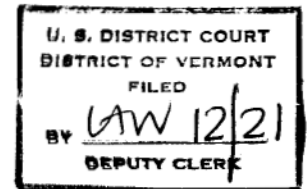


UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT



UNITED STATES OF AMERICA

v.

DENNY REYES,

Defendant.

Case No. 2:16-cr-00069

JURY CHARGE

Members of the Jury:

Now that you have heard the evidence and the arguments, it is my duty to instruct you on the law. It is your duty to accept these instructions of law and apply them to the facts as you determine them.

This case is a criminal prosecution brought by the United States against the defendant DENNY REYES. DENNY REYES is charged in two counts.

The first count of the indictment charges the defendant with aiding and abetting the bringing of aliens to the United States for commercial advantage and private financial gain. Count I alleges:

On or about February 7, 2015, in the District of Vermont, the defendant, DENNY REYES, knowing and in reckless disregard of the fact that certain aliens had not received prior official authorization to come to, enter, or reside in the United States, aided and abetted bringing to the United States, such aliens, for the purpose of commercial advantage and private financial gain.

This count charges the defendant with violating Section 1324(a)(2)(B)(ii) of Title 8 of the United States Code and Section 2 of Title 18 of the United States Code. Section 1324(a)(2)(B)(ii) makes it a crime for "[a]ny person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in

any manner whatsoever, such alien . . . for the purpose of commercial advantage or private financial gain[.]” Section 2 of Title 18 states that “[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”

Count II of the indictment charges the defendant with transporting illegal aliens within the United States. Count II alleges:

On or about February 7, 2015, in the District of Vermont, the defendant, DENNY REYES, knowing and in reckless disregard of the fact that certain aliens had come to, entered, or remained in the United States in violation of law, transported and moved, and attempted to transport and move such aliens within the United States by means of transportation, in furtherance of such violation of law.

This count charges the defendant with violating Sections 1324(a)(1)(A)(ii) and 1324(a)(1)(B)(ii) of Title 8 of the United States Code. Section 1324(a)(1)(A)(ii) makes it a crime for “[a]ny person who knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law[.]”

ROLE OF INDICTMENT

At this time, I would like to remind you of the function of an indictment. An indictment is merely a formal way to accuse a defendant of a crime before trial. An indictment is not evidence. An indictment does not create any presumption of guilt or permit an inference of guilt. It should not influence your verdict in any way other than to inform you of the charges against the defendant. The defendant has pleaded not guilty to the counts in the indictment. You have been chosen and sworn as jurors in this case to determine the issues of fact that have been raised by the allegations in the indictment and the denial made by the not guilty plea of the defendant. You are to perform this duty without bias or prejudice against the defendant or the government.

REASONABLE DOUBT AND PRESUMPTION OF INNOCENCE

The government must prove the defendant guilty beyond a reasonable doubt. The question is what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. A reasonable doubt is not a whim, speculation, or suspicion. However, a reasonable doubt may arise from a lack of evidence. It is not an excuse to avoid the performance of an unpleasant duty and it is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require the government to prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each element of the crime charged beyond a reasonable doubt. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

If, after a fair and impartial consideration of all the evidence against the defendant, you have a reasonable doubt, then it is your duty to find the defendant not guilty. On the other hand, if, after a fair and impartial consideration of all the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you should vote to convict.

The law presumes the defendant is innocent of the charges against him. The presumption of innocence is a piece of evidence that lasts throughout the trial and during your deliberations. The presumption of innocence ends only if you, the jury, find beyond a reasonable doubt that the defendant is guilty. Should the government fail to prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

EVIDENCE

You have seen and heard the evidence produced in this trial, and it is the sole province of the jury to determine the facts of this case. The evidence consists of the

sworn testimony of the witnesses, any exhibits that have been admitted into evidence, and all the facts that have been admitted or stipulated. I would now like to call your attention to certain guidelines by which you are to evaluate the evidence.

