

No. 21- \_\_\_\_\_

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IN THE

**Supreme Court of the United States**

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FENDI BROOKS,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

-----■-----  
On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Third Circuit

-----■-----  
APPENDIX  
Vol. 1

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Joseph A. DiRuzzo, III  
*Counsel of Record*  
DIRUZZO & COMPANY  
401 East Las Olas Blvd., Suite 1400  
Ft. Lauderdale, Florida 33301  
Office: (954) 615-1676  
Fax: (954) 827-0340  
Email: [jd@diruzzolaw.com](mailto:jd@diruzzolaw.com)

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APPENDIX A —

Judgment of the United States Court of Appeals

For the Third Circuit dated December 29, 2020

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-3562

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UNITED STATES OF AMERICA

v.

FENDI BROOKS,  
Appellant

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On Appeal from the District Court  
of the Virgin Islands  
(D.C. No. 3-18-cr-00042-002)  
District Judge: Honorable Curtis V. Gomez

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Submitted Pursuant to Third Circuit L.A.R. 34.1(a)  
December 8, 2020

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Before: SMITH, Chief Judge, CHAGARES and MATEY, Circuit Judges

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JUDGMENT

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This cause came to be considered on appeal from the District Court of the Virgin Islands and was submitted on December 8, 2020.

On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the Judgment of the District Court entered on February 14, 2020, is AFFIRMED. All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszeit  
Clerk

Dated: December 29, 2020

APPENDIX B —

Opinion of the United States Court of Appeals

For the Third Circuit dated December 29, 2020

**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 19-3562

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UNITED STATES OF AMERICA

v.

FENDI BROOKS,  
Appellant

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On Appeal from the District Court  
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Before: SMITH, Chief Judge, CHAGARES and MATEY, Circuit Judges

(Opinion filed: December 29, 2020)

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OPINION\*

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\* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

CHAGARES, Circuit Judge.

Fendi Brooks pled guilty to one count of conspiracy to possess with intent to distribute a controlled substance. The District Court sentenced her to seventy-seven months of imprisonment. Brooks now appeals her judgment of conviction. For the following reasons, we will affirm.

I.

We write solely for the parties' benefit, so our summary of the facts is brief. In September 2018, Brooks and her co-defendant, Ngoc Yen Nguyen, travelled together on a Delta Air Lines, Inc. ("Delta") flight from the Virgin Islands to Atlanta, Georgia. Upon arriving in Georgia, Brooks and Nguyen presented themselves to a U.S. Customs and Border Protection ("CBP") officer to pay duties on alcohol they had purchased in the Virgin Islands. The CBP officer took an x-ray scan of their luggage and discovered thirteen bricks of cocaine.

An Assistant Special Agent in Charge from Homeland Security Investigations ("HSI") — which is part of the Department of Homeland Security ("DHS") — subsequently issued several administrative subpoenas to companies including Delta and Sprint Corporation ("Sprint"). The subpoena issued to Delta (the "Delta Subpoena") requested flight manifests, flight and ticketing information, and the transaction history for Brooks and Nguyen. The subpoena issued to Sprint (the "Sprint Subpoena") requested subscriber information and call information for a specific phone number.

Brooks was charged by criminal information with two counts of controlled substance violations on October 23, 2018. A few weeks later, on November 7, 2018,

Attorney General Jefferson B. Sessions resigned from office, and the President named Matthew Whitaker, who had been the Attorney General's Chief of Staff, as the Acting Attorney General.<sup>1</sup> Brooks filed a motion to dismiss the information six days later on the ground that Whitaker's designation violated federal law and the Appointments Clause and thus rendered her prosecution unlawful. Before the District Court decided Brooks's motion to dismiss, the grand jury returned an indictment in December 2018, which added a third controlled substance charge. Brooks filed a motion to suppress evidence obtained under the Delta and Sprint Subpoenas that same day.

The District Court held a hearing on the pending motions on March 7, 2019. Whitaker was no longer the Acting Attorney General by that time. The Government represented that it intended to use only the subscriber information and phone log, not the location data, that it received from Sprint. The District Court concluded that Brooks lacked standing to challenge the subpoenas and denied her motion to suppress. The court also denied Brooks's motion to dismiss without explanation.

Brooks agreed that same day to plead guilty to Count One of the indictment — conspiracy to possess with intent to distribute cocaine. As part of the plea agreement, Brooks reserved the right to appeal the District Court's denials of her motions to suppress and dismiss. The District Court accepted Brooks's guilty plea at the hearing.

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<sup>1</sup> We may take judicial notice of the date of the President's announcement designating Whitaker as Acting Attorney General because it "is not subject to reasonable dispute." Fed. R. Evid. 201(b).



The District Court sentenced Brooks to seventy-seven months of imprisonment and five years of supervised release on October 31, 2019. The court, however, did not issue the judgment until February 14, 2020. Brooks filed a notice of appeal on November 1, 2019 — after the District Court’s verdict but before the judgment. Brooks’s appeal is timely. See United States v. Hashagen, 816 F.2d 899, 901 (3d Cir. 1987) (“[A] notice of appeal filed after verdict but before sentence, although premature, ripens into an appealable order when the judgment of sentence is entered.”).

## II.<sup>2</sup>

In this appeal, Brooks contests her conviction based on the District Court’s denials of her motion to dismiss and motion to suppress. We will address each in turn.

