U.S.C.A. No. 11-50431

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GILBERT FLORES,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of California
Honorable Roger T. Benitez

APPELLANT'S REPLY BRIEF

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UNITED STATES COURT OF APPEALS

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I

INTRODUCTION

Appellee has responded to appellant's brief in a caustic, bombastic, and even mean-spirited form certainly not becoming of the United States Attorney's Office for the Southern District of California, nor the United States government. Regardless of the merits of the case, such inflammatory language and ad hominem attacks are unusual and certainly unprofessional at best. Defense counsel will resist the temptation to respond in kind.

What does appear clear, however, is that with the numerous continuances requested by the government, the change of appellate counsel, and the ultimate "circle the wagons" tactic of the appellee, that the appellee probably now senses that the days are numbered where juries will be allowed to be intentionally misled

by prosecutors regarding the presentation of testimony by "expert witnesses" that blind mules do not exist when the very position of the El Paso U.S. Attorney's Office and, ironically, the office where counsel for appellee works, take a contrary position.

Because evidence of Mr. Flores's relative wealth and concomitant lack of motive to smuggle drugs for money was completely excluded, and because the trial court erred in allowing the presentation of "no blind mule testimony," Mr. Flores's convictions must be reversed.

II

EVIDENCE OF MR. FLORES'S FINANCES

A. There was no waiver

It is undisputed that Mr. Flores made approximately $102,000 a year as a supervisor for a utility company. The prosecutor filed a motion to exclude any evidence to Mr. Flores's relative wealth. Contrary to appellee's argument, the government's written motion was argued by the prosecutor and ruled upon by the court. As noted by appellee, the prosecutor argued:

MR. CONOVER: The one specific thing, we would like to avoid any reverse poverty evidence from coming in, where the defendant would say, you know, I have a lot of money, I wouldn't need to do this. I don't believe that would be relevant, Your Honor.

THE COURT: I think that Ninth Circuit law holds that this is not admissible—

Mr. CONOVER: [he thanks the court for ruling in his favor.]

THE COURT: [I]f I'm not mistaken. So that would be denied.

[ER 8-9].

The record is unambiguous that Judge Benitez considered the motion and made his ruling, albeit erroneous. Appellee's claim that the motion was not considered or ruled upon is belied by its own brief and the clear record in this case. [Response Brief, "RB" 14-15.] Thus, there was no waiver.

B. Evidence of wealth is not analogous to evidence of poverty

Appellee is correct that there appears to be no controlling authority on the admission of wealth evidence. [RB 18.] Where appellee's analysis completely misses the mark is in trying to analogize poverty evidence to wealth evidence.

Certainly, the case law cited by appellee and well-established by this court regarding exclusion of poverty evidence is well-reasoned. See inter alia United States v. De La Fuente, 353 F.3d 766 (9th Cir. 2003), United States v. Mitchell, 172 F.3d 1104 (9th Cir. 1999). First, by allowing evidence of an individuals relative poverty to be presented before the jury, it would constitute an indictment on a large and growing section of our society. And the logic that poor people are more likely to commit crimes defies common sense. Poor people are equally or more likely to remain poor or to work hard to attempt to provide for their needs. In short, there is no evidence that poverty causes drug smuggling, and such an inference would be more prejudicial than probative. See Fed. R. Evid. 403. This line of cases need not be examined further.

However, the converse is not true. Would it be relevant, for instance, for the jury to know that an individual who was accused of smuggling drugs for a few thousand dollars of profit is a billionaire? A person's financial stability is relevant

evidence to negate the government's theory that a person smuggled drugs for profit when the individual has denied an awareness of the presence of drugs.

All relevant evidence is generally admissible, and the jury is certainly free to disregard it if it feels that there is other more pertinent evidence or its probative value is weak. But the point here is that Mr. Flores did not receive a fair trial as guaranteed by the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution when he was not allowed to explain to the jury that he had no financial motive to commit the crime because he was close to his retirement, was making one hundred thousand dollars a year, owned a home, and had several hundred thousand dollars in IRA funds. In a close case such as this, where Mr. Flores had a legitimate reason to travel to Mexico frequently and denied knowing about the drugs, the exclusion of this evidence could have certainly tipped the scales in favor of conviction.

