

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA.	:	CRIMINAL ACTION
	:	
v.	:	
	:	
MICHAEL J. FRAGALE	:	
	:	NO. 99-34

MEMORANDUM AND ORDER

YOHN, J. August , 1999

On April 28, 1999, defendant Michael J. Fragale was convicted after a trial by jury of: (1) conspiracy to hire or continue to employ aliens unauthorized for employment in the United States; and (2) knowingly continuing to employ aliens unauthorized for employment in the United States. ~~Through his counsel, the~~ **The** defendant **now** ~~moves the court,~~ pursuant to Federal Rule of Criminal Procedure 29, for judgment of acquittal, claiming that the government has failed to prove beyond a reasonable doubt ~~each and every one~~ **all** of the elements of the abovementioned crimes.

Upon consideration of the defendant's motion and brief in support thereof, and the government's response, I find that the evidence was **amply** sufficient to support the defendant's conviction on both counts. Therefore, the defendant's motion for judgment of acquittal will be denied.

I. FACTUAL BACKGROUND

The defendant ~~was~~ is an owner and operator of M & J Fragale Mushrooms (“M & J”), a mushroom growing and selling business, and Premier Mushrooms, Inc. (“Premier”), a mushroom packing business, both located in Kennett Square, Pennsylvania. See Information (“Info.”) at 1. The defendant's conviction in this case arose from his employment of aliens unauthorized for employment in the United States at M & J and Premier. See id. at 3-5.

On January 21, 1999, the United States Attorney filed an information against the defendant. Count one of the information charged the defendant with conspiracy in violation of 18 U.S.C. § 371, claiming that the defendant:

did knowingly, intentionally, and unlawfully combine, conspire, confederate, and agree with other persons both known and unknown to the grand jury, to engage in a pattern and practice to: (1) hire for employment in the United States aliens knowing the aliens to be unauthorized for employment in the United States in violation of 8 U.S.C. § 1324(a)(1)(A) and 8 U.S.C. § 1324a(f)(1); and (2) after hiring aliens for employment, continue to employ in the United States aliens knowing that the aliens are and have become unauthorized for employment in the United States in violation of 8 U.S.C. § 1324a(a)(2) and 8 U.S.C. § 1324a(f)(1).

See Info. at 3. Count two charged the defendant with violations of 8 U.S.C. § 1324a(a)(2) and 8 U.S.C. § 1324a(f)(1) for knowingly and intentionally continuing to employ aliens unauthorized for employment in the United States. See Info. at 5.

At trial, witnesses testified to the facts described below (which the court must view in the light most favorable to the government for this purpose):

On April 3, 1998, Sally Angelucci, a special agent and criminal investigator for the Immigration and Naturalization Service (“INS”), sent a notice of inspection letter to M & J. See April 21, 1999 Trial Tr. at 85. This letter informed M & J that INS had scheduled an audit of

the company for April 17, 1998.¹ See id. at 85-86. The audit was to include an inspection of all employment eligibility verification forms, known as I-9 forms,² for current employees, as well as any Xeroxed copies of identification presented by those employees. Approximately one week before the scheduled inspection, Angelucci telephoned M & J. See id. at 86. She spoke with the controller of the company, Valerie Cubel, and explained that INS was going to conduct an inspection on April 17, 1998. See id. Before the inspection, Ramon Arizaga, foreman of M & J and the person responsible for hiring mushroom pickers for M & J, told the defendant that less than 10 of his approximately 35 employees had valid work authorizations and that the rest were unauthorized.³ Cubel also told the defendant that she believed many employees were unauthorized aliens and she would refuse to sign I-9 verifications for the employees she believed were unauthorized.⁴ The defendant told Cubel that he would take care of having the verifications

¹The audit also included an inspection of Premier. See April 21, 1999 Trial Tr. at 86-87.

²INS requires that any employee hired after November 6, 1986, must fill out an employment eligibility verification form, known as an “I-9” form. See April 19, 1999 Trial Tr. at 4. In the first part of the I-9 form, the employee is required to fill out information attesting that he or she is either a citizen or national of the United States, a lawful permanent resident of the United States, or an alien authorized to work. See id. at 6. In the second part of the form, the employer must verify that the employee showed the employer a valid form of identification that indicates that the employee is authorized to work in the United States. See id. at 7-8.

