, it had to be true and correct to the best of my ability, that's what I knew.
Q. Okay. All right. So you knew it was a crime to put false -- to deliberately put false information in a tax return and send it to the IRS. Isn't that right?
MR. CHURCH: Objection, Your Honor. Asked and answered.
THE COURT: Overruled, if you can answer.
THE WITNESS: Same answer.
BY MR. CARBAJAL:
Q. Okay. All right. Well, you knew it was a crime to deliberately make up information and send it to the IRS in a tax return?
A. I would give you the same answer. I would not knowingly put anything false on any type of a document like this.
Q. And if you did, that would have been a crime, right?
A. I'm going to stay with the same answer. I would never put false information on any kind of form that said it had to be true and correct to the best of my ability.
Q. And if you did do that in 2008, that would have been a crime, right?
A. I'm going to state the same answer.
Q. So you knew back then that submitting a false claim for refund to the IRS, you knew in '08, that that was a crime,

isn't that right?
A. That is not what I stated. I stated that I would not have put false information on a form knowingly if I believed in what I was doing.
Q. Yeah, and you wouldn't have done that because you knew it was against the law in '08, right?
A. It says not to put false information, true and correct. That's what I was putting on, true and correct, as I believed.
Q. Okay. I'm going to show you on the screen what's already been admitted as 12H-2A. You're going to see it up on the screen. If you have a hard time reading it, I'll give you a paper copy. Okay?
A. Thank you.
Q. Now, let me ask you this: You knew at the time you submitted the '07 return, that you were sending false information to the IRS, isn't that right?
A. No, it's not right.
Q. Okay. You knew at the time you were sending made-up information to the IRS when you sent in that return; is that right?
A. No, sir, that's not right.
Q. You intended to deceive and cheat the IRS and take money from the Treasury by submitting that return, isn't that right?
A. That is not correct.
Q. Well, I think you mentioned on direct that shortly after

showing me.
Q. Well, that's what you -- well, may I approach, Your Honor?
THE COURT: Yes.
BY MR. CARBAJAL:
Q. The bond you -- it's a bond you mailed out to Treasury, right?
A. This is a copy of the bond. The original bond is not here. The original bond has a crimped stamp on it under my signature. These are obviously just copies, and they're also stamped copies in blue-ink copies. These are courtesy copies to probably seven to eight entities to notify them of the original bond. It's the original bond that I seek, not a copy of what I mailed to everyone as a courtesy.
Q. Whether it's an original bond or a copy, you know they're not worth anything, right?
A. At that time, I followed the process and believed all this to be a hundred percent correct. I received no frivolous letters regarding any of these, nor were a single one including these copies ever mailed back to me.
Q. None of the bonds you sent back resulted in your debt getting extinguished, isn't that right?
A. As of today, you're right. But then there was a period where I believed they were, and I was receiving letters that looked like the affirmative and no letters from the IRS saying there was an issue.

Q. Well, you started out, we looked at some Bills of Exchange, right?
A. Correct.
Q. And those didn't work to extinguish your debt.
A. Again, they stopped and started after Judge Ishii's case converting the notice to a levy and taking the house. Then they resumed.
Q. Then you started sending promissory bonds out to extinguish your debt, and that didn't work.
A. These are dated an '07 and '06 on some of these, and we're talking about after 2010.
Q. In any event, it didn't work, right? Your debt didn't go away?
A. As of today, you're right.
Q. And then ultimately what you decided to do is submit a tax return with false information to try to get rid of your debt?
A. That is not true. What I tried to do is bring forward the bonds that I had forwarded to them, that I still haven't seen the originals, and bring them to the federal court, trustee, and the bankruptcy division. I couldn't think of a better place to do that similar to what I did in 1988. I thought they would be able to sort this out, and that didn't happen.
Q. I want to go back briefly to this time period where you weren't filing federal tax returns. Okay?
A. Okay.

this: If your beliefs led you to the conclusion that you owed $6.2 million rather than were entitled to a refund, you wouldn't have signed the return, isn't that right?
A. No, that's not true. I did this this way because, like I said, it was my knowledge and belief at the time with the OIDs, number 7 tax return was being prepared in '08 for one purpose and one purpose only, to get my taxes filed and to get it to the trustee to recognize the bond of all these different agencies.
Q. Part of what prompted this return was the bills you were getting from the IRS; is that right?
A. No, not totally.
Q. But in part, right?
A. It was pretty much just a tally of everything, the Court case, the bankruptcy in '88, bringing it all forward up to this point.
Q. So if the return said you owed money, you wouldn't have signed it. Isn't that right?
MR. CRAWFORD: Asked and answered.
THE COURT: Overruled. Go ahead and answer it.
THE WITNESS: I would have signed it if that's what it said.
MR. CARBAJAL: One moment, please. Pass the witness.
MR. HOMOLA: No questions, Your Honor.
THE COURT: Miss O'Neill.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HON. ANTHONY W. ISHII

UNITED STATES OF AMERICA, Plaintiff, vs. GAYLENE LYNNETTE BOLANOS, LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, and RODNEY EDWIN MOON, Defendants.	1:13-cr-00362 AWI JURY TRIAL Day 7

Fresno, California Thursday, October 29, 2015

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 7, Pages 1243 to 1460, inclusive

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GOVERNMENT'S WITNESSES:

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EXHIBITS

doing the inviting?
A. Yes.
Q. And who was doing the inviting?
A. Bill Moore.
Q. And did you ever speak to Mr. Calles about why the meetings were private?
A. Well, he was a tax preparer and a former IRS employee, and he didn't -- well, a long-time tax preparer, actually. And he didn't want to mix this new refund with the traditional refund.
Q. Did he ever mention anything about negative people to you?
A. Yes. He doesn't want any negative.

MR. CRAWFORD: I object, Your Honor, as hearsay and relevance.

THE COURT: Sustained.

BY MR. RABENN:
Q. You had worked with Mr. Calles in filing tax returns; is that correct?
A. Yes.
Q. And as part of that working with Mr. Calles, you had conversations with him; is that correct?
A. Yes.
Q. And is it true that in preparing those returns and working with him, you attended meetings?
A. Yes.

Q. In those private meetings, did there appear to be one person in charge?

A. Knowledgeable was Mr. Calles, who was a long time tax preparer and ex-IRS employee.

Q. Did Mr. Calles state that he was an IRS ex-employee or that he was an IRS agent?

A. Both.

Q. Both?

A. Yes.

MR. RABENN: Objection, Your Honor. Calls for hearsay.

THE COURT: Sustained.

MR. RABENN: Move to strike the response, Your Honor.

THE COURT: Disregard that last answer.

BY MS. O'NEILL:

Q. When Mr. Calles was there, was he telling people what to do?

A. Yes, or what not to do.

MR. RABENN: Objection, Your Honor. Calls for hearsay and move to strike.

THE COURT: Overruled.

BY MS. O'NEILL:

Q. I believe your interest in doing all this was in getting money; is that correct?

A. Yes.

Q. So you wanted to get the refund; is that correct?
A. Yes.
Q. And you wanted to get the refund for your daughter; is that correct?
A. Yes.
Q. And then did you also want to get money for helping other people do this?
A. Yes, I was trying to restore the YMCA, which was going out of business at the same time.
Q. How much money did you get from people that you helped with their refunds?
A. There was only two, Mr. Schwartz and Mr. Williams.
Q. Do you recall the total amount?
A. The total -- 20, 30 -- well, at least around 30 to 40,000.
Q. Now, you said that there was a gentleman's agreement between you and others?
A. Yes.
Q. To split the amount sometimes; is that correct?
A. Yes.
Q. Did you ever get money from this gentleman's agreement from other people for your help?
A. No.
Q. So it never came your way, it just always went towards these other people; is that right?
A. That helped the -- yeah, the leadership, yes.

Q. When you say "leadership," who's the leadership?
A. The ones that had tax knowledge and the long-time tax preparer, and Miss Bolanos went to seminars, and Tom McFadden was one of them that came to Fresno to do a training session.
Q. And Mr. Calles was also considered a leader by you?
A. Yes. Tax leader.
Q. Now, according to -- well, let me ask it this way: Before 2007, how long -- well, strike that.
Is it true that for a long time, since the '70's, you didn't file tax returns.
A. There might have been two or three years that -- when I started at the YMCA, there might have been a few years filed.
Q. All right. But then for years, you did not file; is that correct?
A. No.
Q. Is it correct or not?
A. Yes, correct. I did not.
Q. So would it be fair to say that you didn't file for 20 or 30 years there?
A. Possibly, yes.
Q. What made you decide not to file?
A. It wasn't the -- I thought the issue was income. If you made less than 15,000, you didn't have to file.
Q. What got you involved in a group other than money -- well, strike that.

Do you believe that when you test -- or were interviewed by the Government in those numerous interviews, that you told them the truth?

