

No. 20-_____

IN THE
Supreme Court of the United States

ERIKA HERNANDEZ-NUNEZ,

Petitioner,
-vs-

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**APPENDIX to PETITION FOR WRIT OF CERTIORARI
(APPENDICES A-G)**

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January 27, 2020

FILED

NOT FOR PUBLICATION

OCT 28 2019

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 18-10285

Plaintiff-Appellee,

D.C. No.
4:17-cr-01056-JGZ-BPV-1

v.

JOSIE ARVIZU,

MEMORANDUM*

Defendant-Appellant.

UNITED STATES OF AMERICA,

No. 18-10296

Plaintiff-Appellee,

D.C. No.
4:17-cr-01056-JGZ-BPV-2

v.

ERIKA HERNANDEZ-NUNEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zipps, District Judge, Presiding

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

Submitted October 23, 2019**
Pasadena, California

Before: KLEINFELD and CALLAHAN, Circuit Judges, and RESTANI,*** Judge.

Defendants-Appellants, Josie Arvizu and Erika Hernandez-Nunez

(collectively, “Defendants”), appeal from the district court’s denial of their motion to suppress evidence obtained as a result of a stop of their vehicle, during which illegal aliens were discovered in the trunk. Defendants entered conditional plea agreements to the transport of illegal aliens for profit under 8 U.S.C. §§ 1324(a)(1)(A)(v)(i), 1324(a)(1)(A)(ii), and 1324(a)(1)(B)(i). They reserved their rights to appeal the denial of their motion to suppress. We have jurisdiction under 28 U.S.C. § 1291, and we affirm the district court decision.

We review “*de novo* the district court’s ruling on a motion to suppress and for clear error the district court’s underlying findings of fact.” *United States v. Evans*, 786 F.3d 779, 784 (9th Cir. 2015). Reasonable suspicion determinations are reviewed *de novo*, findings of historical fact are reviewed for clear error and due weight is given “to inferences drawn from those facts by resident judges and local law enforcement officers.” *United States v. Valdes-Vega*, 738 F.3d 1074,

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

*** The Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

1077 (9th Cir. 2013) (internal citation omitted). “We thus apply ‘a peculiar sort of de novo review,’ *United States v. Arvizu*, 534 U.S. 266, 278 (2002) (Scalia, J., concurring), slightly more circumscribed than usual, because we defer to the inferences drawn by the district court and the officers on the scene, not just the district court’s factual findings.” *Id.*

A law enforcement officer may “stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” *United States v. Sokolow*, 490 U.S. 1, 7 (1989). In determining whether there was reasonable suspicion, a court looks at the totality of the circumstances. *United States v. Cortez*, 449 U.S. 411, 417 (1981). “The reasonable-suspicion standard is not a particularly high threshold to reach.” *Valdes-Vega*, 738 F.3d at 1078. “Reasonable suspicion is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Id.* (internal quotation marks and citations omitted).

Here, a number of facts support the district court’s finding of reasonable suspicion for stopping Defendants’ car. The San Miguel West Church is surrounded by the dense Vamori Wash, which is known to provide coverage for

illegal aliens crossing the border. There were recent incidents of alien smuggling in the area of the church. Defendants' car was unknown to the agents, was registered in Tucson, more than 90 minutes away, and had crossed the border from Mexico less than 72 hours earlier. The car only stayed at the church for a short period of time. Leaving the church the car drove faster than local traffic, kicking up dust, and, contrary to the practice of local drivers, slowed down when the agent began to follow it. The agent "observed a disturbance in the dirt on the vehicle's trunk, consistent with handprints previously found on the trunks of vehicles transporting illegal aliens in the trunk." These factors created a reasonable suspicion even if, as Defendants contend, there could be innocent reasons for each of them. The totality of the circumstances supports the finding of reasonable suspicion. *See United States v. Diaz-Juarez*, 299 F.3d 1138 (9th Cir. 2002); *United States v. Guzman-Padilla*, 573 F.3d 865 (9th Cir. 2009).

Defendants' convictions are **AFFIRMED**.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JOSIE ARVIZU,
Defendant-Appellant.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ERIKA HERNANDEZ-NUNEZ,
Defendant-Appellant.

No. 18-10285
D.C. No.
4:17-cr-01056-JGZ-BPV-1
District of Arizona,
Tucson

No. 18-10296
D.C. No.
4:17-cr-01056-JGZ-BPV-2
District of Arizona,
Tucson

ORDER

Before: KLEINFELD and CALLAHAN, Circuit Judges, and RESTANI,* Judge.

The panel has voted to deny the Appellant Hernandez-Nunez's petition for rehearing and petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and the petition for rehearing en banc are denied.

* The Honorable Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 United States of America,) NO. CR 17-01056-TUC-JGZ(BPV)
10 Plaintiff,)
11 vs.)
12 Josie Arvizu,)
13 Erika Hernandez-Nunez,)
14 Defendants.)
15 _____

16 **REPORT AND RECOMMENDATION**
17 **ON DEFENDANTS' MOTIONS TO**
18 **SUPPRESS**

19 On June 11, 2017, Defendants Josie Arvizu and Erika Hernandez-Nunez were arrested
20 for transportation of illegal aliens. The Defendants were indicted on July 5, 2017 [Doc. 19].
21 On October 10, 2017, Defendant Josie Arvizu filed a Motion to Suppress [Doc. 42] and
22 Defendant Erika Hernandez-Nunez filed a Notice of Joinder and Supplement to Motion to
23 Suppress [Doc. 44] on October 12, 2017. The Government filed its Response [Doc. 47] on
24 October 31, 2017.

25 The matter came on for Evidentiary Hearing before the Court on November 30, 2017.
26 The Government called as witnesses Border Patrol Agent Cesar Perez and HSI Agent Mark
27 Landess. The Defendants were present, but called no witnesses.

28 The Court, having considered the briefing, arguments, and evidence presented,
29 recommends that the District Judge, after her independent review and consideration, enter
30 an order **GRANTING** Defendants' Motions to Suppress [Docs. 42 and 44].

FACTS

San Miguel is a village on the Tohono O'Odham Reservation. The village has a number of residences located off dirt roads leading to Indian Highway 19, a paved road. Located within the village area is an old church that is abandoned, except for an outdoor shrine that is maintained by unknown people. The shrine has a number of unidentified people who visit it. Some of the vehicles used to travel to the site are recognized by Border Patrol agents assigned to the general area.

San Miguel, which is located near the U.S./Mexico border, and the Vamori Wash to the west, are considered alien smuggling areas. As a result of this, Border Patrol has placed a sensor on the church premises. Its operation notifies Border Patrol's dispatch office of any motorized activity that is then reported to an on-duty agent, with binoculars, located on a hill that has a visual line of sight to the church.

On June 11, 2017, at about 10:30 a.m., Border Patrol Agent Cesar Perez received notification that the San Miguel Church sensor had been activated. The sensor apparently only went off once. As such, it is unknown how long the vehicle had been in the area. Agent Perez directed his attention to the church and observed a dark-colored sedan leaving the area at an increasing rate of speed. Once the vehicle reached Highway 19, it proceeded north at a rate of speed above the posted speed limit.

As this vehicle was traveling north, HSI Agent Mark Landess was traveling south on Highway 19 towards the departing vehicle. As the two vehicles approached each other, the northbound vehicle reduced its speed. Agent Landess deduced the driver was not local to the area because locals know the Border Patrol has no traffic enforcement authority so locals just keep traveling at their current speed.

After Agent Landess turned his vehicle around, he followed the dark sedan. While in pursuit, he observed a coating of dirt on the trunk lid and possibly a hand print. He believed this meant the vehicle had been recently used to hide people inside the trunk. While on patrol behind the sedan, Agent Landess learned from dispatch that the vehicle was registered to Erika Hernandez-Nunez of Tucson, Arizona.

1 Based on this information, Agent Landess decided to stop the sedan and he activated
2 his emergency lights. After the stop and as he approached the driver, he determined that the
3 possible hand print was actually a hand print around the area of the trunk. From this, Agent
4 Landess concluded that people had placed their hands on the trunk area to assist them in
5 entering the trunk. Thereafter, Agent Landess discovered three persons in the trunk, who
6 admitted they were illegally in this country.

DISCUSSION

8 This case presents the question of how much information is needed to stop a vehicle
9 that has traveled on a dirt road in a known smuggling area (rural southern Arizona) that has
10 a layer of dirt on the trunk with what may be a hand print and where the driver reduces the
11 vehicle's speed upon observing a law enforcement vehicle.

12 In rural Arizona, many communities and its environs have dirt roads. Consequently,
13 many vehicles have a layer of dirt on them. Many people in rural areas have visitors from
14 the big city. These people often come for visits and bring things in their vehicle trunks and
15 when they do, they open, close, and touch the area near the trunk. Out-of-towners leave at
16 all hours of the day, such as after breakfast and before lunch.

17 In this case, other than suspicion, which is a necessary qualification for an officer on
18 patrol, the observable conduct does not suggest that there is ongoing criminal activity.
19 Perhaps the observable activity warrants further surveillance, but it does not warrant a seizure
20 of the driver.

21 In this writer's view, the sensor is simply an alert for a focusing of law enforcement
22 attention. After that, other facts are needed to support the belief that the targeted vehicle
23 stands out from any other vehicle under observation coming out of the target area.

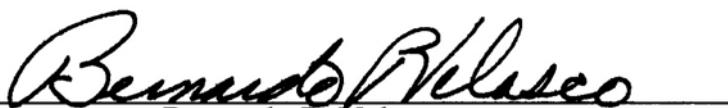
24 This Court does not see any justification for the seizure of the Defendants' vehicle.

CONCLUSION

26 It is the recommendation of this Court that the District Judge, after her independent
27 review and consideration, enter an Order **GRANTING** Defendants' Motions to Suppress
28 [Docs. 42 and 44].

1 Pursuant to 28 U.S.C. §636(b)(1)(B), the parties have fourteen (14) days from the date
2 of this Report and Recommendation to file written objections to these findings and
3 recommendations with the District Court. Any objections and Responses to objections filed
4 should be filed as CR 17-01056-TUC-JGZ. No Replies shall be filed unless leave is granted
5 from the District Court.

6 DATED this 18th day of January, 2018.

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8 _____
9 Bernardo P. Velasco
United States Magistrate Judge

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10 Plaintiff,
11 v.
12 Josie Arvizu and Erika Hernandez-Nunez,
13 Defendants.
14

No. CR-17-01056-TUC-JGZ (BPV)

ORDER

15 On January 18, 2018, Magistrate Judge Bernardo P. Velasco issued a Report and
16 Recommendation (“R&R”) (Doc. 60) in which he recommended that Defendant Josie
17 Arvizu’s Motion to Suppress evidence obtained as a result of a traffic stop (Doc. 42), in
18 which Defendant Erika Hernandez-Nunez joined (Doc. 44), be granted. The government
19 filed an Objection to the R&R on February 22, 2018. (Doc. 71.) Defendant Hernandez-
20 Nunez filed a response to the government’s objection on March 4, 2018. (Doc. 73.) For
21 the reasons stated herein, the Court will reject the R&R and deny the Motion to Suppress.
22

STANDARD OF REVIEW

23 The Court reviews de novo the objected-to portions of the R&R. 28 U.S.C. §
24 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to
25 portions of the R&R. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999);
26 *see also Conley v. Crabtree*, 14 F.Supp.2d 1203, 1204 (D. Or. 1998).

27 //
28 //

FACTUAL BACKGROUND

The factual background contained in Magistrate Velasco's R&R (Doc. 60) is adopted as supplemented by the additional facts stated in this Order.

DISCUSSION

The government objects to the Magistrate Judge's finding that Agent Landess lacked reasonable suspicion to stop Defendants' vehicle. A border patrol agent may conduct "brief investigatory stops" without violating the Fourth Amendment "if the officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot." *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013) (citing *United States v. Arvizu*, 534 U.S. 266, 273 (2002)). Reasonable suspicion is defined as "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Id.* (citation omitted). The reasonable-suspicion standard is not a particularly high threshold to reach. *Id.* "Although ... a mere hunch is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard." *Arvizu*, 534 U.S. at 274. When reviewing a border patrol officer's reasonable suspicion, the Court must consider the totality of the circumstances, including characteristics of the area, proximity to the border, usual patterns of traffic and time of day, previous alien or drug smuggling in the area, behavior of the driver, appearance or behavior of passengers, and the model and appearance of the vehicle and the agent's training and experience. *See Valdes-Vega*, 738 F.3d at 1079 (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 884–85 (1975)). Not all of these factors must be present or highly probative in every case to justify reasonable suspicion. *See id.*

The testimony provided by Agent Perez and Agent Landess established that numerous factors were present in this case. On June 11, 2017, Agent Perez was stationed with a mobile camera unit on a hill near the San Miguel West Church. The church is located in San Miguel, Arizona, 4-5 miles north of the United States-Mexico border. The church is vacant and used exceedingly rarely for religious gatherings. Because of its

1 proximity to the dense Vamori Wash and the international border, the church is known by
 2 Border Patrol agents to be a pick-up location for illegal aliens, who cross the border and
 3 reach the church under the coverage provided by the Vamori Wash. In the six months
 4 prior to June 11, 2017, agents tracked foot sign from Vamori Wash to the church parking
 5 lot approximately once a week, and agents arrested several illegal aliens waiting near the
 6 church for transportation. In the weeks before June 11, 2017, Agent Perez observed
 7 people run from the Vamori Wash to a vehicle waiting in the area immediately
 8 surrounding the church; agents subsequently apprehended four illegal aliens in the
 9 vehicle. During the week of June 11, 2017, the church was mentioned at the agents'
 10 muster as a possible pick-up location. On June 11, 2017, Agent Perez received an alert
 11 from a sensor placed near the church and observed Defendants' vehicle leaving the
 12 church area. Defendants' vehicle had not been at the church when Agent Perez observed
 13 the area ten minutes earlier. Defendants' vehicle was not familiar to Agent Perez, drove
 14 10 miles per hour faster than local traffic, and kicked up dust on the road. When Agent
 15 Perez contacted agents in the area and Agent Landess began to follow the vehicle, the
 16 vehicle slowed down. This was suspicious to Agent Landess, because locals in the area
 17 know that Border Patrol cannot enforce traffic laws and therefore do not slow for Border
 18 Patrol vehicles. Defendants' vehicle was registered in Tucson and had crossed the border
 19 at Douglas, four hours away, less than 72 hours earlier. Agent Landess observed a
 20 disturbance in the dirt on the vehicle's trunk, consistent with handprints previously found
 21 on the trunks of vehicles transporting illegal aliens in the trunk.¹ Under the totality of the
 22 circumstances, Agent Landess had reasonable suspicion to stop Defendants' vehicle.