There are two types of evidence that you may properly use in reaching your verdict. One type of evidence is direct evidence. Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses—something he or she has seen, felt, touched, or heard. Direct evidence may also be in the form of an exhibit.

Circumstantial evidence is evidence that tends to prove a disputed fact by proof of other facts. You infer on the basis of reason, experience, and common sense from one established fact, the existence or non-existence of some other fact. For example, if you were to see cow tracks in a pasture, that would be circumstantial evidence that there are or were cows in the pasture.

Circumstantial evidence is of no less value than direct evidence. Circumstantial evidence alone may be sufficient evidence of guilt.

You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the defendant's guilt beyond a reasonable doubt, then you must find him not guilty. Your verdict must be based solely on the evidence introduced at trial, or the lack thereof.

**GOVERNMENT NOT REQUIRED TO UTILIZE PARTICULAR
INVESTIGATIVE METHODS**

The government is not required to pursue any particular investigative method or methods in the investigation or prosecution of a crime. I remind you, however, that the government is always required to prove the defendant's guilt beyond a reasonable doubt.

**STRICKEN TESTIMONY, ATTORNEYS' STATEMENTS AND OBJECTIONS,
AND THE COURT'S RULINGS**

I caution you that you should entirely disregard any testimony or exhibit that has been excluded or stricken from the record. Likewise, the arguments of the attorneys and the questions asked by the attorneys are not evidence in the case. By the rulings the court

made in the course of the trial, I did not intend to indicate to you any of my own preferences, or to influence you in any manner regarding how you should decide the case. The attorneys have a duty to object to evidence they believe is not admissible. You must not hold it against either side if an attorney made an objection.

CREDIBILITY OF WITNESSES

You, as jurors, are the sole judges of the credibility of the witnesses and the weight of their testimony. You do not have to accept all the evidence presented in this case as true or accurate. Instead, it is your job to determine the credibility or believability of each witness. You do not have to give the same weight to the testimony of each witness, because you may accept or reject the testimony of any witness, in whole or in part. In weighing the testimony of the witnesses you have heard, you should consider: their interest, if any, in the outcome of the case; their manner of testifying; their candor; their bias, if any; their resentment or anger, if any, toward the defendant; the extent to which other evidence in the case supports or contradicts their testimony; and the reasonableness of their testimony. You may believe as much or as little of the testimony of each witness as you think proper. You may accept all of it, some of it, or reject it altogether.

The weight of the evidence is not determined by the number of witnesses testifying. You may find the testimony of a small number of witnesses or a single witness about a fact more credible than the different testimony of a larger number of witnesses. The fact that one party called more witnesses and introduced more evidence than the other does not mean that you should necessarily find the facts in favor of the side offering the most witnesses or the most evidence. Remember, a defendant in a criminal prosecution has no obligation to present any evidence or call any witnesses.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit such testimony. Two or more persons may hear or see things differently, or may have a different point of view regarding various occurrences. It is for you to weigh the effect of any discrepancies in testimony, considering whether they pertain to matters of importance, or unimportant

details, and whether a discrepancy results from innocent error or intentional falsehood. You should attempt to resolve inconsistencies if you can, but you also are free to believe or disbelieve any part of the testimony of any witness as you see fit.

INTEREST IN THE OUTCOME OR OFFER OF BENEFIT

As a general matter, in evaluating the credibility of each witness, you should take into account any evidence that the witness who testified may benefit in some way from the outcome of this case. Such an interest may create a motive to testify falsely and may sway the witness to testify in a way that advances his or her own interests. Therefore, if you find that any witness whose testimony you are considering has an interest in the outcome of this trial, or has been offered benefits or assistance for testimony, then you should bear that factor in mind when evaluating the credibility of his or her testimony and accept it only with great care.

This is not to suggest that any witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, the witness's interest has affected or colored his or her testimony.

LAW ENFORCEMENT WITNESSES

You have heard the testimony of law enforcement officials. The fact that a witness may be employed by the federal, state, or local government as a law enforcement official does not mean that his or her testimony is deserving of more or less consideration or greater or lesser weight than that of an ordinary witness.