### A.

Brooks argues that her conviction and sentence must be vacated because Whitaker’s appointment as Acting Attorney General violated federal law and the Appointments Clause. In other words, Brooks contends that Whitaker’s appointment was improper and thus rendered invalid every sentence imposed on someone whose prosecution took place at least partially during Whitaker’s tenure as Acting Attorney General, even if much of the prosecution took place and the actual sentence was imposed

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<sup>2</sup> The District Court had jurisdiction under 48 U.S.C. § 1612 and 18 U.S.C. § 3231. We have appellate jurisdiction under 28 U.S.C. § 1291. We review a district court’s order denying a motion to suppress or motion to dismiss under a mixed standard of review. We review findings of fact for clear error but exercise plenary review over legal conclusions. United States v. Thompson, 772 F.3d 752, 758 (3d Cir. 2014) (motions to suppress); United States v. Stock, 728 F.3d 287, 291 (3d Cir. 2013) (motions to dismiss).

after Whitaker was no longer Acting Attorney General. Brooks also reasons that she does not need to show prejudice or harm because the purported Appointments Clause violation is “structural in nature.” Brooks Opening Br. 5.

Many courts have held that the legality of Whitaker’s appointment as Acting Attorney General does not affect the validity of criminal prosecutions or sentences.<sup>3</sup> The United States Court of Appeals for the Fourth Circuit has gone further and concluded that Whitaker’s appointment was constitutional. United States v. Smith, 962 F.3d 755, 763 (4th Cir. 2020). Despite reaching this conclusion, the court also noted that “even if [the defendant’s] constitutional argument were right, he still would not be entitled to the relief he seeks, for [the defendant] has failed to show in any discernible fashion how Whitaker’s designation affected the validity of [his] proceeding or prejudiced him in any way.” Id. We agree with the alternate holding of our sister Court of Appeals.

Even assuming that Whitaker’s appointment was invalid — which is a question we need not reach — Brooks “must show that Whitaker’s tenure somehow affected [her] proceeding and prejudiced [her] in some way. Yet [Brooks] can do no such thing.” See id. at 766. First, the criminal information Brooks sought to dismiss was filed weeks before Whitaker was appointed as Acting Attorney General. Second, Brooks was

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<sup>3</sup> See, e.g., United States v. Patara, 365 F. Supp. 3d 1085, 1093 (S.D. Cal. 2019) (concluding that the defendants’ prosecution was valid, “notwithstanding whether Mr. Whitaker’s appointment as acting Attorney General comports with the requirements under the Appointments Clause”); United States v. Santos-Caporal, No. 1:18-cr-171, 2019 WL 468795, at \*7 (E.D. Mo. Jan. 9, 2019); United States v. Smith, No. 1:18-cr-115, 2018 WL 6834712, at \*3 (W.D.N.C. Dec. 28, 2018); United States v. Peters, No. 6:17-cr-55, 2018 WL 6313534, at \*7 (E.D. Ky. Dec. 3, 2018); United States v. Valencia, No. 5:17-cr-882, 2018 WL 6182755, at \*7 (W.D. Tex. Nov. 27, 2018).

subsequently charged pursuant to an indictment issued by a properly constituted grand jury. See Costello v. United States, 350 U.S. 359, 363 (1956) (“An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits.”). Third, to the extent that Brooks argues that her conviction should be vacated merely because Whitaker’s appointment overlapped with part of her prosecution, Brooks was prosecuted by the United States Attorney for the District of the Virgin Islands who was independently empowered by statute to prosecute cases and duly appointed by a district court. See 28 U.S.C. § 547(1) (providing that each United States attorney shall “prosecute for all offenses against the United States”); see also 28 U.S.C. § 546(d) (“If an appointment expires . . . the district court for such district may appoint a United States attorney to serve until the vacancy is filled.”). Because Brooks has failed to show how Whitaker’s appointment affected her, we hold that the District Court did not err in denying Brooks’s motion to dismiss.

## B.

We next consider the District Court’s denial of Brooks’s motion to suppress. Brooks argues that DHS did not have the authority to issue the Delta and Sprint Subpoenas and that the information the Government received from Sprint should be suppressed because the Government failed to obtain a warrant. The Delta Subpoena was issued under 8 U.S.C. § 1225(d),<sup>4</sup> which specifies that the “Attorney General and any

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<sup>4</sup> The Government explained in its opposition to Brooks’s motion to suppress that it requested that DHS reissue the Delta Subpoena under 21 U.S.C. § 967. United States’

immigration officer shall have the power” to issue subpoenas. 8 U.S.C. § 1225(d)(4)(A). The Sprint Subpoena was issued under 21 U.S.C. § 967, which provides that “the Secretary of the Treasury may . . . require the production of records . . . relevant or material to the investigation.” With respect to the information it received pursuant to the Sprint Subpoena, the Government represented at the suppression hearing that it would only use the subscriber information and telephone log at trial, not the location information.

Brooks does not have Fourth Amendment standing to challenge the subpoenas. Defendants “must have standing to invoke the Fourth Amendment’s exclusionary rule.” United States v. Correa, 653 F.3d 187, 190 (3d Cir. 2011). Whether defendants have standing depends on whether they had a reasonable expectation of privacy in the information the Government sought to use. See United States v. Cortez-Dutrieuille, 743 F.3d 881, 885 (3d Cir. 2014). The “Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.” United States v. Miller, 425 U.S. 435, 443 (1976); see also Carpenter v. United States, 138 S. Ct.

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Opp’n to Defs.’ Mot. to Suppress Evid. Obtained Through Administrative Subpoenas at 2 n.1, United States v. Brooks, No. 3:18-cr-42 (D.V.I. Dec. 20, 2018), ECF No. 70. The parties did not include the reissued subpoena in their Joint or Supplemental Appendices. Whether the Government reissued the subpoena is not material because our analysis applies equally to both statutes.