³~~The trial transcript containing the testimony of Arizaga was not made available by the parties~~ **did not make available** to the court **the trial transcript containing the testimony of Arizaga.** Nonetheless, the government and the defendant both acknowledge in their briefs that Arizaga testified at trial that he had advised the defendant that only a small number of ~~his~~**the** employees were legal. See Def.'s Legal Brief in Support of Motion for Judgment of Acquittal (“Def.'s Br.”) at 4; Govt.'s Answer and Memo. of Law in Opp. to Def.'s Motion for Judgment of Acquittal (“Govt.'s Opp.”) at 1-2.

⁴The defendant does not dispute that Cubel testified that she refused to sign the I-9 forms because she questioned the authenticity of the supporting documents. See Def.'s Br. at 4.

signed.

Elueterio Barnal Flores, a Mexican citizen, was an employee of Premier in 1998. See April 21, 1999 Trial Tr. at 44. In approximately April of 1998, Flores told the defendant that his work authorization card had expired in 1994. See id. at 48, 50. After learning this information, the defendant continued to employ Flores, and even promoted him to a supervisory position at Premier. See id. at 51-52.

On April 17, 1998, Angelucci and two other INS agents conducted the scheduled audit of M & J and Premier. See April 21, 1999 Trial Tr. at 87. The agents examined I-9s and found that many of the documents were “highly suspect” and that many of the ~~Xeroxed~~ copies of identification cards were “obviously fraudulent.” See id. at 87-89.

On September 1, 1998, INS obtained three federal search warrants to search M & J and Premier for unauthorized aliens as well as records relating to the hiring and continued employment of unauthorized aliens. See April 19, 1998 Trial Tr. at 12-13. INS notified the Pennsylvania State Police and the Kennett Square Police Department about the search scheduled for the next day. See id. at 17.

Flores testified that on September 1, 1998, the defendant told workers at Premier, including Flores, that INS was coming to conduct a search the next morning. See April 21, 1999 Trial Tr. at 46. According to Flores, the defendant instructed the employees not to report to work at the usual time of 6:00 a.m., but rather, to call Phillip Nicholas, a supervisor at Premier, before reporting to work. See id. at 48; April 22, 1999 Trial Tr. at 7, 8-9.

Jose Bodella Rios testified that the defendant told the employees of M & J that they were to report to work early on September 2, 1998, and to leave work by 5:00 a.m., to avoid the INS

agents who were scheduled to arrive at 6:00 a.m. that morning. See April 20, 1999 Trial Tr. at 62. Angelucci also testified that other employees of Premier and M & J told her that they learned about the INS search scheduled for September 2, 1998, on the day before the search took place. See April 26, 1999 Trial Tr. at 52-53.

On September 2, 1998, INS agents executed the three federal search warrants, and arrested seven unauthorized aliens. See April 20, 1999 Trial Tr. at 7. INS special agent Linda Valentine served the search warrant on the defendant, with an attachment listing the names of employees whom INS believed to be working for the defendant without proper employment authorization. See id. at 4-5.

On November 19, 1998, INS again executed search warrants at M & J and Premier, this time without first informing the local police department about the scheduled search. See id. at 7-9. That day, INS arrested 39 unauthorized aliens at defendant's places of business. See id. at 18. Of the 39 aliens arrested, 16 had been listed on the original search warrant list given to the defendant on September 2, 1998. See April 21, 1999 Trial Tr. at 104.

On November 24, 1998, INS again executed three federal search warrants and arrested two additional unauthorized aliens at defendant's places of business. See id. April 20, 1999 Trial Tr. at 23-24. In total, INS arrested 48 unauthorized aliens as a result of the execution of search warrants at the defendant's businesses on September 2, November 19, and November 24, 1998.⁵

⁵The defendant denies that he employed all of the unauthorized aliens arrested by INS. See Def.'s Br. at 1. He claims that some of the workers were subcontractors who were working for themselves or for other companies. See id. Nonetheless, the defendant does admit that he employed two-thirds of the 39 unauthorized aliens who were arrested on November 19, 1998. See id. (stating that “[a]pproximately one third [of the employees arrested on November 19, 1998] were not employed by the Defendant”).

See id. at 24.

II. DISCUSSION

A. LEGAL STANDARD

Federal Rule of Criminal Procedure 29(c)⁶ provides that a defendant may, within 7 days after the verdict,⁷ or such longer time as the court may prescribe, ~~move the court to enter a~~ **file a motion for** judgment of acquittal. See Fed. R. Crim. P. 29(c). Pursuant to Rule 29, the defendant challenges the sufficiency of the evidence supporting his convictions on count one (conspiracy to hire or to continue to employ unauthorized aliens) and count two (continuing to employ unauthorized aliens).