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26 ¹ Defendant Hernandez-Nunez argues in her response to the government's
 27 objection that Agent Landess did not observe the handprints until after he stopped
 28 Defendants' vehicle. (Doc. 73.) This is incorrect. Agent Landess testified that he
 noticed markings that appeared to be handprints prior to the vehicle stop. (TR 11/30/17,
 pg. 73, line 22 – pg. 74, line 5.) Agent Landess confirmed his observations after the
 vehicle stop. (TR 11/30/17, pg. 92, lines 8-24.)

CONCLUSION

After an independent review of the pleadings, exhibits and transcript, IT IS
HEREBY ORDERED that:

1. The Report and Recommendation (Doc. 60) is REJECTED; and
2. Defendant's Motion to Suppress (Doc. 42) DENIED.

Dated this 6th day of March, 2018.

Honorable Jennifer G. Zipts
United States District Judge

**C.A. Nos. 18-10285 &18-10296
(Consolidated)**

D.Ct. No. 4:17-cr-01056-JGZ-BPV
(District of Arizona, Tucson)

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
JOSIE ARVIZU
and
ERIKA HERNANDEZ-NUNEZ,
Defendants-Appellants.

On Appeal from Judgment of
the United States District Court for the District of Arizona

**APPELLANT HERNANDEZ-NUNEZ'S SUPPLEMENTAL
EXCERPTS OF RECORD**

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Date Filed ECF 04/23/2019

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DATED this 23rd day of April 2019.

RANDOLFO V. LÓPEZ, P.C.

/s/Randolfo V. Lopez

Randolfo V. López
Attorney for Appellant Hernandez-Nunez

 bing maps

San Miguel, Arizona

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San Miguel
Arizona
VS
Mexico

S





San Miguel, Arizona

Type your notes here.



Data from: Wikipedia



CERTIFICATE OF MAILING

RANDOLFO V. LÓPEZ, Attorney for Appellant Hernandez-Nunez, hereby certify that on April 23, 2019, 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. Participants in this case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that some of the participants in this case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepared, to the following non CM/ECF participants:

Erika Hernandez-Nunez
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DATED this 23rd day of April 2019.

RANDOLFO V. LÓPEZ, P.C.

/s/Randolfo V. Lopez

Randolfo V. López
Attorney for Appellant Hernandez-Nunez

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3 United States of America,) 4:17-cr-01056-JGZ-(BPV)
4 Plaintiff,)
5 vs.)
6 Josie Arvisu (1),) Tucson, Arizona
7 Erika Hernandez-Nunez (2),) November 30, 2017
8 Defendant.) 1:30 p.m. to 3:39 p.m.
9)

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12 Before the Honorable Fernando R. Valenzuela, Manufacture, Trade

12 Before the Honorable Bernardo P. Velasco, Magistrate Judge
13
14 Transcript of Proceedings
Hearing on a Motion to Suppress

18 Interpreter: N/A

19 Transcribed by:

10 A. Tracy Jamieson, Court Approved Transcriber
21 Evo A. DeConcini U.S. Courthouse
22 405 W. Congress Street, Suite 1500
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24 Digitally recorded proceedings;
transcript produced by transcriber.

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1 (On the record at 1:30 p.m.)

2 THE CLERK: In Criminal Matter 17-1056, United States
3 of America versus Josie Arvisu and Erika Hernandez-Nunez, on
4 for a motion to suppress hearing.

5 Counsel, please state your appearances.

6 MS. WRIGHT: Good afternoon, Your Honor. Anna Wright
7 and Heather Siegele for the Government today.

8 MR. SCILEPPI: Good afternoon, Judge. Chris Scileppi
9 on behalf of my client, Josie Arvisu. She's seated to my
10 right, she's an English speaker.

11 MR. LOPEZ: Good afternoon, Your Honor. Randy Lopez
12 for Erika Hernandez-Nunez, who is also present, out of custody.
13 She is bilingual and today she is proceeding in English.

14 THE COURT: All right. Thank you. You may proceed.

15 MR. LOPEZ: Your Honor, we invoke the Rule.

16 THE COURT: All right. Do you have a case agent? How
17 many witnesses do you have?

18 MS. WRIGHT: Judge, we have two witnesses. We don't
19 have the case agent with us today. So we're calling Agent
20 Cesar Perez first, and we'll ask Agent Mark Landess to wait out
21 in the anteroom there.

22 The Government calls Agent Cesar Perez to the stand.

23 THE CLERK: Raise your right hand, please.

24 CESAR PEREZ, WITNESS, SWORN

25 DIRECT EXAMINATION

1 BY MS. WRIGHT:

2 Q. Agent, will you do me a flavor and please state your name
3 for the record.

4 A. My name is Cesar Perez, Border Patrol agent.

5 Q. Agent, how long have you been employed by the Border
6 Patrol?

7 A. Since February of 2009.

8 Q. And, generally speaking, what have been your duties with
9 Border Patrol?

10 A. Well, we patrol the border. We cut for sign, push sign.
11 One of my main duties is surveillance with a mobile
12 surveillance truck.

13 Q. On June 11th of 2017, were you employed by Border Patrol on
14 that date?

15 A. Yes, ma'am.

16 Q. And where were you stationed on that date?

17 A. I was at Three Points Station.

18 Q. How long had you been stationed there?

19 A. Since July of 2013.

20 Q. And on June 11th, what were your duties?

21 A. I was assigned to the mobile surveillance truck and -- down
22 in the reservation.

23 Q. So let's talk a little bit first about the mobile
24 surveillance truck. Can you describe generally what that truck
25 does, what you do with that truck.

1 A. Yeah, so we have -- it has a radar system that detects
2 movement and it gives me a signal of where there's movement.
3 It has a camera, I am able to see about 10 or more miles pretty
4 clearly, especially at night it's even better.

5 Q. Let me pause you there. When you say you can see 10 miles
6 with those instruments, is that 10 miles just in a stationary
7 direction?

8 A. No, 360, all around.

9 Q. And on the day you said you were assigned to operate that
10 truck, how long -- how many years of experience do you have
11 working that truck at that time?

12 A. I had about three, three years or so.

13 Q. And on that day, where was the truck positioned?

14 A. It was on top of the hill. On -- it's called "White
15 House."

16 Q. And where was that, geographically speaking?

17 A. It's west of FR19. It's just north of the international
18 border.

19 Q. Is that in Arizona?

20 A. Yes.

21 Q. And is that on the Tohono O'odham Reservation?

22 A. Yes, ma'am.

23 Q. Now, from your vantage point in that truck, were you able
24 to see a church that is located in San Miguel, Arizona?

25 A. Yes, ma'am.

1 Q. And were you able to see the area immediately surrounding
2 that church?

3 A. Yes, ma'am. Pretty clearly.

4 Q. How much detail could you see?

5 A. I can see very good detail. I can see rabbits.

6 MR. LOPEZ: Your Honor, may I ask for clarification
7 whether it's instruments or whether it's visual, his personal
8 visual?

9 THE COURT: Sustained.

10 THE WITNESS: We --

11 BY MS. WRIGHT:

12 Q. Agent, let me ask the question.

13 So when I ask you about what you can see on that day, when
14 you're talking about that, are you talking about things you can
15 see using the instruments in the truck?

16 A. Yes.

17 Q. And you're not talking about anything that you're seeing
18 with your naked eye, without instruments?

19 A. It's pretty far without instruments. It's about five miles
20 away, so....

21 Q. So what kind of detail, using the instruments, could you
22 see of the church and its immediate surrounding area?

23 A. Well, I can see the whole lot. I can see FR19, which is
24 the road just east of it. I have pretty good detail, and I can
25 see animals, I can see people, vehicles driving through.

1 Q. Well, let's talk a little bit about that church. Can you
2 describe what it looks like to the Court, please.

3 A. Yes. So it's -- this church is not used. I've only seen
4 it used work --

5 Q. I'm sorry, I meant a physical description.

6 A. Okay.

7 Q. What does it look like?

8 A. It's made of -- it looks like rocks. It's boarded up.

9 It's in the middle of a -- pretty much of the dirt lot.

10 There's a little shrine in front of it. It's brown with white.

11 Q. Thank you, Agent.

12 I'd like to show you what has been marked as Exhibits 1 --
13 Government's Exhibit 1 through 3.

14 MS. WRIGHT: Your Honor, if I may approach?

15 THE COURT: Yes.

16 MS. WRIGHT: Thank you.

17 BY MS. WRIGHT:

18 Q. Agent Perez, I'd like you to take a look through those
19 three photos. Do you recognize what's depicted in those
20 photos?

21 A. Yes, ma'am.

22 Q. What's depicted there?

23 A. It's the San Miguel West Church.

24 Q. Is this the same church we've been talking about?

25 A. Yes, ma'am.

1 Q. Do those photos depict the church as it appeared on June
2 11th, 2017?

3 A. Yes, ma'am.

4 MS. WRIGHT: Your Honor, I'd move for admission of
5 Government's Exhibits 1 through 3.

6 MR. SCILEPPI: No objection.

7 THE COURT: They'll be admitted.

8 BY MS. WRIGHT:

9 Q. Agent, next I'd like to show you Exhibits 4A and 4B.

10 MS. WRIGHT: May I approach, Your Honor?

11 THE COURT: Yes.

12 BY MS. WRIGHT:

13 Q. Agent, take a look at those and tell me if you recognize
14 what's depicted in those exhibits.

15 A. Yes, ma'am. That's the -- this is the...(indiscernible
16 word(s)... and the church is just to the west of it.

17 Q. I'm sorry, I missed the first part of your answer. Tell me
18 again what's depicted in those images.

19 A. Well, this is FR19, Federal Route 19, it runs north-south,
20 and the church just west of it.

21 Q. So, generally speaking, are those images maps?

22 A. Yes.

23 Q. What are they maps of?

24 A. Of the area down on the reservation where the church is at.

25 Q. Thank you. Do those maps show the area as it looked on

1 June 11th, 2017?

2 A. Yes, ma'am.

3 Q. Okay. Let's take a look at those. And what I'd like you
4 to do on those maps -- do you see where the church is located?

5 A. Yes, ma'am.

6 Q. Which one shows the closer, closer view, 4A or 4B, please?

7 A. 4A.

8 Q. All right. Let's look at 4A. Where on the map is the
9 church?

10 A. It's just west of FR19, and just south of that larger dirt
11 road where the 19 is at, it goes west.

12 Q. Agent, if I handed you a pen, could you circle where that
13 church is?

14 A. Yes, ma'am.

15 MS. WRIGHT: May I, Your Honor?

16 THE COURT: Yes.

17 MS. WRIGHT: Thank you.

18 BY MS. WRIGHT:

19 Q. I am handing you a pen. Just circle where the church is on
20 4A. And if you would hand that to the Court so he may see.
21 I'll also show it to defense counsel.

22 THE COURT: Okay. Thank you.

23 MR. LOPEZ: This whole orientation, is the top of the
24 photograph north?

25 THE COURT: West.

1 THE WITNESS: The top of the photo is north.

2 THE COURT: North? I thought you said Route 19 runs
3 north and south?

4 Oh. Oh, I'm sorry.

5 THE WITNESS: Yes.

6 THE COURT: I've got it wrong.

7 MR. LOPEZ: North. So to the left would be west. So
8 that's the church.

9 BY MS. WRIGHT:

10 Q. Agent, when I bring you the photo back, the map back, I'll
11 have you mark where the cardinal directions are: north, south,
12 east, west.

13 A. Okay.

14 Q. Okay. If you will do that for me, if you will mark where
15 north is in reference to this.

16 And is north at the top of the page?

17 A. Yes, ma'am.

18 Q. Thank you.

19 Let's talk a little bit about what's around the church.

20 Why don't we start with north. What is immediately to the
21 north of the church?

22 A. That's the San Miguel West Road. It's only a couple houses
23 right there. It's pretty much, I mean, just that -- that road
24 that runs east-west.

25 Q. Now let's talk about what's to the east.

1 A. Okay. This is -- there's only one house right there, and
2 FR19.

3 Q. And what is to the west?

4 A. It's pretty much empty all the way to the Vamori Wash.
5 That wash, it's a pretty large wash. There's a lot of brush,
6 it's pretty thick. It's maybe about 20 feet high. A lot of
7 times we can't see through that brush.

8 Q. For the record, I am going to have you spell the name of
9 the wash.

10 A. It's Vamori. Victor Alpha Mike Oscar Romeo India.

11 Q. And the brush that's located there, how does it compare to
12 the brush on the other sides of the church?

13 A. On the other sides it's short, it's just regular little
14 bushes. This is -- the vegetation is really thick and green.
15 You can hardly even walk through there, and it's real tall.

16 Q. I believe we need to talk about what's to the south.

17 A. Okay.

18 Q. What is to the south of the church?

19 A. It's just another open space all the way to -- there's a
20 small house just south of it, but there's pretty much open
21 space all around it.

22 Q. How far is the church from the international border?

23 A. It's about five miles.

24 Q. Five miles to the north?

25 A. To the north, yes, ma'am.

1 Q. I'd like to talk a little bit about surveillance you
2 conducted of the church.

3 Can you tell us, please, when Border Patrol first put a
4 mobile surveillance camera truck on that same vantage point
5 that you had?

6 A. It's about a little over three years.

7 MR. SCILEPPI: I'm sorry?

8 THE WITNESS: About three years. Maybe a little more.

9 MS. WRIGHT: Agent, scoot that mic a little bit
10 closer.

11 THE WITNESS: Yes. I'm sorry. I tend to talk soft.

12 BY MS. WRIGHT:

13 Q. And during that time did you operate that truck?

14 A. Yes.

15 Q. And in the six months prior to the June 11th incident, did
16 you operate that truck?

17 A. Most of the time, yes.

18 Q. When you say, "most of the time," how often per week were
19 you operating that truck?

20 A. At least three times out of five. Three days out of five
21 days.

22 Q. During that time did you have an opportunity to observe any
23 activities that might be happening at the church and its
24 surrounding area?

25 A. Yes.

1 Q. Let's talk first about what I am going to call legitimate
2 uses of the church.

3 During that time did you see any regular meetings at the
4 church?

5 A. Ever since I've been there, since 2013, I've only seen one.
6 There was some sort of celebration by the Tohono O'odham
7 Nation, and it wasn't even inside the church, it was outside.
8 There were some vehicles, there were some tarps, and we were
9 notified at that time as well.

10 Q. During the time that you've been able to use this equipment
11 to surveil the church, have you ever seen something that looked
12 like regular Sunday morning service?

13 A. No.

14 Q. Is there a shrine close by to that church?

15 A. Yes, it's from the front -- the front door. It's maybe, I
16 don't know, 20 yards, 30 yards in front of it.

17 Q. Do you ever see people who seem to be visiting that shrine?

18 A. Yes, there's -- I can -- there's about three vehicles that
19 I always see stop by there.

20 Q. When you say you always see these vehicles, do you
21 recognize these vehicles?

22 A. Yes.

23 Q. And you can tell them apart from other vehicles that might
24 visit?

25 A. Yes, it's three pick-ups; a silver one, a red one, a green

1 one. And they live right there around the church as well, so I
2 know they're locals.