The government's argument that the excluded evidence was "equivocal" and "[Mr. Flores] was a man of some means" is disingenuous at best. [RB 20.] Mr. Flores had enough means that the government recommended a fine and persuaded the court to impose a fine of fifteen thousand dollars forthwith, billed him approximately an additional fifteen thousand dollars for his federal defenders legal fees forcing him to liquidate a portion of his retirement savings to hire

private counsel to pay these expenses. It was up to the jury to decide how much weight to give to Mr. Flores's financial situation, not Mr. Conover, and certainly even less, Mr. Rehe.

At one point in the RB, the prosecutor takes a "cheap shot" at Mr. Flores that was not even done in trial by mentioning that he had a mistress in Mexico and speculating that perhaps he was supporting her, which contributed to his need to smuggle drugs. [RB 20.] The presence of a girlfriend in Tijuana, provided Mr. Flores with a compelling reason to be making frequent trips to Tijuana from the Los Angeles area, other than for drug smuggling and does not in any way undue the prejudice of barring him from presenting evidence of his relative wealth.

Compounding the unfairness of excluding evidence of Mr. Flores's financial means and lack of motive to smuggle drugs for money, the government was allowed to argue "greed" as a motive to smuggle drugs. [PSR 5, RB 20.] Appellee's reading of the record is strained, not clever, and disingenuous regarding the arguments that were made regarding greed. The prosecutor first argued: "That's a lot of risk , ladies and gentleman, if you don't know. That's why we know he did know." [SER 476.] Despite appellee's argument to the contrary (RB 31), the clear reference here is to the one man who was on trial and

who was seated at defense counsel, and ultimately convicted to serve a sentence of sixteen years, three months.

The prosecutor then continued to talk about the greed of drug smugglers in general: "And drug smugglers are greedy. They do this for a living." [SER 476.] While the prosecutor may have been pontificating about all drug smugglers in general, the thrust of his argument was obviously that Mr. Flores was among the class of drug smugglers who did this for a living because of his frequent border crossings. At no time was there an inference that Mr. Flores was importing drugs for personal use, but purely for profit. The entire theme of the prosecutor's argument was that Mr. Flores committed his crime for financial gain.

In short, Mr. Flores was stripped of his ability to argue that he was not greedy, nor did he have a need to risk his life and future to make a relatively small amount of money carrying drugs.[1/] Here, the trial court excluded evidence of wealth, probably relying erroneously on the line of cases regarding no admission of poverty evidence.

It is almost impossible and not required under our system of justice that a person prove innocence. Here, the evidence of Mr. Flores's wealth was not a

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[1/] While Agent Krause testified that the package that Mr. Flores was carrying was worth several hundred thousands of dollars, he did not clarify this confusing testimony by indicating that drug couriers generally only receive a small amount of money relative to the merchandise they are carrying.

"sympathy play," but an attempt to create reasonable doubt by showing that a man with several hundred thousand dollars in the bank, a good paying job, and a house would be out of his mind to try to earn a few quick bucks by drug smuggling.

Thus, this court should reverse Mr. Flores's conviction to allow him to present all relevant evidence in his defense.

III

NO-BLIND MULE TESTIMONY

Appellant will not re-hash the factual background pertaining to this claim. Some of the judges in the United States District Court, Southern District never allow police agents to testify that blind mules do not exist. Unfortunately, for Mr. Flores, he was in front of one of the judge's who allows this kind of testimony. As noted in the AOB, Agent Krause was allowed to opine that drug traffickers would not have entrusted these drugs to Flores without his knowledge because of the modus operandi of drug organizations and the value of the merchandise. [AOB 15-24, RB 24.]