“A defendant challenging the sufficiency of the evidence bears a heavy burden.” United States v. Casper, 956 F.2d 416, 421 (3d Cir. 1992). In reviewing the record to determine whether there was sufficient evidence to support a conviction, “the court must view the evidence and the inferences logically deducible therefrom in the light most favorable to the government, to

⁶In his motion, the defendant did not specify the subsection of Federal Rule of Criminal Procedure 29 under which he is moving. In his brief in support of his motion, the defendant stated that he is moving pursuant to Federal Rule of Criminal Procedure 29(a). This subsection, however, applies to motions made before the case is submitted to the jury. In this case, the ~~defendant is moving~~ **motion was filed** after the case was submitted to the jury and the jury returned a verdict of guilty. Thus, the court presumes that the defendant intended to move pursuant to Federal Rule of Criminal Procedure 29(c), which permits a motion for judgment of acquittal to be filed within 7 days after the jury is discharged. See Fed. R. Crim. P. 29(c). Therefore, the court will consider this motion as if it were brought under Federal Rule of Criminal Procedure 29(c).

⁷The defendant's motion, which was filed on May 4, 1999, was filed within 7 days of the issuance of the jury verdict and, therefore, was timely.

determine if there is sufficient evidence to support the factfinder's verdict.” See United States v. McNeill, 887 F.2d 448, 450 (3d Cir. 1989), cert. denied, 493 U.S. 1087 (1990). “The evidence need not unequivocally point to the defendant's guilt as long as it permits the jury to find the defendant guilty beyond a reasonable doubt.” United States v. Punigitore, 910 F.2d 1084, 1129 (3d Cir. 1990), cert. denied, 500 U.S. 915 (1991). “A verdict will be overruled only if no reasonable juror could accept the evidence as sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt.” United States v. Coleman, 811 F.2d 804, 807 (3d Cir. 1987) (citations omitted); see also United States v. Salmon, 944 F.2d 1106, 1113 (3d Cir. 1991) (finding that in evaluating the sufficiency of the evidence to support a conviction, the court “must determine whether a reasonable jury believing the government's evidence could find beyond a reasonable doubt that the government proved all of the elements of the offenses”), cert. denied sub nom Washington v. United States, 502 U.S. 1110 (1992).

B. CONSPIRACY

In order to support the defendant's conviction, the government must ~~have proved~~ **prove** each element of conspiracy beyond a reasonable doubt. See United States v. McGlory, 968 F.2d 309, 321 (3d Cir. 1992), cert. denied, 507 U.S. 962 (1993). Thus, the government must have established at trial that the defendant and his co-conspirators had “a unity of purpose, intent to achieve a common goal, and an agreement to work together toward that goal.” See id. (citations omitted); see also United States v. Powell, 113 F.3d 464, 467 (3d Cir.) (listing elements of conspiracy), cert. denied, 118 S. Ct. 454 (1997). “The government may . . . prove these elements entirely by circumstantial evidence.” McGlory, 968 F.2d at 321.

In this case, the defendant was charged with conspiring to: (1) hire for employment in the

United States aliens while knowing the aliens to be unauthorized for employment in the United States; and (2) continue to employ aliens in the United States while knowing that the aliens are, or have become, unauthorized for employment in the United States.⁸ See Info. at 3. The defendant contends that the government failed to prove ~~any and all of~~ the requisite elements of conspiracy. The court finds that, viewing the evidence in the light most favorable to the prosecution, a reasonable jury could find that the government proved all of the elements of conspiracy. **Indeed, the evidence could almost be said to be overwhelming.**

1. Evidence of An Agreement

The defendant argues that the government did not prove that he had an agreement with anyone to commit the crime of hiring or continuing to employ unauthorized aliens. See Def.'s

⁸Although the defendant was charged with both conspiracy to hire and to continue to employ unauthorized aliens, for the jury to convict the defendant of conspiracy, it was only necessary for the jury to find that the defendant did one or the other. The jury was instructed that if it found that the defendant was guilty of both objects of the conspiracy (i.e., hiring and continuing to employ unauthorized aliens), or if the jury found that the defendant was guilty of one or the other object, the jury should find the defendant guilty of conspiracy. Thus, because a reasonable jury could have found that, based on the evidence presented at trial, the defendant continued to employ unauthorized aliens, knowing that they were unauthorized for employment in the United States, the court does not address whether the evidence also proved that the defendant conspired to hire aliens knowing the aliens to be unauthorized for employment in the United States. Although the government presented ~~some~~ evidence that could have supported a finding that the defendant knowingly hired unauthorized aliens, the court finds that it is not necessary to resolve whether this evidence is sufficient to support the conviction because the evidence is sufficient to find that the defendant continued to employ unauthorized aliens.