A. Yes.

Q. The private meetings you've talked about -- about 20 percent were at Denny's; is that right?

A. Private, yes. During the day and different times. They were not on Thursday night.

Q. Where else were they held?

A. McDonald's, Starbucks, I -- it might have been a few others. I can't remember.

Q. Besides helping Schwartz, Mr. Schwartz, and who else did you help, Williams?

A. Mr. Williams.

Q. Did you have -- and then you've testified that you did do one page on Mr. Uptergrove's; is that correct?

A. Yes. It was incorrect -- I mean correct, but I was wrong. So someone else had do another page.

Q. I guess my question would be to you, I think you've testified that at the time you filed your income tax for '07, that you didn't know what interest income was. Did you testify to that?

A. Yes. I still don't know what it is today.

Q. Why would you fill out a form that you didn't understand?

A. I was hopeful because of the leadership and because the ex-tax preparer -- I mean an ex-IRS employee. And we were hearing good news on the weekly calls. There was a -- apparently a lot of calls on the Internet and different -- oh, what do they call that, free on-line -- I forgot what it's called. Some kind of on-line stuff where you get a free on-line service.

Q. But your intent all along was to get money?

A. Not for selfish reasons, no.

Q. All right, but to get money for whatever cause you were interested in?

A. Yes.

Q. Do you know how many private meetings there were in '07 and '08?

A. I wouldn't know. I was not privileged to all of them. I might have -- I was -- a few myself, but I don't know how many I missed.

Q. How did you find out about the private meetings? Who alerted you?

A. Well, again, the -- because the tax preparer says we have a new system, a new way to do it, and he knows how to do it, and to -- Mr. McFadden came to town and instructed us on how to do it.

Q. When you say the tax preparer, who are you referring to?

A. Mr. Calles, Louie Calles, the ex-IRS employee.

Q. Did it influence you in any way that Mr. Calles told you

that he was an ex-IRS employee or agent?
A. Oh, absolutely, yes.
Q. Why is that?
A. Well, that brought hope and sincerity from -- and his experience that he spouted.

THE COURT: It's a little after 12:00. We'll take our noon recess to 1:30. Remember the admonishing instruction. We'll see you at 1:30.

(The jury was excused.)

THE COURT: All right, the jurors have left. Mr. Georgner, you can step own. We'll see you at 1:30 this afternoon.

Okay, while Mr. Georgner is leaving the courtroom, are there any issues we need to take up at 1:30 before the jury comes in for plaintiff's side?

MR. RABENN: No, Your Honor.

THE COURT: Defense side?

MR. HOMOLA: No, Your Honor.

MS. O'NEILL: No, Your Honor.

THE COURT: All right, we'll see you at 1:30 this afternoon.

(Noon recess.)

AFTERNOON SESSION

THE COURT: All right, back on the record outside the presence of the jury. Are there any issues we need to take up

A. No. I think there was -- well, I wasn't -- I wasn't entitled to some of those refunds. That was the main issue.

Q. Okay, and why is it you weren't entitled to those refunds?

A. Because I guess they weren't interest -- earned interest income.

Q. But you believed they were interest at the time?

A. Well, I didn't know what interest was at that time, and I'm not sure what it is now.

Q. But you were advised that it was interest income?

A. I don't know what I was advised of. I can't remember back that far. I'm not sure what I was advised. I just did what I was -- what the formula said to do.

Q. Okay. So this was -- there were seminars that you attended?

A. Yes.

Q. And that was with Mr. Calles and Miss Bolanos and Mr. Moore and others?

A. Yes.

Q. Okay. And you indicated that Mr. Calles was a tax expert who used to work for the IRS?

A. He's a tax preparer, a long-time tax preparer.

Q. And then he worked for IRS?

A. Yes.

Q. And he was offering you and others advice on how to prepare your taxes?

A. Well, he would be the final go-to. If we weren't sure -- before we would submit anything or could submit anything, we had to get second and third opinions.

Q. Okay. And the Government asked why you didn't consult an attorney about the tax -- your tax return. Was the reason you didn't consult an attorney because you were consulting Mr. Calles instead?

A. Yes. We -- he was a long-time tax preparer.

Q. And you believed he knew what he was talking about?

A. We didn't have the money at the time to hire an attorney anyway.

Q. Okay. And I believe I saw on one of your interviews with the Government, there was a notation that indicated that you actually -- that you believed that Mr. Calles and Miss Bolanos were actually presenters of one of the tax seminars. Is that correct?

A. I don't know -- you mean a local one or outside one?

Q. I'm not sure exactly where.

A. I'm not sure either. Other than -- no, not a presenter, because they went to the seminars themselves. And our overseer was the -- the other fellow, Tom McFadden. He's the one that came to Fresno to direct them.

Q. Okay. And when you had meetings about -- the meetings were held where people discussed filing tax returns and whatnot, and Mr. Calles would offer advice, is that correct, or Miss Bolanos?

A. No, those were public meetings. Mr. Calles only wanted to deal with elite people who had no qualms or questions and would take -- well, because he would be at risk of getting a -- a refund -- I mean, a commission. How do you know the people are going to get refunds and how are you going to get your commission?

Q. Okay.

A. His commission.

Q. So he was helping people prepare a tax, and he was supposed to get a percentage of the refunds as a commission, and he had the private meetings because he wanted to make sure that he actually received his commission?

A. Yes. He had prior meetings for that.

Q. And his tax methods that were presented, they were presented as a legitimate way to do taxes?

A. Yes, because he knew that it works -- from working at the IRS.

Q. Okay. And that's what people who were advised that spoke to him?

A. I'm not sure --

MR. RABENN: Objection, Your Honor. Speculation.

THE COURT: Sustained.

THE WITNESS: I don't know what he advised --

BY MR. KERSTEN:

Q. But when you were present, the information was presented as being a legitimate way to do taxes.
A. Yes.
MR. KERSTEN: Thank you. I have no further questions at this time.

CROSS-EXAMINATION

BY MR. CRAWFORD:
Q. Good afternoon, Mr. Georgner.
A. Yes, sir.
Q. My name is Steve Crawford, and I represent Mr. Moon, who is sitting next to his wife there.
A. Okay.
Q. Have you ever met my client, Mr. Moon?
A. Not really, no.
Q. So you don't know Rodney Moon at all?
A. No.
Q. I want to talk to you about Mr. Calles.
A. Okay.
Q. What is Mr. Calles' full name, do you know?
A. Not really. Louie Calles.
Q. So you know him as Louie Calles.
A. Yes.
Q. And you mentioned that he would attend these meetings at Denny's?
A. He would -- he was a night owl -- infrequently he would,

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HON. ANTHONY W. ISHII

UNITED STATES OF AMERICA,	1:13-cr-00362 AWI
Plaintiff,	TRIAL CONFIRMATION
vs.	MOTIONS IN LIMINE
GAYLENE LYNNETTE BOLANOS, LEROY DONOVAN COMBS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, and RODNEY EDWIN MOON, LOUIE CALLES, and JAMES KARAM SCHWARTZ,	
Defendants.	

Fresno, California   Thursday, October 15, 2015

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY:
GAIL LACY THOMAS, RMR-CRR
Official Court Reporter
CSR No. 3278

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Thursday, October 15, 2015 Fresno, California
1:34 p.m.

THE CLERK: The Court calls case 1:13-cr-00362, United States versus Gaylene Lynette Bolanos, Leroy Donovan Combs, Charles Wayne Uptergrove, LaDonna Lee Moon, Rodney Edwin Moon, Louie Calles, and James Karam Schwartz, trial confirmation, motions in limine hearing.

MR. HOMOLA: James Homola, appointed counsel for Miss Bolanos, who is personally here.

MR. DRANDELL: Harry Drandell on behalf of Chuck Uptergrove. He's present in court.

MR. KERSTEN: Eric Kersten, Federal Defenders on behalf of LaDonna Moon. She is waiving her presence. She has a signed waiver on file. I'm also specially appearing for Steve Crawford on behalf of Rodney Moon, who is also waiving his presence. He has a signed waiver on file.

MS. O'NEILL: Good afternoon, Your Honor. Barbara O'Neill for Leroy Combs. He is present in court in custody.

THE COURT: All right.

MS. O'NEILL: I'm sorry. I said "in custody," Your Honor. I meant out of custody.

MR. BLICKENSTAFF: Good afternoon, Your Honor. Dale Blickenstaff for James Schwartz. He's present in court with counsel.

MR. JONES: Peter Jones for Louie Calles, who is present in court.

MR. RABENN: Grant Rabenn for the United States with Henry Carbajal and Karen Sharp.

THE COURT: All right, good afternoon. This is the date and time set for continued hearing on the trial confirmation and the motions in limine. We had fairly extensive discussion the other day, but I want to make sure that all parties are allowed to be heard on this and a clear record is made as we proceed on to the trial.

So continuing on, and let me take up first the issue of the elements on the 287 charge. And so, certainly, I'll entertain further on that. Let me turn first to defense, anything further on the issue of the elements relating to that particular charge, and then we'll get to the other aspects of that.

MR. JONES: Your Honor, since I addressed it yesterday, I don't have anything additional other than what I included in both of my motions and what I argued yesterday to the Court and presented to the Court; the cases I cited. If the Court has questions, though, I'd be happy to attempt to answer any.