At the same time, it is proper for defense counsel to try to attack the credibility of a law enforcement witness on the grounds that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all the evidence, whether to accept the testimony of a law enforcement witness and to give to it what weight, if any, you find it deserves.

GOVERNMENT'S CONFIDENTIAL INFORMANTS

There has been evidence introduced at trial that the government used one or more confidential informants in this case, and you have heard the testimony of some of these

confidential informants. There is nothing improper about the government's use of informants. You, therefore, should not concern yourselves with how you personally feel about the informants, but you should be concerned with deciding whether the government has proved the guilt of the defendant beyond a reasonable doubt, regardless of whether evidence was obtained via a confidential informant.

On the other hand, when an informant testifies, his or her testimony must be examined with greater scrutiny than the testimony of an ordinary witness. You should consider whether the informant received any benefits or promises from the government that would motivate him or her to testify falsely against the defendant. For example, the informant may believe that he or she will only continue to receive these benefits if he or she produces evidence of criminal conduct.

If you decide to accept an informant's testimony, after considering it in the light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves.

**WITNESSES WHO HAVE RECENTLY
OR ARE CURRENTLY USING CONTROLLED SUBSTANCES**

There has been evidence introduced at trial that some of the individuals who the government called as witnesses were using controlled substances when the events they observed or participated in took place. There is nothing improper about calling such witnesses to testify about events within their personal knowledge.

However, testimony from such witnesses must be examined with greater scrutiny than the testimony of other witnesses. The testimony of a witness who was using controlled substances at the time of the events he or she is testifying about, or who has recently or is currently using controlled substances during the time of his or her testimony, may be less believable because of the effect the controlled substances may have on his or her ability to perceive or remember the events in question.

If you decide to accept the testimony of such a witness, after considering it in light of all the evidence in this case, then you may give it whatever weight, if any, you find it deserves.

USE OF RECORDINGS AND TRANSCRIPTS

Some of the evidence in this case includes audio recordings. In some cases, the parties were permitted to display a transcript containing the parties' interpretation of what can be heard on the recordings but the transcripts themselves were not admitted in evidence as exhibits.

In those cases, the transcripts were provided as an aid or guide to assist you, the jury, in listening to and watching the recordings; however, the transcripts themselves are not evidence. The audio recordings are evidence, and, as such, you must rely on your own interpretation of what you heard on these recordings. If you think you heard something different on the recording than what was represented on the transcript, then what you heard on the recording must control.

In other cases, transcripts of recorded conversations that took place in Spanish were admitted into evidence. Those transcripts are evidence, and you may evaluate them as you would any other piece of admissible evidence.

CHARTS AND SUMMARIES

The charts and summaries were shown to you in order to make the other evidence more meaningful and to aid you in considering the evidence. They are no better than the testimony or the documents upon which they are based, and are not themselves independent evidence. Therefore, you are to give no greater consideration to these summaries than you would give to the evidence upon which they are based. It is for you to decide whether the charts or summaries correctly present the information contained in the testimony and in the exhibits on which they were based. You are entitled to consider the charts and summaries if you find that they are of assistance to you in analyzing the evidence and understanding the evidence.

IMPERMISSIBLE TO INFER PARTICIPATION FROM PRESENCE

You may not infer that a defendant is guilty of participating in criminal conduct merely from the fact that he or she may have been present at the time a crime was being committed or may have had knowledge that it was being committed. A defendant's mere presence at the scene of a crime, his general knowledge of criminal activity, or his simple

association with others engaged in a crime are not, in themselves, sufficient to prove the defendant is guilty.

JURORS' EXPERIENCE OR SPECIALIZED KNOWLEDGE

Anything you have seen or heard outside the courtroom is not evidence, and must be disregarded entirely. It would be a violation of your oath as jurors to consider anything outside the courtroom in your deliberations. But in your consideration of the evidence, you do not leave behind your common sense and life experiences. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw, from facts which you find have been proved, such reasonable inferences as you feel are justified in light of the evidence. However, if any juror has specialized knowledge, expertise, or information with regard to the facts and circumstances of this case, he or she may not rely upon it in deliberations or communicate it to other jurors.

