

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTONIO RODRIGUEZ-DIAZ,

Defendant.

No. CR18-4036-LTS

**COURT’S INSTRUCTIONS
TO THE JURY**

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No. 1 — INTRODUCTION

Congratulations on your selection as a juror! These Instructions will help you better understand the trial and your role in it.

In an Indictment, a Grand Jury has charged Antonio Rodriguez-Diaz with the offense of being a removed alien found in the United States. An Indictment is simply an accusation—it is not evidence of anything. The defendant has pled not guilty to the offense charged against him, and he is presumed absolutely not guilty of the offense, unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

You must decide during your deliberations whether or not the prosecution has proved the defendant's guilt on the offense charged against him beyond a reasonable doubt. In making your decision, you are the sole judges of the facts. You must not decide this case based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence, these instructions, and any additional oral or written instructions that I may give you.

Do not take anything that I have said or done or that I may say or do as indicating what I think of the evidence or what I think your verdict should be.

Remember, only defendant Antonio Rodriguez-Diaz, and not anyone else, is on trial. Also, he is on trial *only* for the offense charged in the Indictment, and not for anything else.

Please remember that this case is important to the parties and to the fair administration of justice. Therefore, please be patient, consider all of the evidence, and do not be in a hurry to reach a verdict just to be finished with the case.

No. 2 — PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The presumption of innocence means that the defendant is presumed to be absolutely not guilty.

- This presumption means that you must put aside all suspicion that might arise from the defendant's arrest, the charge, or the fact that he is here in court
- This presumption remains with the defendant throughout the trial
- This presumption is enough, alone, for you to find the defendant not guilty of the offense charged against him

The burden is always on the prosecution to prove guilt beyond a reasonable doubt.

- This burden never, ever shifts to the defendant to prove his innocence
- This burden means that the defendant does not have to call any witnesses, produce any evidence, cross-examine the prosecution's witnesses, or testify
- This burden means that, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict
- This burden means that you must find the defendant not guilty of a charged offense unless the prosecution proves beyond a reasonable doubt that he has committed each and every element of that offense

No. 3 — REASONABLE DOUBT

A reasonable doubt is a doubt based upon reason and common sense.

- A reasonable doubt may arise from evidence produced by the prosecution or the defendant, keeping in mind that the defendant never, ever has the burden or duty to call any witnesses or to produce any evidence
- A reasonable doubt may also arise from the prosecution's lack of evidence

The prosecution must prove the defendant's guilt beyond a reasonable doubt.

- Proof beyond a reasonable doubt requires careful and impartial consideration of all of the evidence in the case before making a decision
- Proof beyond a reasonable doubt is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs
- Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt

The prosecution's burden is heavy, but it does not require proof beyond all doubt.

No. 4 — OTHER IMPORTANT TERMS

Before I turn to specific instructions on the offense charged in this case, I will explain some important terms.

Elements

The offense charged consists of “elements,” which are the parts of the offense. The prosecution must prove beyond a reasonable doubt all of the elements of the offense charged against the defendant for you to find him guilty of that offense.

Timing

The Indictment alleges an approximate time period or an approximate date for the charged offense.

- The prosecution does not have to prove that the offense occurred on an exact date
- The prosecution only has to prove that the offense occurred at a time that was reasonably close to or within the period or the date alleged for the offense in the Indictment

Location

For purposes of the charged offense, the prosecution must prove that the defendant’s conduct occurred in the Northern District of Iowa.

Sioux County is in the Northern District of Iowa.

* * *

I will now give you the “elements” instruction on the charged offense. The “elements” themselves are set out in **bold**.

No. 5 — REMOVED ALIEN FOUND IN THE UNITED STATES

The Indictment charges the defendant with being a removed alien found in the United States. The defendant denies that he committed this offense. The prosecution must prove beyond a reasonable doubt *all* of the following elements against the defendant:

One, defendant is an alien.