THE COURT: All right. And on behalf of any other defense counsel?

MR. HOMOLA: As the Court stated the other day in open court, is that I join Mr. Jones' verbal and written motions as well as verbal and written statements by other cocounsel.

THE COURT: And that would apply to all defendants and all defense counsel. I would assume unless advised otherwise, that all counsel are joining in on behalf of their clients. Anything either written or oral on behalf of any individual defendant? Yes.

MR. BLICKENSTAFF: Your Honor, just a brief comment on behalf of Mr. Schwartz, my client. As the Court is aware in my proposed jury instructions, I asked the Court to give 9.42, the definition of willfully. And I believe that willfully is implicit in the elements of this particular offense, 18 USC 287. Your Honor -- and I derived that position from a reading of 942, including the comment. And Mr. Jones touched on this on Tuesday, but I just want to make sure that it's reiterated here.

In that definition, it certainly defines willfully, but in the comment, it does too, but then it adds the sentence, "This same definition applies equally to all tax offenses, misdemeanors, felonies, alike."

Now, I think the Government relies on the *Milton* case, but apparently that was not a tax case. This is a tax case. And it seems to me that that language is pretty persuasive that willfully is implicit in the statutory scheme of 287.

So I'll submit it with that, Your Honor. I hope that the Court is influenced by that particular language.

THE COURT: Anything further on behalf of any defendant?

MR. KERSTEN: Your Honor, this is just a clarifying matter. In my jury instructions, I erroneously listed 5.5 as a willfulness instruction. That was an error on my part. I actually intended to list 9.42, and I would join in Mr. Blickenstaff's comment.

THE COURT: All right, anything further on behalf of the other defendants?

All right, Government.

MR. RABENN: Your Honor, I would submit on the extensive argument we had two days ago unless the Court has any questions. I would just -- one point I want to reemphasize is that the charges are Title 18 charges. They're not Title 26 charges.

THE COURT: Let me ask the Government, sometimes we're talking about discussions that may ultimately not have a great bearing, but it is important. In reading the cases, there are three possible -- and counsel are well aware. There are three possible aspects to the 287 charge, in that the -- with respect to the claims. They could be false, they could be fictitious, or they could be fraudulent. Even assuming that a claim -- charge that a claim was false or fictitious arguably does not contain a willfulness or a specific intent, mens rea element, that fraudulent seems to. And if fraudulent -- if the Government is contending that the claims are, you know, in the alternative fraudulent, it seems to me that a good faith defense would apply on that because it does implicate the mens rea of willfulness or specific intent.

MR. CARBAJAL: I think as we stated on Tuesday, Your Honor, like in any mail fraud, bank fraud case, you could have a type of a good faith defense that you did not intend to defraud. That is qualitatively different from saying I thought it was legal or a lay *Cheek*-type defense. Those are distinct.

It is possible that the defendants could proffer a good faith type of defense as you would often find in other mail fraud, bank fraud type cases, but we don't believe under the case authorities that a *Cheek* defense, a willfulness-type defense is appropriate for these charges.

THE COURT: All right, anything further by defense, then?

MR. JONES: Thank you, Your Honor. Just -- yeah, it sounds like we're at where we began yesterday, and, of course, as the Court knows, I argued that simply giving a willfulness and specific intent to defraud instruction as to only one prong would -- well, it would be unique. I've never seen that. Most cases do not distinguish -- the weight of authority does not distinguish between these prongs.

THE COURT: That's not correct. Even *Milton* indicates that if the charge were a fraud, then it's very possible or likely that there could be an intent issue.

MR. JONES: *Milton* -- now, that wasn't a tax case and didn't involve any IRS issues or tax issues. To me, I believe *Dorotich*, which came, I don't know, almost 20 years later emphatically said -- I mean, the Court -- the Ninth Circuit upheld an instruction and used that instruction to explain why not instructing the jury on good faith was not fatal because the jury on the count, 18 USC 287, had been instructed on specific intent to defraud and on willfulness. And that was a tax case.

I cited a number of authorities for the Court in my moving papers, and underlying this, of course, is what Mr. Blickenstaff accentuated, and that is that in tax cases, it's generally recognized that willfulness is an element if it's not specifically included in the statute. If the statute is being used to accuse somebody of tax fraud, violation of the tax code, making a claim against the IRS, it's certainly implied in many circuits. And their own manual, which I can supply to the Court, the USDOJ, U. S. Attorneys' manual setting forth the elements for 18 USC 287 includes specific intent to violate the law for all three prongs.

So if we have specific intent to defraud for the third prong, their own manual would suggest we have specific intent to violate the law for the first two, which is a recognition of unlawfulness, which implies willfulness.

So I think when we look at -- why would their manuals say that? Well, it cites several cases in which I presented to the Court. But I also presented to the Court the cases that refer to specific intent to defraud, applying to all three prongs, and there was no distinction.

And, frankly, the Government in their original motions in limine and several places in that motion in limine imply that we're entitled to a good faith defense, and I would agree with the original motions in limine. They cited *Milton* in their reply, suggesting that only the third prong -- obviously if the jury is instructed, well, you have to decide it's false, fictitious or fraudulent, it doesn't matter if the defendant was aware it was unlawful or not on the first two, but on the third one, if you find that and now choose, well, to me, that pretty much eliminates any good faith defense. Although I think that one for knowingly could be fashioned, and I would certainly argue that as a fallback, but I don't think it should be the fallback. I think willfulness and specific intent, at least to violate the law for the first two prongs, if not to defraud the Government, should be instructed on. And it should imply the *Cheek*-type wilfulness -- I mean, Cheek-type good faith defense.

I cited for the Court *Nash*, where it's not a Ninth Circuit case, but it's similar to *Dorotich*, and it's definitely right along line with *Finley*, which was a 2002 case from this district. And the whole issue in *Finley* was an 18 USC 287 charge where -- with several other charges. But the Ninth Circuit held -- overturned the conviction for the 287 charge on the ground that Mr. Finley was not allowed to present evidence to support his honest and sincere belief. And that was sent back with the caveat that he could have present that defense on that charge, 18 USC 287.

And *Nash* cited *Cheek* and said that the district court attempted to distinguish *Cheek*, stating that the holding in *Cheek* pivoted upon the presence of willfulness because willfulness is not expressly stated as an element under 18 USC 287.

The district court ruled that the good faith defense did not apply. This distinction, however, is not persuasive because 18 USC 287 requires that Nash filed the claims knowing that they are false, fictitious, or fraudulent. If Nash truly believed in good faith he was not obligated to pay income taxes, and that he was owed these refunds, then he could not have filed his refund claiming -- claims knowing they were false, fictitious, or fraudulent.

And so the good faith instruction they were talking about there applied to 18 USC 287, and they found that it was the subjective intent of the person presenting the claim. And the -- again, their own -- the U.S. Attorney's manual on willfulness cites the Ninth Circuit as supporting a willfulness element for that offense, along with a majority of circuits. And I came across a lot of cases I didn't cite, but it seemed to me, the weight of authority supported that.

MR. CARBAJAL: Your Honor, if I may respond briefly?

THE COURT: Sure.

MR. CARBAJAL: First, the *Finley* case is not a jury instruction case. And that case -- and I'm well acquainted with, and my colleague, Mark McKeon, from my office handled that case on appeal.

That case was hinged on the prevention of evidence of a mental health disorder being presented. So it was a *Daubert* issue, in essence.

And I want to briefly respond to -- I know counsel repeatedly brought up the U. S. Attorney's manual. It's a policy and guidance manual. It's not case law, it's not precedential. When I heard counsel's argument in that regard, I went and looked into it and looked in the case that was cited in that provision. And it was *U.S. v. Slocum*, 708 F.2d 587.

And in a case just last month out of the Eleventh Circuit, *United States v. Hesser,* H-E-S-S-E-R, 2015 U.S.App.

LEXIS 19534, and I believe this is a published case.

In footnote 18 -- footnote 16, the *Hesser* Court explained that case, citing the use in *Slocum* case is not the law, and it was incorrect, and instead, they confirmed in that that footnote that willfulness is not an element of 287.

So with all respect to the U. S. Attorney's manual, which we do use for policy guidance, it's wrong on that point and probably should be updated.

THE COURT: All right, anything further by any party, because what I intend to do now is rule on the issue of the elements involved in the 287 charge, and also based upon that, the determination with respect to whether or not a good faith defense -- or evidence of a good faith belief would be admissible. Anything further, then?

All right, then, I take it the matter is submitted.

In this case, I have received and reviewed, obviously, the extensive briefing on this, the cases that had been submitted, and I do agree that there are obviously -- a lot can be read into the different cases. To a certain extent -- and I'll point this out in my ruling. There seems to be in a number of the cases some application of willfulness or specific intent with knowledge, and I'll mention some cases that go along with that thought.

So I just want to make sure that I -- the parties are aware I understand the significance of this particular ruling.

I know defense counsel mentioned the other day that depending on the ruling of the Court, it could be tantamount to a directed verdict to the extent that certain defenses might not apply.