2206, 2222 (2018) (“We hold only that a warrant is required in the rare case where the suspect has a legitimate privacy interest in records held by a third party.”).

We have previously explained that there is no reasonable expectation of privacy in subscriber information voluntarily conveyed to third parties. See United States v. Christie, 624 F.3d 558, 573–74 (3d Cir. 2010) (discussing IP addresses). We similarly agree with our sister Courts of Appeals that there is no reasonable expectation of privacy in telephone subscriber information and records or flight and ticketing information. See Johnson v. Duxbury, 931 F.3d 102, 108 (1st Cir. 2019) (concluding that “a phone subscriber has no reasonable expectation of privacy in the phone service provider’s records of the numbers that the subscriber has dialed and from which the subscriber has received calls”); United States v. Wheelock, 772 F.3d 825, 828–29 (8th Cir. 2014) (discussing internet subscriber information); United States v. Beckett, 369 F. App’x 52, 56 (11th Cir. 2010) (“Beckett could not have had a reasonable expectation of privacy in the information that was obtained from the ISPs and the phone companies.”); United States v. Goree, 47 F. App’x 706, 712 (6th Cir. 2002) (“All of the information that Goree objects to was provided by him to the airline. Therefore, Goree lacks any ‘reasonable expectation of privacy’ in his flight information.”). Brooks, therefore, had no reasonable expectation of privacy in the information on which the Government intended to rely that it obtained from Sprint and Delta.

The Government’s failure to obtain a warrant before obtaining information from Sprint similarly does not justify suppression for the same reasons: Brooks had no reasonable expectation of privacy in the subscriber information or telephone logs

obtained from Sprint, which are the only pieces of information on which the Government intended to rely. See United States v. Goldstein, 914 F.3d 200, 202 (3d Cir. 2019) (“[I]f there is no reasonable expectation of privacy as to [the information obtained], then its acquisition does not require a search warrant.”). Given the Government’s representation that it would not use the location information, any reasonable expectation of privacy that Brooks may have had in that information is not relevant. See United States v. Maddex, No. 98-50005, 1998 WL 789414, at \*1 (9th Cir. Nov. 6, 1998) (rejecting the defendant’s argument that “unlawfully elicited statements tainted the validly obtained biographical information”); United States v. Kupper, 179 F. Supp. 264, 268 (E.D. Pa. 1959) (denying the defendant’s motion to suppress because “the Government did not in any way use information obtained as a result of the search”); cf. United States v. de la Cruz-Paulino, 61 F.3d 986, 993–94 (1st Cir. 1995) (explaining that Federal Rule of Criminal Procedure 12 allows defendants to avoid the necessity of moving to suppress evidence the government does not intend to use).

Notwithstanding Brooks’s lack of Fourth Amendment standing, she could still challenge DHS’s authority to issue the subpoenas if the relevant statutes allowed for such a challenge. To challenge the statutory authority of a government agency to issue a subpoena, movants must assert their own legal interests and show that their interests are within the zone of interests the statute is intended to protect. See Davis ex rel. Davis v. Phila. Hous. Auth., 121 F.3d 92, 96 (3d Cir. 1997). The U.S. Courts of Appeals for the Ninth and Tenth Circuits, when reviewing a statute similar to the statutes at issue here, concluded that defendants cannot challenge a subpoena if the “statute provides no express

right to challenge the [government’s] subpoenas issued under it.” United States v. Moffett, 84 F.3d 1291, 1293 (10th Cir. 1996); see also United States v. Plunk, 153 F.3d 1011, 1020 (9th Cir. 1998) (concluding that the defendant could not attack the subpoena because he was not in the zone of interest and the statute did not provide an express right to challenge subpoenas issued under it), overruled on other grounds by United States v. Hankey, 203 F.3d 1160, 1169 n.7 (9th Cir. 2000).

Here, 8 U.S.C. § 1225 and 21 U.S.C. § 967 give the Attorney General, immigration officers, and the Secretary of the Treasury broad powers to investigate violations of immigration laws and federal drug smuggling laws, respectively. Neither statute provides an express right to challenge the subpoenas issued under them. Brooks consequently does not fall within the zones of interest the statutes are meant to protect and thus cannot challenge the Delta and Sprint Subpoenas.<sup>5</sup> Indeed, “[o]ur supervisory power does not authorize us to order suppression of ‘otherwise admissible evidence on the ground that it was seized unlawfully from a third party not before the court.’” Moffett, 84 F.3d at 1294 (quoting United States v. Payner, 447 U.S. 727, 735 (1980)). We therefore do not reach whether DHS was authorized to issue the subpoenas.

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<sup>5</sup> Even if Brooks could challenge the subpoenas, suppression is not an available remedy because both statutes are silent as to whether exclusion is appropriate. See United States v. Moalin, 973 F.3d 977, 996 (9th Cir. 2020) (“Because suppression is a disfavored remedy, we impose it to remedy a statutory violation only where it is clearly contemplated by the relevant statute.” (quoting United States v. Forrester, 512 F.3d 500, 512 (9th Cir. 2008)) (quotation marks and alterations omitted)).

We consequently hold that the District Court did not err in denying Brooks's motion to suppress and will affirm the court's judgment.<sup>6</sup>

III.

For the foregoing reasons, we will affirm Brooks's judgment of conviction.

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<sup>6</sup> We have considered all other arguments made by Brooks and conclude that they are without merit.