JURORS' SYMPATHY, PASSION, OR PREJUDICE

In arriving at a verdict, you must not permit yourselves to be influenced in the slightest degree by sympathy, passion, or prejudice, or any other emotion in favor of or against either party. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, or prejudice.

DEFENDANT NOT TESTIFYING

You may have observed that the defendant did not testify in this case. The defendant has a constitutional right not to do so. He does not have to testify, and the government may not call him as a witness. The defendant's decision not to testify raises no presumption of guilt and does not permit you to draw any unfavorable inference. A defendant is never required to prove that he or she is not guilty. Therefore, in determining the defendant's guilt or innocence of a crime charged, you are not to consider, in any manner, the fact that the defendant did not testify. Do not even discuss it in your deliberations.

OTHER ACTS

The government has offered evidence tending to show that on a different occasion the defendant engaged in conduct similar to the charges in the indictment.

I remind you that the defendant is not on trial for committing any act not alleged in the indictment. Accordingly, you may not consider any evidence of similar acts as proof that the defendant committed the crime charged. Nor may you consider this evidence as proof that the defendant has a criminal personality or bad character. Any evidence of other, similar acts was admitted for a much more limited purpose and you may consider it only for that limited purpose.

If you determine that the defendant committed the acts charged in the indictment and the similar acts as well, then you may, but you need not draw an inference that in doing the acts charged in the indictment, the defendant acted knowingly and intentionally and not because of some mistake, accident or other innocent reason.

Evidence of similar acts may not be considered by you for any other purpose. Specifically, you may not use this evidence to conclude that because the defendant committed the other act he must also have committed the acts charged in the indictment.

RACE, RELIGION, NATIONAL ORIGIN, SEX, OR AGE

You may not consider the race, religion, national origin, sex, or age of the defendant or any of the witnesses in your deliberations over the verdict or in the weight given to any evidence.

BIAS, PREJUDICE, AND EQUALITY BEFORE THE COURT

You are to perform the duty of finding the facts without bias or prejudice toward any party. You are to perform this duty in an attitude of complete fairness and impartiality. You must not allow any of your personal feelings about the nature of the crimes charged to interfere with your deliberations, or to influence the weight given to any of the evidence.

This case is important to the parties and the court. You must give it the fair and serious consideration that it deserves.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a case. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals before the court.

INSTRUCTIONS ON THE SUBSTANTIVE LAW OF THE CASE

Having explained the general guidelines by which you will evaluate the evidence in this case, I will now instruct you with regard to the law that is applicable to your determinations in this case.

It is your duty as jurors to follow the law as stated to you in these instructions and to apply the rules of law to the facts that you find from the evidence. You will not be faithful to your oath as jurors if you find a verdict that is contrary to the law that I give to you.

However, it is the sole province of the jury to determine the facts in this case. I do not, by any instructions given to you, intend to persuade you in any way as to any question of fact.

The parties in this case have a right to expect that you will carefully and impartially consider all the evidence in the case, that you will follow the law as I state it to you, and that you will reach a just verdict.

COUNT I

AIDING AND ABETTING ALIEN SMUGGLING

Count I of the indictment charges that the defendant, Denny Reyes, aided and abetted bringing an alien to the United States for commercial advantage or private financial gain in violation of Section 1324(a)(2)(B)(ii) of Title 8 of the United States Code and Section 2 of Title 18 of the United States Code. I remind you that Section 1324(a)(2)(B)(ii) makes it criminal for "[a]ny person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien . . . for the purpose of commercial advantage or private

financial gain.” Section 2 of Title 18 states that “whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”

I will first explain what it means to aid and abet a crime. I will then explain the essential elements of the crime of bringing an alien to the United States for commercial gain.