My ruling is strictly based on my understanding of the law that's been presented, statutory case law. And there's always a defense to any charge. For example, if a person were charged with filing a false tax return, they can certainly present evidence that it was indeed properly filed. In other words, submitting W-2's, if the person was self-employed, business records, whatever.

In case of filing, requesting a tax refund, certainly the party can submit evidence or information regarding withholding, either by governmental entity or a third party, and it was withheld, which is common and proper with any person who files a tax return.

I'm not going to cite to every case. I certainly considered them all. I'll cover some simply to indicate some of the considerations that I have taken in this case.

I think defense pretty much in all of the papers have outlined to the Court an affirmative defense, a good faith belief that they were not violating the law based upon their understanding of tax laws, et cetera. They believed that what they were doing was not unlawful. I certainly understand that, and I'm not saying that the defense has to put on any evidence at all. In fact, at the end of the Government's presentation of the case, defendants may, after consulting with his or her attorney, decide that the Government has not proven its case or otherwise decided not to put on any evidence or testify. They certainly have that right, which then focuses on what is the point, which is that the Government must prove each and every element of each and every charge beyond a reasonable doubt.

I only mentioned presentation by the defense as it has been presented to me only to explain my ruling, but I'm not indicating that I expect defendants to testify or present evidence in this regard.

Probably the defense's position can be summarized, and the ruling by me is going to be pretty much summarized by defendant Calles' response to the Government's motion in limine, Document 254 filed on September 22nd, 2015. And at page 2, starting at line 8, "Mr. Calles' defense is that he honestly and sincerely believed that at the time he filed his 2007 return, it was done legally in light of his understanding of the law. Mr. Calles does not have to prove this, however. The Government must prove that defendant did not have an honest and sincere belief, i.e., good faith belief beyond a reasonable doubt. It is the Government's duty to prove Mr. Calles knowingly and willfully filed a false, fictitious, or fraudulent claim and intended to defraud the Government by doing so."

Essentially what the defense is asking me to do is incorporate it into 287 the elements of willfulness or intent to defraud as to all three of those options, if you will, false, fictitious, and/or fraudulent.

After reviewing all of the cases and authority, I find that I cannot do that. And there are a number of reasons for that. First, a plain reading of the statute, Section 287. A portion of it reads, "Knowing such claims to be false, fictitious, or fraudulent." There is no intent element other than the knowledge element. And I'm not in a position to attempt to read into that statute any other element beyond that. As counsel has previously pointed out, it's up to Congress to make a determination as to each specific criminal charge contained in the federal statutes, what the elements of each defense are.

Second, the *Milton* case, *Milton* case specifies, "The only issue raised on appeal is whether the charged offense, 18 United States Code Section 287 request proof of intent to defraud." And the *Milton* court answered that definitively, no, it is not an element.

The Court did note at footnote 7, "We do not decide whether intent to deceive becomes an element when the defendant is charged with submitting fraudulent as opposed to false claims under 18 United States Code Section 287."

So it appears that the *Milton* case, the Court there did indicate that there is -- that there is an issue, at least as far as that court was concerned, as to whether or not an intent is an element on the fraud prong.

All right, there are other cases that were cited that referred to *Milton*. One was a Seventh Circuit case, *United States v. Catton,* C-A-T-T-O-N, 89 F.3d 387.

The Government did cite to a recent Ninth Circuit case, 2015, the *Defoor* case, D-E-F-O-O-R. However, that was not selected for publication, and so I'm not going to rely on it simply to indicate that at least one panel has agreed with the *Milton* determination.

There is another -- a Seventh Circuit case, the *Strong* case, 114 F.3d 1192, which is an unpublished opinion, so I'm not relying on that. But I do note in footnote 1, that the Court does say under the definition of fraudulent, "Fraudulent, which is an intent to deceive, an intent to deceive only becomes relevant when the government attempts to prove that the statement was fraudulent." Which, again, leads me to believe that if the Government is alleging as one prong fraud, that there is an intent element.

In defendant Rodney Moon's trial brief at page 3, in arguing that the elements of the offense of 287 includes a specific intent element, the defense does cite to *United States v. Slocum*, which I did review. And in *Slocum*, as defense points out, which is an Eleventh Circuit 1983 case, the elements -- one of the elements was a specific intent to violate the law on the 287 charge. It cites to *United States v. Computer Sciences Corporation.* And in reviewing *United States v. Computer Sciences Corporation, et al*, 511 F.Supp. 1125 Eastern District of Virginia, a 1981 case, which was reversed on other grounds in 1982. At 1134, it states, "The elements of a mail fraud violation are" -- I'm sorry. "The elements of a false claim violation, a 287 are, (1) making and presenting a claim against the United States or any agency or department thereof; (2) such statement must be false, fictitious, or fraudulent; and (3) the defendant must know that his claim is false, fictitious, or fraudulent."

So it essentially states the elements properly, but it does not say anything about requiring specific intent. And, again, that's the -- the *Slocum* case is one of those cases where when you look at what the Court is deciding, it's no wonder that there is such a split because the *Slocum* case cites to the *Computer Sciences* case that I mentioned, and the *Computer Sciences* case does not even mention the issue of specific intent. So I can see the difficulty or the difficulty for me, frankly, as to what the appellate courts, or why there is a split amongst the appellate courts.

But it also seems clear to me that with respect to the aspect of the Government's claim that the claims -- the

Government's position the claims were fraudulent, that that is a specific intent or willfulness offense for which the defense may raise a good faith defense.

With respect to the others, I have reviewed the cases cited as far as the good faith defense, including the *Cheek* case. Now, the *Cheek* case was a tax case. And I understand defense counsel's concern that although 287 is not a tax case, that it does involve in this case certain aspects of -- of taxes involved. But that doesn't make it a tax case in and of itself. The *Cheek* case was a tax case. And the holding essentially was that a good faith misunderstanding of the law, or a good faith belief that one is not violating the law negates willfulness whether or not the claimed belief or misunderstanding is objectively reasonable.

Now, in the *Cheek* case, defendant was charged with willfully failing to file a federal income tax return and willfully attempting to evade his income taxes. The tax offenses for which petition was charged are specific intent crimes that require the defendant to have acted willfully.

And it concludes that it was error for the Court to instruct the jury that petitioner's asserted belief that wages are not income, and he was not a taxpayer within the meaning of the Internal Revenue Code, should not be considered by the jury in determining whether Cheek had acted willfully.

And the Court does note at footnote 11, that *Cheek* argues that applying to him The Court of Appeals standard of objectively reasonableness violates his rights under the First, Fifth, and Sixth Amendments of the Constitution. "Since we have invalidated the challenged standard on statutory grounds, we need not address these submissions." So the Court in *Cheek* relied upon the statute itself.

And I will note the Court also notes, "It would, of course, be proper to exclude evidence having no relevant or probative value with respect to willfulness."

I have reviewed the *Nash* case. In that case, the defendant apparently did have wages deducted, or he did pay, and the government did have funds that belonged to him, and he was -- he was asking for a refund of those taxes being -- those funds being withheld by the government.

The Court in *Nash* does note that various courts have held that good faith is a potential defense to 18 United States Code Section 287, citing the *Dorotich* case, the Ninth Circuit case that the defense has also cited to.

And I have reviewed the *Dorotich* case. In *Dorotich,* the Court finds the failure to give an instruction on good -- on a good faith defense is not fatal as long as the Court clearly instructs the jury as to necessity of specific intent as an element of a crime. Citing the *Solomon* case, in which the defendant in that case was found guilty of filing false tax returns under 26 United States Code Section 7206, Subsection 2.

The Court notes in this case, the district judge adequately instructed the jury that one element of the Government's case was to prove specific intent beyond a reasonable doubt. And then it goes on to say what the specific intent was, and this is at page 194.

In this case, the district judge adequately instructed the jury that one element of the Government's case was to prove specific intent beyond a reasonable doubt: That Dorotich filed the returns, knowing that they were false.

Again, this is a situation I'm not sure if the Court intended to equate specific intent with knowledge, but that's what they indicate was the element of specific intent that would be proven by his knowledge that the -- filed the returns knowing that they were false.

There is a footnote 2, and we talked about this last time at the last hearing. Footnote 2 states: "The District Court instructed the jury on specific intent under 18 United States Code Section 287 as follows: A defendant can be found guilty of the offense of making a false claim against the Government only if all of the following facts are proved beyond a reasonable doubt. First, the defendant knowingly presented to an agency of the United States a false and fraudulent claim. A claim is false or fraudulent if it is unsure at the time it was made, then known to be untrue by the person making it."

Those are the specific instructions cited at footnote 2 that the trial court read.

The Court then goes on to cite the elements instructed under 18 United States Code Section 1341. After that, the Court -- on footnote 2 states, "That the Court also stated in general instructions applying to both counts. To constitute the crimes charged in this indictment, there must be the joint operation of two essential elements, an act forbidden by law and an intent to do the act. To act with intent to defraud means to act willfully and with a specific intent to deceive or cheat."