APPENDIX C —

Reporter's Transcript, Omnibus Hearing dated March 7, 2019

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS and ST. JOHN

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CRIM. NO. 18CR0042
	)	
FENDI BROOKS,	)	
	)	
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT

OMNIBUS HEARING

THURSDAY, MARCH 7, 2019

BEFORE: THE HONORABLE CURTIS M. GOMEZ,  
District Judge

APPEARANCES: OFFICE OF THE UNITED STATES ATTORNEY  
BY: MEREDITH EDWARDS, AUSA  
5500 Veterans Drive, Suite 260  
St. Thomas, VI 00802

(For the United States)

DIRUZZO & COMPANY  
BY: JOSEPH A. DiRUZZO, III, ESQ.  
401 East Las Olas Blvd., Suite 1400  
Ft. Lauderdale, FL 33301

(For the Defendant)

COURT REPORTER: PERSHA S. WARNER, RMR  
Official Court Reporter  
Virgin Islands District Court  
St. Thomas, Virgin Islands

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1 PROCEEDINGS:

2 \* \* \*

3 [Court called to order at 3:53 pm.]

4 THE CLERK: United States of America vs. Fendi  
5 Brooks.

6 THE COURT: With respect to Miss Brooks, we're  
7 here for a motion hearing, on the suppression motion.  
8 Attorney DiRuzzo, is it your motion?

9 MR. DIRUZZO: Yes, Your Honor. We're here for  
10 two motions to suppress, the first one regarding my  
11 client's statements, filed as Document Entry 69. I  
12 believe that one is going to require testimony. And the  
13 second motion to suppress the Government's subpoenas  
14 filed as Document Entry 58. I do not believe that is  
15 going to require testimony.

16 THE COURT: You have a motion or motions to  
17 suppress; is that right?

18 MR. DIRUZZO: Right, Your Honor.

19 THE COURT: All right. Tell me, what are the  
20 things or what is the thing you seek to suppress.

21 MR. DIRUZZO: Your Honor, with respect to the  
22 motion to suppress my client's statements found on Page  
23 2 --

24 THE COURT: Bring the microphone down so we can  
25 hear you. Okay, good.

1 MR. DIRUZZO: With respect to my client's  
2 motion to suppress her statements found at Document No.  
3 69, on Page 2 I detailed my client's statements that she  
4 made or allegedly made to CBP in the Hard Secondary  
5 area.

6 THE COURT: Okay, so you wish to have, what,  
7 the statements suppressed?

8 MR. DIRUZZO: Correct, Your Honor.

9 THE COURT: Okay. Which date and place were  
10 the statements made?

11 MR. DIRUZZO: September 24th at the airport, at  
12 the hard sec- --

13 THE COURT: You said November 24th, what year?

14 MR. DIRUZZO: September 4th, Your Honor.

15 THE COURT: Oh, September 24th. What year?

16 MR. DIRUZZO: Last year.

17 THE COURT: 2018?

18 MR. DIRUZZO: Correct.

19 THE COURT: Anything else?

20 MR. DIRUZZO: With respect to Document 69, no.

21 THE COURT: I'm just trying to get a list of  
22 the things you want suppressed. So, you wish her  
23 statement made on September 24, 2018 at the airport to  
24 be suppressed. Anything else?

25 MR. DIRUZZO: Yes, Your Honor. With respect to

1 Document Entry 58, I ask for the information with  
2 respect to the administrative subpoenas issued to Delta  
3 and issued to Sprint.

4 THE COURT: Tell me, what is the thing that you  
5 wish to suppress?

6 MR. DIRUZZO: From Delta the information  
7 regarding my client's travel, and from Sprint the cell  
8 site location information.

9 THE COURT: You want information obtained by  
10 the Government from Delta to be suppressed?

11 MR. DIRUZZO: Correct.

12 THE COURT: And information obtained from  
13 Sprint by the Government to be suppressed?

14 MR. DIRUZZO: Correct.

15 THE COURT: All right. What's the  
16 constitutional basis for the Delta and Sprint  
17 suppressions? As I understand it, suppressions  
18 generally deal with addressing some constitutional  
19 infirmity that requires suppression. So, tell me, what  
20 is the constitutional violation with respect to Delta,  
21 then we'll go on to Sprint.

22 MR. DIRUZZO: With respect to Delta, Your  
23 Honor, it's a Fourth Amendment and the fact that the use  
24 of administrative subpoenas were ultra vires, in  
25 violation of the statute.

1           THE COURT: Are you saying that the basis is a  
2           statutory violation and also a Fourth Amendment  
3           violation?

4           MR. DIRUZZO: Correct.

5           THE COURT: What's the Fourth Amendment  
6           violation? Is this with respect to Delta and Sprint?

7           MR. DIRUZZO: Sorry, Your Honor. What was  
8           that?

9           THE COURT: Is it with respect to Delta and  
10          Sprint, the Fourth Amendment violation that you're  
11          alleging?

12          MR. DIRUZZO: Correct, Your Honor.

13          THE COURT: Okay. Just so I'm clear, what is  
14          the basis of the Fourth Amendment violation?

15          MR. DIRUZZO: Your Honor, with the issuance of  
16          the administrative subpoenas both to Delta and Sprint,  
17          the Government was able to obtain from Delta my client's  
18          travel plans, including her flight plans, where she was,  
19          where she was going to be.

20                 With respect to Sprint, it's my client's cell site  
21          location information or information that is  
22          substantially similar to cell site location information  
23          that addresses my client's whereabouts and locations,  
24          specifically in the Virgin Islands, but not limited to  
25          the Virgin Islands.