AIDING AND ABETTING

Under the aiding and abetting statute, it is not necessary for the government to show that a defendant himself physically committed the crimes with which he is charged in order for the government to sustain its burden of proof. A person who aids and abets another to commit an offense is just as guilty of that offense as if he committed it himself.

Accordingly, you must find the defendant guilty of the offense charged if you find beyond a reasonable doubt that another person actually committed the offense with which the defendant is charged, and that the defendant aided or abetted that person in the commission of the offense.

To find the defendant guilty of aiding or abetting, you must first find that another person has committed the crime charged. No one can be convicted of aiding or abetting the criminal acts of another if no crime was committed by the other person in the first place. But if you do find that a crime was committed, then you must consider whether the defendant aided or abetted the commission of that entire crime.

In order to aid or abet another in the commission of a crime, it is necessary that the defendant knowingly associate himself in some way with the crime, and that he participate in the crime by doing some act to help make the crime succeed. That is, an aiding and abetting conviction requires not just an act facilitating one or another element of the crime, but also a state of mind extending to the entire crime. An intent to advance some different or lesser offense is not sufficient: instead, the intent must go to the specific and entire crime charged – so here, to the full scope of alien smuggling. So for purposes of aiding and abetting, a person participating in a criminal scheme knowing its extent and character intends that scheme’s commission.

To establish that defendant knowingly associated himself with the crime, the government must establish that the defendant acted with the knowledge that a crime was being committed. To establish that the defendant participated in the commission of the crime, the government must prove that the defendant engaged in some affirmative conduct or overt act with the specific intent of bringing about the crime. In other words, to aid and abet a crime, a defendant must not just in some way associate himself with the venture, but also participate in it as something he seeks to bring about and seeks by his acts to make succeed.

The mere presence of a defendant where a crime is being committed, even coupled with knowledge by the defendant that a crime is being committed, or merely associating with others who were committing a crime is not sufficient to establish aiding and abetting. One who has no knowledge that a crime is being committed or is about to be committed but inadvertently does something that aids in the commission of that crime is not an aider and abettor. An aider and abettor must know that the crime is being committed and act in a way which is intended to bring about the success of the criminal venture.

To determine whether a defendant aided or abetted the commission of the crime with which he is charged, ask yourself these questions:

Did he participate in the crime charged as something he wished to bring about?

Did he knowingly associate himself with the criminal venture?

Did he seek by his actions to make the criminal venture succeed?

If he did, then the defendant is an aider and abettor, and therefore guilty of the offense. If, on the other hand, your answer to any one of these questions is "no," then the defendant is not an aider or abettor, and you must find him not guilty.

ESSENTIAL ELEMENTS OF THE OFFENSE OF ALIEN SMUGGLING

As I have explained, in order to prove the defendant guilty of aiding and abetting bringing an alien to the United States for commercial advantage or private financial gain, the government must first prove that the crime was committed by someone else (the

“principal”). Here, the government alleges that an individual named Chino was one of the principals involved in the charged crime.

The government must establish each of the following elements beyond a reasonable doubt as to the principal.

First, that the principal knowingly brought to the United States an individual who was an alien at the time of the offense alleged in the indictment;

Second, that the principal knew or was in reckless disregard of the fact that the person brought to the United States had not received official authorization to come to, enter, or reside in the United States; and

Third, that the principal acted for the purpose of commercial advantage or private financial gain.

BRINGING ALIENS TO THE UNITED STATES

The first element the government must prove beyond a reasonable doubt is that the principal knowingly brought (or attempted to bring) an alien to the United States.

Bringing an alien to the United States means guiding, leading, escorting, or causing the alien to come.

ALIEN STATUS

The government must prove beyond a reasonable doubt that the person brought to the United States was an alien at the time of the offense alleged in the indictment.

An alien is a person who is not a natural-born or naturalized citizen, or a national of the United States.