The intent to defraud comes from the prong of fraudulent claim. This says nothing about false or fictitious. So, again, I don't find the *Dorotich* case to authorize me to expand out the elements of 287 as to the prong for false or fictitious, but I do find that it does apply to the allegation of a fraudulent claim. That is, that the fraudulent prong does require an intent to defraud, which incorporates the elements of willfulness and specific intent.

Defense also cited a recent Ninth Circuit case, the *Haischer* case, H-A-I-S-C-H-E-R, 780 F.3d 1277, Ninth Circuit, 2015 case, in which the trial court excluded evidence of the defendant's alleged abuse at the hands of her boyfriend.

The Court in that case was dealing with the trial court's determination under 403, probative value versus prejudicial effect and the issue of relevant evidence, whether or not it was sufficiently prejudice -- prejudicial such that it should have been excluded. In this case, I have found that in terms of the willfulness or specific intent, a good faith defense is not relevant as to the false or fictitious prongs, but it is relevant as to the fraudulent prong. And this is obviously not a 403 analysis, but simply a ruling with respect to the elements of 287.

All right, so with respect to my ruling, it is that the elements with respect to 18 United States Code Section 287 as to the false or fictitious prongs, they do not include a willfulness or a specific intent element.

With respect to the fraudulent prong, they do. In light of that, a good faith defense, a dual defense is not applicable and not relevant to the prongs of false or fictitious claims, but it is relevant as to the fraudulent prong. And defense may present evidence with respect to good faith as to that prong only. I would expect that if defense chooses to present evidence on that prong in terms of good faith belief, that there would be appropriate jurist instructions prepared that would be consistent with this Court's ruling.

Now, with respect to the specific evidence that the defense might wish to present on the good faith prong, I don't have that in front of me. I'll reserve any ruling on that. I'll leave it to counsel as to when you want to take that up. If defense counsel intends to give an opening statement at the outset of the case, then we need to have a hearing on that aspect so that I'm not constantly interrupting defense counsel's opening statements, attempting to rule on the Government's objections as to references as to witnesses, testimony, or exhibits relating to the good faith defense.

All right, now, having ruled on the elements of 287 and the applicability of the good faith defense, before I move on to the other motions in limine, is there anything further by any counsel, then, as to that aspect before I move on? Defense?

MR. DRANDELL: Your Honor, just on the -- with the Court making that ruling as far as the good faith defense only as to the fraudulent prong, there seems to be some concession that as to the presentation of a good faith defense, that the defendants are allowed to testify as to material information and other matters that they relied on to make that good faith defense. We would mark them as exhibits, but they would be presented to the jury, and I know that I addressed that in my moving papers, and, like I say, I think there is some concession, is the way we would handle it or propose to handle it.

THE COURT: Now, let me just indicate, and I'm just going to make general rulings because I don't know obviously what the specific evidence is. But my general thought is that good faith is the mental state of the defendant, so the defendant can obviously present testimony regarding things that he had heard from others, things that he has read, advice that he has been given, and that it's not for the truth of the matter asserted. And I'll expect the jury instruction on that. It is only to allow the defendant to testify as to what the basis for his belief was. So I don't anticipate -- obviously the Government can make objections, but in general, I'm not going to -- I'll sustain the objection with respect to truth of the matter, but I will overrule the objection with respect to state of mind of the defendant.

So you folks can meet and confer on that. Again, I haven't seen the exact items of evidence, but I do know, as you've just alluded to, that in other cases where defendants have been allowed to present a good faith defense by testifying to various documents. They may be marked as exhibits or otherwise, but they are not going to be sent to the jury. But certainly defendant can make reference to them, having the documents in front of them, et cetera. They just would not go back to the jury.

Anything else with respect to the ruling on the elements of the 287 or the ability of the good faith defense?

MR. JONES: Thank you, Your Honor, for the opportunities you've given me to this point. I appreciate that and respect the Court's decision.

I would say that it almost seems ludicrous and superfluous and actually counterproductive to present any kind of good faith defense because we have to focus on that one prong, and by way of focusing on that, we're pretty much giving up the other two. In other words, our defense is to this one prong, so you might as well tell the jury find our clients guilty of the first two.

THE COURT: Isn't that sort of like an entrapment defense where you're admitting you sold the drugs, but you were entrapped. I mean, you wouldn't have sold it otherwise, but your friends kept begging for the drugs, and finally you relented. I mean, you admit that you sold the drugs, but you're saying that there was a reason why I did it that is a defense. So that's understandable, but those are calls that defendants make with advice of counsel as to how they're going to proceed.

Again, it doesn't automatically preclude a defense because if someone is charged with making a false tax return, that they did not actually have that income, whether it's through self-employment or otherwise, they can present evidence that, no, indeed, look, here is my evidence that I did indeed earn that money, that that was taxable income, and/or that -- you know, if I file for a refund or a tax credit, I was entitled to that because I have this information.

So those are the -- I think what defense is saying, no, there is a different aspect here because we're saying that we're -- you know -- and I'm putting words into your mouth, and, yes, I filed a false tax return, yes, I filed a false -- but, it's because of my belief. So that's a different aspect than proving or disproving the elements of the offense itself.

MR. JONES: And that's what I wanted to address briefly if I may. I -- this isn't citable authority, but it was a case from 2013, *U.S. v. Miles Julison*, Eastern District case. It was a two counts of 18 USC 287, two counts involving the 1099-OID presentation for a refund.

And in that case, the Court instructed on just the two elements that this Court mentioned. Limited it. And this is the fallback I mentioned earlier. And limited it to presenting a false claim and knowing it was false. And in that case, the Court did give a good faith instruction on the knowing issue. In other words -- and I have a copy of the jury instructions here, and the Court instructed the jury that the good faith of a defendant is a complete defense to all charges, and that was just the two counts of 18 USC 287 because good faith on the part of the defendant is inconsistent with the requirement that the defendant knowingly submitted a false, fictitious, or fraudulent claim. If the defendant had an honest good faith belief in the correctness of the entries on his 2007 and 2008 federal income tax returns, even if he were mistaken in that belief, there would be no crime because the defendant would not have knowingly submitted a false, fraudulent, or fictitious claim.

And then the next instruction explaining good faith said, "A good faith belief is one that is honestly and genuinely held. A belief need not be objectively reasonable to be held in good faith. Nevertheless, you may consider whether the defendant's stated belief about the IRS Form 1099-OID were reasonable as a factor in deciding whether the belief was honestly or genuinely held."

So we do have a subjective, honest, sincere, good faith belief -- good faith instruction tied to the knowing element, and that was given in that case. Mr. Julison was convicted. However, there was that instruction given to the jury on the knowing element, and there was no instruction on willful, specific intent of any kind, just the two elements this Court cited to.

So I would request a good faith instruction on the knowing element, and I know we haven't discussed that yet.

THE COURT: Well, okay. One of the issues here, and I thought about that too, is that the issue is knowledge of what? If you're saying knowledge of the laws itself, that I have read all these different statutes, and I've got advice from tax advisors, et cetera, and I didn't think I was violating the law. I had no knowledge I was violating the law is one thing. But is the element knowledge of the accuracy of the tax return or knowledge of the accuracy of the request or submission for a refund? That is, that the information that was contained in my tax return was to my knowledge accurate. That is, when I said that I had taxable income of $100,000, this is all the information I have to show that I believed it was -- I had a reasonable belief that I had made a hundred thousand dollars. Or when I submit the form asking -- requesting a refund, that I had knowledge or reasonable knowledge that this third party, whatever, or the Government actually withheld that money from me, and I want that money back. So the question really is in terms of knowledge. Is it knowledge of the accuracy of what you had submitted on your claim, or is it more general? I think maybe what you're alluding to, it's got to be more general than that, and I'm not so sure that's true.

MR. JONES: Okay, I understand what the Court is saying. In the *Julison* case, obviously he was asking for a large refund based on a 1099-OID theory because of his understanding of the tax laws, his understanding -- I mean, sure that's what was presented, his understanding of the laws and the federal reserve, and so when the Court agreed to instruct the jury that it did not have to be a reasonable belief, but if it was honestly and sincerely held that he believed this is true, that what he was presenting to the government was honest, genuine belief that this was not false. It was -- it was true, if not that it was based on income he earned in what we might call the reasonable scheme of things. But it would be up to the jury to decide if it was an honest and sincerely-held belief even if it was, in their opinion, very unreasonable. And that would be the determination. The knowing, in other words, went to the heart of the defense. Instead of going after willfulness and specific intent, he didn't know it was false. He believed it was true. He had an honest and sincere belief that it was true. It was an appropriate way of -- claim to make, and so we may be at an impasse here, but that is an instruction that was given in a recent case very similar to this one.