3 Q. All right. Let's talk about what can be termed as illegal
4 activities of the church.

5 Before you were ever in the truck, did you ever have
6 opportunity to investigate any illegal activity that might be
7 happening near the church?

8 A. Yes, ma'am.

9 Q. What was that like?

10 A. Well, we've always picked up foot sign around that coming
11 out of Vamori Wash. A lot of times we follow the sign going
12 northeast. A lot of times we just lose the sign and we'd
13 figure out that they got picked up by a vehicle.

14 Q. How were you able to figure that out?

15 A. Well, you follow the sign, there's no more foot sign but
16 there is tire sign from vehicles, and you can tell they jumped
17 in the vehicle and disappeared.

18 Q. And did you ever track foot sign and then actually
19 apprehend people who were in the United States illegally?

20 A. Yes, ma'am.

21 Q. Let's talk about close in time to June 2017; were you ever
22 able to do that, were other agents able to do that?

23 A. Yes, ma'am.

24 Q. How often were they tracking foot sign near the church?

25 A. At minimum, once a week we'd -- I mean, a few times a week.

1 MR. LOPEZ: Your Honor, I'm going to object to
2 relevancy.

3 MR. SCILEPPI: And Foundation.

4 THE COURT: Overruled.

5 BY MS. WRIGHT:

6 Q. Agent, let's talk a little bit in the time immediately in
7 the months around June 2017; were you operating the
8 surveillance truck?

9 A. Yes.

10 Q. During that time did you have opportunity to see what might
11 be happening at the church?

12 A. Yes, ma'am.

13 Q. During that time were you also talking to other agents that
14 you work with about what they might be seeing or experiencing
15 around the church?

16 MR. SCILEPPI: Objection, Judge. Calls for hearsay.

17 THE COURT: Overruled.

18 MS. WRIGHT: You can answer.

19 A. Yes, I hear -- well, agents will tell --

20 MR. SCILEPPI: Objection, Judge. It's hearsay.

21 MS. WRIGHT: There wasn't any question, Your Honor.

22 MR. SCILEPPI: He's about to tell what the agent said,
23 which is hearsay.

24 THE COURT: Yes, I understand that. Overruled.

25 But you can lay some foundation as to when you -- where you

1 were, where the agents were, what days, what time.

2 MS. WRIGHT: All right.

3 BY MS. WRIGHT:

4 Q. So I'll ask you some more questions.

5 So do you ever go to muster before you begin your shift?

6 A. Yes, ma'am.

7 Q. What happens at muster?

8 A. Well, we're given intel, information about smuggling or
9 drugs coming into the country. This -- this church has always
10 been a big topic because they've always been -- we've always
11 been told to keep surveillance there. There's pick-ups being
12 done. Illegal aliens walk through there all the time just
13 because of the -- it's pretty close to the border and they have
14 pretty good cover because of that Vamori Wash, all that brush.

15 Q. Okay. So let's talk about specific time periods when you
16 might have heard things at muster.

17 June 11th, did you go to muster?

18 A. Yes.

19 Q. And was the church a topic at muster that day?

20 A. No, I don't believe so. Not that day.

21 Q. Okay. In the week before June 11th, was the church a topic
22 at muster?

23 A. Yes.

24 Q. And what specifically was said about the church at muster?

25 A. Well, we were told to go at least once during our shift and

1 cut for sign because they'd been picking up a lot of foot sign
2 and vehicle sign through there. And we'd been losing
3 undocumented aliens in that area, they'd get picked up and they
4 would just lose the groups.

5 Q. I'd like to talk to you now about what you would have
6 personally seen operating that truck at about that time, in
7 June 2017.

8 During that time did you personally see any people walking
9 out of the Vamori Wash near the church?

10 A. No. Not that date, no.

11 Q. Not on that day. In the week or two weeks preceding June
12 11th, did you see anybody walking out of the brush in that
13 time?

14 A. Yes.

15 Q. Is that a place that people would hike for entertainment?

16 A. No.

17 Q. And when you saw people walking out of the brush, were you
18 able to see what they did next?

19 A. Yes. Well, either they keep going or they get loaded up.
20 And in my experience, in this church, I've had other load-ups
21 that I spotted in that same area, and most of the time they
22 come out of the brush, they run into the vehicle, and they take
23 up going north.

24 Q. Had you seen anybody to that close in time to June 11th?

25 A. Yes.

1 Q. When was that?

2 A. I want to say about -- around April, I had another vehicle
3 that picked up bodies.

4 Q. When you say, "picked up bodies," do you mean --

5 A. Illegal --

6 Q. -- people got into the vehicle?

7 A. Yes.

8 Q. What did you see on that date?

9 A. It was an SUV. There were four -- four persons that ran
10 into the vehicle, got into the vehicle, and we ended up
11 stopping it shortly after, and they were illegal aliens.

12 Q. And when you say they were picked up at the vehicle, was
13 this done in the immediate surroundings of the church?

14 A. Yes.

15 Q. Let's turn our attention now actually to the main event, to
16 June 11th, 2017. You told us you were on duty that day
17 operating the mobile surveillance camera truck.

18 A. Yes.

19 Q. Please describe the visual conditions that day.

20 A. It was a clear day.

21 Q. Were you able to see the full 10 miles of the radius the
22 instruments gave you?

23 A. Pretty much, yes, ma'am.

24 Q. And at about 10:30 that day, did anything happen to catch
25 your attention?

1 A. Yes. Through radio, there was an activation of one of our
2 sensors. When I turned the camera to the area, I saw a black
3 four-door sedan right by the church and leaving the area.

4 Q. And I want to just talk a little bit so that the Court
5 knows what you mean when you say there was a sensor that
6 activated. What do you mean that there's a sensor there?

7 A. Well, whenever there's any movement, or in this case a
8 vehicle activated the sensor, it's -- something went over this
9 sensor. It sends a signal to our station and they call us on
10 the radio, there's something there or something went through,
11 came out. It's just sensor activation, they let us know
12 there's something in the area and we can investigate further.

13 Q. So when you said you -- so once you hear about the sensor,
14 what do you do next?

15 A. Well, I'd automatically turn the camera to that area.

16 Q. How long does that take you to do?

17 A. Within three seconds.

18 Q. Did you say "three" or "thirty"?

19 A. Three seconds.

20 Q. Once you turn the camera, what do you see?

21 A. So I turn the camera and I see a black vehicle leaving
22 the -- the east side of the church, driving through in this
23 empty lot in front of the church. And I -- well, nobody really
24 drives in front of that church, other than those three other
25 vehicles that I've always seen.

1 Q. Let me ask you another question here. So you said it was
2 driving --

3 MR. SCILEPPI: Objection. By the way, Judge,
4 objection to that last statement, as far as foundation.

5 THE COURT: Sustained.

6 BY MS. WRIGHT:

7 Q. So, Agent, I want to talk about just this day only.

8 So you've told us you turn the camera, you saw this
9 vehicle, were there any other vehicles immediately around the
10 church at that time?

11 A. No, there was nobody around.

12 Q. And during that day, earlier in that day, had you had
13 occasion to turn your camera towards the church?

14 A. Yes.

15 Q. And had you seen any other vehicles at the church any time
16 earlier in that day?

17 A. No, it was empty.

18 Q. And did you continue to keep your surveillance on that
19 vehicle?

20 A. Yes, I did.

21 Q. And what did you observe next?

22 A. Well, I saw it leaving the church area. I kept eyes on it.
23 I saw that it was -- it wasn't driving slow, like locals
24 usually do, people that live in the area.

25 Q. How can you tell from that far away that it's driving slow

1 or fast?

2 A. Well, because of the dust that it's picking up on the dirt
3 road. Usual --

4 Q. Give me a second here. Have you had occasion in the past
5 to watch traffic around the church?

6 A. Yes.

7 Q. And have you had occasion to observe traffic that you
8 believe is local?

9 A. Yes, ma'am.

10 Q. And what have you observed about how they drive?

11 A. Well, they drive pretty slow, as to not pick up dust in the
12 area. They don't like dust around there.

13 Q. And on this day, with this particular vehicle, was it
14 picking -- kicking up dust?

15 A. Yes, ma'am.

16 Q. Did you notice which direction the vehicle drove in?

17 A. No, I did not.

18 Q. As you kept visual on the vehicle, did you see where it
19 drove to?

20 A. I saw it driving out east from the church, on the east side
21 of the church.

22 Q. Did it then turn onto another road or do anything else?

23 A. Yes, it came out of the church going northeast onto the
24 main road, and then it -- it went straight towards -- when you
25 look at the map, where that 19 is, straight to the paved road.

1 Q. And when you say, "the paved road," which road is that?

2 A. That's Federal Route 19.

3 Q. Did you do anything when you saw this happen?

4 A. Yes. Well, I automatically got on the radio and contacted
5 the agents that were close by, and that's where Agent Landess
6 answered, and he was coming south on that road.

7 Q. And pause right there. When you say you called out on the
8 radio, did you relay some of this information to other agents
9 in the area?

10 A. Yes, I did.

11 Q. What particular information did you relay?

12 A. Well, I advised them that the sensor had been activated and
13 I didn't recognize that vehicle that was in the area. That
14 didn't seem to be a local vehicle, that I had never seen in
15 that area before.

16 Q. When you were maintaining your surveillance on the vehicle
17 as it drove, how long did you maintain surveillance?

18 A. I never lost the visual of the vehicle until it got pulled
19 over by Agent Landess.

20 Q. So would it be fair to say that you continued surveillance
21 until Agent Landess intercepted the vehicle?

22 A. Yes, ma'am.

23 Q. All right. I'd like to talk a little bit just about the
24 traffic that is there at the church.

25 In the weeks preceding this incident, were you -- did you

1 have occasion to notice who came and went from the church, if
2 anyone?

3 A. Yes.

4 Q. And did you notice if vehicles came and went from the area
5 immediately around the church?

6 A. Yes.

7 Q. Describe for us what that traffic looked like.

8 A. It's always the same three vehicles. There's a red
9 pick-up, green pick-up, a silver pick-up that always pass by.
10 They go to that little shrine that's in front, they spend a few
11 minutes there, and then they head to their houses. And I can
12 see all that.

13 MS. WRIGHT: If I could have just one moment, Your
14 Honor.

15 THE COURT: Mmm-hmm.

16 MS. WRIGHT: Your Honor, I'm not sure, I don't think I
17 asked to admit 4A and 4B, and I would move to do that at this
18 time.

19 THE COURT: They'll be admitted.

20 MS. WRIGHT: Thank you, Your Honor. I have no further
21 questions.

22 CROSS-EXAMINATION

23 BY MR. SCILEPPI:

24 Q. Good afternoon, Agent.

25 A. How are you doing, sir?

1 Q. So did you -- you got trained at the academy where Border
2 Patrol Agents go to get trained, correct?

3 A. Yes, sir.

4 Q. Was that in New Mexico?

5 A. Yes, sir.

6 Q. When was that?

7 A. In 2009.

8 Q. And you were trained about report writing, the importance
9 of report writing at that -- at your training?

10 A. Briefly, yes, sir.

11 Q. And you were trained about -- to include everything you
12 found relevant and important in your -- in your investigation
13 into your report, correct?

14 A. Yes, the important facts. Yes.

15 Q. And did you write a report in this instance?

16 A. Yes, sir.

17 Q. And do you feel you included everything you felt relevant
18 in your report?

19 A. The main facts, yes, sir.

20 Q. You said that you were at surveillance, you've done
21 surveillance or performed surveillance from that mobile truck,
22 surveillance truck, since 2013. Correct?

23 A. About, yes, sir. Well, no, about 2014.

24 Q. 2014.

25 A. Yeah. We didn't have that truck up there. We've always

1 had surveillance from that area, not specifically from that
2 truck. Because we didn't have that truck up there, but we did
3 have "scouts" (word barely discernible; phonetic spelling).

4 We had other surveillance system up there, yes.

5 Q. So did you perform surveillance up there prior to 2014,
6 prior to the truck, mobile truck, being there?

7 A. Yes.

8 Q. And then that truck came -- how many people, how many
9 agents, run or perform surveillance in that truck?

10 A. It's only one per shift. So --

11 Q. So when you're there, you're there alone?

12 A. Yes, sir.

13 Q. And you said that you're there --

14 A. Unless I'm training somebody. Because I am a trainer for
15 that truck.

16 Q. How often does that happen?

17 A. Well, I've pretty much trained everybody there. So it
18 doesn't happen often, but before that it would be every week.
19 I'd have somebody five days with me. It's a five-day training,
20 so....

21 Q. I think that you said you'd be in that truck approximately
22 three out of, you said, five days.

23 A. Yes.

24 Q. Does that make sense?

25 A. Yes.

1 Q. So when we're talking five days, you're talking a five-day
2 business week?

3 A. Yes, sir.

4 Q. So you're actually there three out of seven days, correct?

5 A. Correct.

6 Q. So are you there typically on Sundays?

7 A. Well, we work 24/7. So, in a seven-day week, I would
8 probably be up there four or five times. If -- we're not often
9 on the same days all the time. So if I was to work 10 days
10 straight without days off, I would be out there maybe seven or
11 eight times.

12 Q. I'm sorry. You'd be there...?

13 A. Seven or eight times within two weeks.

14 Q. Okay.

15 A. We're not off certain days, but there's times where we get
16 Sunday-Monday off and then we work Tuesday all the way through.

17 Q. All way through what?

18 A. Next Thursday.

19 Q. You're talking whomever is assigned to the mobile
20 surveillance truck.

21 A. Well, we -- we switch out all the time. We're not -- we
22 have four other trucks that we do surveillance from, this is
23 just one of them.

24 Q. Okay. So when you're in that truck, do you do a 24-hour
25 stint in that truck?

1 A. No.

2 Q. How long is your -- how long is your period of time that
3 you're in there?

4 A. Six or seven hours.

5 Q. Okay. So if you're there a week, you could be there, like
6 we said, three days out of seven?

7 A. Yes.

8 Q. And for about six or seven hours per day.

9 A. That's correct.

10 Q. And what was your -- what hours were you working, what was
11 your shift specifically, on the day of June 11th of 2017?

12 A. It was from 6:00 in the morning 'til 4:00 in the afternoon.

13 Q. So approximately what time did you spot the black vehicle
14 that you're referring to earlier?

15 A. Approximately 10:30 in the morning.

16 Q. So then you'd been there for about five hours?

17 A. Actually, two and a half hours, because it takes me two
18 hours to get there from the station. So I come in at 6:00. By
19 the time I get to that truck it's already 8:00 o'clock.

20 Q. Okay. Okay. That's why... (indiscernible word(s))...spent
21 five hours there and then drive back?

22 A. Yeah, I would get there at 8:00 and I get relieved around
23 2:00 in the afternoon, which, that would be about six hours,
24 and then I'd drive back and my shift ends at 4:00.

25 Q. So you said on June 11th you saw, at around 10:00, 10:30,

1 saw that black vehicle by the -- by the church?