1           THE COURT: So, you're saying that the  
2           Government -- I'm guessing this is not a seizure, a  
3           search, is what you're suggesting, is some  
4           unconstitutional search? Tell me what it is you're  
5           saying is wrong.

6           MR. DIRUZZO: Your Honor, insofar as Sprint  
7           goes, traveling, the Supreme Court's decision in  
8           Carpenter holds that cell site location information is  
9           unable to be obtained absent a warrant.

10          THE COURT: Okay. All right. Attorney  
11          Edwards, before we go forward, it's the defense's  
12          motion, Government burden. Does the Government intend  
13          to use the September 24, 2018, statement?

14          MS. EDWARDS: Yes, Your Honor.

15          THE COURT: Okay. Does the Government intend  
16          to use the Delta information?

17          MS. EDWARDS: Yes, Your Honor.

18          THE COURT: Does the Government intend to use  
19          the Sprint information?

20          MS. EDWARDS: Some of the information,  
21          specifically the subscriber information and the  
22          telephone log, the calls that were made. However, if  
23          you allow me a brief moment to confer and confirm that  
24          that information is available through the search warrant  
25          results that we obtained, then I can rely on those. But



1       we're not relying on any location information.

2               THE COURT: Okay. Attorney DiRuzzo, your  
3       sister just said she's not relying on location  
4       information, subscriber information. It sounds like the  
5       nub of it. You heard what she said. Does that resolve  
6       your concern?

7               MR. DIRUZZO: No, it does not.

8               THE COURT: Okay. All right. Did you need a  
9       moment to confer, Attorney Edwards or?

10              MS. EDWARDS: The information, I believe, is  
11       available, but I'd like to reserve a right to use the  
12       call logs and the subscriber information.

13              THE COURT: Ready to proceed?

14              MS. EDWARDS: For those motions, for that  
15       information, I don't have any witnesses to call. It  
16       would just be argument. However, I do have a witness  
17       for the statements.

18              THE COURT: Your burden. Go ahead, call your  
19       witness.

20              MS. EDWARDS: The Government calls James  
21       Vanterpool.

22              THE CLERK: Please stand and raise your right  
23       hand to take the oath.

24              THEREUPON, JAMES VANTERPOOL, after having been  
25       first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MS. EDWARDS:

Q. Good afternoon. Would you please state and spell your name?

A. James Vanterpool. J-a-m-e-s. V-a-n-t-e-r-p-o-o-l.

Q. For whom do you work?

A. US Customs and Border Protection.

Q. What is your title?

A. I'm a Customs and Border Protection Officer.

Q. And how long have you been a Customs and Border Protection Officer?

A. Three years, two and-a-half months.

Q. Were you working in that capacity on September 24, 2018?

A. Yes, I was.

Q. Where were you working?

A. In the Secondary PAU Unit.

Q. What did your duties entail on that unit?

A. In the Secondary Unit we do, we collect duty, we do case processing, adverse actions. We do bag exams, any secondary action that needs to be taken on a passenger we would do that.

Q. And in the course of performing your duties on that day, did you become involved in the seizure of luggage that's involved in the instant case?

1 A. Yes.

2 Q. How did you become involved?

3 A. Well, on that said date and time Ms. Fendi Brooks  
4 and Nguyen were brought in to pay duty on some excess  
5 amount of alcohol that they were traveling with. During  
6 the exam our -- I was working along with my coworker,  
7 CBP --

8 THE COURT: Officer Vanterpool, can you pull  
9 the microphone in front of you so you speak right into  
10 it.

11 THE DEFENDANT: At the time I was working in  
12 secondary with another officer. He was basically  
13 calculating the duty and explaining the duty to Brooks  
14 and Nguyen. And during that inspection, I went over and  
15 I asked Brooks and Nguyen where the alcohol was, and  
16 they stated that it was with the porter, the Red Cap  
17 Porter Services that brings in luggage at the time. So,  
18 I had him bring the luggage on the inside over to our  
19 X-ray machine. I went over; I X-rayed the bags and  
20 there were several brick-like, I don't know,  
21 abnormality. Sorry. There were several brick-like  
22 images that came up on the X-ray machine, so I informed  
23 the supervisor that we were going to do a complete bag  
24 exam of the luggage for Miss Brooks and Nguyen.  
25 BY MS. EDWARDS:

1 Q. Is there a specific process that that entailed?

2 A. In terms of the bag exam?

3 Q. Correct?

4 A. Oh, yes. Once we -- initially, once you're  
5 referred to secondary you go into what we call "soft  
6 secondary." It's basically a glass room where we do our  
7 interviews or whatever. But once we do a bag exam, we  
8 take you into hard secondary. Hard secondary is  
9 situated a little different from soft secondary. We  
10 have an exam table; we lay out all the bags, all your  
11 belongings on the table, and we do our exams in there.  
12 So from there I proceeded to escort Miss Brooks and  
13 Nguyen over to Hard Secondary. That's when we laid out  
14 all the luggage. But the Red Cap Porter, he brought the  
15 luggage in on the same cart that he was transporting the  
16 luggage with.

17 THE COURT: Officer Vanterpool, are you saying  
18 hard, h-a-r-d, or heart?

19 THE WITNESS: Yes, hard. Hard Secondary and  
20 Soft Secondary.

21 THE COURT: With a "d"?

22 THE WITNESS: With a "d".

23 THE COURT: Okay.

24 THE WITNESS: Yes. So once we lay out all the  
25 luggage, and all the bags, and its belongings on the

1 exam table, we obtained an oral declaration. They  
2 consist of five questions. Basically, we ask you if all  
3 the bags that's here in front of you are yours? We give  
4 you the opportunity to answer yes or no. We ask you,  
5 did you pack the bags yourself? We give you an  
6 opportunity to answer. We ask you, are you traveling  
7 with anything for anyone else besides yourself? We give  
8 you an opportunity to answer. We ask if there are any  
9 sharp objects in the bags that might hurt us if we go  
10 into the bags? And then we ask you if everything in the  
11 bags are yours? And we give you the opportunity to  
12 answer.