One of the most peculiar and potentially positive aspects of the common law system is the evolving nature of the law. While it may have been true that before prosecutors and DEA agents had reason to believe that the above is true, they now have every reason to believe otherwise.

First, in El Paso, in a series of cases with which the United States Attorney's Office is certainly familiar, individuals in a drug organization made copies of car keys and planted drugs in the vehicles of innocent occupants. This completely belies the government's position that the modus operandi is not to entrust drugs to individuals who do not know about them because they are valuable cargo. The

court can certainly take judicial notice of these Federal cases and requests all affidavits and materials pertaining to these cases (Fed. R. Evid. 201(b)). See e.g. Motion of Dismissal, United States v. Magallanes, U.S.D.C. Western District of Texas, El Paso Division, attached as Exhibit A.)

Second, as noted in the AOB, and which predictably drew the most nasty remarks from opposing counsel, the United States Attorney's Office where the U.S. Attorney who wrote the Response Brief works, has acknowledged the existence of more than thirty probable blind mule cases, in the same border crossing point where Mr. Flores was arrested. The intention of counsel in bringing these San Diego cases to this court's attention was certainly not the promotion of his "commercial website," but to emphasize the incongruity of government counsel for the appellee arguing a position essentially contrary to that of his office. It is interesting that the United States Attorney's Office did not apparently post this material on their own website, but counsel has discovered that it does appear on a non-commercial website as well. See Memorandum re Disclosure of Use of Advertisements, http://www.fd.org/navigation/select-topics-in-criminal-defense/common-offenses/controlled-substances/supporting-pages/blind-mule-resources, attached as Exhibit B. Counsel possesses the cases referenced in attachment B, but is bound by a protective order regarding these files. However, this court

should take judicial notice of their existence, and a copy of them will be placed under seal at this court's request. And this court should request the lodging of this material to help resolve this case and to promote justice. See Fed. R. Evid. 201.

Finally, more blind mule cases have appeared in the San Diego area. Magnetic boxes containing drugs have been strapped to the bottom of cars. In a matter of a few seconds, an innocent passenger to Tijuana can become a convicted drug smuggler, especially after the jury hears evidence that no blind mules exist. See inter alia, Surreptitious Smugglers Foiled by Savvy Travelers, http://www.sandiegoreader.com/news/2012/may/25/stringers-surreptitious-smugglers-foiled-/.

The prosecution and the government expert witness had to have been aware of the El Paso cases because the investigation in the highly publicized El Paso cases took place almost contemporaneously with Mr. Flores's investigation. And while the San Diego-Tijuana blind mule cases were publicized after Mr. Flores's conviction, it appears that the matter of these blind mules was being investigated substantially before the government's notice on March 12, 2012. Thus, there is a troubling probability that the government was aware of Tijuana-San Diego "blind mules" at the time the time agent Krause testified.

It is was fundamentally unfair for the court to allow police "expert witnesses" to testify that they have never known of any blind mule case when both the prosecutors and agents themselves are well-aware that there have been many blind mules even apart from the highly publicized cases. See inter alia Michael Levine, Blind Mules - Fiction or Fact?, Law Enforcement Executive Journal, Department of Law Enforcement and Judgment Administration, Western Illinois University (April 2006). The defense attorney made some attempts to impeach the testimony of agent Krause, but was not even allowed to do this. (AOB 16-18.)[2/]

Case law from the Unites States Supreme Court recognizes these fundamental tenets of fairness. Under Napue v. Illinois 360 U.S. 264 (1959) a prosecutor's use of false testimony violates a defendant's due process rights, and the prosecutor has an obligation to correct false testimony. Here, the prosecutor had an ethical duty to admonish agent Krause, assuming that he did not already know, that there were documented cases of drug organizations using blind mules

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[2/] It is unclear whether trial attorney Garrison was familiar with the El Paso blind mule cases that the U.S. government admitted existed. We can infer that while the government was probably familiar with the Tijuana-Mexico public transportation blind mule cases that Mr. Garrison, like current appellate counsel, was not aware until the United States Attorney's Office on February 2, 2012, disseminated the shocking but innocuously entitled document, "Disclosure re Use of Advertisements," Exhibit B.

to carry valuable cargo, evidence directly contradictory to that presented by Agent Krause.