2 A. Yes, sir.

3 Q. When did you -- how long had your eyes or your camera been
4 trained at that church?

5 A. Well, I have an area of about 10 miles by 10 miles all the
6 way around me that I have to surveil, so I'm always scanning
7 different areas. I'll scan there for 10, 15 seconds, see if I
8 see anything. At that time I did not have eyes on that church.

9 Q. At what time -- I'm sorry, I just want to be specific here.
10 At what times do you not have eyes on the church?

11 A. Well, until before the -- before the sensor went off, I
12 didn't have eyes on it.

13 Q. Where is the sensor in relation to the church?

14 A. It's inside the third lot. It's in the church lot.

15 Q. Okay. And what time did the sensor get tripped?

16 A. About 10:30.

17 Q. And so when the sensor got tripped, did you then turn your
18 attention from what you're doing and then look to where that
19 sensor --

20 A. That's correct, yes.

21 Q. -- was located?

22 A. Yes, sir.

23 Q. And what did you see?

24 A. I saw nothing but a black sedan, which was the only thing
25 that was in the area.

1 MS. WRIGHT: Do you want the photos?

2 MR. SCILEPPI: Yeah. Thank you.

3 Judge, may I approach the witness?

4 THE COURT: Yes.

5 MR. LOPEZ: Chris, I've got them here.

6 BY MR. SCILEPPI:

7 Q. Take a look at 4A if you would, Exhibit 4A.

8 A. Yes, sir.

9 Q. Which is a picture of the church which you circled,
10 correct?

11 A. Correct.

12 Q. Your unit is located in what direction from the church?

13 Are you to the west, north, south, or east?

14 A. To the west.

15 Q. How far from the church?

16 A. About five miles west.

17 Q. And if you're looking from the west -- you're on a hill,
18 correct?

19 A. Yes, sir.

20 Q. So you're looking down upon the church.

21 A. Correct.

22 Q. So you have more of an aerial view of the church and the
23 surrounding areas, correct?

24 A. Not so much of an aerial view. More of a side view, yes.

25 Q. My point is that you're looking at it from an elevated

1 position so you have an unobstructed line of sight to the
2 church.

3 A. Correct, yes.

4 Q. And there's no -- there's no bushes -- I see a line of --
5 if you look at 4A, on the west side the church.

6 A. Yes.

7 Q. It looks like a line of greenery, like bushes?

8 A. Yeah, it's a couple of trees.

9 Q. That's not obstructing your view of what's going on at that
10 church, is it?

11 A. No, sir.

12 Q. So you can see above that, and you can see clearly what's
13 going --

14 A. Yes.

15 Q. -- in the surrounding areas.

16 And how often are you circulating your -- are you -- are
17 you -- let me back up.

18 When you're in your truck, are you constantly looking
19 through the camera which gives you that long-range view?

20 A. Yeah, well, what it is, there's a camera on top, and I have
21 two LCD screens, computer screens, and that's what I'm looking
22 through.

23 Q. Gotcha. So the camera is picking up things, but you're
24 looking at the screens.

25 A. Yes.

1 THE COURT: Excuse me. The camera is on the vehicle,
2 not at the site?

3 THE WITNESS: No, the camera is -- it's on top of the
4 truck, yes, sir.

5 BY MR. SCILEPPI:

6 Q. So the camera is on top of the truck and you're looking at
7 what the camera is seeing through your monitors?

8 A. Correct.

9 Q. And you said that you can see approximately 10 miles or
10 that camera can see approximately 10 miles. Can you zoom in
11 and zoom out?

12 A. Yes, it has four zoom settings.

13 Q. Four...? I'm sorry.

14 A. Four zoom settings.

15 Q. Got it. Got it.

16 A. And I can also see infrared. I can switch it to IR, so it
17 picks up --

18 Q. Heat.

19 A. -- heat signatures and stuff, yes, sir.

20 Q. This is the daytime, the morning?

21 A. Yes.

22 Q. You were not using infrared, were you?

23 A. At that time, no.

24 Q. At any time during this investigation, did you turn on
25 infrared?

1 A. No, I didn't.

2 Q. And why not? Did you do it more at nighttime, when it's
3 colder and you can pick up body heat? Or when you -- why
4 didn't you?

5 A. No, I use it throughout the day as well. I didn't use the
6 IR because it's pretty much black and white. So the screen's
7 black, or you can switch it, it's vice versa. So if the hot
8 signatures are white, everything is black and then you have a
9 white spot. But at this time the view was pretty clear, on the
10 daytime. It was clear, so, I mean, it was just....

11 Q. So is the camera -- are you moving the camera where you
12 want it to be?

13 A. Yes.

14 Q. So how often are you -- I mean, are you kind of rotating on
15 a constant like -- are you on a constant basis or are you --
16 and just looking around? Or are you -- how do you determine
17 what you're looking at?

18 A. No, I'm rotating it constantly looking at different areas.
19 The radar on top of it is turning as well, 360, and it picks up
20 movement. So if something moves it will give me a signal on
21 the screen. I click on it and it automatically --

22 Q. Zooms in.

23 A. -- turns the camera to that area. A lot of times I'm
24 checking those -- we call them "hits." So we click on it, it
25 turns the camera, we see what it is. Sometimes it's animals,

1 sometimes it's people walking or vehicles leaving.

2 Q. Understood.

3 A. Any type of movement.

4 Q. So back to the original question: How often would you say
5 you get a 360-degree view? How long would it take you -- you
6 know, if you're just kind of sitting there and doing your
7 surveillance, you're not going to be looking at one segment for
8 30 minutes, you're kind of rotating the whole time around,
9 correct?

10 A. Right.

11 Q. So how long would it take you to go a full 360?

12 A. About a minute.

13 Q. So you're constantly doing this.

14 A. Yes, the radar is turning. Usually -- I have settings on
15 the radar. And it turns, let's say, north for 20 seconds, the
16 other way for another 20 seconds, 20. Or 15 seconds.

17 Q. Fifteen, fifteen?

18 A. Continuously.

19 Q. So -- and when -- it doesn't -- for that 15 seconds you
20 just mentioned, it's not trained in one direction. Is it
21 constantly kind of -- it takes 15 seconds from due north to due
22 east, and then another 15 seconds to go from due east to due
23 south?

24 A. No, it stops for 15 seconds on a 90 -degree angle. So if I
25 want it looking -- the radar looking east, it stops there for

1 15, 20 seconds, or however I set it for. Once it stops it will
2 take maybe two or three seconds to move to the next spot and
3 the next one.

4 Q. You said you set it -- you said that you can determine how
5 long those settings are: 15 seconds, 20 seconds. Correct?

6 A. Yes.

7 Q. And you set it to the settings that you find fit with what
8 you're observing and you can adjust the times, correct?

9 A. Correct. That's what works for -- for me.

10 Q. So I would -- from what you're telling me, it would make
11 sense that, from your vantage point, you'd be looking at or
12 around the area of this church for at least 15, 20 seconds per
13 minute and a half.

14 A. Possibly. I mean, I'm -- between me and the truck, there's
15 five miles, and I can still see. So I have 10 miles that I
16 have to look at. I mean, you get -- like I said, the radar
17 shows me certain hits of movement in the area, I click on it
18 and that's what I go to.

19 Q. So did you -- and the whole time that you were looking --
20 that morning you were there for two and a half -- approximately
21 two and a half hours, right?

22 A. Yes.

23 Q. And you never saw anything being picked up, no movement, no
24 bodies, no movement around that church.

25 A. No.

1 Q. You didn't see bodies going there?

2 A. No.

3 Q. And you didn't see bodies going there beforehand.

4 A. No. And the reason is because sometimes --

5 Q. Let me ask the questions.

6 So then you got a hit, and the hit came from what you
7 assume or what you learned was a vehicle that pulled into the
8 parking lot.

9 A. Right.

10 Q. What did you see the vehicle do when it was in the parking
11 lot?

12 A. It passed right next to the church, going northeast towards
13 the main road, and then it took an eastern -- if you look at
14 the map, there's a church and --

15 Q. When you say, "the map," you're referring to 4A?

16 A. Yes, sir.

17 Q. Okay. Go ahead.

18 A. So that main road where that 19 is, that's a main road.
19 But there are some other smaller dirt roads that come from the
20 church. So when I panned to the church, this vehicle was just
21 east of the church and moving towards -- through one of the
22 smaller roads.

23 Q. Got it. So one of the small, kind of, dirt tributaries
24 that come from the road coming off the -- the main dirt road
25 coming off 19.

1 A. Correct.

2 Q. Those are dirt roads, correct?

3 A. They are dirt roads, yes.

4 Q. And you were talking about the -- you were talking about,
5 on direct, whether you can determine somebody is going faster
6 or slower because of the amount of dirt that's kicked up on
7 those dirt roads, correct?

8 A. Correct.

9 Q. And even if somebody is going slowly on those roads,
10 they're still creating, they're still kicking up dirt, correct?

11 A. Yes, sir.

12 Q. So any car or pick-up truck or whatever the case that's
13 traveling on those dirt roads, it would make sense that it's
14 kicking up dirt and that it could leave a layer of dust or dirt
15 on the back of the vehicles that are driving on those roads,
16 correct?

17 A. It depends how fast they're going.

18 Q. We already just discussed that, but you said whether
19 they're going slowly or quickly, it still leaves dust, correct?

20 A. To a certain extent, yes. I mean, if you're going faster
21 it's going to create a bigger cloud than if you're just kind of
22 going five miles an hour; it's hardly going to pick up any
23 dust.

24 Q. We've already established that whether they go slowly or
25 quickly, they're going to kick up dirt and it's going to land

1 on the vehicle, it's just a matter of how much.

2 A. Correct.

3 Q. So in your shift you saw no activity around that church,
4 humans or -- on that day -- humans or vehicles, except for that
5 one at 10:30.

6 A. That's right.

7 Q. All right. Then when you saw -- when you saw that vehicle,
8 did you contact another Border Patrol agent?

9 A. Yes, sir.

10 Q. And what did you direct -- what did you tell that Border
11 Patrol agent?

12 A. I advised them that there was a sensor activation just
13 previously to me looking at that vehicle, the sensor is in the
14 area, and it appeared that it was leaving the area where the
15 sensor is located. I told them that I had never seen that
16 vehicle by that church before, and that it was going at a
17 little faster speed than usual, that it didn't look like the
18 local vehicle, somebody that lived there.

19 Q. And you understand that first of all -- two things. You
20 just described that the vehicle, the black vehicle, was going
21 fast, correct?

22 A. Faster than usual, yes.

23 Q. Okay. Faster than usual. What's usual?

24 A. About 5, 10 miles an hour.

25 Q. So it's going faster than 10 miles per hour.

1 A. Yes.

2 Q. So, according to your discussion before, it's kicking up
3 more dirt than a car going slower than 10 or 5 miles per hour
4 would kick up, correct?

5 A. Yes, sir.

6 Q. Looking at 4A, there's the church, and there is numerous
7 houses and edifices to the northwest, there's a bunch of houses
8 and buildings and edifices to due north, there's some houses
9 and edifices to due east, to the southeast, there's a bunch of
10 buildings and structures due south. You would agree with my
11 depiction of that, correct?

12 A. Yes, sir.

13 Q. You don't know all these people in this area, correct?

14 A. No, not really. Not everybody.

15 Q. And these people, these -- are these individual homes
16 mostly or businesses?

17 A. No, they're individual homes.

18 Q. Okay. And these people can have people that come and visit
19 them, correct?

20 A. Yes, sir.

21 Q. And if people come and visit them that don't necessarily
22 live there, you're not going to necessarily recognize those
23 cars, correct?

24 A. That's right.

25 Q. But those vehicles aren't necessarily conducting illegal

1 activity just because they happen to be in that area, correct?

2 A. Correct.

3 Q. So the fact that you saw this black vehicle by the church,
4 in and of itself, didn't mean anything to you, right?

5 A. Well, locals or people visiting these don't go into the
6 church a lot, they use the -- the regular roads.

7 Q. Okay. And you already said that this person -- or that you
8 didn't -- first of all, you don't recognize all the cars in
9 that area, correct?

10 A. The ones that go through the church? I do. I don't know
11 all the cars down in the reservation, no, but the ones that go
12 through that lot, that empty lot in front of the church, I do
13 know. There's three. Because they always stop at that shrine.

14 Q. But you're not there 24 hours a day, 7 days a week, you
15 know, 365 days a year, correct?

16 A. That's correct.

17 Q. There's many times where you're not there that many people
18 can go and visit that church, right?

19 MS. WRIGHT: Objection. Calls for speculation.

20 MR. SCILEPPI: Judge, she laid the foundation previous
21 and he answered previous --

22 THE COURT: Overruled.

23 THE WITNESS: Can you say that again?

24 BY MR. SCILEPPI:

25 Q. There's many people that can go to that church that you

1 wouldn't know, one way or the other, if they were local or not,
2 correct?

3 A. Well, it's an abandoned church so nobody really goes there.
4 But that's... (indiscernible word(s)).

5 Q. You said that there was -- first of all, you saw a picture,
6 you saw Exhibit 1, correct? Are you looking at it now?

7 A. Yes, sir.

8 Q. And that church looks like it's in pretty good condition,
9 right?

10 A. Yes, sir.

11 Q. The paint is kept up?

12 A. I don't believe there's any paint. It's mostly rock.

13 Q. Do you see the white arch around the front door of the
14 church?

15 A. Yes.

16 Q. What color is that painted?

17 A. White.

18 Q. Does it look like it's dirty or does it look like it's
19 clean?

20 A. It looks clean from the picture.

21 Q. What about the top, the steeple, if you will, the one with
22 the cross on top, does that look like it's fairly freshly
23 painted?

24 A. It looks in good condition, yes, sir.

25 Q. It doesn't look like it's an abandoned church, correct?

1 A. Not from the front, no.

2 Q. And the building in the back, I see that there's a building
3 in the back, and that looks like it has some...(indiscernible
4 word(s)). That's an older structure, right?

5 A. I would assume so, and I've never been inside the church.

6 Q. Have you ever been to the church?

7 A. Yes.

8 Q. So you'd agree that that structure in the back, the one
9 that looks like the T, the top of the T part, if you will...

10 A. Yes, sir.

11 Q. ...that seems to be an older structure, and not a rock
12 structure, like the one in the front, the church itself.

13 A. Yes, sir.

14 Q. So the vehicle is doing a little more than 10 miles per
15 hour, it's kicking up some dust, and then, what, you tell
16 Border Patrol Agent Landess?

17 A. Yes, sir.

18 Q. What do you tell him?

19 A. I tell him it's leaving the church area, that it's going a
20 little faster than usual, I don't recognize the vehicle --

21 Q. Let me interrupt you there. I'm sorry. I just want to
22 lock this down. When you say, "faster than usual,"...(word
23 indiscernible due to a cough in the microphone)...breaking any
24 traffic infractions, correct?

25 A. Correct.

1 Q. So there's a car that's going faster than usual, not
2 creating any -- not causing any traffic infractions, not doing
3 anything untoward, and what do you direct him to do?