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

Two, on or about November 13, 2008, defendant was removed from the United States to Mexico or departed from the United States while an order of removal was outstanding.

The prosecution is required to prove beyond a reasonable doubt that defendant was removed from the United States to Mexico, or that he departed the United States while an order of removal, including an expedited removal order, was outstanding. A removal is also called a deportation.

A “voluntary departure” and a “voluntary return” are processes by which an alien departs the United States without an order of removal. Evidence of a voluntary departure or a voluntary return is not sufficient to prove this element.

Three, on or about March 24, 2018, defendant was knowingly and voluntarily in the United States.

The prosecution

- *is not* required to prove where or when the defendant re-entered the United States
- *is* required to prove that the defendant was knowingly and voluntarily present in the United States

Four, on or about March 24, 2018, defendant was found in the United States.

An alien is “found in” the United States when the alien is “discovered in” the United States by immigration authorities. “Discovery” consists of three elements:

- the discovery of the alien’s physical presence in the United States;
- the discovery of the alien’s identity; and
- the discovery of the alien’s status as a previously removed alien who had not obtained consent to apply for readmission

Five, defendant did not receive the consent of the Attorney General or the Secretary of the Department of Homeland Security to apply for readmission to the United States after his removal.

You may, but are not required to, find that the Secretary did not consent to the defendant’s application for readmission from evidence that immigration agents searched for, but did not find, a record indicating that the defendant had applied for readmission to the United States in either

- the Citizenship and Immigration Service central index system (CIS database), or
- defendant’s Alien File (A-File) with the Immigration and Customs Enforcement (ICE)

If the prosecution *does not* prove all of these elements beyond a reasonable doubt, then you must find the defendant not guilty of the offense of “being a removed alien found in the United States.”

No. 6 — DEFINITION OF EVIDENCE

Evidence is the following:

- testimony
- exhibits admitted into evidence, but exhibits are not necessarily more important than any other evidence, just because they are shown to you
- stipulations, which are agreements between the parties that certain facts are true; you must treat stipulated facts as having been proved

The following are not evidence:

- testimony that I tell you to disregard
- exhibits that are not admitted into evidence
- statements, arguments, questions, and comments by the lawyers
- objections and rulings on objections
- anything that you see or hear about this case outside the courtroom

You may have heard of “direct” or “circumstantial” evidence.

- “Direct” evidence is direct proof of a fact
 - An example is testimony by a witness about what that witness personally saw or heard or did
- “Circumstantial” evidence is proof of one or more facts from which you could find another fact

- An example is testimony that a witness personally saw a broken window and a brick on the floor, from which you could find that the brick broke the window
- You should consider both kinds of evidence, because the law makes no distinction between their weight
- The weight to be given any evidence, whether it is “direct” or “circumstantial,” is for you to decide.

Some evidence may be admitted only for a limited purpose.

- I will tell you if that happens
- I will instruct you on the purposes for which the evidence can and cannot be used

No. 7 —TESTIMONY 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 whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You may need to decide whether a contradiction is an innocent misrecollection or lapse of memory or, instead, an intentional falsehood. This may depend on whether the contradiction involves an important fact or only a small detail.

In deciding what testimony of any witness to believe, consider the witness' intelligence, the opportunity the witness had to see or hear the things he or she testifies about, the quality of the witness' memory, any motives the witness may have for testifying a certain way, the witness' demeanor, whether the witness said something different at an earlier time, the witness' drug or alcohol use or addiction, if any, the general reasonableness of the testimony, the extent to which the testimony is consistent with other evidence that you believe and any other factors that you find bear on believability or credibility.

You should not give any more or less weight to a witness' testimony just because the witness is a public official, a law enforcement officer or an expert.

You may give any witness' opinion whatever weight you think it deserves, but you should consider the reasons and perceptions on which the opinion is based, any reason that the witness may be biased and all of the other evidence in the case.