CONCLUSION

Legally and ethically, Mr. Flores is entitled to a new trial.

Regardless of whether the prosecution is right and Mr. Flores just happens to be one of the more dumb drug smugglers in recent times, risking his pension, marriage, and to commit a crime he had no reason to commit, he certainly had the right to present evidence which could have led to an acquittal in his case. Unfortunately, what is more likely is that fifty-five year old Mr. Flores is guilty of marital infidelity, and not drug smuggling, for which he is now paying a sentence of sixteen years, three months with no prior criminal record.

For the foregoing reasons, appellant respectfully requests that Mr. Flores's conviction be reversed.

Respectfully submitted,

DATED: September 10, 2012

s/ Russell S. Babcock
Russell S. Babcock
Attorney for Appellant FLORES

CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP 32 (A)(7)(C) AND CIRCUIT COURT RULE 32-1 FOR CASE 11-50431

I certify that pursuant to Fed. R. App. 32(a)(7)(C) and Ninth Circuit Court Rule 32-1 that APPELLANT'S REPLY is proportionally spaced, has a typeface font of 14 points or more and does not exceed 7,000 words and that the actual word count is: 2,458 words.

Date: September 10, 2012

s/ Russell S. Babcock
Russell S. Babcock
Law Offices of Russell S. Babcock
Attorneys for Gilbert Flores

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	Cause Number: EP-10-~~CR-3155-DB~~
v.	§	
	§	
RICARDO MAGALLANES,	§	
	§	
Defendant.	§	

MOTION FOR JUDGEMENT OF ACQUITTAL, PURSUANT TO FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 29(c), AND MOTION TO DISMISS THE INDICTMENT AND THE SUPERSEDING INDICTMENT

Comes now the United States of America, by and through its United States Attorney for the Western District of Texas, and files this Motion for Judgement of Acquittal, Pursuant to Federal Rules of Criminal Procedure, Rule 29(c), and Motion to Dismiss the Indictment and the Superseding Indictment, in the above entitled and numbered cause, and in support thereof the Government will show the following:

On November 17, 2010, Ricardo Magallanes was arrested and charged by a criminal complaint with Possession of a Controlled Substance with Intent to Distribute and Importation of a Controlled Substance.

On December 15, 2010, a federal grand jury sitting in El Paso, in the Western District of Texas, returned a true bill on a two count indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: 50 kilograms or more of marijuana, and one count of Possession of a Controlled Substance, namely: 50 kilograms or more of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause. On February 23, 2011, a federal grand jury sitting in El Paso, in the Western District of Texas returned a true bill on a two

count superseding indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: a quantity of marijuana, and one count of Possession of a Controlled Substance, namely: a quantity of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause.

Beginning on May 9, 2011, a jury trial was held for Ricardo Magallanes in El Paso, in the Western District of Texas. On May 10, 2011, the jury returned a guilty verdict on both counts of the superseding indictment, which was pending in the above entitled and numbered cause. On May 13, 2011, Ricardo Magallanes, through his attorney, filed a Motion for Acquittal.

On or about June 23, 2011, based on an investigation which was conducted by the Federal Bureau of Investigation (FBI), the United States Attorney's Office for the Western District of Texas, El Paso Division, received sufficient reliable evidence which indicated that Ricardo Magallanes was the victim of a drug trafficking organization's scheme to import marijuana from the Republic of Mexico into the United States. As part of this drug trafficking organization's scheme, members of the scheme used individuals, including Ricardo Magallanes, who had access to the dedicated commuter lane. In furtherance of the scheme, the organization members would place duffle bags, which contained bundles of marijuana in the individuals' vehicle's trunk, while the vehicle was still located in Ciudad Juarez, Chihuahua, Mexico. In most of these instances, the drug trafficking organization members had previously obtained copies of the key to access the individuals' vehicle's trunk. Then, the individual would cross the drug laden vehicle into and park the vehicle in the United States. Subsequently, the organization members would remove the marijuana from the individuals' vehicle's trunk. Most importantly, the investigation revealed that these individuals,

including Ricardo Magallanes, had no knowledge that they were being used by the organization and that marijuana was being placed in their vehicles. Therefore, based on this investigation, the Government believes that Ricardo Magallanes was and is innocent.