13 BY MS. EDWARDS:

14 Q. When you presented the bags to Miss Nguyen and Miss  
15 Brooks, were they both in the same room?

16 A. Yes, they were.

17 Q. And were their bags all brought in together?

18 A. Yeah, all the bags came in at the same time. Miss  
19 Brooks and Nguyen came into the room and they were  
20 situated on the exam table. Like I said, it's roughly  
21 about five to six feet right in front of you so you can  
22 see the bags that we're questioning you about and you  
23 can answer about it.

24 Q. And did you ask each of them whether each of the  
25 pieces of luggage belonged to them?

1       A.    I asked Miss Nguyen in regards to her belongings  
2       and my coworker at the time, CBP Charles, he was the one  
3       that was asking Miss Brooks, getting her oral  
4       declaration, which she answered to him in regards to her  
5       bags.

6       Q.    And initially, did anyone claim the bag where you  
7       noticed it had brick-like anomalies?

8       A.    That bag was a black suitcase. That was claimed by  
9       Miss Nguyen at the time when I got my oral declaration  
10      and then we conducted our bag exam. We completed our  
11      bag exam of all the bags excluding the one black  
12      suitcase because it was locked. So at that time I asked  
13      Miss Nguyen to come and unlock the bag since she was the  
14      one who claimed it. Then she got up from where she was  
15      sitting and she came and she attempted to unlock -- It  
16      was a combination lock. So, she attempted to unlock the  
17      bag several times. And after failing to unlock it, she  
18      said, "I don't know how it got locked." And that's when  
19      Miss Brooks interjected and said, "well, the contents of  
20      bag belong to both of us. We both packed our clothing  
21      in that bag." And she don't know how it got locked  
22      either. The lock that was on the bag is one of those  
23      TSA-approved locks.

24      Q.    Let me interrupt you briefly. So, when Miss Brooks  
25      made that statement was it in response to a question

1       that you had posed to her?

2       A.    No.  She interjected into the conversation that I  
3       was having with Miss Nguyen at the time.

4       Q.    Sorry.  Continue on with the lock.

5       A.    Being that the lock was a TSA-approved lock, TSA  
6       usually have the keys to unlock those locks in the event  
7       they are required to go into your bag.  So, we sent an  
8       officer over to TSA, and she retrieved the key that  
9       unlocked to bag.  And upon opening the bag there were  
10      several men's pants, underwear, covering the brick-like  
11      packages.  They were also vacuumed sealed and wrapped in  
12      like foil-like material.

13      Q.    And at that point did either Miss Nguyen or Miss  
14      Brooks make any statements about the bag?

15      A.    Well, at that point they both denied ownership of  
16      the bag at that time and --

17      Q.    Okay.  And then in light of that, did you check to  
18      see whether--

19               THE COURT:  Attorney Edwards, you are leading  
20      this witness for your entire exam.  Try not to lead.

21      BY MS. EDWARDS:

22      Q.    Did you check to see who the bag belonged to?

23      A.    Well, after that we -- the bag tags, there was a  
24      bag tag on the bag and it matched the receipt that Miss  
25      Fendi Brooks had at the time in her possession.  Then

1 her name was on bag tag that was attached to the bag.

2 Q. What further steps did you take, if any, regarding  
3 the bag and its contents?

4 A. Well, after we saw the items in the bag, we started  
5 taking pictures of the bag, how it was packaged. And I  
6 contacted the supervisor, and she in turn contacted our  
7 K-9 handler and he brought over a K-9 Schober to do a  
8 sweep of the room. And the K-9 also alerted. From  
9 speaking to him, K-9 is trained to alert any narcotics.

10 Q. Did you do anything further?

11 A. From there we tested the bricks, the product that  
12 was in the bricks and it was a white powdery substance  
13 that was field tested with our Gemini machine and it  
14 came back positive for cocaine hydrochloride.

15 Q. At that point what happened?

16 A. From that point we contacted, oh, HSI agents and  
17 informed them of our findings.

18 Q. About how long would you estimate that your  
19 interaction with Miss Brooks, well, collectively Miss  
20 Brooks and Nguyen were when you were in the soft, what  
21 you refer to as Soft Secondary?

22 A. Soft Secondary alone?

23 Q. Correct.

24 A. About ten minutes give or take.

25 Q. Okay. And then when you went to hard secondary?



1 A. Roughly about 15 to 20 minutes. Roughly.

2 Q. And during that time, what had you done  
3 specifically, in terms of the exam, if you could explain  
4 what you do when you perform the exam of the luggage.

5 A. Well, when we do a bag check we go through each  
6 item, each luggage, basically, take everything out, go  
7 through it and then we put it back in.

8 Q. And how many bags were there?

9 A. Miss Nguyen, if I recall, she had a liquor box; she  
10 had a blue suitcase; she had a black suitcase; and she  
11 also had a purse, a woman's purse that she was traveling  
12 with.

13 Q. So, you went through multiple items?

14 A. Yes, multiple items, multiple bags.

15 Q. What was your -- how would you describe your  
16 demeanor while you were interacting?

17 A. Well, we always try to maintain a professional  
18 demeanor. We deal with the traveling public on a daily  
19 basis, so it was that type of environment I would say on  
20 both parties.