THE COURT: All right, well, let me take a look. But my thought -- and, again, I have thought about this. I haven't looked at that specifically, is otherwise, what you're saying is -- and, again, just based on what I have heard. I don't know what the evidence by the defense or obviously, again, the defense is not required to put on any evidence at all. But if a proffer is that the defense is I submitted a tax return. It was incorrect, false, whatever, I submitted a request for a refund, but there was no -- no one has held money from me. I mean, not a third party nor the Government, but I have submitted it anyway, knowing that it was not true, false, whatever. But I was doing that because I was told that, you know, you can do that. You can submit a false tax return or a false claim for refund because the law says it's okay. And that's problematic in terms of that being something that I considered to be -- I mean, I'm not -- I'm not saying I can understand in some of the cases they did talk about it doesn't have to be reasonable. You mentioned that the other day. It could be just the Court could just totally find that it's just almost incredible, but you still have to give it. And I'm not so sure that that's the case because I'm not sure exactly how -- you know, I don't have a pure proffer from the defense. But it just seems to me that that would be not a proper way of submitting a jury instruction on knowledge that would be consistent with whatever evidence that might be presented.

MR. JONES: Yes, my fallback would be it does not have to be objectively reasonable, and it would be up to a jury to make that -- that determination. I think if we -- if I laid out specifically, and I don't mind doing that, or generally what the basis for filing a 1099-OID and requesting the refunds that were requested, the basis for that, I know the Court would find it unreasonable, but if somebody absolutely believed it was -- to them it was reasonable, and it made sense, and it was not inconsistent with what the

Government believed. Maybe the Government didn't tell everybody about it, but it's honest and sincere on our part. At one time, everybody thought the sun went around the earth, and the couple people who said it didn't, they were crazy, and they were locked up. Reasonableness is relative in a sense. But in the context of a tax case, I don't know.

Again, I don't agree with *Julison*, I think willfulness and specific intent should be instructed on, but if they're not, I think this is an alternative instruction that might be considered.

THE COURT: Well, let me -- I'll consider it. Right now, my tentative ruling is, no, just so you folks can move forward and plan for the trial on Tuesday. But let me take a hard look at it, and I'll certainly let you know on Tuesday morning.

MR. BLICKENSTAFF: Your Honor, the only comment that I would make along that same line is that my client's situation, I suspect, is somewhat unique, in that his tax return, the 2007 tax return, was prepared by others. And he's not sophisticated in preparation of tax returns. And he was led to believe that this was a legitimate way to do your tax return, and he signed it accordingly.

For you to foreclose a defense that he relied upon others in good faith eviscerates our case. If you relegate it to intent to defraud only, we need a good faith instruction somehow that he could rely upon expertise that he didn't have. So I would join in Mr. Jones' remarks. We need an exception for knowing.

MR. KERSTEN: And, Your Honor, my client is similarly situated to Mr. Blickenstaff's in regard to filing. And I think that if the Government is going to argue that by filing a tax return that doesn't comply with the tax laws, that it's false and fictitious because the laws are misinterpreted. It's essentially a strict liability matter. If you misunderstand the tax laws, you put information in a return that is improper under the IRS rulings and what the tax laws are, by filing that, you're filing a tax return with false information in it, and it's really strict liability regardless of whether there's any knowledge that what your finding is not appropriate.

THE COURT: Yes. Well, see, the problem is, you know, we're not talking, at least from what I understand, about a misunderstanding that if I put on my form that I have taxable income of $100,000, that there's some mysterious thing about the tax laws that I don't understand that -- how -- I mean, where does $100,000 come from? I mean, you're saying this is my -- this is my income. So we're not talking about any complex laws. We're actually talking about a person's own financial affairs that based upon either self-employment or W-2s, or whatever, dividend or interest income, that this is what I earned. I mean, this is my taxable income.

And the other is, I'm saying that the third party or the Government, or whoever else, has withheld some of my money, and I just want my money back. There's nothing particularly -- that's more in the purview of the individual. It's not anything to do with complex tax laws. It's simply did you make that much money or didn't you make that much money? Did someone else hold your money? Does the Government now hold your money? Was it withheld from some investment, or whatever, that I had?

MR. KERSTEN: Well, I think that they believe in effect that it was withheld because of the way the fed operates. They believe that under the OID process -- it's hard for me to explain it. But, in essence, when you engage in commercial transactions, you're essentially allowing the Government to use your money, and they have --

THE REPORTER: Mr. Kersten, you dropped way off. I can't hear you.

THE CLERK: Please use the mike.

MS. O'NEILL: And, Your Honor, if I may.

THE COURT: But before, let me just respond. And that's fine. I mean, if they have -- what you said, and, again, I'm just sort of following along. They have engaged in commercial transactions. Apparently these commercial transactions wound up deducting -- somehow money got to the government. That's basically what I'm understanding is that these commercial transactions resulted in the government getting money, either through third party's withholding, or whatever, and all the defendants are saying, "Look, we want our money back. The Government has it, and we want it back." That's pretty straightforward. Most of us file our tax returns. If we want a tax credit or tax refund, we just file the appropriate papers, and either we get it or we don't.

So I disagree that there is just no defense. I mean, there is a defense. The question is whether or not if the defendants choose to present a defense, whether or not there is enough evidence to support that defense.

MS. O'NEILL: Your Honor, my client is -- Mr. Combs is in a similar position, and it does appear by the Court's ruling that it has converted this case into a strict liability by its ruling and has taken any defense my client may have away from him. And it makes it extremely difficult to proceed with this ruling, and I just wanted that on the record.

THE COURT: And Mr. Jones said right at the outset of the hearing the other day, that a ruling could eviscerate a defense. I totally -- I'm serious about this because it does have great ramifications. I totally understand that.

MR. DRANDELL: Your Honor, just briefly. The People -- or the Government's instructions has the fourth element, "The defendants knew at the time that the claim was false, fictitious, or fraudulent." Given that the Court's ruling is that as far as the first two prongs, false and fictitious, knowingly is an element. Looking at 5.6, which is the Ninth Circuit model, that's obviously not going to apply anymore. There's going to be too confusing, too many knowinglies, because that one doesn't really go towards the knowing that the Court is talking about. So perhaps that's where we should be concentrating, then, as far as the defense goes in trying to proffer a jury instruction that will take into account the new as is set forth in the elements as the Court has set forth as compared to 5.6 is what my take on this is, is that we should be looking at trying to fashion a knowingly that would seem to fit into the Court's indicated ruling -- not indicated ruling, but ruling of today.

THE COURT: Certainly based on this ruling, I mean, I understand that there has to be some discussions with respect to jury instructions, possible verdict form, et cetera. I totally understand that.

Anything else by defense, then, on those issues?

Anything further on behalf of the Government?

MR. CARBAJAL: Submitted, Your Honor. Thank you.

THE COURT: All right, now, let me just cover the Government's motions in limine, then, and then I'll make some rulings.

First -- and I'm just going to go through their arguments. The first at page 3, "Legal and pseudo legal materials offered by defendants should be excluded as irrelevant and more prejudicial than probative."

I don't have that information -- I'm going to reserve a ruling on that issue. At some point in time, we're going to have to determine what evidence either exhibits or witnesses, or whatever the defense might intend to proffer, and then we can -- at some point in time, obviously, I'm going to have to make a ruling on those. And, again, that -- the timing of that is going to depend -- to partly on whether defense wishes to give an opening statement right at the outset because then I've got to rule on a number of possible witnesses, exhibits, or testimony, again, so that you don't wind up getting interrupted in your opening statement by repeated objections by the Government if I have not had a chance to make a ruling. If you're going to reserve your opening until after the Government's case in chief, then maybe we have some more time. Think about that. But I can't rule on the Government's objection on possible evidence presented by the defense until we know what it is. And obviously the defense is not required to present any evidence. So I totally understand that.

All right, "B, defendant should be prohibited from eliciting testimony from lay witnesses upon their opinion of the tax laws that are established on the defendant's state of mind." Again, I'm going to reserve a ruling on that because I don't know what witnesses the defendant is going to call.

Obviously as to all parties, one of the factors is Rule 16. Have the parties disclose to each other what you're supposed to under Rule 16. Generally if you haven't, you're not going to be allowed to present it. So keep that in mind.

"C, any defendant testimony or argument should be limited to relevant issues of fact." Okay, well, that's -- that applies to all parties. The only admissible evidence is relevant evidence subject to the rules of evidence, of course.

"Defendants should be precluded from introducing their own self-serving statements unless they testify subject to cross-examination." Again, I'll reserve a ruling on that until the defense advises the Court, one, whether defendant wishes to testify. And then if so, we can take it from there. And whether or not defense intends to attempt to introduce statements made by defendants who don't testify, again, I'll have to rule on that when the issue arises.

"E, any comments or -- regarding or reference to defendant's potential penalty or punishment should be precluded." I'm going to grant that. Obviously I'll also give a jury instruction on that to the jury.

"F, defendant should be precluded from introducing topics relating to sympathy." Again, I don't know what that is, so I'll reserve a ruling on that.

"G, opinions on the defendant's guilt or innocence should be precluded." I'll grant that as a general principle.

"H, reference to improper defenses and jury nullification arguments should be precluded." I'll only say jury nullification, I'll grant that as counsel is aware that should not be allowed. Improper defenses, again, I'll have to otherwise reserve a ruling on that.

"Defendants' reliance on the advice of individuals with no expertise in tax laws is not a defense." Again, I'll have to reserve a ruling on that until defense advises the Court as to how they wish to proceed in the way of an affirmative defense.