On June 27, 2011, the Government filed a Motion to Dismiss the Indictment, and on the same date the Court granted the Motion and dismissed the superseding indictment, which indictments were pending in the above entitled and numbered cause. At the time, the Government should have moved to dismiss both the indictment and the superseding indictment.

When an inquiry is made on the ECF system, in regard to the above entitled and numbered cause, it reflects that the Ricardo Magallanes was convicted and the verdict form, Document number 52, is still accessible to the public.

Based on the foregoing, and since on May 10, 2011, the jury returned a guilty verdict against Ricardo Magallanes on both counts of the superseding indictment, filed in the above entitled and numbered cause, the Government hereby moves this Court, pursuant to the Federal Rules of Criminal Procedure, Rule 29(c)[1], to set aside the verdict and enter a judgement of acquittal; and the Government moves that the Court find that Ricardo Magallanes is "not guilty" and "innocent" of the charges alleged in the indictment and superseding indictment, filed on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause.

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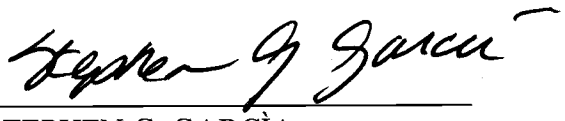
[1] Federal Rules of Criminal Procedure, Rule 29(c)(1) requires the defendant to file a motion for judgement of acquittal within 14 days after a guilty verdict. On May 13, 2011, Ricardo Magallanes, through his attorney, filed a Motion for Acquittal. The guilty verdict was entered on May 10, 2011.

Furthermore, based on the foregoing, the Government hereby, pursuant to the Federal Rules of Criminal Procedure, Rule 48, moves to dismiss the indictment and superseding indictment filed, on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause.

WHEREFORE, the Government respectfully requests that the Court grant this Motion.

Respectfully submitted,

ROBERT PITMAN
UNITED STATES ATTORNEY

BY: 

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CERTIFICATE OF SERVICE

I hereby certify that on the 22th day of May 2012, a true and correct copy of the foregoing instrument was sent to:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	Cause Number: EP-10-CR-3155-DB
v.	§	
	§	
RICARDO MAGALLANES,	§	
	§	
Defendant.	§	

ORDER GRANTING GOVERNMENT'S
MOTION FOR JUDGEMENT OF ACQUITTAL AND MOTION TO DISMISS

On this date came to be considered the Government's Motion for Judgment of Acquittal, Pursuant to Federal Rules of Criminal Procedure, Rule 29(c), and Motion to Dismiss the Indictment and the Superseding Indictment, in the above entitled and numbered cause.

THE COURT FINDS that, the Government's Motion should be GRANTED.

THE COURT FINDS that, on December 15, 2010, a federal grand jury sitting in El Paso, in the Western District of Texas, returned a true bill on a two count indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: 50 kilograms or more of marijuana, and one count of Possession of a Controlled Substance, namely: 50 kilograms or more of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause.

THE COURT FINDS that, on February 23, 2011, a federal grand jury sitting in El Paso, in the Western District of Texas returned a true bill on a two count superseding indictment charging Ricardo Magallanes with one count of Importation of a Controlled Substance, namely: a quantity of marijuana, and one count of Possession of a Controlled Substance, namely: a quantity of marijuana, with Intent to Distribute, which was filed in the above entitled and numbered cause.

