APPENDIX

NOT FOR PUBLICATION

FILED

FEB 21 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ANDRES SOTO, Defendant-Appellant.	No. 17-50296 D.C. No. 3:16-cr-02192-MMA-1 MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Submitted February 7, 2019**
Pasadena, California

Before: WARDLAW and BEA, Circuit Judges, and MURPHY,*** District Judge.

Andres Soto appeals his conviction for thirteen counts of transportation of certain aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (v)(II) and (a)(1)(B)(i).

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Stephen J. Murphy, III, United States District Judge for the Eastern District of Michigan, sitting by designation.

He argues that the district court erroneously denied his motion to suppress all evidence derived from a traffic stop, vehicle search, and questioning by law enforcement officers. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court correctly concluded that California Highway Patrol Officer Carlos Davila had reasonable suspicion to seize Soto for the purposes of an investigative stop. The district court properly found that Soto was not seized until Officer Davila activated the police lights on his vehicle. *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980). We reject Soto's argument that "a reasonable person would have believed that he was not free to leave" at the moment Officer Davila pulled onto the shoulder of the road behind Soto's stopped vehicle. *Id.* When Officer Davila activated his vehicle's lights, he saw that the refrigeration unit on Soto's vehicle was on even though there was no seal or lock on the vehicle's back doors, which gave rise to a particularized suspicion that the tractor-trailer was not carrying produce, but some type of contraband. *See United States v. Cortez*, 449 U.S. 411, 417 (1981). The district court properly deemed Officer Davila's testimony credible. *See Atwood v. Ryan*, 870 F.3d 1033, 1061 n.25 (9th Cir. 2017) (citation omitted) (appellate courts owe the district court's credibility findings deference on appeal).

2. The district court correctly concluded that Imperial County Sheriff's

Deputy Randy McCoy had probable cause to search Soto's vehicle. The district court properly credited Deputy McCoy's testimony that he conducted the visual search of the vehicle after he learned about the multiple footprints on the foot rail leading into the vehicle, the unsealed refrigerated trailer, Soto's claim that he was carrying spinach, and the information from the tip. Under the collective knowledge doctrine, Deputy McCoy also knew that Soto did not have the necessary commercial license to be driving a tractor-trailer or the proper shipping papers to carry a load of spinach. *United States v. Ramirez*, 473 F.3d 1026, 1032 (9th Cir. 2007) (holding that probable cause turns on "the collective knowledge of all the officers involved" (internal quotation marks and citation omitted)). Thus, there was a "fair probability" that a search of the truck would reveal contraband. *United States v. Rodriguez*, 869 F.2d 479, 484 (9th Cir. 1989).

3. Because Soto was not subject to custodial interrogation, the officers were not required to provide Soto with *Miranda* warnings. *See Stanley v. Schriro*, 598 F.3d 612, 618 (9th Cir. 2010). The district court did not clearly err by finding that Soto was not in custody during the traffic stop. Under *United States v. Medina-Villa*, 567 F.3d 507, 519–20 (9th Cir. 2009) and *United States v. Galindo-Gallegos*, 244 F.3d 728, 729 (9th Cir. 2001), the traffic stop did not become custodial because a Border Patrol agent told Soto "not to leave." The district court correctly weighed the evidence that Deputy McCoy told Soto that he was not under

arrest, the stop took place in public on the shoulder of a busy road, none of the officers used threatening language, physical force, or drew their weapons, and Soto was not "confronted with evidence of guilt." *United States v. Booth*, 669 F.2d 1231, 1235 (9th Cir. 1981). Accordingly, the district court properly concluded that, based on the evidence, Soto was not subject to a custodial interrogation.

AFFIRMED.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ANDRES SOTO, Defendant-Appellant.	No. 17-50296 D.C. No. 3:16-cr-02192-MMA-1 Southern District of California, San Diego ORDER

Before: WARDLAW and BEA, Circuit Judges, and MURPHY,* District Judge.

The memorandum disposition filed on February 21, 2019 is amended as follows:

On page three of the memorandum disposition, in the paragraph beginning "3. Because Soto was not subject to custodial interrogation," replace <The district court did not clearly err> with <Reviewing the question de novo, the district court did not err>.

With this amendment, Judges Wardlaw and Bea vote to deny the appellant's petition for panel rehearing and rehearing en banc, and Judge Murphy so recommends. The full court has been advised of the petition for rehearing en banc, and no active judge has requested a vote on whether to rehear the matter en banc.

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* The Honorable Stephen Joseph Murphy III, United States District Judge for the Eastern District of Michigan, sitting by designation.

Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc is therefore DENIED. No further petitions for panel or en banc rehearing shall be permitted.

IT IS SO ORDERED.