4 A. I ask him if he could take a closer look at the vehicle,
5 investigate further, see if -- pretty much see who it is.

6 Q. So, up until that point, you didn't see anybody in or
7 around the church, right?

8 A. Right.

9 Q. You didn't see anybody get into the vehicle, that black
10 vehicle that you were talking about, right?

11 A. That's right.

12 Q. You didn't see the black vehicle stop at the church or do
13 anything like that, did you?

14 A. No, I didn't have eyes on that church until it was leaving.

15 Q. Okay. But you said it triggered -- the vehicle triggered
16 the sensor when it went into the parking lot, right?

17 A. As it was coming out of the parking lot. So it didn't
18 trigger it when it came in, it triggered as it was going out.

19 Q. And how -- can you explain to me how you know that.

20 A. Well, if it had triggered it when it came in, I would have
21 seen the vehicle coming towards the church.

22 Q. I'm surprised how didn't you see that vehicle coming. If
23 you're doing a rotation like every minute, minute and a half,
24 how didn't you see that vehicle go into the church five minutes
25 before, six minutes before, seven minutes before? You have a

1 panorama of the entire landscape, correct?

2 A. Yes, but --

3 Q. How do you not see that car before it triggered the sensor
4 as it was, according to you, leaving the church?

5 A. Well, in the course of my duties in that truck, I have to
6 look at smaller areas, 10 miles by 10 miles, so I have a very
7 large area to cover.

8 Q. I understand that.

9 A. So when I'm checking other hits, other movement, I -- I
10 can't keep eyes on this church 24/7, or throughout my six
11 hours.

12 Q. I understand that, but you told me before that you do --
13 you're not just fixed in one location for five or ten minutes,
14 you're constantly rotating, you're constantly rotating, you're
15 constantly rotating. How -- so it would take -- that's a
16 fairly remote church, right?

17 A. Right.

18 Q. So you can see, you know, vehicles -- how far is that --
19 I'm sorry, I may have asked you this, I apologize: How far is
20 that church from I-19? What's, like, the scale? I can't
21 really tell.

22 A. It must be about maybe 2-, 300 yards away.

23 MS. WRIGHT: Point of clarification, Your Honor. I
24 believe counsel said "I-19." The road is FR19.

25 MR. SCILEPPI: Thank you. Thank you for the

1 clarification. I did say "I-19."

2 A. I don't know. Let's see. It looks like, according to the
3 scale here, if I get technical, it's going to be about 300
4 meters.

5 BY MR. SCILEPPI:

6 Q. Three hundred meters? Okay.

7 How frequently traveled by cars is FR19?

8 A. It's pretty frequently traveled. Anybody that lives south
9 of marker five pretty much comes through there.

10 Q. Okay. Can you -- can your -- when you're in your mobile
11 unit and you have eyes on a target, if you will, could you tell
12 through infrared whether there are bodies, warm bodies, alive
13 bodies, in a trunk of a vehicle?

14 A. No.

15 MR. SCILEPPI: Thank you, sir.

16 Your Honor, no further questions.

17 THE COURT: You can examine her from the chair if you
18 have the microphone in front of you.

19 MR. LOPEZ: Well, I have to show him some documents,
20 Your Honor.

21 THE COURT: All right.

22 CROSS-EXAMINATION

23 BY MR. LOPEZ:

24 Q. Good afternoon, Agent Perez.

25 A. Good afternoon. How are you doing, sir?

1 Q. My name is Randy Lopez, I represent Erika Hernandez.

2 You generated a report in this case, correct?

3 A. That's correct.

4 Q. Did you make any additions to that report?

5 A. No, I didn't.

6 Q. Any corrections?

7 A. No, not from the -- I wrote up the report, and that's what
8 was turned in.

9 MR. LOPEZ: Your Honor, may I approach the witness?

10 THE COURT: Yes.

11 BY MR. LOPEZ:

12 Q. I'll show you what....

13 Agent Perez, I just handed you what's been marked as
14 Exhibit 24. Do you recognize that?

15 A. Yes, sir.

16 Q. Is that your signature at the bottom?

17 A. Yes, sir.

18 Q. Is that's the report you prepared?

19 A. That's correct.

20 Q. And as you stated, there were no additions, corrections, or
21 modifications to that report, is that right?

22 A. That's correct.

23 Q. You kept saying that this mobile surveillance truck that
24 you're in, that you noticed that there was some activity in the
25 church area, correct?

1 A. At that time, yes. Not before.

2 Q. I'm talking about June 11th. I'm talking about that day.

3 A. Yes. Yes, sir.

4 Q. In the report it says that you were advised by Three Points
5 radio station of sensor activity, isn't that right?

6 A. That's correct.

7 Q. So you didn't see -- you didn't get any -- in your
8 equipment that you had there, there was nothing there to
9 indicate there was sensor -- some activity there, correct?

10 A. Not at the time, no, sir.

11 Q. So the only way you got it is by Three Points advising you
12 via radio, hey, something's up, a sensor went out near your
13 location. Isn't that right?

14 A. That's right.

15 Q. It didn't specify where it was at, correct?

16 A. Well, we know where it's at. They told me which sensor it
17 was, and I know the specific location of where it's at.

18 Q. That's not in your report though, is it?

19 A. No, we usually don't write location of sensors, that would
20 give out sensitive information.

21 Q. Well, I'm not asking you to give out sensitive information,
22 but you're the one's talking -- testifying about that it came
23 from the church area. No one is asking the precise location of
24 where the sensor may be. All we're -- the report, your report,
25 could have included simply, "I received information that there

1 was sensor activity in the San Miguel church area." Isn't that
2 a fair --

3 MS. WRIGHT: Objection. Argumentative, Your Honor.

4 THE COURT: Yeah, but not that bad. Overruled.

5 A. I was told there was a sensor activation near my location,
6 meaning the location that I can see from my mobile surveillance
7 capability truck.

8 BY MR. LOPEZ:

9 Q. And that's why you turned your camera towards that
10 location, right?

11 A. Right.

12 Q. And that's all you see next, is a vehicle in that
13 proximity, area, correct?

14 A. Right next to the church, yes.

15 Q. You didn't see it in the church parking lot, did you?

16 A. I saw it coming out of the parking lot.

17 Q. This equipment that you have, state-of-the art equipment?

18 A. Pretty much, yes, sir.

19 Q. Digital?

20 A. Yes.

21 Q. Camera's very good?

22 A. Yes.

23 Q. You said you had four -- four types of zoom, correct?

24 A. Correct.

25 Q. You can make out vehicles, people, correct?

1 A. Right.

2 Q. You can tell colors, correct?

3 A. Yes.

4 Q. Can you look at license plates, determine the license plate
5 numbers?

6 A. No, you can't.

7 Q. All right. But it's clear that you can see people,
8 correct?

9 A. Correct.

10 Q. What about recording?

11 A. Yeah, it does record, yes, sir.

12 Q. Did you record this incident?

13 A. No, the recording wasn't working on that truck, the server
14 was down.

15 Q. How long had it been down?

16 A. I do not know. When I tried pulling up the video, it -- it
17 showed there was a failure to record, so it didn't record the
18 incident. But most of the time it is recording.

19 Q. Most of the time it does record except it wasn't recording
20 on this day.

21 A. Correct.

22 Q. And you can't tell us how long it had been out.

23 MS. WRIGHT: Objection. Relevance, Your Honor?

24 THE COURT: Sustained.

25 BY MR. LOPEZ:

1 Q. The recording would have shown us exactly what was
2 indicated in your monitors, correct?

3 A. Correct.

4 Q. Now, you stated that there were times that you could tell
5 that the vehicle that you saw leaving the area was not one that
6 you recognized, is that right?

7 A. That's right.

8 Q. And you stated that you had seen other vehicles in that
9 area, but for some reason this one didn't ring a bell with you,
10 it hadn't been there before.

11 A. Correct.

12 Q. But that's not in your report, is it?

13 A. That's right, it's not.

14 Q. Also, you kept track of this vehicle as it got on Federal
15 Route 19, correct?

16 A. Correct.

17 Q. And that's when you notified the other agents of which
18 direction it was heading, right?

19 A. Right.

20 Q. And you kept your visual on it, correct?

21 A. Correct.

22 Q. And it merged in with other traffic, correct?

23 A. It passed one vehicle, and as it passed the vehicle I saw
24 Agent Landess pass it in the opposite way, and that's when I
25 advised him that he had just passed the vehicle that I was

1 looking at. He made a U-turn and caught up to it.

2 Q. But there were other vehicles also there, right? Other
3 than the one truck that he passed, there were other vehicles?

4 A. No, there's just one vehicle.

5 Q. Are you sure about that?

6 A. Pretty sure, yes.

7 Q. Okay. Had you been able -- did you review any other
8 agents' reports prior to coming over here or prior to your
9 testimony here?

10 A. No, I didn't.

11 Q. Did you review your report?

12 A. I did.

13 Q. You didn't review none of the other agents' reports, either
14 Landess, the supervisory agents -- I forget their names now.

15 MS. WRIGHT: Objection. Asked and answered, Your
16 Honor. He stated he only reviewed his report.

17 THE COURT: Overruled.

18 BY MR. LOPEZ:

19 Q. David...hope I say it right...D-a-i-s-s. David Daiss. Is
20 that how you say it?

21 A. David Daiss. David Daiss.

22 Q. Daiss. He's a supervisory agent?

23 A. Yes, sir.

24 Q. Did you see his report?

25 A. No, I didn't.

1 Q. When you were observing the vehicle, the black sedan, going
2 down the road on FR19, you saw Agent Landess' vehicle pass it
3 and then turn around and get behind it, correct?

4 A. Correct.

5 Q. Did you also see Agent Diass' vehicle do the same thing?

6 A. No, I didn't. My attention was on the black vehicle, I
7 didn't want to lose visual of it. So when he passed --

8 Q. But doesn't it give you like a panoramic view that you can
9 see not just a vehicle but other vehicles around it?

10 A. To a certain extent, yes. It depends on the zoom you have.

11 Q. Did you have it at its highest zoom?

12 A. Three-quarters of the way.

13 Q. Did the entire black vehicle that you were looking at cover
14 the entire screen?

15 A. No, it was a very small size.

16 Q. And you only had then a view of that car and Agent Landess'
17 vehicle?

18 A. When he caught up to it, yes. Once it was stopped, I
19 believe Agent Diass got there soon after, once he had pulled it
20 over.

21 MR. LOPEZ: This is Exhibit 23, Your Honor, David
22 Daiss' report.

23 BY MR. LOPEZ:

24 Q. He says that he got immediately behind officer Landess'
25 vehicle. You did not see that?

1 A. No.

2 MS. WRIGHT: Objection, Your Honor. Facts not in
3 evidence. Counsel is testifying.

4 THE COURT: Sustained.

5 MR. LOPEZ: It's reliable, Your Honor, it's a report
6 by the agent.

7 THE COURT: But it doesn't go towards
8 the...(indiscernible word)... of suspicion.

9 MR. LOPEZ: I think that's all I have at this time.

10 Wait a minute. One more question.

11 BY MR. LOPEZ:

12 Q. Look at Photo 4A. Strike that.

13 4B, that photo, that still doesn't show the international
14 border, correct?

15 A. That's correct.

16 Q. It's still another -- I think you said it was five or six
17 miles from the church, is where the international border's at?

18 A. It's probably about, from the bottom of the picture, maybe
19 four and a half miles south. The border would be four and a
20 half miles south of that.

21 Q. Okay. So San Miguel Road, when it hits up to 4A, where it
22 hits up to FR19, that road itself when it hits FR19, how far is
23 that from the border?

24 A. About four and a half miles.

25 Q. Is that Mile Marker 5 then at that point?

1 A. Yeah, it's about four and a half, five. I'm not exactly
2 sure what mile marker it is. It's about four and a half or
3 five.

4 Q. Aside from those houses that are shown here, are there
5 other houses down south of that?

6 A. Yes.

7 MR. LOPEZ: All right. Nothing further, Your Honor.

8 EXAMINATION BY THE COURT

9 Q. Was there that -- your surveillance vehicle or some other
10 vehicle located in the vicinity of the shift before, do you
11 know?

12 A. I'm sorry, sir?

13 Q. Your truck was at White House Hill, right?

14 A. Yes.

15 Q. Had somebody been there the shift before?

16 A. Yes.

17 Q. So that vehicle would have had the same capabilities as
18 yours?

19 A. Correct.

20 Q. Are there sensors parallel to the international border
21 between Federal Route 19 and Vamori Wash?

22 A. Yes.

23 Q. Are there sensors immediately -- do they keep having
24 sensors parallel to the border for some distance?

25 A. Yes, they do. We do.

1 Q. And at Vamori Wash also?

2 A. Yes. Yeah, we have sensors all over that area.

3 Q. At muster, were you told that the shift before may have
4 detected sensor activity going north on the border?

5 A. I don't recall, sir.

6 Q. Okay. Do you have any idea how long that vehicle had been
7 at the church?

8 A. No.

9 Q. Do you have any idea when it got to the church?

10 A. No.

11 Q. Okay. And are we in agreement that Federal Route 19
12 appears to be paved?

13 A. It is paved, yes, sir.

14 THE COURT: I don't have anything further.

15 UNKNOWN DEFENSE COUNSEL: Nothing further.

16 THE COURT: Redirect?

17 MS. WRIGHT: Yes, please, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. WRIGHT:

20 Q. Agent, let's talk a little about your activities that
21 morning.

22 A. Okay.

23 Q. So when did you arrive to the truck? Or to your vantage
24 point?

25 A. About 8:00 in the morning.

1 MR. LOPEZ: Objection, Your Honor. That's beyond the
2 scope of cross-examination. We didn't go into none of the
3 early morning activities. She didn't either.

4 THE COURT: Actually, you guys did. Because he said
5 he was there from 6:00 to 4:00, and then we figured out that he
6 went to work at 6:00, he left at 4:00, and that he was at that
7 station between 8:00 and 2:00. And we're going to spend more
8 time arguing about it than listening.

9 Go ahead and ask your....

10 BY MS. WRIGHT:

11 Q. When did you get to your truck that morning, at that
12 vantage point?

13 A. At about 8:00 in the morning.

14 Q. All right. That morning, prior to 10:30, do you have
15 occasion to look at the area immediately surrounding the
16 church?

17 A. Yes, I did.

18 Q. How often were you looking at the area immediately
19 surrounding the church that morning?

20 A. I don't have -- I don't look at it constantly, but I
21 occasionally pan over there because it's a landmark. And just
22 due to the activity that's in that area, I pan occasionally
23 maybe, I don't know, once every 10 minutes.

24 Q. Before you panned over at 10:30 because of the sensor
25 activation, how long had it been since you last looked at that

1 immediate area?

2 A. About 10 minutes maybe.

3 Q. Ten minutes prior when you looked at that area, did you see
4 any vehicles there?

5 A. No.

6 Q. Would you have seen vehicles if they were there?

7 UNKNOWN DEFENSE COUNSEL: Object.

8 A. Yes.

9 THE COURT: If -- if they weren't behind the church,
10 right?

11 BY MS. WRIGHT:

12 Q. Is there any area of that immediate -- is there any part of
13 that area where a vehicle could be immediately surrounding the
14 church that you would not see?