The COURT FINDS that, beginning on May 9, 2011, a jury trial was held for Ricardo Magallanes in El Paso, in the Western District of Texas and on May 10, 2011, the jury returned a guilty verdict on both counts of the Superseding Indictment, pending in the above entitled and numbered cause.

The COURT FINDS the following:

> On or about June 23, 2011, based on an investigation which was conducted by the Federal Bureau of Investigation (FBI), the United States Attorney's Office for the Western District of Texas, El Paso Division, received sufficient reliable evidence which indicated that Ricardo Magallanes was the victim of a drug trafficking organization's scheme to import marijuana from the Republic of Mexico into the United States. As part of this drug trafficking organization's scheme, members of the scheme used individuals, including Ricardo Magallanes, who had access to the dedicated commuter lane. In furtherance of the scheme, the organization members would place duffle bags, which contained bundles of marijuana in the individuals' vehicle's trunk, while the vehicle was still located in Ciudad Juarez, Chihuahua, Mexico. In most of these instances, the drug trafficking organization members had previously obtained copies of the key to access the individuals' vehicle's trunk. Then, the individual would cross the drug laden vehicle into and park the vehicle in the United States. Subsequently, the organization members would remove the marijuana from the individuals' vehicle's trunk. Most importantly, the investigation revealed that these individuals, including Ricardo Magallanes, had no knowledge that they were being used by the organization and that marijuana was being placed in their vehicles.

THE COURT FINDS that, Ricardo Magallanes is "not guilty" and is innocent of the charges with which he was charged in the indictment and superseding indictment, filed on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause.

THE COURTS ORDERS that, since Ricardo Magallanes is innocent, the following:

THE COURT ORDERS that, pursuant to the Federal Rules of Criminal Procedure, Rule 29(c), the guilty verdict entered by the jury on May 10, 2010, on both counts of the Superseding

Indictment, which was filed in the above entitled and numbered cause, is, hereby, SET ASIDE and Ricardo Magallanes is, hereby, ACQUITTED OF THESE CHARGES; and

THE COURT ORDERS that, pursuant to the Federal Rules of Criminal Procedure, Rule 48, the indictment and superseding indictment filed, on December 15, 2010, and on February 23, 2011, respectively, in the above entitled and numbered cause, are hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED this _____ day of _____, 2012.

_____
DAVID BRIONES
UNITED STATES SENIOR DISTRICT JUDGE

Memorandum

Subject	Date
Disclosure re Use of Advertisements	February 2, 2012

To	From
Defense Counsel	United States Attorney's Office

HSI Special Agent Robert Kearney is in possession of information that, in or about November 2011, two drug transportation brokers made statements that an advertisement was placed in a Mexican newspaper (likely "El Mexicano") soliciting persons to drive vehicles from the Republic of Mexico into the United States, that persons responding to the advertisement would be offered employment picking up vehicles in the United States and bringing them to Mexico, and that, at some point, certain of the persons would be tricked into unknowingly crossing drugs, or some type of contraband, into the United States.

In late January 2012, HSI Special Agent Daniel Siazon came into possession of information that at least five or six groups of drug trafficking recruiters in the Baja California border region have placed help wanted advertisements in Mexican publications. The advertisements are used to recruit drug couriers, although they appear to offer employment. One recruiter said that he pays the drivers that he hires through the advertisements $200 per job and that the drivers do not know that they are bringing drugs into the United States. The advertisement allegedly placed by this recruiter ran in "La Frontera."

This information may exceed the scope of discovery mandated by law and, to that extent, is provided voluntarily and solely as a matter of discretion. By providing this information, the United States does not waive its right to object to any future discovery requests on this or other topics, and does not waive any objection to the admissibility of the above-referenced information.

9th Circuit Case Number(s) 11-50431

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > *PDF Printer/Creator*).

****

CERTIFICATE OF SERVICE
When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [ ].

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format) [ ]

****

CERTIFICATE OF SERVICE
When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [Sep 10, 2012].

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I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Gilbert Flores

Signature (use "s/" format) s/ Russell S. Babcock