The defendant argues that he hired the aliens with a “good faith” belief that the documents presented by the aliens were valid. See Def.'s Br. at 6-7. This argument, however, only applies to the charge that the defendant conspired to hire aliens knowing them to be unauthorized aliens; it does not prohibit a finding that the defendant continued to employ unauthorized aliens knowing the aliens to be unauthorized for employment in the United States. Thus, this argument is not a defense to the charge brought against the defendant for continuing to employ unauthorized aliens.

Br. at 3-4. The court disagrees. Viewing all of the evidence presented at trial in the light most favorable to the government, see McNeill, 887 F.2d at 450, the court finds that a reasonable jury could have found that the defendant had an agreement to continue to employ aliens unauthorized for employment in violation of federal law.

The court finds that a reasonable jury could have found that the government demonstrated at trial that: (1) the defendant had an agreement with Phillip Nicholas to continue to employ unauthorized aliens; ~~and~~ (2) the defendant had an agreement with his foreman, Arizaga, to hire unauthorized aliens; and (3) the defendant had an agreement with his employees who were unauthorized aliens, particularly Flores and Rios, to continue to employ unauthorized aliens.

~~At~~ **First, at** trial, the government presented ~~circumstantial~~ evidence to prove that the defendant had an agreement with Nicholas, the supervisor at Premier, to continue to employ unauthorized aliens. Flores testified that the defendant told him, and other Premier employees, not to report to work at their normal starting hour of 6:00 a.m. on September 2, 1998.⁹ See April 21, 1999 Trial Tr. at 46. Instead, Flores and the other unauthorized aliens were told to contact Nicholas before coming to work to ensure that the INS agents had already finished their search and left the premises before the aliens arrived at Premier. See id. at 48. A reasonable jury could

⁹In his motion, the defendant argued that Flores's testimony was "suspect" because the government had to impeach him with grand jury testimony before he would testify that the defendant instructed him not to report to work on September 2, 1998. See Def.'s Br. at 5. Simply because this testimony was elicited through impeachment of the witness, however, is not itself reason enough to reject this evidence. "It is not for the court to assess the credibility of witnesses, weigh the evidence, or draw inferences of fact from the evidence. These are functions of the jury. The court must look to all of the evidence, but must take the view of the evidence and the inferences therefrom most favorable to the government. That testimony is in conflict is not in itself enough to require judgment of acquittal." Charles A. Wright, 2 Federal Practice & Procedure, Criminal, § 467 at 663-65.

have concluded that this was sufficient circumstantial evidence to support a finding that the defendant and Nicholas had an agreement to commit the crime of continuing to employ unauthorized aliens. See Powell, 113 F.3d at 467 (finding that circumstantial evidence is sufficient to prove conspiracy charge).

~~The~~ **Second, the government also presented evidence of demonstrated at trial that the defendant had an agreement between the defendant and the aliens employed by the defendant to continue to employ with his former foreman, Arizaga, to hire aliens unauthorized aliens for employment in the United States. Arizaga testified at trial that he told the defendant that many people applying for jobs at M & J were unauthorized for employment in the United States. According to Arizaga, the defendant responded that Arizaga should nonetheless hire these unauthorized aliens even if Arizaga knew that they were unauthorized aliens.**¹⁰

Third, the government presented evidence of an agreement between the defendant and the aliens employed by the defendant to continue to employ unauthorized aliens. As explained above, the defendant instructed the employees of Premier not to report to work until later in the day on September 2, 1998, to avoid detection by INS agents. See April 21, 1999 Trial Tr. at 46. Similarly, there was testimony that the defendant told the employees at M & J to report early to work on September 2, 1998, and to leave before 6:00 a.m., to avoid being discovered by INS agents. See April 20, 1999 Trial Tr. at 62. Based on this evidence, a reasonable jury could have concluded that the defendant and the unauthorized aliens in his employ had an agreement to