15 A. Yes.

16 Q. What is that area?

17 A. That would be right next to that -- the Vamori Wash,
18 because of the brush. It's so tall that they could park there
19 and I couldn't see them.

20 Q. I want to be clear I understand. If a vehicle's parked in
21 the brush that's in the wash, you couldn't see it there?

22 A. No, I could see it getting there. If it's standing next to
23 the brush it would be hard to see. It's pretty thick and tall.

24 THE COURT: Let's start over here.

25 I've got Picture 4A and 4B.

1 THE WITNESS: Yes.

2 THE COURT: Is Vamori Wash in either one of those
3 pictures?

4 THE WITNESS: On 4B, that big green area.

5 THE COURT: Over to the edge?

6 THE WITNESS: Right there, yes, sir.

7 MR. SCILEPPI: I'm sorry, Judge. Is that the --

8 THE COURT: 4B.

9 MR. SCILEPPI: -- northeast part of 4B?

10 THE COURT: No, it's to the west. Right?

11 THE WITNESS: Right.

12 THE COURT: And is that -- is this a wash?

13 THE WITNESS: Yes, sir, that's the Vamori Wash.

14 THE COURT: That's Vamori Wash.

15 THE WITNESS: Yes. It's not right next to the church,

16 but that's the only spot we wouldn't be able to see vehicles.

17 But inside the church area, I could see whether they were in
18 there.

19 BY MS. WRIGHT:

20 Q. Let's talk a little bit about church on Sundays. Have you
21 had occasion in the past to be in your truck doing surveillance
22 on Sunday mornings?

23 A. Yes, I have.

24 Q. How often have you done that?

25 A. For the past three years.

1 Q. So in the six months prior to June 11th, 2017, had you had
2 occasion to be in your truck looking at the church on Sunday
3 morning?

4 A. Yes.

5 Q. During those times had you ever seen any activity that
6 looked like it might be associated with a worship service on a
7 Sunday morning?

8 A. Never.

9 Q. And let's talk a little bit about that paved road, FR19.
10 You told, I think it was maybe Mr. Scileppi, that there was
11 frequent traffic there. I want to know, what do you mean by
12 "frequent traffic"?

13 A. Where again? I'm sorry.

14 Q. FR19. So on cross-exam you were asked about the level of
15 traffic on FR19. I'd like to know how often do you see people
16 traveling up and down that road?

17 A. There's constant vehicles usually going up and down. On
18 Sundays it's less because people don't work. Or certain people
19 don't work up in Sells, so there's less traffic than during the
20 week. But you'll see the school buses or vehicles that live
21 further south from there coming up.

22 MS. WRIGHT: If I could have just a second, Your
23 Honor. I think I'm pretty much done here.

24 BY MS. WRIGHT:

25 Q. Agent, the Judge asked you if you had -- about the sensors

1 that are to the south of the church between the church and the
2 border. Is it unusual for those sensors to go off?

3 A. Unusual? No. I mean, they go off all the time.

4 Q. When you say, "all the time," what do you mean?

5 A. Well, there's animals, like cattle, because cattle runs all
6 over the place there.

7 Q. Let me ask you a different question. Do those sensors go
8 off every day?

9 A. Every day, yes.

10 Q. Is a sensor going off generally in that area something so
11 important that it gets mentioned at muster?

12 A. No.

13 Q. What does get mentioned at muster?

14 A. If there is any activity that's being worked, currently
15 worked at the time. So we get intel information, anything
16 that's been going on maybe in the past few hours in the area.

17 MS. WRIGHT: If I could have just a moment, Your
18 Honor.

19 THE COURT: Mmm-hmm.

20 MS. WRIGHT: That's all I have. Thank you, Your
21 Honor.

22 THE COURT: Thank you.

23 You may step down.

24 Let's take a break until 2:45.

25 (A recess was taken from 2:42 p.m. to 2:51 p.m.)

1 THE COURT: Thank you. You may be seated.

2 The record shall reflect the presence of counsel and the
3 parties.

4 You may call your next witness.

5 MS. WRIGHT: Thank you, Your Honor. The Government
6 calls Agent Mark Landess.

7 **MARK LANDESS, WITNESS, SWORN**

8 DIRECT EXAMINATION

9 BY MS. WRIGHT:

10 Q. Agent, could you please introduce yourself for the record.

11 A. My name is Mark Landess.

12 Q. Agent, where are you currently employed?

13 A. I'm currently employed with Department of Homeland
14 Security, ICE Deportation Officer, in Seattle, Washington.

15 Q. Now, was that who employed you back on June 11th of 2017?

16 A. No, I was employed with United States Border Patrol in
17 Three Points Station.

18 Q. At that point in time, how long had you been a Border
19 Patrol agent?

20 A. About 10 years.

21 Q. And how long had you been stationed in Three Points?

22 A. About four years.

23 Q. Back on that day, what were your duties?

24 A. I was an acting supervisor over the Shift Patrol Group. I
25 was currently working in the area.

1 Q. What were you actually physically doing on that day, on
2 June 11th?

3 A. On June 11th, I was cutting for sign, looking for
4 indications of people that had crossed into the United States
5 illegally.

6 Q. During the time that you worked at Three Points Station,
7 did you become familiar with a church that was located in San
8 Miguel?

9 A. Yes, I did.

10 Q. Is that in Arizona?

11 A. It is in Arizona, yes.

12 Q. Is that also on the Tohono O'odham Reservation?

13 A. It is.

14 Q. I am going to show you what's already been marked and
15 admitted as Government's Exhibits 1 through 3.

16 MS. WRIGHT: May I, Your Honor?

17 THE COURT: Yes.

18 BY MS. WRIGHT:

19 Q. Do those photos show that church in San Miguel?

20 A. Yes, they do.

21 Q. Agent, I'd like you to look at Photographs 2 and 3.

22 A. Two and three. Okay.

23 Q. Actually, look at all of them. Generally speaking, can you
24 describe the church for us?

25 A. So this is an old church that has been around, I don't know

1 how long, but -- and on the back side of it, from the photos,
2 you'll notice that it's been barricaded, the doors and the
3 windows. I'd say an old, unused church.

4 Q. When you say, "barricaded," what do you mean?

5 A. So wood panelling over the windows and doors so that you
6 can't get access into it. It's, like, hammered into the
7 framework.

8 Q. Is that over all of the windows and doors or just some of
9 them?

10 A. No, it's over the back half of the church. The front door
11 I know had worked. And the four front windows, you can see
12 through the four front windows, and the rest of them boarded
13 up.

14 Q. This church, do you know how far it is from the
15 international border?

16 A. It's approximately four miles north of the international
17 border.

18 Q. Do you know how far it is from Tucson?

19 A. Not by mileage. But drive time, hour and a half, hour and
20 45.

21 Q. Agent, we've already admitted Exhibits 4A and 4B.

22 MS. WRIGHT: If I could give those to him to look at,
23 Your Honor.

24 THE COURT: Yes.

25 BY MS. WRIGHT:

1 Q. So I'd like you to just kind of, in each of the cardinal
2 directions, north, south, east, and west, we'll talk a little
3 bit about what's around this church.

4 A. Mmm-hmm.

5 Q. Actually, let's -- to the north.

6 A. Okay.

7 Q. What is there generally?

8 A. So to the north of the church there's about four, five
9 residences, in the general northern direction.

10 Q. And what's -- is there any vegetation out there?

11 A. As in that entire area, there's some small shrubbery, cacti
12 and mesquite.

13 Q. Would that also be true to the south?

14 A. It would.

15 Q. And what's to the east of the church?

16 A. To the east of the church is -- about 100 yards is the
17 roadway, which is Indian Highway 19.

18 Q. Is that also known as FR19?

19 A. FR19 also.

20 Q. And to the west, what's there?

21 A. So to the west is the Vamori Wash.

22 Q. Can you spell that for us.

23 A. It runs up from the international border. Yes, it's
24 V-a-m-o-r-i.

25 Q. Tell us, where does the wash run?

1 A. So the wash crosses about four miles south into Mexico, and
2 it flows north into the United States up past 10, up through
3 86.

4 Q. About how far is the wash from the lot that the church sits
5 on?

6 A. It's approximately a hundred yards. About the same
7 distance from the church to the roadway. The church sits in
8 about middle way.

9 Q. Tell us what the vegetation at the wash is like.

10 A. So at the wash itself it's very dense, a lot of trees,
11 bigger trees, more bushes, thicker, if you will. We have a lot
12 of trouble passing through a lot of the areas.

13 Q. Would it be fair to say that the vegetation in the wash is
14 heavier than it is on the other sides of the church?

15 A. Very much so, yes.

16 Q. Is there anything further down the road from the church?

17 A. To the south?

18 Q. I'm sorry. That wasn't a very good question.

19 If you drive down the road that leads to the church, can
20 you drive further down the road past it?

21 A. You can drive out into the Vamori.

22 Q. Okay. Is there anything on the other side of the church?

23 A. No.

24 Q. Let's talk about during your time at Three Points Station.

25 Did you have occasion to become familiar with the goings-on at

1 the church?

2 A. I did not. I never actually witnessed any goings-on at the
3 church.

4 Q. During your time at Three Points, did you have occasion to
5 drive by the church?

6 A. Yes, it was in the area that I worked on a regular basis.

7 Q. When you say you worked in that area on a regular basis,
8 what were you doing near the church?

9 A. Patrolling. Looking for indications of foot traffic,
10 vehicle traffic, that type of activities.

11 Q. During your time out there, did you learn whether or not
12 regular services were held at the church?

13 A. In my time up there, I never heard of a regular service.
14 One of the agents has told me that they had maybe a Christmas
15 and an Easter service, but I never witnessed it.

16 Q. During your time did you ever see a sort of regular Sunday
17 morning service there?

18 A. No.

19 Q. Now, in terms of your work as a Border Patrol agent, did
20 you have a chance to investigate illegal activity around the
21 church?

22 A. Yes, yes, I made arrests in and around the church before.

23 Q. When you say, "in and around the church," how close are we
24 talking about?

25 A. Across the street I've grabbed people that were hiding in

1 the bushes waiting for pick-up, what appeared to be -- well,
2 they told us they were waiting for a pick-up.

3 Q. Let's slow down a little bit. When you say people who --

4 A. Illegal aliens that had crossed, traveled north towards the
5 church and were waiting for somebody to pick them up.

6 Q. And you knew that because these people told you that?

7 A. That's correct.

8 Q. Were you the only person who would investigate around the
9 church?

10 A. Oh, no. No, every agent that works out of Three Points at
11 one time or another would use that area.

12 Q. And did other agents make arrests at or near the church
13 like you did?

14 A. Yes. Yes. In the month prior there had been a couple of
15 arrests in that area.

16 MR. SCILEPPI: Objection as to foundation.

17 THE COURT: Overruled.

18 BY MS. WRIGHT:

19 Q. You can continue.

20 A. So the month prior there had been a few arrests from that
21 area of the church, and they did put it out in muster about
22 activity and people coming up to the church area.

23 Q. When you say, "there had been a few arrests," what were
24 those arrests for?

25 A. Aliens that had illegally entered the country.

1 Q. Were any of those arrests related to people helping
2 transport those aliens?

3 A. Not on those particular ones. We -- they were people
4 waiting to get picked up.

5 Q. So the people who were arrested indicated that they
6 expected to be picked up?

7 A. Yes, in the interview that they conduct afterwards. We
8 conduct interviews on every person that we arrest now, and that
9 was the indication. That's how we sometimes get our
10 information.

11 Q. Let's talk about June 11th, 2017. Were you working on that
12 day?

13 A. I was working on that day.

14 Q. On that day, did you happen to hear Agent Perez make a call
15 out over the radio?

16 A. Yes, we heard him regarding the church and that he had
17 spotted a vehicle in that area.

18 Q. All right. Let me drill down.

19 On that day, did you hear Agent Perez make the call out at
20 about 10:30?

21 A. That's correct.

22 Q. On that morning?

23 A. Yes.

24 Q. What did you hear him say?

25 A. That he had a vehicle that was leaving the area of the San

1 Miguel church.

2 Q. Did he say anything else?

3 A. He gave a brief description of the vehicle, dark colored
4 sedan.

5 Q. Did he give you any other indication about why he was
6 calling out about this particular vehicle?

7 A. There had been a sensor activation prior to that, so he had
8 apparently turned his camera on and...(indiscernible
9 word(s)...and looked.

10 Q. Agent, I am going to ask you to move that microphone closer
11 to your mouth so it picks up better.

12 A. I'm sorry.

13 Q. You can pull it toward you physically.

14 A. All right. How's that?

15 Q. Thank you.

16 A. Okay.

17 Q. Now, did you do anything in response to hearing this
18 information?

19 A. Yes. So once he put that information out, I was north of
20 the area, from where the church is, so probably Mile Marker 12,
21 roughly, and I kind of positioned myself to intercept the
22 vehicle if it were to come up towards me.

23 Q. Were you able to do that?

24 A. I was. I was. As it got closer, he was giving briefings
25 as to where the vehicle was at the time, because he was able to

1 follow it with his camera, and as it approached I got onto the
2 FR19 headed south at a slower pace and waited for the vehicle
3 to pass me, which it did at about Mile Marker 9.

4 Q. What did you do next?

5 A. At that time I turned around on the vehicle. It was headed
6 northbound and it had just -- as I turned around, it passed a
7 pick-up truck a little while later and as I was gathering up
8 speed, and then I got in behind it to run the plates on the
9 vehicle.

10 Q. Were there any vehicles between you and the vehicle you
11 were following?

12 A. Just initially the pick-up that the vehicle had passed.

13 Q. But after that?

14 A. But after that there was not.

15 Q. How close were you to this vehicle at the closest point?

16 A. Just so that I could see the tag over the roof of my car so
17 that I could read the vehicle information. So 15 feet.

18 Q. And what did you do with the tag information?

19 A. So I gave that information to my dispatch and they gave me
20 the information back on the tag.

21 Q. What did you learn?

22 A. From the vehicle tag, I learned that it was registered to
23 an Erika Hernandez-Nunez, from Tucson, and that she had made
24 recent crossings of the international border in Douglas,
25 Arizona.

1 Physically, I also then observed the trunk of the vehicle.

2 Q. I am making notes so that I remember.

3 A. Okay.

4 Q. So give me just a sec to ask you another question.

5 Let's talk about those crossings in Nogales. How far is
6 Nogales from San Miguel?

7 MR. LOPEZ: Objection. He didn't say Nogales.

8 Douglas.

9 MS. WRIGHT: My apologies.

10 THE WITNESS: Douglas.

11 THE COURT: Well, then she was going to get to
12 Douglas.

13 MR. LOPEZ: I always go there first, too, Judge.

14 BY MS. WRIGHT:

15 Q. Where were the frequent and recent crossings?

16 A. In Douglas, Arizona. Agua Prieta.

17 Q. How far is that from San Miguel?

18 A. So it's about two and a half hours from Tucson to Douglas,
19 and about an hour and a half from Tucson, so four hours.

