

APPENDIX C

Excerpts from Suppression Hearing,
(September 6, 2018)

1 Q All right. What did you do with those devices at that
2 point?

3 A So those devices were still in the custody of Customs and
4 Border Protection. The only cell phone that I manipulated was
5 Cristal Hernandez's phone.

6 Q When you say, "manipulated," what do you mean?

7 A I went over the phone with -- when I -- after I had
8 interviewed her, she gave us consent to search the phone. And
9 she was next to me. And we were -- she was showing us photos,
10 and GPS, and things of that nature.

11 Q Okay. What did you do with -- so what devices did the
12 Defendant have?

13 A The Defendant, I believe -- I was told that he had two
14 devices.

15 Q Okay. And so what did you do with those devices after you
16 attempted to interview him?

17 A They were still in the custody -- I didn't touch the
18 devices that night. They were still in the custody of CBP.

19 Q Okay. When did you retrieve those devices from CBP
20 custody?

21 A I obtained those -- all devices from all three Defendants
22 the afternoon of the 16th, late that afternoon.

23 Q Okay. And then what did you -- I guess, how were those
24 devices secured?

25 A So after I received the devices, they were now in my chain

1 of custody. They were secured and pending forensic
2 examination.

3 Q Did you turn them off or anything like that?

4 A No.

5 Q Okay. Did -- where did you, I guess, then secure those
6 devices?

7 A Those devices were secured under lock and key.

8 Q And I guess at, like, your office location?

9 A Yes, sir.

10 Q Okay. When did those devices leave your office location?

11 A After -- from our building, after they were forensically
12 examined.

13 Q Okay. So when did you take them to be forensically
14 examined?

15 A The first device, which belongs to Cristal Hernandez, was
16 examined on a Monday, which was the 21st.

17 Q Did you drop all the phones over together to get examined
18 basically at once?

19 A No.

20 Q Okay. So you took them to get examined one by one?

21 A Yes. I -- the first one to get examined was Cristal
22 Hernandez's device. And once I retrieved that device back to
23 my custody, I gave the technician the other two -- three
24 devices.

25 Q Okay. So let's back up a little bit. So you said that

1 you took those into your possession on the 16th; and then on
2 the 21st is when you physically handed them off to, I guess,
3 someone to forensically examine them?

4 A Yes, sir.

5 Q All right. Why was there a delay of the -- of those days
6 between the 16th and the 21st?

7 A So on the 16th, we retrieved them late that afternoon.
8 The 17th, I was tasked with presenting all three Defendants for
9 their initial appearance. We essentially -- after I -- we -- I
10 got done with my core duties, I went back out to the field to
11 assist with the other ongoing case.

12 Q The one that you were working on --

13 A Yes.

14 Q -- when you were called out for this one?

15 A Yes, sir.

16 Q Okay.

17 A And that actually spilled over into the following week.

18 Q Okay. And so on the 21st, you said that you gave one of
19 the phones first for Ms. Hernandez?

20 A Yes.

21 Q Okay. Why did you start with that phone and not all of
22 them, I guess?

23 A So I started with that phone because I knew there was
24 evidence in that phone, which she had already showed me. So I
25 knew that was of importance to me.

1 Q Okay. So you wanted to start with the one that you knew
2 there were things of interest on?

3 A Yes.

4 Q All right. Who did you give that phone to?

5 A I gave that phone to one of our HSI Task Force officers,
6 Manuel Gutierrez.

7 Q All right. And then when did you give the Defendant's
8 devices over to Task Force Officer Gutierrez?

9 A I gave him the devices on the 22nd, which was a Tuesday.

10 Q Okay. Why did you give them on the 22nd?

11 A That was after he had completed the forensic process of
12 the first phone. I retrieved that phone, and on the 22nd, I
13 gave him the other three cell phones.

14 Q Why didn't you get a warrant to, I guess, you know,
15 examine the cell phones?

16 A In this case, I exercised our border search authority.

17 Q Okay. I guess your -- based off of your training and the
18 protocol that you were following, that was your understanding
19 that the border search doctrine would apply to these phones?

20 A Yes, sir.

21 Q Okay.

22 MR. DOS SANTOS: I'll pass the witness, Judge.

23 THE COURT: Mr. Charles?

24 //

25 //

1 **CROSS EXAMINATION**

2 **BY MR. CHARLES:**

3 Q Good morning, Agent Salinas.

4 A Good morning, sir.

5 Q How are you doing today? Agent Salinas, why was -- why
6 would you, as a special agent with Homeland Security
7 Investigations, not take the phones on May 15th with you --
8 with your person?

9 A So on -- I actually responded on the 16th.

10 Q That's right; it was already midnight.

11 A So on the 16th, Customs and Border Protection, since they
12 initially intercepted the case, they have to process the case.
13 They process all the individuals that are arrested. They
14 process the evidence. And that's why it took -- that's why I
15 didn't leave with the evidence that night -- that morning.

16 Q But as a special agent with Homeland Security
17 Investigations, you can't just say, I'm taking these as a
18 part -- I need them, especially since you knew there was
19 evidence in them already?

20 A No, they have to log it in the system as evidence. And
21 their, technically, chain of custody lies with them initially.
22 And so they have to complete their process before I can take
23 over the chain -- the evidence.

24 Q So on the 16th is when you secured them --

25 A 16th --

1 Q -- in the afternoon?

2 A -- later that afternoon, after we had transported the
3 Defendant to Webb County Jail.

4 Q What day was that?

5 A That was Wednesday.

6 Q Is that the day you presented them in court?

7 A No, I presented them Thursday, the 17th.

8 **MR. CHARLES:** May I have a moment, Your Honor?