KNOWLEDGE OF ALIEN STATUS

The second element the government must prove beyond a reasonable doubt is that at the time of the offense alleged in the indictment, the principal knew or was in reckless disregard of the fact that the person brought to the United States had not received prior official authorization to come to, enter, or reside in the United States.

To satisfy this element, the government must prove that the person brought to the United States did not have prior official authorization to come to, enter, or reside in the United States. To “come to” or “enter” the United States means simply to cross the

border into the United States. If you find that the person brought to the United States did have such authorization, then you must find the defendant not guilty.

Next, the government must prove that the principal knew or was in reckless disregard of the fact that the person brought to the United States did not have this authorization. Whether or not the principal had this knowledge is a question of fact to be determined by you on the basis of all the evidence. An act is done knowingly when it is done purposely and deliberately, and not because of accident, mistake, negligence, or other innocent reason. If you find that the evidence establishes beyond a reasonable doubt that the principal actually knew that the person brought to the United States did not have prior official authorization, then this element is satisfied.

Even if the evidence does not establish actual knowledge, this element may be satisfied if you find that the government has proven beyond a reasonable doubt that the principal acted with reckless disregard of the fact that the person brought to the United States did not have prior authorization to come to the United States. The phrase “reckless disregard of the fact” means deliberate indifference to facts that, if considered and weighed in a reasonable manner, indicate the highest probability that the person brought to the United States did not have prior official authorization to come to the United States.

Under section 1324(a)(2)(B)(ii), it is not relevant that any of the aliens subsequently received authorization to stay in the United States. It is the principal’s knowledge that they did not have such authorization at the time of coming to the United States that is important in this case.

COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN

The third element the government must prove beyond a reasonable doubt is that the principal acted for the purpose of commercial advantage or private financial gain. The phrase “commercial advantage or private financial gain” should be given its ordinary and natural meaning. “Commercial advantage” is a profit or gain in money or property obtained through business activity. “Private financial gain” is profit or gain in money or property specifically for a particular person or group.

The government is not required to prove that the principal actually received some financial gain, although, of course, you may consider evidence that the principal did or did not receive financial gain in deciding whether he acted for the purpose of achieving financial gain.

COUNT ONE

LESSER INCLUDED OFFENSE

AIDING AND ABETTING ALIEN SMUGGLING

I have just explained what the government has to prove for you to find the defendant guilty of the offense charged in Count One of the indictment, aiding and abetting alien smuggling for commercial advantage. The law also permits the jury to decide whether the government has proven the defendant guilty of another, lesser offense which is, by its very nature, necessarily included in the offense of aiding and abetting alien smuggling for commercial advantage or private financial gain.

The offense of aiding and abetting alien smuggling for commercial advantage or private financial gain necessarily includes the lesser offense of aiding and abetting alien smuggling. In order to find the defendant guilty of aiding and abetting this lesser included offense, the government must first prove that the crime was committed by someone else (the “principal”), and then that the defendant aided and abetted the principal’s commission of the crime.

To prove that the principal committed the crime, the government must prove the following elements beyond a reasonable doubt:

First, that the principal knowingly brought to the United States an individual who was an alien at the time of the offense alleged in the indictment; and

Second, that the principal knew or was in reckless disregard of the fact that the person brought to the United States had not received official authorization to come to, enter, or reside in the United States.

Note that the government does not need to prove that the principal acted for the purposes of commercial advantage or private financial gain as an element of the lesser included offense.

If you find unanimously that the government has proved beyond a reasonable doubt each of the essential elements of the offense of aiding and abetting alien smuggling for commercial advantage or private financial gain charged in Count One of the indictment, then you should find the defendant guilty of that offense and your foreperson should check “guilty” in the space provided on the verdict form for that offense. You will not consider the lesser included offense and will move on to consider Count Two.

However, if you find unanimously that the government has not proved beyond a reasonable doubt each essential element of the offense of aiding and abetting alien smuggling for commercial advantage or private financial gain, then you must find the defendant not guilty of that offense and your foreperson should check “not guilty” in the space provided for that offense on the verdict form. You should then go on to consider whether the government has proved beyond a reasonable doubt all the elements of the lesser included offense of aiding and abetting alien smuggling.