You may hear that a witness was once convicted of a crime. You may use that evidence only to help you decide whether to believe the witness and how much weight to give to the witness' testimony.

If the defendant testifies, you should judge his testimony in the same way that you judge the testimony of any other witness.

Remember, it is your exclusive right to give any witness' testimony whatever weight you think it deserves.

No. 8 — OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon.

- If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself
- Do not hold it against a lawyer or a party that a lawyer has made an objection, because lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible

No. 9 — BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of your hearing.

- I may hold a bench conference while you are in the courtroom or call a recess
- These conferences are to decide how certain evidence is to be treated, to avoid confusion and error, and to save your valuable time, so please be patient
- We will do our best to keep such conferences short and infrequent

No. 10 — NOTE-TAKING

You are allowed to take notes during the trial if you want to.

- Be sure that your note-taking does not interfere with listening to and considering all the evidence
- Your notes are not necessarily more reliable than your memory or another juror's notes or memory
- Do not discuss your notes with anyone before you begin your deliberations
- Leave your notes and these instructions on your chair during recesses and at the end of the day
- At the end of trial, you may take your notes with you or leave them to be destroyed
- No one else will ever be allowed to read your notes, unless you let them
- If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence
- An official court reporter is making a record of the trial, but her transcripts will not be available for your use during your deliberations

No. 11 — CONDUCT OF JURORS DURING TRIAL

You must decide this case *solely* on the evidence and the law in these Instructions and any additional written or oral instructions that I may give. You must also keep to yourself any information that you learn in court until it is time to discuss this case with your fellow jurors during deliberations.

To ensure fairness, you must obey the following rules:

- Do not talk among yourselves about this case, or about anyone involved with it, until you go to the jury room to decide on your verdict.
- Do not talk with anyone else about this case, or about anyone involved with it, until the trial is over.
- When you are outside the courtroom, do not let anyone ask you about or tell you anything about this case, anyone involved with it, any news story, rumor, or gossip about it, until the trial is over. If someone should try to talk to you about this case during the trial, please report it to me.
- During the trial, you should not talk to any of the parties, lawyers, or witnesses—even to pass the time of day—so that there is no reason to be suspicious about your fairness. The lawyers, parties, and witnesses are not supposed to talk to you, either.
- You may need to tell your family, friends, teachers, co-workers, or employer about your participation in this trial, so that you can tell them when you must be in court and warn them not to ask you or talk to you about the case. However, do not provide any information to

anyone by any means about this case until after I have accepted your verdict. That means do not talk face-to-face or use any electronic device or media, such as the telephone, a cell or smart phone, a Blackberry, a PDA, a computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, any blog, or any website such as Facebook, Instagram, Snapchat, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict.

- Do not do any research—on the Internet, in libraries, in the newspapers, in dictionaries or other reference books, through social media—or in any other way conduct any investigation about this case, the law, or the people involved on your own.
- Do not visit or view any place discussed in this case and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony.
- Do not read any news stories or articles, in print, on the Internet, in any “blog,” or through social media about this case, or about anyone involved with it, or listen to any radio or television reports about it or about anyone involved with it, or let anyone tell you anything about any such news reports. I assure you that when you have heard all the evidence, you will know more about this case than anyone will learn through the news media—and it will be more accurate.
- Do not make up your mind during the trial about what the verdict should be. Keep an open mind until you have had a chance to discuss the evidence with other jurors during deliberations.

- Do not decide the case based on “implicit biases.” Everyone, including me, has feelings, assumptions, perceptions, fears, and stereotypes—that is, “implicit biases”—that we may not be aware of. These hidden thoughts can impact what we see and hear, how we remember what we see and hear, and how we make important decisions. Because you are making very important decisions in this case, I strongly encourage you to evaluate the evidence carefully and to resist jumping to conclusions based on personal likes or dislikes, generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict, based solely on the evidence and the instructions that I give you. Our system of justice is counting on you to render a fair decision based on the evidence, not on biases.
- A Verdict Form is attached to these Instructions. A Verdict Form is simply a written notice of your decision. After your deliberations, if you have reached a unanimous verdict, your foreperson will complete one copy of the Verdict Form by marking the appropriate blank or blanks for each question. You will all sign that copy to indicate that you agree with the verdict and that it is unanimous. Your foreperson will then bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- If, at any time during the trial, you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please let me know. I want you to be comfortable, so please do not hesitate to tell us about any problem.