20 Q. So four hours total from San Miguel to Douglas?

21 A. I would say.

22 Q. Are there closer ports to San Miguel than Douglas?

23 A. Nogales would be the larger and closer.

24 Q. And how far away is that from San Miguel?

25 A. From there, it would be about two hours, two and a half

1 hours.

2 THE COURT: How about Lukeville?

3 THE WITNESS: Lukeville? I never think about that,
4 but that is true. It's about the same distance to Lukeville.

5 BY MS. WRIGHT:

6 Q. You say, "same distance," we're talking two, two and a half
7 hours?

8 A. Yeah. Less traffic that way.

9 Q. Give me a second while I make my notes.

10 Now, while you were following the vehicle, did you notice
11 anything about the driving behavior?

12 A. So when I had first observed the vehicle as it passed by
13 and when I turned around, like I said, it was passing the
14 slower moving pick-up truck. And then as I get behind it, then
15 it did slow down to the speed limit, which was a little
16 unusual.

17 Q. Why was that unusual?

18 A. Well, on the reservation, the people that live on the
19 reservation know that we have no authority to stop anybody for
20 traffic violations, and when I get behind somebody that's
21 speeding on the reservation, they continue to speed.

22 Q. Did you notice anything else about this vehicle?

23 A. Just that it had just light dust on it, and that on the
24 trunk area it had a disturbance that looked like it might be
25 handprints.

1 Q. Why did you think that might be handprints?

2 A. Well, because in prior arrests that I've made, I've seen
3 that same type of pattern on a trunk of a vehicle. I just
4 couldn't get close enough while driving to confirm it was a
5 fingerprint, but it had the same general pattern.

6 Q. Agent, you said there was some dirt there. In Arizona, is
7 it fairly common for vehicles to be pretty dirty?

8 A. Absolutely. And one of the advantages of when people get
9 into cars when they're sweaty is that they leave an imprint
10 almost, because the dust collects then when you're driving down
11 the roadway. So even more dust collects in areas where you've
12 touched your hands if you were to draw a smiley face or
13 something.

14 Q. So when we're talking about this dirt that you noticed, it
15 didn't stand out from any other dirt that might have been on
16 the vehicle?

17 A. Yeah, the rest of the vehicle from the back side was
18 fairly -- had the same amount of dirt, if you will, which
19 wasn't all that much, but it was just right around the trunk
20 area. And it was above the trunk line, which is unusual for
21 people. If you're going to open up your trunk you're going to
22 put your hands below the trunk lid, and this was above, so....

23 Q. I want to ask you, these things that you noticed about
24 where the vehicle was registered, where it crossed, and these
25 other things, did those have any significance to you?

1 A. Yeah. So the indication is, is four miles north of the
2 border, on the Indian reservation, and I have an individual
3 that appears to be from Tucson and drives all the way down to
4 Douglas to do crossings indicates to me that they're not from
5 the area. Their driving behavior also indicated that they're
6 not from the area, and that they're coming from an area where
7 we had a sensor activation which was from an area that we had
8 recently and historically gotten arrests from illegal activity.
9 It seemed suspicious.

10 MS. WRIGHT: If I could have one moment.

11 THE COURT: Mmm-hmm.

12 BY MS. WRIGHT:

13 Q. Agent, just to clarify, I should have done this earlier,
14 when you talk about recent crossings, are you talking about a
15 crossing earlier in that day?

16 A. I don't recall the exact times, but it's within a 72 hour
17 period that we track, and so when they've crossed -- the
18 vehicle had crossed within the last 72 hours in Douglas. I
19 don't remember the exact timing.

20 MS. WRIGHT: That's all I have, Your Honor. Thank
21 you.

22 THE COURT: Is there a town or area called Mamori
23 (Phonetic)?

24 THE WITNESS: Mamori, sir?

25 THE COURT: Vamori?

1 THE WITNESS: Vamori? On the reservation?

2 THE COURT: Right.

3 THE WITNESS: Not that I am aware of. But it might
4 not be an area in which I've worked.

5 THE COURT: I mean, there's a Vamori wash, but is
6 there a place called Vamori?

7 THE WITNESS: Oh, the town itself?

8 THE COURT: Yes.

9 THE WITNESS: Yes, sir.

10 THE COURT: Where is it in relation to San Miguel?

11 THE WITNESS: It's going to be to the northwest,

12 approximately eight miles as the crow flies. It's up --

13 there's an actual hard road that drives to it, a paved road.

14 THE COURT: Okay. Thank you.

15 MR. SCILEPPI: May I, Your Honor?

16 THE COURT: Yes.

17 MR. SCILEPPI: Thank you.

18 CROSS-EXAMINATION

19 BY MR. SCILEPPI:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Agent, forgive me, when did you attend the Border Patrol
23 academy?

24 A. I started in May of 2007 and ended in September.

25 Q. Is that the one in New Mexico?

1 A. It is, unfortunately.

2 Q. When you were at the training, in your academy, you had a
3 lot of training, but part of your training was about report
4 writing, the importance of report writing, correct?

5 A. That's correct.

6 Q. You learned as part of your training that it's important to
7 document anything that you find relevant and important to your
8 investigation in your report so that it's -- you know, if you
9 have an evidentiary hearing or some trial much later on down
10 the road, you can refresh your recollection, correct?

11 A. That's correct.

12 Q. And you were trained to, write, again, everything relevant
13 and important in that report, and you did that in this case?

14 A. Yes.

15 Q. So, tell me, what was your shift on June 11th? What shift
16 were you working?

17 A. I was on the day shift. It runs from 6:00 a.m. until 2:00
18 in the afternoon.

19 Q. Where do you originate your shift? Do you have to like
20 drive a bit of time to get to ultimately where you were that
21 day? Give us like where you started out and how you ended up
22 at the incident location.

23 A. Okay. We start at Three Points, Arizona, that's where our
24 station is located at, and we work --

25 Q. Is Three Points just kind of like 40 minutes away?

1 A. Exactly. I think it's also known as "Robles."

2 Q. Okay.

3 A. Okay. I've seen signs for both. And so when we work our
4 area of responsibility for Three Points, and it changes over
5 time, but it's, generally speaking, currently, with the
6 mountain ranges, the Baboquivari, Baboquivari mountain range,
7 and we work over basically to the Vamori, a little past. Well,
8 probably about, about eight miles west of the Vamori wash.

9 Q. So when -- so you leave at around 6:00 in the morning, or
10 you get to the substation where -- your Three Points
11 substation?

12 A. We're at the substation at 6:00 o'clock, and we have a
13 muster where they put out information about what went on the
14 shift before, and what we should be looking out for, and then
15 we drive to our duty location.

16 Q. Do you guys go as a group or --

17 A. No.

18 Q. -- do you disperse?

19 A. The agents, depending -- yeah, the agents get there --
20 because we go to different locations also. We don't all go to
21 the same.

22 Q. You muster every -- before each time you head out?

23 A. Yes, we do.

24 Q. Tell me about the muster that morning. How many people
25 were in attendance?

1 A. I don't have that information.

2 Q. What was discussed during that muster?

3 A. I don't recall.

4 Q. So there was nothing relevant during that muster that
5 morning that is relevant to what we're here for today.

6 A. Not what we're here for today, that's correct.

7 Q. I'm sorry?

8 A. That's correct.

9 Q. Were you stationed -- I think you said you were about
10 nine -- are you going by kilometers or miles when you're --

11 A. I work on miles. I'm terrible with the kilometers.

12 Q. No problem. So it goes by mile markers there?

13 A. It does.

14 Q. So you were -- you were stationary at Mile Marker
15 9 approximately?

16 A. I wasn't stationed anywhere. I was acting supervisor for
17 the patrol group that was working. I was -- just happened to
18 be around that area.

19 Q. Got it. So when you say you were on stationary, you're
20 patrolling.

21 A. Right.

22 Q. Got it. How many other agents are in that area? I know
23 there's you, I know there's Agent Perez, how many other agents
24 are kind of communicating with each other?

25 A. On a daily basis?

1 Q. No, that morning?

2 A. On that morning. I can give you an approximation, and I
3 would say that there's approximately 25 agents in the field.

4 Q. Okay. Did you deal with anybody -- with respect to this
5 incident and this investigation, did you deal with anybody
6 other than Agent Perez and Agent Diass?

7 A. Regarding this?

8 Q. This incident that we're talking about today.

9 A. There were other agents there, but nobody that was just --
10 that was doing anything other than standing to make sure that
11 the people that we had arrested didn't get up or move or
12 anything. We were doing the paperwork.

13 Q. The sensor that tripped that day, where is that sensor?

14 A. It's located around the San Miguel church.

15 Q. When you say, "around," is it like -- and I don't mean to
16 be digging into sensitive information, frankly, but was it on
17 the church property or is it approaching the church?

18 A. I don't know, I am not on the sensor crew. I don't know
19 the exact position of it.

20 Q. Do you know if that's the sensor that got tripped that day?

21 A. Yes, that's --

22 Q. And how did you get informed that the sensor that got
23 tripped?

24 A. When a sensor gets activated, regardless of where it's at,
25 we're notified by our dispatch as to what sensor went off, and

1 we have a list of that.

2 Q. So that sensor went off that morning, and were you informed
3 by dispatch that the sensor went off?

4 A. That's correct. Well, it's called "Top" (Spelled
5 phonetically). But, yeah.

6 Q. What?

7 A. It's -- our station notifies us.

8 Q. Okay. So the -- if a sensor is tripped, it doesn't go to,
9 like, the computer in your vehicle --

10 A. No.

11 Q. You know nothing about that sensor.

12 A. We don't get wifi out there. So, no, it's over the radio.

13 Q. So all these sensors are attached to some central or
14 different locations, and then that information is conveyed to
15 the agents in the field?

16 A. Yes, generally speaking, that's my understanding of it.

17 Q. So -- and the person -- to your knowledge -- did you ever
18 work in the mobile unit that Perez was working that day?

19 A. Oh, have I worked in it?

20 Q. Yes.

21 A. Yes, I have.

22 Q. So if you're in that mobile unit does that person -- or if
23 you were in that mobile unit, would you know that a sensor got
24 triggered or would you have to hear from dispatch?

25 A. A sensor activation would be notified through the dispatch.

1 Q. How long does that usually take?

2 A. I believe it's fairly quickly.

3 Q. Is it something that's electronically sent or is it a
4 communication that has to be received and then perceived by a
5 human in that station and then sent out by that human being
6 either through e-mail or through some sort of notification to
7 the agents in the field?

8 A. So I've never personally worked in that detail, so I don't
9 have the personal knowledge of exactly how that operates. I
10 can simply tell you that my understanding of it is that it is
11 tripped in whatever manner that is, whether it be a vehicle or
12 a foot or an image, and then we are notified over the radio
13 about that sensor going off.

14 Q. Okay. So you can't tell me today if -- can you tell me
15 when you first learned -- like what time you first learned that
16 the sensor got tripped?

17 A. It would have been at or about the 10:30 time frame.

18 Q. Now, do you know when that sensor actually got tripped?
19 You know when you got notified about the sensor, when did the
20 sensor actually get tripped? Or you don't know that
21 information?

22 A. I don't have the exact information on that.

23 Q. So it was sometime obviously before you got notified, but
24 you don't know if it was one minute, 15 minutes, or a half an
25 hour, correct?

1 A. That's correct.

2 Q. So it could have gotten tripped by another vehicle that was
3 in the church if -- so it could have gotten tripped by some
4 other vehicle, and then a communication may not have gotten to
5 you for a period of time because you just don't know how long
6 the delay is between the sensor, you know, going -- information
7 going to the substation and then back out to the agents,
8 correct?

9 MS. WRIGHT: Objection. Calls for speculation.

10 MR. SCILEPPI: Judge, this is from his training and
11 experience.

12 THE COURT: Well, you heard on the radio that the San
13 Miguel church sensor went off.

14 THE WITNESS: Yes, sir.

15 THE COURT: And that happened around 10:30.

16 THE WITNESS: Yes, sir.

17 THE COURT: How much time elapsed before you heard
18 from Agent Perez?

19 THE WITNESS: One minute, maybe.

20 THE COURT: And he told you a black vehicle.

21 THE WITNESS: Right.

22 THE COURT: Heading north.

23 THE WITNESS: A dark vehicle headed north, yes, sir.

24 THE COURT: And that's what you know for sure.

25 THE WITNESS: That's what I know, yes, sir.

1 THE COURT: But you don't know how long it took
2 Dispatch to notice the sensor or to communicate the
3 information.

4 THE WITNESS: That's correct.

5 THE COURT: All you know is the sensor went off, Perez
6 went on the radio, and then how soon after you heard from Perez
7 did you see the black vehicle?

8 THE WITNESS: It was approximately 10 minutes.

9 MR. SCILEPPI: Thank you, Judge. I'll move on.

10 BY MR. SCILEPPI:

11 Q. So tell me about the area around that church. You've
12 patrolled around there a lot, correct?

13 A. That's correct.

14 Q. Are you looking at either 4 -- actually, you know what,
15 take a look at 4A, if you will.

16 A. Okay.

17 Q. What is the speed limit on FR19?

18 A. At that location, I believe it's 35 miles an hour.

19 Q. Thirty-five?

20 A. Mmm-hmm.

21 Q. And what is the speed limit on -- do you see that dirt
22 road -- see the 19 on 4A?

23 A. Mmm-hmm.

24 Q. Do you see the dirt road that goes like -- that comes from
25 that -- that box where the 19 is and then goes in a sort of

1 westerly and then northwesterly direction?

2 A. Are you talking about the dirt road --

3 MR. SCILEPPI: May I approach, Judge?

4 THE COURT: Yes.

5 BY MR. SCILEPPI:

6 Q. Yes, sir. So from this...(Speaking away from microphone).

7 A. Are you asking about posted speed limits on dirt roads?

8 Q. I want to know what -- the posted speed limit on that dirt
9 road.

10 A. There are no posted speed limits on that road that I know
11 of.

12 Q. Okay. What about any of the -- I know that church is
13 surrounded by kind of a web of dirt roads, if you will. No
14 speed limits posted on any of those dirt roads, correct?

15 A. I have never seen a posted speed limit on a dirt road, sir.

16 Q. You'd agree I think counsel for the Government already
17 spoke to you about that area, it's a dusty area.

18 A. It's the desert, yes, sir.

19 Q. Dusty area, correct?

20 A. Yes.

21 Q. Vehicles that are driving on those roads around there, if
22 they're driving at all on a dirt road, they're going to collect
23 dust, correct?

24 A. Yes, sir.

25 Q. So basically any vehicle that turns off 19 to go onto that

1 dirt road to any of those homes or any of the buildings in that
2 area are going to kick up dirt behind their vehicle, correct?

