

FILED

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CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 10-50044-JLV
)	
Plaintiff,)	FINAL INSTRUCTIONS
)	TO THE JURY
vs.)	(REDACTED)
)	
CRUZ HERNAN PORRAS-PALMA,)	
a/k/a HERNAN PORRAS)	
)	
Defendant.)	

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FINAL INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, the preliminary instructions I gave you at the beginning of the trial and any oral instructions I gave you during the trial remain in effect. *All* instructions, whenever given, must be followed. If there is any difference between the preliminary and final instructions, the instructions I give you now must govern your deliberations.

The final instructions I am about to give you are in writing and will be available to you in the jury room.

FINAL INSTRUCTION NO. 2 - DUTY OF JURORS

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the crime charged against him. You must find the facts from the evidence presented in court. "Evidence" is defined in Final Instruction No. 8. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw conclusions from facts that have been established by the evidence. You will then apply the law, which I give you in these instructions, to the facts to reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I may have said or done during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment I may have made that I have any opinions on how you should decide the case.

Please remember that only the defendant, Cruz Hernan Porrás-Palma, not anyone else, is on trial here. Also, remember that this defendant is on trial **only** for the crime charged against him, not for anything else.

**FINAL INSTRUCTION NO. 3 - POSSESSION OF A FRAUDULENT
IMMIGRATION DOCUMENT**

The charge against the defendant is set out in a superseding indictment. A superseding indictment is simply an accusation. It is not evidence of anything. The defendant has pleaded not guilty to the charge brought against him; therefore, the defendant is presumed to be innocent unless and until the prosecution proves, beyond a reasonable doubt, his guilt of the offense.

The superseding indictment charges that the offense was committed “on or about” a certain date. The prosecution does not have to prove with certainty the exact date of the offense charged. It is sufficient if the evidence establishes that the offense occurred within a reasonable time of the date alleged in the superseding indictment.

The superseding indictment charges that on or about March 16, 2010, in the District of South Dakota, the defendant, Cruz Hernan Porras-Palma, a/k/a Hernan Porras, an alien, knowingly possessed a United States immigration document which was not issued to him, namely, a Lawful Permanent Resident Card (number redacted) bearing the name Hernan Porras, knowing it was forged, counterfeited, altered, or falsely made.

Elements

For you to find the defendant guilty of the offense of possession of a fraudulent immigration document as charged in the superseding indictment,

the government must prove the following two essential elements beyond a reasonable doubt:

One, that, on or about March 16, 2010, in the District of South Dakota, the defendant knowingly possessed a United States immigration document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, namely, a Lawful Permanent Resident Card (number redacted) bearing the name Hernan Porras; and

Two, that the defendant knew the document was forged, counterfeited, altered, or falsely made.

FINAL INSTRUCTION NO. 4 - KNOWLEDGE

“Knowledge” is an element of the offense charged in this case and must be proved beyond a reasonable doubt. The prosecution is not required to prove that the defendant knew his acts or omissions were unlawful. An act is done “knowingly” if the defendant is aware of the act and does not act through ignorance, mistake, or accident. 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.

FINAL INSTRUCTION NO. 5 - DEFENSE

The defendant has pled not guilty to the superseding indictment. The defendant submits that he did not knowingly possess a United States immigration document nor did he know it had been forged, counterfeited, altered, or falsely made.

FINAL INSTRUCTION NO. 6 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence or lack of evidence produced by the prosecution. A reasonable doubt is a doubt based upon reason and common sense and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

**FINAL INSTRUCTION NO. 7 - PRESUMPTION OF INNOCENCE
AND BURDEN OF PROOF**

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome only if the prosecution proves, beyond a reasonable doubt, each element of the crime charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to the defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of the offense charged in the superseding indictment against him, you must find him not guilty of that offense.

FINAL INSTRUCTION NO. 8 - DEFINITION OF EVIDENCE

Evidence is:

1. Testimony.
2. Exhibits that I admit into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be “direct” or “circumstantial.” The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

The fact that an exhibit was shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

The weight of the evidence is not determined by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence should not be determined merely by the number or volume of documents or exhibits. The weight of evidence depends on its quality, not quantity. The quality and weight of the evidence are for you to decide.

FINAL INSTRUCTION NO. 9 - CREDIBILITY OF WITNESSES

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to see or hear the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

You should judge the defendant's testimony in the same manner in which you judge the testimony of any other witness.

Finally, just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

FINAL INSTRUCTION NO. 10 - IMPEACHMENT

In Final Instruction No. 9, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be “impeached” and how you may treat certain evidence.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or failed to say or do something, that is inconsistent with the witness’s present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness’s testimony whatever weight you think it deserves.

FINAL INSTRUCTION NO. 11 - OBJECTIONS

The lawyers have made objections and motions during the trial that I have ruled upon. If I sustained an objection to a question before it was answered, do not draw any inferences or conclusions from the question itself. The lawyers had a duty to object to testimony or other evidence that they believed was not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer made objections.

FINAL INSTRUCTION NO. 12 - USE OF NOTES

Notes you took during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

FINAL INSTRUCTION NO. 13 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. Your verdict as to the defendant must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on the offense charged against him, then the defendant should have your vote for a not guilty verdict. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant. Of course, the opposite also applies. If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt, then your vote should be for a verdict of guilty against the defendant, and if all of you reach that conclusion, then the verdict

of the jury must be guilty for the defendant. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Remember also that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be resolved at some later time.

FINAL INSTRUCTION NO. 14 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the court security officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. **Remember that you should not tell anyone—including me—how your votes stand numerically.**

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. **The verdict, whether not guilty or guilty, must be unanimous.** Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when

each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the court security officer that you are ready to return to the courtroom.

Dated June 23rd, 2010.

BY THE COURT:



JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE