

No. 11-210

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**In the Supreme Court of the United States**

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UNITED STATES OF AMERICA, PETITIONER

*v.*

XAVIER ALVAREZ

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**JOINT APPENDIX**

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PETITION FOR A WRIT OF CERTIORARI FILED: AUG. 18, 2011  
CERTIORARI GRANTED: OCT. 17, 2011

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UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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08-50345

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

*v.*

XAVIER ALVAREZ, DEFENDANT-APPELLANT

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Filed: Sept. 26, 2007

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**DOCKET ENTRIES**

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DATE	DOCKET NUMBER	PROCEEDINGS
8/5/08	<u>1</u>	DOCKETED CAUSE AND ENTERED APPEARANC- ES OF COUNSEL. Filed in District Court on 08/05/2008. Reporters Transcript requi- red: Yes. Sentence imposed: probation. Transcript shall be ordered by 08/26/2008 for Appellant Xavier Alvarez. Transcript shall be filed by 10/27/2008. Appellant briefs and excerpts due by 12/04/2008 for Xavier

(1)

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DATE	DOCKET NUMBER	PROCEEDINGS
		Alvarez. Appellee brief due 01/05/2009 for United States of America. Appellant reply brief due by 01/20/2009 for Xavier Alvarez.—[Edited 08/08/2008 by BY] (PG)
		* * * * *
2/13/09		Filed Opening Brief [ <u>10</u> ] filed by Xavier Alvarez in 08-50345. Within 5 working days of the filing of this order, filer is ordered to file 10 copies of the brief in paper format, with a Blue cover, accompanied by certification that the brief is identical to the version submitted electronically. (FT)
		* * * * *
4/24/09	<u>17</u>	Submitted (ECF) Answering brief for review. Submitted by Appellee USA. Date of service: 04/24/2009. [6896366] (CM)

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DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
11/4/09	<u>26</u>	ARGUED AND SUBMITTED TO THOMAS G. NELSON, JAY S. BYBEE and MILAN D. SMITH, JR.. [7119203] (LN)
		* * * * *
8/17/10	<u>28</u>	FILED OPINION (THOMAS G. NELSON, JAY S. BYBEE and MILAN D. SMITH, JR.) REVERSED AND REMANDED. Judge: JSB Dissenting, Judge: MDS Authoring. FILED AND ENTERED JUDGMENT. [7441940] (RP)
		* * * * *
9/30/10	<u>33</u>	Filed (ECF) Appellee USA petition for panel rehearing and petition for rehearing en banc (from 08/17/2010 opinion). Date of service: 09/30/2010. [7493340] (TP)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/22/10	<u>35</u>	Filed (ECF) Appellant Xavier Alvarez response to ,for panel and en banc rehearing (statistical entry), for panel and en banc rehearing, ,to set response by any party to anything. Date of service: 10/22/2010. [7520302]. (JDL)
* * * * *		
3/21/11	<u>37</u>	Filed Order for PUBLICATION (THOMAS G. NELSON, JAY S. BYBEE and MILAN D. SMITH, JR.) Judges T.G. Nelson and M. Smith have voted to deny the petition for panel rehearing. Judge M. Smith has voted to deny the petition for rehearing en banc, and Judge T.G. Nelson has so recommended. Judge Bybee has voted to grant the petition for panel rehearing and rehearing en banc. The full court was advised of the petition for rehearing en banc. A judge

DATE	DOCKET NUMBER	PROCEEDINGS
		requested a vote on whether to rehear the matter en banc, and the matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc is DENIED. See order for full text. [7687964] (PH)

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
(Western Division - Los Angeles)

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No. 2:07-cr-01035-RGK-1  
UNITED STATES OF AMERICA

*v.*

XAVIER ALVAREZ

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Filed: Sept. 26, 2007

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**DOCKET ENTRIES**

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DATE	DOCKET NUMBER	PROCEEDINGS
9/26/07	<u>1</u>	INFORMATION filed as to Xavier Alvarez (1) count(s) 1. Offense occurred in Los An- geles. (mw) (Entered: 09/28/2007)
		* * * * *
12/21/07	<u>12</u>	NOTICE OF MOTION AND MOTION to Dismiss Case

DATE	DOCKET NUMBER	PROCEEDINGS
		(INDICTMENT) Filed by Defendant Xavier Alvarez Motion set for hearing on 1/14/2008 at 10:00 AM before Judge Edward Rafeedie. (Attachments: # <u>1</u> Exhibit) (Fuller, Brianna) (Entered: 12/21/2007)
		* * * * *
1/2/08	<u>13</u>	MEMORANDUM in Opposition to MOTION to Dismiss Case (INDICTMENT) <u>12</u> (Missakian, Craig) (Entered: 01/02/2008)
		* * * * *
1/7/08	<u>15</u>	REPLY opposition MOTION to Dismiss Case (INDICTMENT) <u>12</u> filed by Defendant Xavier Alvarez. (Fuller, Brianna) (Entered: 01/07/2008)
		* * * * *
2/20/08	<u>17</u>	First SUPERSEDING INFORMATION filed as to Xavier Alvarez (1) count(s)