9 **THE COURT:** Yes.

10 Agent, given the fact that you were presenting these
11 individuals for an initial appearance, was it before one of the
12 U.S. Magistrate judges?

13 **THE WITNESS:** Yes, Your Honor.

14 **THE COURT:** If you -- I believe that you needed a
15 search warrant to get into these cell phones. Would it have
16 been something that you could have done; could you have taken a
17 warrant to one of the Magistrates if you thought that's what
18 you needed?

19 **THE WITNESS:** Yes, Your Honor.

20 **BY MR. CHARLES:**

21 Q Agent Salinas, so on May 16th, you filed the complaint
22 with the Court?

23 A Yes, sir.

24 Q Can I hand you a copy of your complaint?

25 A Sure.

1 Q Is this a copy of -- like that you prepared in this case?

2 A Yes, sir.

3 Q You're the officer that presented the case in front of the
4 Magistrate?

5 A That is correct.

6 Q May I turn the page to page 2?

7 A Sure.

8 Q Did you prepare the attachment in Part A?

9 A Yes.

10 Q And can you tell the Court what is your -- in your
11 attachment in Part A?

12 A In my attachment essentially is a culmination of the
13 statements made to me by Customs and Border Protection
14 officers, together with my individual facts and findings.

15 Q The facts and findings that you made in this case?

16 A Yes.

17 Q And so you're presenting the -- your cause for arresting
18 and presenting --

19 A Yes.

20 Q -- Mr. Aguilar, Ms. Cano, and Ms. Hernandez in front of
21 the Magistrate?

22 A Yes.

23 Q When did you prepare that complaint?

24 A That was prepared on the 16th.

25 Q Agent Salinas, have you prepared a warrant before?

1 A Yes.

2 Q In your acting capacity as a Homeland Security
3 Investigation?

4 A Yes.

5 Q How long does a warrant preparation take you?

6 A It depends. Are we talking about a search warrant or --

7 Q Search warrant.

8 A -- arrest warrant? Search warrant depends on the item or
9 the residence to be searched.

10 Q In this case, it's a phone.

11 A In the phone -- I'm going off of other cases -- a couple
12 hours, I'm assuming, give or take.

13 Q Because the need of a warrant is basically what's -- what
14 we included in your complaint, right?

15 A Correct.

16 Q Was that saved in your computer?

17 A Yes.

18 Q In your work computer? So on the 16th, you had pretty
19 much the essence of the case, the cause of the case, why you
20 were arresting somebody, already on your work computer?

21 A Yes.

22 Q Okay. Where do you -- okay; so on May 17th, you said you
23 went back to work; and then on May 21st, you dropped off the
24 phones.

25 A Yes.

- 1 Q Where did you physically take them to, here in Laredo?
- 2 A Where I dropped them off? Yes, sir.
- 3 Q The one phone, on the 21st.
- 4 A Yes.
- 5 Q You dropped off the one phone?
- 6 A Yes.
- 7 Q Is it in your office?
- 8 A Yes.
- 9 Q In the same building?
- 10 A Yes.
- 11 Q Down the hall?
- 12 A It's in the same general working area.
- 13 Q Is it with Agent Williams?
- 14 A No.
- 15 Q No? Who's the agent? I believe you told us, frankly, who
- 16 the agent -- who's the agent?
- 17 A Manuel Gutierrez.
- 18 Q Manuel Gutierrez. And so he's like the specialist in
- 19 forensic examinations of phones?
- 20 A He is the agent assigned to my group that handles
- 21 examination of phones and does the phone downloads.
- 22 Q And he works with all -- with Homeland Security
- 23 Investigations?
- 24 A He's actually a Border Patrol agent assigned to HSI as a
- 25 Task Force officer.

- 1 Q Okay. He's housed in your building?
- 2 A Yes.
- 3 Q In your office?
- 4 A Yes.
- 5 Q Same office as you?
- 6 A Yes, sir.
- 7 Q Right down the hall?
- 8 A Yes, sir -- well --
- 9 Q Okay.
- 10 A -- right -- I would say within our general cubicle area.
- 11 Q Okay. How far is he from you?
- 12 A Like from me to the gentleman sitting here in front of me.
- 13 Q So he's your neighbor --
- 14 A My neighbor, yes.
- 15 Q -- 10 feet away from you. Okay. And I think you stated
- 16 to the Court that the reason that you took the first phone,
- 17 21st -- on the 21st, or you handed it over to him, was because
- 18 you knew it had evidence?
- 19 A Yes, sir.
- 20 Q And the reason you took the second batch of phones was
- 21 because you were hoping to get evidence?
- 22 A No, because the agent that was to examine those phones had
- 23 other phones that he -- pertaining to other cases that he had
- 24 to download.
- 25 Q Do you know how --

1 A So they were essentially placed in sequential order.

2 Q Do you know how many he had?

3 A There were several --

4 Q You don't --

5 A -- from other agencies, other different cases.

6 Q But you don't know how many there were?

7 A I don't know how many.

8 Q Yeah, okay. So it would have been help -- it would've
9 helped to drop them off -- the sooner the better probably would
10 have been best?

11 A Well, I consulted with him on the 18th, which was a
12 Friday --

13 Q Okay.

14 A -- and I told him about us having these phones that needed
15 to be downloaded. And he was busy with other duties and other
16 phones.

17 Q On the 21st, you handed him this phone, the --
18 Ms. Hernandez's phone?

19 A Yes, sir.

20 Q And he returned it to you -- he returned the report to you
21 by the next day?

22 A Next day.

23 Q Okay. The bulk of writing a warrant to search a phone is
24 mostly boiler plate?

25 A I'm sorry?