If you find unanimously that the government has proved beyond a reasonable doubt each of the elements of this lesser included offense, then you should find the defendant guilty of this lesser included offense and your foreperson should check “guilty” in the space provided on the verdict form.

If you find unanimously that the government has not proved beyond a reasonable doubt each essential element of this lesser included offense, then you must find the defendant not guilty of this offense and your foreperson should write “not guilty” in the space provided for this lesser included offense on the verdict form.

You should remember that the burden is always on the government to prove, beyond a reasonable doubt, each and every element of the offense charged in the indictment or of any lesser included offense.

COUNT II

TRANSPORTING AN ILLEGAL ALIEN WITHIN THE UNITED STATES

Count II of the indictment charges the defendant with transporting an alien within the United States. I remind you that Section 1324(a)(1)(A)(ii) makes it a crime for “[a]ny person who knowing or in reckless disregard of the fact that an alien has come to,

entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law[.]”

**ESSENTIAL ELEMENTS OF THE OFFENSE OF TRANSPORTING AN
ILLEGAL ALIEN WITHIN THE UNITED STATES**

In order to prove the defendant guilty of knowingly transporting an illegal alien within the United States, the government must establish beyond a reasonable doubt each of the following elements:

First, that an alien was in the United States in violation of the law;

Second, that the defendant knew, or acted in reckless disregard of the fact, that the person was an alien who had come to, entered, or remained in the United States in violation of the law;

Third, that the defendant knowingly transported the alien within the United States; and

Fourth, that the defendant acted willfully in furtherance of the alien’s violation of law.

ALIEN STATUS

The first element that the government must prove beyond a reasonable doubt is that the transported person is an alien who had entered (or came to or remained in) the United States in violation of the law.

An alien is a person who is not a natural-born or naturalized citizen, or a national of the United States.

KNOWLEDGE OR RECKLESS DISREGARD

The second element of the offense that the government must prove beyond a reasonable doubt is that the defendant knew that the alien he transported had come to, entered, or remained in the United States in violation of the law, or that the defendant acted in reckless disregard of that fact.

As I have previously instructed you, whether or not the defendant had this knowledge is a question of fact to be determined by you on the basis of all the evidence.

I remind you that an act is done knowingly only if it is done purposely and deliberately, and not because of accident, mistake, negligence, or other innocent reason. If you find that the evidence establishes, beyond a reasonable doubt, that the defendant actually knew of the alien's illegal status, then this element is satisfied.

Even if the evidence does not establish actual knowledge, this element is satisfied if you find that the government has proved beyond a reasonable doubt that the defendant acted with reckless disregard of the facts concerning the alien's status. I reiterate that the phrase "reckless disregard of the facts" means deliberate indifference to facts that, if considered and weighed in a reasonable manner, indicate the highest probability that the alleged alien was in fact an alien and was in the United States unlawfully.

TRANSPORTING OR MOVING AN ALIEN

The third element of the offense that the government must prove beyond a reasonable doubt is that the defendant knowingly transported an alien who had come to (or entered or remained in) the United States in violation of law.

If you find, based on all the evidence, that the government has proved, beyond a reasonable doubt, that the defendant transported someone who was an alien who had come to the United States in violation of law, this element has been satisfied.

TRANSPORTATION IN FURTHERANCE OF ALIEN'S VIOLATION OF LAW

The fourth element of the offense that the government must prove beyond a reasonable doubt is that the defendant acted willfully in furtherance of the alien's violation of the law.

In order to establish this element, the government must prove that the defendant knowingly and intentionally transported the alien in furtherance of the alien's unlawful presence in the United States. In other words, the evidence must show a direct and substantial relationship between the transportation and its furtherance of the alien's unlawful presence in the United States. Transportation of illegal aliens is not, by itself, a violation of the statute if it is merely incidental to the alien's presence in the United States, for the law proscribes such conduct only when it is in furtherance of the alien's unlawful presence.