¹⁰ **Although the parties did not provide the trial transcript for the testimony of Arizaga, I clearly recall his testimony.**

continue the employment of aliens unauthorized for employment in the United States.¹¹

2. Evidence of An “Overt Act” In Furtherance of Conspiracy

The defendant also argues that the government failed to prove that he committed an “overt act” in furtherance of the conspiracy. See Def.'s Br. at 4. An “overt act” is any transaction or event, even one which may not be criminal in nature when considered alone, but which is knowingly committed by a conspirator in an effort to accomplish some object of the conspiracy. See United States v. Nelson, 852 F.2d 706, 713 (3d Cir.), cert. denied, 488 U.S. 909 (1988).

The government presented evidence that the defendant attempted to thwart the expected INS search of his businesses on September 2, 1998, by instructing his employees not to report to work at normal business hours, but instead to work either before the INS agents arrived or after they left the premises. See April 20, 1999 Trial Tr. at 62 (testimony of Rios); April 21, 1999 Trial Tr. at 46 (testimony of Flores). Based on this evidence, a reasonable jury could have found that the defendant committed an “overt act” in furtherance of his conspiracy to continue to employ unauthorized aliens.

The government also presented evidence that Flores told the defendant that he was an unauthorized alien in April of 1998. See April 21, 1999 Trial Tr. at 48, 50. Nonetheless, the defendant continued to employ Flores, and even promoted him to a supervisory position at Premier. See id. at 51-52. A reasonable jury could have concluded that this also was sufficient evidence of an overt act made in furtherance of a conspiracy to continue to employ unauthorized

¹¹The defendant argues that the government failed to prove that the defendant had an agreement with another co-conspirator because the government did not indict any other co-conspirator. See Def.'s Br. at 4. A defendant can be found guilty of conspiracy, however, even if no other co-conspirator is indicted or even identified. See United States v. Allen, 613 F.2d 1248, 1253 (3d Cir. 1980).

aliens.

3. Evidence of Intent to Conspire

Finally, the defendant contends that the evidence presented at trial is insufficient to prove intent to conspire. See Def.'s Br. at 4. The court finds, however, that a reasonable jury could have found that the defendant had the intent to conspire to continue to employ unauthorized aliens based on the evidence presented at trial.

The government presented evidence at trial that demonstrated that the defendant knowingly and willfully continued to employ aliens after learning that they were not authorized for employment in the United States. See, e.g., April 21, 1999 Trial Tr. at 48-52 (Flores's testimony that he informed the defendant of his unauthorized status in April of 1998 and the defendant continued to employ him until he was arrested by INS on November 19, 1998); see also April 20, 1999 Trial Tr. at 62 (Rios's testimony that the defendant instructed employees to report to work early on September 2, 1998, to avoid INS agents); April 21, 1999 Trial Tr. at 46 (Flores's testimony that the defendant instructed employees to report to work late on September 2, 1998, to avoid INS agents). Thus, the court finds that, based on the evidence presented at trial, a reasonable jury could have concluded that the defendant had the requisite level of intent to convict him for conspiracy.

C. CONTINUING EMPLOYMENT OF UNAUTHORIZED ALIENS

To support a conviction on count two, the government had the burden of proving beyond a reasonable doubt that the defendant knowingly engaged in a pattern or practice of continuing to employ aliens unauthorized for employment in the United States, in violation of 8 U.S.C. §§

1324a(a)(2), (f)(1).¹² The government met this burden.

For many of the same reasons that a reasonable jury could have found the evidence sufficient to support a conspiracy charge, a jury could have found that the evidence supported a finding that the defendant continued to employ aliens, knowing that the aliens were unauthorized for employment in the United States. For example, Flores testified that he told the defendant that he was unauthorized for employment in April, 1998, and the defendant continued to employ him until he was arrested by the INS in November, 1998. See April 21, 1999 Trial Tr. at 48-52. There was also testimony that Arizaga told the defendant that less than 10 of the M & J employees were authorized, and the rest were unauthorized, and despite this knowledge, the defendant continued to employ these aliens.