"And defendants should be precluded from presenting evidence or argument that the IRS invited or could have prevented the charged fraud." I'll reserve a ruling on that unless and until defense discloses how they wish to present proceed on that.

So bottom line is that I can't rule on most of the Government's motions in limine because I don't know what the defense is going to attempt to present. After this hearing, I would like you folks to meet and confer to see whether you can sort of decide, okay, when are we going to deal with this? Are we going to deal with it right at the outset of the case? And so maybe what we'll do on Tuesday, we'll pick the jury, I'll send them home, and then we can deal with legal issues at that point in time.

If the defense is going to reserve opening statement, then maybe we have little bit more time, but you can meet and confer on that aspect.

Okay, right now, though, anything else on Government's motions in limine? And I realize I have not really ruled, but I don't think I can.

MS. SHARP: No, Your Honor.

THE COURT: Anything further by the defense on the Government's motions in limine?

MR. HOMOLA: No, thank you.

THE COURT: Okay, now, with respect to the Government's notice with respect to 404(b), I'm just going to have you folks meet and confer on that. I don't know if the Government has met with defense to make more specifically the 404(b) evidence that they intend to admit. The Government did give me a disk of exhibits. I didn't look at them. I didn't think I needed them for the purposes of the rulings today, but once I get the hard copy, then I'll see. But if there are any issues regarding 404(b) evidence, I'll go ahead and take it up at that time.

With respect to the Government's notice with respect to 609 impeachment, again, I'll reserve a ruling on that. If there is any impeachment evidence to be presented, obviously it would have to wait until a defendant chooses to testify, but the Government has given its notice.

I did receive something entitled, "Notice of Reservation of Rights" submitted apparently by Beverly Weldon and Paul Weldon in response to a subpoena. At this point in time, it's not before me, so I'll just let counsel know that I did receive it. But I intend to take no action on it because it's not properly before the Court.

Okay, on the jury instructions, obviously we'll have to deal with the concluding instructions, but on the preliminary instructions, there were -- I did receive the joint jury instructions. Now, the concern I have with the preliminary jury instructions is model instruction No. 1.2. Statement -- essentially something about the case. The Government did submit in its proposed jury instructions a statement, and all of the defendants' proposed jury instruments that I read over, those were left blank. So you folks will need to meet and confer and decide on what it is that I'm going to advise the jury with respect to the nature of the charges and the defenses.

MR. DRANDELL: Your Honor, I think Mr. Calles did a 1.2 that was specific. It wasn't blank. I think some of the other defense counsel was going to do so. I think we were hoping that the Court might give us some instruction, but I guess now that the Court's ruled on the elements, that they're pretty much going to mirror what the elements are, what the instructions we started with.

THE COURT: Maybe I missed it.

MR. KERSTEN: I think it was attached as a special instructions.

MR. DRANDELL: On his joinder.

THE COURT: Okay. Oh, okay, got it.

Okay, well, all I'm going to ask you folks is meet and confer as to what you believe should be presented on that. Obviously that will come right at the beginning of the case when I read the preliminary jury instructions. So I'll need to know. If there is a dispute or disagreement, you'll need to let me know so we can sort of hammer something out that simply advises the jury what the case is about, frankly. And then I can go ahead and read that to the jury.

Okay, now, Tuesday morning -- and if we have to meet tomorrow or Monday, I'll make myself available, but Tuesday morning when you come into the courtroom basically -- and most of you are aware of this, but when the jury panel comes in, the first thing I'm going to do is I'll go ahead and introduce everyone at counsel table.

In this regard, there was a brief discussion on behalf of Mr. Uptergrove, and I did indicate to Mr. Uptergrove and Mr. Drandell that there will be another attorney assisting. He will be substituting in as cocounsel. He will be limited -- he wants to be limited in terms of his participation. He will be present during opening statements,

FILED

NOV 10 2015

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GAYLENE LYNNETTE BOLANOS, et al.,

Defendants.

Case No: 1:13-cv-00362-AWI-BAM

JURY INSTRUCTIONS GIVEN

The attached Jury Instructions comprise all of the instructions given to the trial jurors by Senior United States District Judge Anthony W. Ishii in the above-entitled case.

/s/ Reneé Gaumnitz
RENEE GAUMNITZ
Courtroom Deputy

1.2 THE CHARGE—PRESUMPTION OF INNOCENCE

This is a criminal case brought by the United States government. The government charges the Defendants as follows:

Gaylene Bolanos, Count 1, Conspiracy to Defraud, Counts 2-4 and 6-16, Making or Presenting a False Claim to a Department of the United States

Charles Wayne Uptergrove, Count 12, Making or Presenting a False Claim to a Department of the United States,

Rodney Edwin Moon, Count 14, Making or Presenting a False Claim to a Department of the United States,

Ladonna Lee Moon, Count 14, Making or Presenting a False Claim to a Department of the United States, and

Leroy Donovan Combs, Count 16, Making or Presenting a False Claim to a Department of the United States.

The charges against the defendants are contained in the indictment. The indictment simply describes the charges the government brings against the defendants. The indictment is not evidence and does not prove anything.

The defendants have pled not guilty to the charges and are presumed innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant has the right to remain silent and never has to prove innocence or to present any evidence.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime[s] which the government must prove to make its case:

Defendant Gaylene Bolanos is charged in Count one of the indictment with conspiring to defraud in violation of section 286 of title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove the following beyond a reasonable doubt that:

1. the defendant, Ms. Bolanos, entered into an agreement, combination or conspiracy with one or more other persons beginning on or about August 2008, and ending on or about October 16, 2008,;

2. the purpose of the conspiracy was to submit or aide in submitting a false claim against the United States through the Department of the Treasury;

3. the defendant knew that the purpose of the conspiracy was to submit false claims to the government and intended to help accomplish that goal; and

4. the defendant intended to defraud the government.

In order to convict a defendant on a charge of making a false claim against the United States, the government must prove beyond a reasonable doubt that:

1. the defendant submitted a claim to the United States, Department of the Treasury,

2. the claim was false or fictitious or fraudulent.

3. the claim was material; that is, it had the natural tendency to influence, or was capable of influencing, a person or entity to part with money or property.

4. the defendant knew at the time the claim was submitted, or was caused to be submitted, the claim was false, fictitious or fraudulent .

5. with respect to a fraudulent claim, the defendant have acted with intent to defraud.

These elements will be explained to you more completely after you have heard all of the evidence in this case.

Defendant Charles Wayne Uptergrove has testified. You should treat this testimony just as you would the testimony of any other witness.

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful; however, the Government is required to prove that the defendant knew, at the time that he made the claim, or caused the claim to be made, that the claim he made was false, fictitious or fraudulent. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

A defendant may be found guilty of Making or Presenting a False Claim to the United States, even if that defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of Making or Presenting a False Claim to the United States by aiding and abetting, the government must prove each of the following beyond a reasonable doubt:

First, Making or Presenting a False Claim to the United States was committed by someone;

Second, the defendant aided, counseled, commanded, induced or procured that person with respect to at least one element of Making or Presenting a False Claim to the United States;

Third, the defendant acted with the intent to facilitate Making or Presenting a False Claim to the United States; and

Fourth, the defendant acted before the crime was completed.

It is not enough that a defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that a defendant acted with the knowledge and intention of helping that person Make or Present a False Claim to the United States.

A defendant acts with the intent to facilitate the crime when that defendant actively participates in a criminal venture with advance knowledge of the crime.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

The indictment charges the defendants with Making or Presenting a False Claim to a Department of the United States as follows:

Gaylene Bolanos is charged in Counts 2 through 4 and 6 through 16,

Charles Wayne Uptergrove is charged in Count 12,

Rodney Edwin Moon is charged in Count 14,

Ladonna Lee Moon is charged in Count 14, and

Leroy Donovan Combs is charged in Count 16.

In order for you to find a defendant guilty of any charge, the government must prove each of the following as to each defendant beyond a reasonable doubt:

First, the defendant submitted a claim to the United States, Department of the Treasury;

Second, the claim was false, fictitious, or fraudulent;

Third, the claim was material; that is, it had a natural tendency to influence, or was capable of influencing, a person or entity to part with money or property;

Fourth, the defendant knew at the time the claim was submitted, or caused to be submitted, that the claim was false, fictitious, or fraudulent; and

Fifth, with respect to a fraudulent claim, the defendant acted with intent to defraud.

You must also unanimously agree as to whether the claim was false, or fictitious, or fraudulent in order to find a defendant guilty.

An intent to defraud is an intent to deceive or cheat.

A claim is false if it was untrue when made, and was then known to be untrue by the person making it or causing it to be made.

A claim is fictitious if it is not real or if it does not correspond to what actually happened.

A claim is fraudulent if it was known to be untrue, and made or caused to be made with the intent to defraud; that is, the intent to deceive or cheat.

You need not find that all of the entries on the claim were false, or fictitious or fraudulent, so long as you unanimously find that there was one material entry which was false, or fictitious or fraudulent.