21 Q. At the time that the dog alerted, once the dog  
22 alerted, did you pose any further questions to the  
23 defendant?

24 A. No, we proceeded to do a field test.

25 MS. EDWARDS: I don't have any further

1 questions, Your Honor.

2 THE COURT: Attorney DiRuzzo.

3 CROSS-EXAMINATION

4 BY MR. DIRUZZO:

5 Q. Officer Vanterpool, my client, Miss Fendi Brooks,  
6 was taken into the Soft Secondary area at the airport,  
7 she was not free to leave, correct?

8 A. Say that again.

9 Q. She was not free to leave?

10 A. You mean when she was taken to the Soft Secondary?

11 Q. When she was taken to the Soft Secondary, she was  
12 not free to leave?

13 A. Well, once she paid the duty, then she would be  
14 able to leave.

15 Q. That was not my question, sir. She was taken to  
16 the Soft Secondary area for the initial contact with  
17 her; she was not free to leave; she didn't have a  
18 choice; she couldn't have told you no and walked out,  
19 correct?

20 A. Yes.

21 Q. And likewise, when she went to the, was taken into  
22 the hard secondary area she was likewise not free to  
23 leave, correct?

24 A. Yes.

25 Q. And you would admit that at no point during your

1 interaction with my client was my client given a Miranda  
2 warning, correct?

3 A. Not from me, she was not.

4 Q. From anyone else from Custom and Border Patrol?

5 A. Not to my knowledge.

6 Q. Now, when my client was summoned over to the Soft  
7 Secondary area, could you describe the language that you  
8 used in order to direct her over to the Soft Secondary?  
9 In other words, what exactly did you say to her at the  
10 time --

11 A. I was not the one that brought her to Soft  
12 Secondary. I was working in Soft Secondary. The  
13 primary officer that first encountered Miss Brooks was  
14 the one that brought her into the Soft Secondary  
15 office -- to the Soft Secondary. Sorry.

16 Q. That individual's name is?

17 A. I can't recall who the primary officer was at the  
18 time.

19 Q. I believe in your direct testimony you mentioned  
20 someone with the first name Charles?

21 A. No, he was also working with me in secondary. It's  
22 a separate unit from primary processing.

23 Q. And is there any type of standard language that is  
24 used by CBP to direct people to the Soft Secondary?

25 A. Well, every officer's inspection is different. But

1 if you're being referred to pay duty, we explain to you  
2 the process, or the reason why you're paying duty and  
3 the process you go through when you pay duty and then we  
4 escort you over where you will pay the duty.

5 Q. Now, moving from the Soft Secondary to the hard  
6 secondary, do you remember the language, what you said  
7 to my client when you direct her to the hard secondary?

8 A. Not verbatim.

9 Q. To the best of your recollection, what did you say?

10 A. Basically, that we were going to go over to hard  
11 secondary.

12 Q. It was not a -- that was a command? In other  
13 words, you commanded, you told my client, Miss Brooks,  
14 that she was going to, was going to accompany you to  
15 hard secondary, correct?

16 A. Not -- I asked her to come with me to hard  
17 secondary.

18 Q. Well, you had asked her but she did not have the  
19 opportunity to refuse, correct?

20 A. If she did not have the opportunity to refuse?

21 Q. You'd asked her, but if she said no you would not  
22 have taken no for an answer, correct?

23 A. Well, if she had refused to come with me then I  
24 would have to contact my supervisor.

25 Q. And then by getting your supervisor that would have

1       been escalating the matter, so to speak?

2       A.    Not necessarily.  I would even try to de-escalate  
3       the matter.

4       Q.    When you opened the bag, or when the bag was opened  
5       by you and your coworker and the bricks that were in the  
6       bag were exposed, how did you confront my client?  In  
7       other words, what did you say to my client in front of  
8       her as to what these bricks were?

9       A.    Well, I wasn't the officer that was dealing with  
10       Brooks.  I was dealing with the bags belonging to  
11       Nguyen.  Brooks interjected in the dialogue that I was  
12       having with Nguyen and stated that both -- before I  
13       opened the bag, she stated the bag belongs to both of  
14       them, her and Nguyen.  And after I opened the bag, she  
15       said that that's not their bag.  It probably got mixed  
16       up when they were checking it in at the ticket counter.

17       Q.    This hard secondary area, this is a separate room  
18       that the public cannot see into, correct?

19       A.    Yes, correct.

20       Q.    And how many doors into and out of this hard  
21       secondary room are there?

22       A.    Four.

23       Q.    And when you brought my client into the hard  
24       secondary area, were all these doors closed when the  
25       inspection of bags was taking place?

1 A. Yes.

2 Q. And are these doors locked or no?

3 A. They are not locked.

4 Q. And in other words, if my client wanted to leave  
5 that area she would have been unable to do so without a  
6 key?

7 A. Correct.

8 Q. From the time that the K-9 was called to when my  
9 client is taken away by Homeland Security, how long was  
10 that?

11 A. I'm not sure exactly as to the length of time. It  
12 was over a period of several hours.

13 Q. Okay. And from the time that my client was taken  
14 to the hard secondary to when the K-9 arrived on the  
15 scene, how long was that?

16 A. Roughly about a half hour.

17 Q. And this entire time in hard secondary, including  
18 when the K-9 arrived, my client was not free to leave,  
19 correct?

20 A. Say that again. I didn't hear you. Repeat.

21 Q. My client was not free to leave the room while she  
22 was waiting, while everyone was waiting for the K-9 to  
23 arrive on the scene, correct?