Finally, the government presented evidence that on September 2, 1998, an INS agent served a search warrant on the defendant, which listed the names of M & J and Premier employees whom INS believed to be unauthorized for employment. See April 20, 1999 Trial Tr. at 4-5. On November 19, 1998, INS agents arrested 39 unauthorized aliens at the defendant's businesses. See id. at 18. Of the 39 aliens arrested, 16 had been listed on the original search warrant served on the defendant on September 2, 1998. Thus, a reasonable jury could have concluded that the defendant had knowledge of the unauthorized status of these 16 aliens and he nonetheless continued to employ them. See April 21, 1999 Trial Tr. at 104.

¹²Count two of the information also included a charge that the defendant violated 18 U.S.C. § 2, by aiding and abetting another in the crime of continuing to employ aliens unauthorized for employment in the United States. See Info. at 1, 5. For the same reasons that I find that a reasonable jury could have found that the defendant was a principal actor in the crime of continuing to employ unauthorized aliens, the court also finds that enough evidence was presented to permit a reasonable jury to conclude that the defendant aided and abetted another person in carrying out the commission of this crime.

In his motion, the defendant appears to argue that his conviction for continuing to employ unauthorized aliens should not stand because he was not given a reasonable period of time to terminate his employees who were unauthorized to work in the United States. See Def.'s Br. at 8-9. As support, the defendant cites Mester Mfg. Co. v. INS, 879 F.2d 561 (9th Cir. 1989), and New El Rey Sausage Co. v. INS, 925 F.2d 1153 (9th Cir. 1991).

In Mester, the United States Court of Appeals for the Ninth Circuit affirmed an Administrative Law Judge's finding that, based on the relevant facts of that case, a two-week delay in firing an unauthorized alien was a violation of federal immigration law. See Mester Mfg. Co., 879 F.2d at 568. The Ninth Circuit refused to develop a bright-line rule for determining when an employer must terminate an employee upon learning that he or she is unauthorized to work in the United States. See id. at 567. Instead, the court held that the employer must terminate the unauthorized employee within a "reasonable" time period. See id. The court explained that "an inquiry into a reasonable time frame for termination will include consideration, in certain cases, of factors other than the number of days alone--such as the certainty of the information providing the knowledge of unauthorized status, and steps taken by the employer to confirm it." Id. at 568 n.9; see also New El Ray, 925 F.2d at 1156 (citing Mester Mfg. Co. for proposition that "INS must provide an employer with a reasonable amount of time for compliance after the employer acquires knowledge that an employee is unauthorized"). The court reasoned that requiring termination of an unauthorized employee within a "reasonable" time, rather than immediately upon knowledge of their unauthorized status, would avoid "unjust or capricious action." See Mester Mfg. Co., 879 F.2d at 567; New El Ray, 925 F.2d at 1156.

Applying the factors identified in Mester Mfg. Co., the court finds that the defendant had

much more than a reasonable time to terminate any unauthorized aliens in his employ, and he failed to do so. At trial, evidence was presented that the defendant learned in April from his former foreman, Arizaga, that the majority of his employees were unauthorized aliens. Also in April, the defendant learned from Cubel that she believed that many of his employees were unauthorized and their work authorization documents were fraudulent. On September 2, 1998, the defendant was served with a search warrant listing the names of aliens whom INS suspected were unauthorized for employment in the United States. Despite all of this information, the defendant continued to employ these aliens and on November 19, 1998, INS arrested 39 unauthorized aliens working on the defendant's premises. See April 20, 1999 Trial Tr. at 18; April 21, 1999 Trial Tr. at 104. Moreover, the defendant presented no evidence that he, at any point in time, attempted to confirm the immigration status of his employees. Thus, the court concludes that it is not “unjust or capricious” to hold that the defendant had a reasonable amount of time in which to terminate any unauthorized aliens in his employ, and he failed to do so, before these aliens were arrested by INS in November of 1998.

IV. CONCLUSION

Because the court finds that the evidence presented by the government at trial was sufficient to support the defendant's conviction on both counts of the information, the defendant's motion for judgment of acquittal must be denied. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA.	:	CRIMINAL ACTION
	:	
v.	:	
	:	
MICHAEL J. FRAGALE .	:	
	:	NO. 99-34

ORDER

AND NOW, this day of August, 1999, upon consideration of defendant's motion for judgment of acquittal (Document No. 24), defendant's brief in support of motion for judgment of acquittal (Document No. 27), as well as the government's answer and memorandum of law in opposition thereto (Document No. 28), IT IS HEREBY ORDERED that Defendant's Motion For Judgment of Acquittal is DENIED.

William H. Yohn, Jr., J.