3 A. Yeah. Unless they're going extremely slow, I would say
4 yes.

5 Q. Give me a moment, please.

6 A. Mmm-hmm.

7 Q. So when you position yourself behind the black vehicle,
8 that vehicle and you were heading northbound on FR19, correct?

9 A. Yes, that's correct.

10 Q. And were you still at or around Mile Marker 9 or before or
11 after that?

12 A. No, we were further north.

13 Q. How long -- and so you followed it, and you were about two
14 car lengths behind it?

15 A. After I got the vehicle information off from the tag, I
16 drove up to about 15 feet at one point, got the vehicle
17 information, and then I backed off. Yeah, I would say a
18 vehicle or two back, or lengthwise.

19 Q. And you indicate in your report that you observed dirt
20 along the back of the trunk area, correct?

21 A. That's correct.

22 Q. That's obviously something that you would see on every
23 single car that would get off 19 and be traveling on those dirt
24 roads, correct?

25 A. Dirt, yes, but it was a disturbance of the dirt.

1 Q. Right. So my point is every single vehicle that gets off
2 19 and is driving around in the area around that church is
3 going to have -- is going to be going on a dusty road, going to
4 be kicking up dirt, and then that dirt and dust is going to
5 land on their vehicle, correct?

6 MS. WRIGHT: Objection. Asked and answered.

7 THE COURT: Overruled.

8 A. Yes.

9 BY MR. SCILEPPI:

10 Q. Again, you mention in your report that you saw dirt. You
11 do not mention in your report --

12 MR. SCILEPPI: Judge, may I approach?

13 THE COURT: Yes.

14 MR. SCILEPPI: I want to show him....

15 (Mr. Scileppi and Ms. Wright speaking privately.)

16 BY MR. SCILEPPI:

17 Q. If you need to refresh your recollection from your report,
18 just feel free. I've handed you what's been marked previously
19 as Exhibit 21. That's a copy of your report, correct?

20 A. It is a copy, yes.

21 Q. You wrote that report, correct?

22 A. I did.

23 Q. And when -- how long after the -- this investigation was
24 over did you actually either dictate or write that report?

25 A. The processing took approximately 10 hours in total, so

1 sometime in that next 10 hours.

2 Q. And you had that -- again, we already discussed that that
3 includes everything relevant and important that you found in
4 your investigation. Your supervisor approved that report,
5 correct?

6 A. Yes, a watch commander did.

7 Q. Sorry?

8 A. A watch commander.

9 Q. I'm sorry?

10 A. A watch commander.

11 Q. Oh, a watch commander.

12 A. Yeah.

13 Q. Is that back at Three Points or is it --

14 A. That was actually at Tucson Station.

15 Q. Tucson Station. Okay. So you had again a supervisor --
16 you wrote it, you went through it, you had a supervisor go
17 through it and approve it.

18 A. That's correct.

19 Q. So you indicate there that you saw dust on the back -- on
20 the black vehicle, right?

21 A. Yes.

22 Q. Nowhere in your report did you indicate that you saw any
23 hand marks, handprints, fingers, anything, any disruption of
24 the dust, did you?

25 A. On that report, I did not.

1 Q. So you wrote two reports in this case?

2 A. No, not two reports, but on a separate one, I believe I
3 wrote disturbance of dirt.

4 Q. Hold on a second.

5 A. On an FR66.

6 Q. Let's talk about the reports.

7 A. Okay.

8 Q. I handed you 21.

9 A. Mmm-hmm.

10 Q. Did you write one report or two reports?

11 A. I wrote three reports. There is also a vehicle seizure
12 report also.

13 Q. Got it.

14 When did you write the first report?

15 A. There were all written in that time frame, five or six
16 hours after the initial stop.

17 Q. So Exhibit 21, which you're holding right now, does that
18 incorporate all three of the reports that you wrote?

19 A. I would say it was a summation of the reports.

20 Q. What's a summation of the reports?

21 A. I mean, for example, I did use a little different word. On
22 this one, I did use that I observed the dirt along the back of
23 the trunk, but I didn't specify disturbance of the dirt.

24 Q. I want to be clear for the record, when you say, "on this
25 one," what is "this one"?

1 A. On this report of investigation.

2 THE COURT: Here's the way we're going to do it, sir.

3 THE WITNESS: Okay.

4 THE COURT: I don't know, -- I think there's Exhibit
5 21.

6 THE WITNESS: Mmm-hmm.

7 THE COURT: And if you look at the first page of
8 Exhibit 21, it says, on the right-hand corner, ALDISC-001.

9 Do you see that?

10 THE WITNESS: I do, sir.

11 THE COURT: And then it goes to two, three, four,
12 five, all the way to nine. Now, which one of those pages are
13 you examining him about?

14 THE WITNESS: I believe he is talking to me about Page
15 3.

16 THE COURT: Page what?

17 THE WITNESS: Three.

18 THE COURT: Is that the page you're talking about?

19 Okay.

20 MR. SCILEPPI: Yes.

21 BY MR. SCILEPPI:

22 Q. So, Page 3, is that the first report you wrote?

23 A. That would have been the second report. The first report
24 was G166, which is my narrative.

25 Q. Is that included in Exhibit 21?

1 A. Yes, the content of it is included in it. It's not a
2 verbatim.

3 Q. So in one area you wrote that you only saw dust, and in
4 another area --

5 A. I believe it was "dirt," was the word.

6 Q. Dirt?

7 A. Yeah.

8 Q. So in one area of the report you indicate that -- only that
9 you position yourself behind the vehicle and you observe dirt
10 along the back of the trunk area, and then you move on to say,
11 "I called in via radio to our dispatch." So that's all you
12 mentioned about the dirt, correct?

13 A. That's correct.

14 MR. SCILEPPI: May I approach, Your Honor?

15 THE COURT: Yes.

16 BY MR. SCILEPPI:

17 Q. I'm showing you what's been marked as.... I'm showing you
18 what's been marked as Exhibit 22.

19 A. Mmm-hmm.

20 Q. Do you recognize that?

21 A. Yes.

22 Q. And what do you recognize that to be?

23 A. This is a report of apprehension or seizure. This is what
24 we refer to as our "seizure report."

25 Q. Okay. And what page are you -- the page where it has the

1 summary of your report in Exhibit 22, what are you seeing?

2 What page number is that?

3 A. It looks to be Page 3.

4 Q. So in that report you indicate, again, in the top
5 paragraph, "I observed the dirt along the back of the trunk
6 area."

7 A. Mmm-hmm.

8 Q. Same as the other. Later on down in the report, you
9 indicate that when you approach -- you say when you approach
10 the vehicle, you confirm that the dirt located at and around
11 the trunk area was, in fact, handprints. That's when you were
12 out of the vehicle, correct?

13 A. That's correct.

14 Q. So you had already made the stop.

15 A. Yes.

16 Q. And then you approach, and that's when you're able to see
17 any markings.

18 A. I could see the specific handprints, yes.

19 Q. So the handprints that you saw once you got out of the
20 vehicle and already made the stop, you didn't have that
21 knowledge prior to the stop, correct?

22 A. I had what looked to be, or could have been, but I wasn't
23 sure. I could not have said that is a handprint absolutely, it
24 just looked like it could be.

25 Q. Okay. I don't want to belabor this point, but you didn't

1 mention anything in your initial report, when, you know, you
2 said you observed dirt along the back of the trunk, not like
3 dirt along the back of the trunk that looks like it could have
4 been manipulated by somebody stuffing aliens into the trunk,
5 correct?

6 A. I did not.

7 Q. So, with respect to the passing of the vehicle on the road,
8 I guess it -- you got behind it, did it pass the truck before
9 you got behind it?

10 A. It passed the truck, yes, before I got behind it.

11 Q. And you think it was suspicious when the truck slowed down
12 after speeding up to pass a truck.

13 A. The vehicle, the sedan, slowed down after it passed the
14 truck.

15 Q. The black -- the black vehicle that's in question --

16 A. Okay.

17 Q. -- today, you think it's suspicious that that vehicle
18 slowed down after it sped up to pass another vehicle?

19 A. Yes.

20 Q. Isn't that what -- like when you're passing a vehicle,
21 isn't that what you normally do, you speed up to pass the
22 vehicle. You don't like keep going faster and faster and
23 faster until the governor in your car kicks in. I mean, you
24 speed up, safely pass, get over, and then maintain your speed,
25 correct?

1 MS. WRIGHT: Objection. Argumentative.

2 THE COURT: Sustained. He said the vehicle slowed up
3 when he got behind it.

4 BY MR. SCILEPPI:

5 Q. How far -- when it passed the truck, how far behind it were
6 you?

7 A. I had just turned around, so at that point I was a hundred
8 yards behind.

9 Q. So you had to --

10 A. Yeah, and I'm in a slower -- I'm in a slow vehicle, so it
11 took me a little bit to catch up.

12 Q. So by the time you caught up to the black vehicle, it had
13 already -- it had already, like, completed the passing of the
14 other vehicle, the truck, right?

15 A. That's correct.

16 Q. And then it slowed down to the speed limit?

17 A. After I got behind it. It continued at the speed that it
18 was going at as it passed the truck and it continued at that
19 same approximate speed. When I got behind the vehicle, that's
20 when it slowed down.

21 Q. So how fast was it -- how fast were you pacing it?

22 A. I did not pace it, sir. I was driving up to it, so I
23 wasn't pacing it.

24 Q. How -- how far -- how fast would you -- the speed limit is
25 35, how fast would you -- how fast did you think it was going

1 before it slowed down?

2 A. Well, the pick-up truck appeared to be the doing the 35
3 miles an hour and it passed it at a pretty quick pace, so my
4 guess would be about 50 miles an hour.

5 Q. And how long was it going 50 miles an hour before it slowed
6 down to 35 miles per hour?

7 A. From when I saw it, it went about a mile.

8 Q. Did you recognize the truck that it had passed as a local
9 truck?

10 A. I have seen that truck, but I don't know the lady that
11 drives it.

12 Q. Yet it wasn't speeding.

13 A. No, it wasn't. It didn't appear to be speeding.

14 Q. And I just mention that because you had mentioned that all
15 the locals around there speed around Border Patrol because they
16 know that you guys don't have the --

17 A. Not all of them speed. I said that the ones that do speed
18 won't slow down for us.

19 MR. SCILEPPI: Let me just check my notes.

20 BY MR. SCILEPPI:

21 Q. So the dust on the back of the -- when you're driving, I'm
22 talking about, I guess the thing that triggered your suspicion,
23 if you will, your words, are that a sensor was tripped at the
24 church and that car was around -- at or around to the church --

25 A. Mmm-hmm.

1 Q. -- and that there was a little dust on the back of the
2 vehicle, and that it slowed down when you approached it.

3 A. I would be a little bit more specific. That's a general.
4 Because it's at an abandoned church four miles from the border
5 when a sensor activated, and that when I got close to it I saw
6 what I thought were hand prints at the trunk of the vehicle.
7 Couldn't confirm it, but it looked like other cases that I've
8 made where there were people that had climbed in.

9 MR. SCILEPPI: One second, please, Your Honor.

10 THE COURT: Sure.

11 BY MR. SCILEPPI:

12 Q. How long -- you mention in your report that you thought
13 that vehicles needed -- needed permission, vehicles who are not
14 part of the, I guess, Tohono O'odham Nation need permission to
15 be there.

16 A. That's correct.

17 Q. You'd agree though, back to the speeding, driving the speed
18 limit is something that's a reasonable and prudent thing to do,
19 wouldn't you?

20 A. Driving the speed limit?

21 Q. Driving the speed limit.

22 A. Yes, I would say that's prudent.

23 Q. Also, you've been doing this for a while, and you graduated
24 from the academy in 2007?

25 A. That's correct.

1 Q. You didn't note in your report that -- that you felt that
2 the vehicle was riding low in the back or anything like that,
3 correct?

4 A. I did not.

5 MR. SCILEPPI: No further questions. Thank you, sir.

6 THE WITNESS: Mmm-hmm.

7 THE COURT: Anything further, Mr. Lopez?

8 MR. LOPEZ: Mr. Scileppi took all my thunder away,
9 Your Honor.

10 THE COURT: Okay. Thank you.

11 Any redirect?

12 MS. WRIGHT: Just a little bit, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. WRIGHT:

15 Q. Agent, after you run tags and you follow this vehicle for a
16 bit, did you eventually stop it?

17 A. I did.

18 Q. And as a result of that stop, did you eventually make the
19 arrest in this case?

20 A. Yes, I did.

21 MS. WRIGHT: Your Honor, that's all I have.

22 EXAMINATION BY THE COURT

23 Q. And as a result of the stop, you were able to see there
24 were handprints on the trunk lid?

25 A. Yes, when I got out -- when I could get in and stop behind

1 it, yes, sir, and I could see it clearly.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Anything further?

5 MS. WRIGHT: Not from the Government, Your Honor.

6 MR. LOPEZ: Not for Ms. Hernandez, Your Honor.

7 MR. SCILEPPI: Nor for my client.

8 THE COURT: When is the trial in this case?

9 MR. SCILEPPI: I'll tell you in a second, Your Honor.

10 MS. WRIGHT: I'm sorry, Your Honor, it wasn't at the
11 front of my mind.

12 THE COURT: That's all right.

13 MR. SCILEPPI: It's set for February 6th.

14 THE COURT: Okay. I'll take the matter under
15 advisement.

16 MR. SCILEPPI: Do you want to hear argument?

17 THE COURT: If you want to give it to me. Or is that
18 a sincere question?

19 (Laughter among parties).

20 THE COURT: Go ahead. Let me hear you.

21 MR. LOPEZ: He was joking, Your Honor.

22 MR. SCILEPPI: Hold on one second.

23 We'll leave it be, Judge.

24 THE COURT: Pardon me?

25 MR. SCILEPPI: I think you have a handle of the facts.

1 MR. LOPEZ: Submit on the briefs, Your Honor.

2 THE COURT: Thank you. We stand at recess.

3 (Off the record at 3:37 p.m.)

4 (On the record at 3:38 p.m.)

5 THE CLERK: You're on the record.

6 MR. LOPEZ: Just to eliminate some -- my client wants
7 to spend the holidays in Agua Prieta. Miguel Pride has already
8 stated that he wants to -- that he is allowing it. Do you want
9 me to submit a form of order?

10 THE COURT: No, she can go to Agua Prieta for the
11 holidays if she tells Miguel Pride when she is leaving, when
12 she is coming back, and if she calls when she leaves, and if
13 she calls when she gets back.

14 MR. LOPEZ: Thank you, Your Honor.

15 THE COURT: Thank you.

16 (Off the record at 3:38 p.m.)

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C E R T I F I C A T E

2

3 I, A. TRACY JAMIESON, court-approved transcriber,
4 certify that the foregoing is a true and accurate transcript
5 from the official electronic sound recording of the proceedings
6 held in the above-entitled matter, transcribed to the best of
7 my ability.

8

9 Signed in Tucson, Arizona, on the 2nd day of
10 February, 2018.

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s/A. Tracy Jamieson
A. Tracy Jamieson