I will read the remaining Instructions at the end of the evidence.

No. 12 — DUTY TO DELIBERATE

A verdict must represent the careful and impartial judgment of each of you. However, before you make that judgment, you must consult with one another and try to reach agreement, if you can do so consistent with your individual judgment.

- If you are convinced that the prosecution has not proved beyond a reasonable doubt that the defendant is guilty of the charged offenses, say so
- If you are convinced that the prosecution has proved beyond a reasonable doubt that the defendant is guilty of the charged offenses, say so
- Don't give up your honest beliefs just because others think differently or because you simply want to be finished with the case
- On the other hand, do not hesitate to re-examine your own views and to change your opinions, if you are convinced that they are wrong
- You can only reach a unanimous verdict if you discuss your views openly and frankly, with proper regard for the opinions of others, and with a willingness to re-examine your own views
- Remember that you are not advocates, but judges of the facts, so your sole interest is to seek the truth from the evidence
- The question is never who wins or loses the case, because society always wins, whatever your verdict, when you return a just verdict based solely on the evidence and the instructions that I give you
- You must consider all of the evidence bearing on each question before you

- Take all the time that you feel is necessary
- Remember that this case is important to the parties and to the fair administration of justice, so do not be in a hurry to reach a verdict just to be finished with the case

No. 13 — DUTY DURING DELIBERATIONS

You must follow certain rules while conducting your deliberations and returning your verdict:

- Select a foreperson to preside over your discussions and to speak for you here in court.
- Do not consider punishment in any way in deciding whether the defendant is not guilty or guilty. If the defendant is guilty, I will decide what his sentence should be.
- Communicate with me by sending me a note through a Court Security Officer (CSO). The note must be signed by one or more of you. Remember that you should not tell anyone, including me, how your votes stand. I will respond as soon as possible, either in writing or orally in open court.
- Again, nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.
- Reach your verdict without discrimination. In reaching your verdict, you must not consider the defendant's race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the defendant unless you would return the same verdict without regard to his race, color, religious beliefs, national origin, or sex. To emphasize the importance of this requirement, the verdict form contains a certification statement. Each of you should carefully read that statement, then sign your name in the appropriate place in the

signature block, if the statement accurately reflects how you reached your verdict.

- Complete the Verdict Form. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict.
- When you have reached a verdict, the foreperson will advise the CSO that you are ready to return to the courtroom.

Good luck with your deliberations.

IT IS SO ORDERED.

DATED this 8th day of April, 2019.



Leonard T. Strand, Chief Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANTONIO RODRIGUEZ-DIAZ,

Defendant.

No. CR18-4036-LTS

VERDICT FORM

As to defendant Antonio Rodriguez-Diaz, we, the Jury, find as follows:

REMOVED ALIEN FOUND IN THE UNITED STATES	VERDICT
On the offense of being a removed alien found in the United States, as charged in the Indictment and explained in Instruction No. 5, please mark your verdict.	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty

CERTIFICATION

By signing below, each juror certifies the following:

- (1) that consideration of the defendant's race, color, religious beliefs, national origin, or sex was not involved in reaching the juror's individual decision, *and*
- (2) that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the defendant's race, color, religious beliefs, national origin, or sex.

Date

_____ Foreperson	_____ Juror
_____ Juror	_____ Juror
_____ Juror	_____ Juror
_____ Juror	_____ Juror
_____ Juror	_____ Juror
_____ Juror	_____ Juror