“ON OR ABOUT” EXPLAINED

The indictment charges that the offenses were committed “on or about” a certain date. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed on dates reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged

UNANIMOUS VERDICT REQUIRED

To return a verdict, it is necessary that every juror agree to the verdict. In other words, your verdict must be unanimous regarding each essential element of each count.

MULTIPLE COUNTS

The indictment contains multiple counts. Each count charges the defendant with a different crime. You must consider each count separately and return a separate verdict of guilty or not guilty for each. Whether you find the defendant guilty or not guilty as to one offense should not control your verdict as to the other offenses charged.

**DISCREPANCIES BETWEEN THE SPECIAL VERDICT FORM
AND THESE INSTRUCTIONS**

If you find that there are any discrepancies between the special verdict form I will provide you with and any of the instructions I give to you now, my instructions must govern your deliberations.

JUROR NOTE TAKING

During this trial, you have been provided with pencil and paper, and some of you have taken notes. As I explained at the beginning of the trial, all jurors should be given equal attention during the deliberations regardless of whether they have taken notes. Any notes you have taken may only be used to refresh your memory during deliberations. You may not use your notes as authority to persuade your fellow jurors as to what a witness did or did not say. In your deliberations you must rely upon your collective memory of the evidence in deciding the facts of the case. If there is any difference between your memory of the evidence and your notes, you may ask that the record of the

proceedings be read back. If a difference still exists, the record must prevail over your notes.

RECOLLECTION OF EVIDENCE

Let me remind you that in deliberating upon your verdict, you are to rely solely and entirely upon your own memory of the testimony.

If, during your deliberations, you are unable to recall with any degree of accuracy, a particular part of the testimony, or a part of these instructions, you may do the following:

- (1) Write out your question, and have the foreperson sign it;
- (2) Knock on the door of the jury room; and
- (3) Deliver your note to the Court Officer to give to me.

After the attorneys have been consulted, and the record has been reviewed, I will decide what action to take, and I will tell you my ruling.

CONCLUSION

I caution you, members of the jury, that you are here to determine whether the defendant before you today is not guilty or guilty solely from the evidence in this case. I remind you that the mere fact that a defendant has been indicted is not evidence against him. Also, a defendant is not on trial for any act or conduct or offense not alleged in the indictment. Nor are you called upon to return a verdict as to the guilt or innocence of any other person or persons not on trial as a defendant in this case.

You should not consider the consequences of a guilty or not guilty determination. The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the responsibility of the judge, and should never be considered by the jury in any way in arriving at an impartial verdict.

It is your duty as jurors to consult with one another and to deliberate. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. Do not hesitate to re-examine your own views and change your opinion if you think that you were wrong. Do not, however,

surrender your honest convictions about the case solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.


Upon retiring to the jury room, your foreperson will preside over your deliberations and will be your spokesperson here in court. If a vote is to be taken, your foreperson will ensure that it is done. A verdict form has been prepared for your conclusions. If the verdict form varies in any way from the instructions provided within this jury charge, I instruct you that you are to follow the instructions provided within this jury charge.

If you have reached an agreement, the foreperson will record a verdict of guilty or not guilty. Your foreperson will then sign and date the verdict form and you will return to the courtroom. In all other respects, a foreperson is the same as any other juror. His or her vote does not count more than any other member of the jury.

If, during your deliberations you should desire to communicate with the court, please put your message or question in writing signed by the foreperson, and pass the note to the Court Officer who will bring it to my attention. I will then confer with the attorneys and I will respond as promptly as possible, either in writing or by having you return to the courtroom so that I can speak with you. I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at that time. You should also never communicate the subject matter of your note or your deliberations to any member of the court's staff.

I appoint as your foreperson.

Dated at Burlington, in the District of Vermont, this 21 day of December, 2017.


Christina Reiss, District Judge
United States District Court