In order to prove that the defendant acted "willfully" as to presenting a fraudulent claim, the government must prove beyond a reasonable doubt that the defendant knew federal law imposed a duty on him, and the defendant intentionally and voluntarily violated that duty. A defendant who acts on a good faith misunderstanding as to the requirements of the law does not act willfully even if his understanding of the law is wrong or unreasonable. Nevertheless, merely disagreeing with the law does not constitute a good faith misunderstanding of the law because all persons have a duty to obey the law whether or not they agree with it. Thus, in order to prove that a defendant acted willfully as to presenting a fraudulent claim, the government must prove beyond a reasonable doubt that a defendant did not have a good faith belief that he was complying with the law.

FILED
NOV 10 2015
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GAYLENE LYNETTE BOLANOS, CHARLES WAYNE UPTERGROVE, LADONNA LEE MOON, RODNEY EDWIN MOON, and LEROY DONOVAN COMBS Defendants.	NO. 1:13-cr-00362 AWI-BAM VERDICT OF TRIAL JURY

We, the jury in the above-entitled matter, find the following verdict as to the defendants:

COUNT ONE - Conspiracy to Defraud, 18 U.S.C. § 286

We, the jury in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

COUNT TWO - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 6, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Fernando Bolanos and Gaylene Lynette Bolanos]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Two of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

X Fictitious

X Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

COUNT THREE - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 8, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for John Williams and Diane Williams]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Three of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

COUNT FOUR - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 9, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Bert McHenry and Kim McHenry]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Four of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

COUNT SIX - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 10, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Phillip Glines and Barbara Glines]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Six of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARRETO

Foreperson

COUNT SEVEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 14, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Grant Lyddon and Karri Lyddon]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Seven of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10/____, 2015

EDRALD BARREDO
Foreperson

COUNT EIGHT - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 14, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Daniel Esqueda and Jan Rabe]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Eight of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

COUNT NINE - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 14, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for James Karam Schwartz]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty X   Guilty ____

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Nine of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to GAYLENE LYNETTE BOLANOS, was:

_____ False

_____ Fictitious

_____ Fraudulent

Sign verdict for this count.

DATED: 11/10 ________, 2015

EDRALD BARREDO
Foreperson

COUNT TEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 14, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Louie Calles]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty X   Guilty ____

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Ten of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to GAYLENE LYNETTE BOLANOS, was:

_____ False

_____ Fictitious

_____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARRERO
Foreperson

COUNT ELEVEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 15, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Terri Cook]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Eleven of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARRETO

Foreperson

COUNT TWELVE - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 15, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Charles Wayne Uptergrove and Martha Uptergrove]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Twelve of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to GAYLENE LYNETTE BOLANOS, was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRAD BARREDO

Foreperson

COUNT TWELVE - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 15, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Charles Wayne Uptergrove and Martha Uptergrove]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant CHARLES WAYNE UPTERGROVE:

Not Guilty ____   Guilty X

In finding the defendant, CHARLES WAYNE UPTERGROVE, guilty of the offense charged in Count Twelve of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to CHARLES WAYNE UPTERGROVE, was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BAUTEDO

Foreperson

COUNT THIRTEEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 16, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Beverly Weldon]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Thirteen of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARRETO

Foreperson

COUNT FOURTEEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 16, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Rodney Edwin Moon and Ladonna Lee Moon]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____   Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Fourteen of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to GAYLENE LYNETTE BOLANOS, was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

COUNT FOURTEEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 16, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Rodney Edwin Moon and Ladonna Lee Moon]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant RODNEY EDWIN MOON:

Not Guilty ____ Guilty ____

In finding the defendant, RODNEY EDWIN MOON, guilty of the offense charged in Count Fourteen of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to RODNEY EDWIN MOON, was:

_____ False

_____ Fictitious

_____ Fraudulent

Sign verdict for this count.

DATED: _____________, 2015

____

Foreperson

COUNT FOURTEEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 16, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Rodney Edwin Moon and Ladonna Lee Moon]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant LADONNA LEE MOON:

Not Guilty ____ Guilty X

In finding the defendant, LADONNA LEE MOON, guilty of the offense charged in Count Fourteen of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to LADONNA LEE MOON, was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARRERO

Foreperson

COUNT FIFTEEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 16, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Paul Weldon]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Fifteen of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD [illegible]

Foreperson

COUNT SIXTEEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 16, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Leroy Donovan Combs]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant GAYLENE LYNETTE BOLANOS:

Not Guilty ____ Guilty X

In finding the defendant, GAYLENE LYNETTE BOLANOS, guilty of the offense charged in Count Sixteen of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to GAYLENE LYNETTE BOLANOS, was:

X False

____ Fictitious

____ Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARRETO

Foreperson

COUNT SIXTEEN - Making and Presenting a False Claim To A Department of the United States, 18 U.S.C. § 287 [On or about October 16, 2008, in the Eastern District of California and elsewhere: Tax Year 2007, Form 1040 for Leroy Donovan Combs]

WE, THE JURY, in the above-entitled matter, find the following verdict as to defendant LEROY DONOVAN COMBS:

Not Guilty ____ Guilty X

In finding the defendant, LEROY DONOVAN COMBS, guilty of the offense charged in Count Sixteen of the indictment, WE THE JURY unanimously found beyond a reasonable doubt the claim to the United States, as to LEROY DONOVAN COMBS, was:

X False

____ Fictitious

X Fraudulent

Sign verdict for this count.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

Sign and return this verdict as to all counts.

DATED: 11/10, 2015

EDRALD BARREDO

Foreperson

922. Elements of 18 U.S.C. § 287

Under 18 U.S.C. § 287, the government must establish that the defendant:

1. made or presented a false, fictitious, or fraudulent claim to a department of the United States;
2. knew such claim was false, fictitious or fraudulent; and
3. did so with the specific intent to violate the law or with a consciousness that what he was doing was wrong.

United States v. Slocum, 708 F.2d 587, 596 (11th Cir. 1983)(*citing United States v. Computer Sciences Corp.*, 511 F. Supp. 1125, 1134 (E.D. Va. 1981), *rev'd on other grounds*, 689 F.2d 1181 (4th Cir. 1982)).

Under Section 287, unlike 18 U.S.C. § 1001, there may not be a requirement that the statements or claims be material; the United States Courts of Appeals are split on the issue. *United States v. Parsons*, 967 F.2d 452, 455 (10th Cir. 1992)(no materiality component); *United States v. Elkin*, 731 F.2d 1005, 1009 (2d Cir.), *cert. denied*, 469 U.S. 822 (1984)(same); *United States v. Pruitt*, 702 F.2d 152, 155 (8th Cir. 1983) (materiality component); *United States v. Snider*, 502 F.2d 645, 652 n.12 (4th Cir. 1974) (same). The conflict was noted in *United States v. White*, 27 F.3d 1531, 1535 (11th Cir. 1994), which did not resolve the issue. Presumably, if a materiality component exists, it is a matter for jury resolution in light of *United States v. Gaudin*, 115 S.Ct. 2310 (1995).

Although it is clear from the case law that specific intent to defraud is not required for a conviction under 18 U.S.C. § 287, the United States Courts of Appeals are divided on the issue of whether willfulness is an essential element of the crime. For example, the United Stated Courts of Appeals for the Tenth, Fifth and Second Circuits have held that willfulness is not an essential element of Section 287, while the Ninth, Eighth and Fourth Circuits appear to indicate that willfulness is an essential element of Section 287.

Presentation of a claim is more than an intention to make a claim. The claim must be presented actually and physically, and thereby made to the government. The clearest case is presentation directly to the government; however, the claim may go through an intermediary. *United States v. Murph*, 707 F.2d 895, 896 (6th Cir.) *cert. denied*, 464 U.S. 844 (1983), (court rejected the argument that defendant did not cause a violation of Section 287 because the claim was submitted by an intermediary; the defendant sold a tax return, falsely claiming a refund, to the intermediary and knew that the return would be presented to the government to claim the refund). Presenting or cashing a refund check constitutes making a false claim on the United States. *See United States v. Branker*, 395 F.2d 881 (2d Cir. 1968), *cert. denied*, 393 U.S. 1029 (1969). Although Section 287 does not define the term "claim" (*United States v. Barsanti*, 943 F.2d 428, 432-33 (4th Cir. 1991), *cert. denied*, 503 U.S. 936 (1992)), in *United States v. Cohn*, 270 U.S. 339 (1926), the United States Supreme Court wrote:

> While the word "claim" may sometimes be used in the broad juridical sense of "a demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty," it is clear, in the light of the entire context, that in the present statute, the provision relating to the payment or approval of a "claim upon or against" the government relates solely to the payment or approval of a claim for money or property to which a right is asserted against the government, based upon the government's own liability to the claimant.

270 U.S. at 345-36. The civil component of the False Claims Act, 31 U.S.C. § 3729(c), also defines the word "claim."

[cited in USAM 9-42.001]

‹ 921. False Claims up 923. 18 U.S.C. § 371—Conspiracy to Defraud the United States ›