DATE	DOCKET NUMBER	PROCEEDINGS
		1s-2s 18 USC 704 (b), (C) (1). (lom) (Entered: 02/22/2008)
		* * * * *
4/9/08	<u>29</u>	MINUTES OF IN CHAMBERS ORDER by Judge R. Gary Klausner denying defendant's Motion to Dismiss the Indictment. (sw) (Entered: 04/09/2008)
		* * * * *
4/30/08	<u>31</u>	PLEA AGREEMENT filed by Plaintiff USA as to Defendant Xavier Alvarez (Misakian, Craig) (Entered: 04/30/2008)
		* * * * *
5/5/08	<u>32</u>	MINUTES OF Change of Plea Hearing held before Judge R. Gary Klausner as to Defendant Xavier Alvarez. Defendant sworn. Court questions defendant regarding the plea. The Defendant Xavier Alvarez (1) pleads GUILTY to Count 1s. The

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>plea is accepted. The Court ORDERS the preparation of a Presentence Report. Sentencing set for 7/21/2008 at 10:00 AM before Judge R. Gary Klausner. The Court vacates the 5/9/08 trial date as to this defendant. Terms of bond to remain pending sentencing. Court Reporter: Lynne Smith. (sch) (Entered: 05/05/2008)</p>
		* * * * *
7/23/08	<u>41</u>	<p>JUDGMENT AND COMMITMENT by Judge R. Gary Klausner as to Defendant Xavier Alvarez (1), Count(s) 1s, Special Assessment of \$10. Fine of \$5,000 with interest as provided by law. Defendant is placed on Probation on Count 1 of the First Superseding Information for 3 years under the terms and conditions of U.S. Probation Office and General Order 318. Defendant shall perform 416 hours of commu-</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>nity service, as directed by the Probation Officer. The Court makes the recommendation that the defendant perform the community service hours at the V.A. Hospital in Loma Linda. Count(s) 1, 2s, The Underlying Information and Count 2 of the First Superseding Information are dismissed. Bond is ordered exonerated. Defendant advised of right to appeal. Signed by Judge Judge R. Gary Klausner. (sch) (Entered: 07/24/2008)</p>
		* * * * *
7/31/08	<u>45</u>	<p>NOTICE OF APPEAL to Appellate Court filed by Defendant Xavier Alvarez re Appeal of (Attachments: # <u>1</u> Judgment &amp; Commitment Order), Filed On: 7/23/08; Entered On: 7/24/08; Filing Fee. Waived. See Document Number 11. (Fuller, Brianna) Modified on 8/5/2008 (lr). (Entered: 07/31/2008)</p>

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DATE	DOCKET NUMBER	PROCEEDINGS
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9/17/08	<u>51</u>	AMENDED JUDGMENT as to Defendant Xavier Alvarez (1), Count(s) 1, 2s, The Underlying Information and Count 2 of the First Superseding Information are dismissed. Count(s) 1s, Special Assessment of \$10. Fine of \$5,000 with interest as provided by law. Defendant is placed on Probation on Count 1 of the First Superseding Information for 3 years under the terms and conditions of U.S. Probation Office and General Order 318. The fine shall be paid in monthly installments of \$175.00 per month. Signed by Judge Judge R. Gary Klausner. (ca) (Entered: 09/22/2008)
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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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No. CR 07-1035(A)-ER

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

XAVIER ALVAREZ, AKA "JAVIER ALVAREZ,"  
DEFENDANT

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[Filed: Feb. 20, 2008]

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**FIRST SUPERSEDING INFORMATION**

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The United States Attorney charges:

COUNT ONE

[18 U.S.C. § 704(b), (c)(1)]

On or about July 23, 2007, in Los Angeles county, within the Central District of California, defendant XAVIER ALVAREZ did falsely represent verbally that he had been awarded the Congressional Medal of Honor when, in truth as defendant knew, he had not received the Congressional Medal of Honor.

COUNT TWO

[18 U.S.C. § 704(b), (c)(1)]

On or about November 21, 2005, in Los Angeles County, within the Central District of California, defen-

dant XAVIER ALVAREZ did falsely represent verbally that he had been awarded the Congressional Medal of Honor when, in truth as defendant knew, he had not received the Congressional Medal of Honor.

THOMAS P. O'BRIEN  
United States Attorney

/s/ CHRISTINE C. EWELL  
CHRISTINE C. EWELL  
Assistant United States Attorney  
Chief, Criminal Division

CRAIG H. MISSAKIAN  
Assistant United States Attorney  
Public Integrity & Environmental  
Crimes Section