24 A. Correct.

25 MR. DIRUZZO: Nothing further, Your Honor.

1 THE COURT: Any redirect?

2 MS. EDWARDS: No, Your Honor.

3 THE COURT: Officer Vanterpool, thank you for  
4 your testimony. You may step down. Next witness.

5 MS. EDWARDS: The Government calls Special  
6 Agent Ramnes.

7 THE CLERK: Please raise your right hand to  
8 take the oath.

9 THEREUPON, CHRISTOPHER RAMNES, after having been  
10 first duly sworn, was examined and testified as follows:

11 MS. EDWARDS: Before I begin, Your Honor, may  
12 Officer Vanterpool be excused?

13 THE COURT: You're going to need Officer  
14 Vanterpool?

15 MR. DIRUZZO: No, Your Honor.

16 THE COURT: He is excused.

17 MS. EDWARDS: Thank you.

18 DIRECT EXAMINATION

19 BY MS. EDWARDS:

20 Q. Would you please state your name for the record?

21 A. Christopher Ramnes.

22 Q. And spell it?

23 A. C-h-r-i-s-t-o-p-h-e-r. R-a-m-n-e-s.

24 Q. Thank you. With whom do you work?

25 A. Home Security Investigations.

1 Q. What is your title?

2 A. I'm a Criminal Investigator, Special Agent.

3 Q. As a Special Agent with Homeland Security, do you  
4 -- are you aware of whether you have been cross  
5 designated at all?

6 A. Yes, ma'am. We're Title 21 cross designated.

7 Q. So, specifically, what does that mean?

8 A. We are able to enforce drug laws.

9 Q. And you, specifically, have been so designated?

10 A. Yes. Yes, ma'am, I have.

11 MS. EDWARDS: No further questions, Your Honor.

12 THE COURT: Attorney DiRuzzo.

13 CROSS-EXAMINATION

14 BY MR. DIRUZZO:

15 Q. Good afternoon, sir. You would agree with me that  
16 the administrative subpoenas issued in this case were  
17 signed by an individual by the name of Ariel Ramos?

18 A. That's correct, sir.

19 Q. And you would agree with me that you did not sign  
20 the administrative subpoenas issued to either Delta or  
21 Sprint, correct?

22 A. I did not sign. No, I did not sign those.

23 Q. And Mr. Ramos is an individual that's employed by  
24 the Department of Homeland Security, correct?

25 A. Yes, sir, he is.



1 Q. And you stated that you've been cross designated.  
2 When were you cross designated?

3 A. We are given that authority when we graduate from  
4 the Academy. Title 1811, which are criminal  
5 investigators through Homeland Security are cross  
6 designated.

7 THE COURT: Agent Ramnes, pull the microphone  
8 down so you speak right into it.

9 THE WITNESS: Yes, sir.

10 BY MR. DIRUZZO:

11 Q. So, this is a blanket cross designation? It's not  
12 a cross designation that is unique to you?

13 A. That's correct.

14 Q. And who did this cross designation?

15 A. That's given to us through the Academy. Once we  
16 complete the Academy, we're given that through DEA.

17 Q. I'm not understanding. Are you saying that if you  
18 work for the Department of Homeland Security you went to  
19 a different academy?

20 A. No, sir. Once we complete our academy, four  
21 and-a-half months of training, we are -- each agent is  
22 given the authority to be cross designated through DEA  
23 to enforce Title 21 laws.

24 Q. Okay. The Academy is the Department of Homeland  
25 Security Academy, not DEA Academy?

1 A. That's correct.

2 Q. Okay. So, your testimony today is that, as a  
3 matter of course, as soon as one graduates from  
4 Department of Homeland Security Academy he or she is  
5 automatically cross designated by the DEA?

6 A. That's correct.

7 Q. And how do you know this?

8 A. We're given that authority. It's listed on part of  
9 our credentials -- not credentials, but our graduation  
10 that we are given that authority, Title 21 designated.

11 Q. So, this is a federal documentation that you're  
12 given?

13 A. Yes, sir.

14 Q. Okay. And who issued you that documentations?

15 A. It's issued when we graduate. As far as who signed  
16 it, I could not testify to that.

17 Q. Okay. But this documentation is produced by the  
18 Department of Homeland Security?

19 A. Correct. And it is through Federal Law Enforcement  
20 Training Center in Georgia, Glynco, Georgia.

21 Q. And sitting here today, are you able to testify as  
22 to the individual who signed this documentation giving  
23 you that authority, that cross designation?

24 A. I'm sure that there is, but I cannot testify as to  
25 who that person is.

1 Q. And just so I'm clear, sir, you do not work for  
2 Immigration and Naturalization Service, also known as  
3 INS?

4 A. No, I do not. I work for Customs.

5 Q. And you also, you were not an employee of the  
6 United States Treasury Department, correct?

7 A. Correct.

8 MR. DIRUZZO: No further questions.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION

11 BY MS. EDWARDS:

12 Q. You issued several administrative subpoenas in this  
13 case; is that correct?

14 A. That is correct, ma'am.

15 Q. The individual that Counsel just mentioned, Ariel  
16 Ramos, what is he in relation to -- what's your working  
17 relationship?

18 A. He is the Deputy Special Agent in charge over in  
19 San Juan, in Puerto Rico. He would be my supervisor's  
20 supervisor.

21 Q. Do you know whether he, in fact, is also cross  
22 designated?

23 A. Yes, he is.

24 MS. EDWARDS: No further questions.

25 THE COURT: Agent Ramnes, thank you for your

1 testimony. You may step down.

2 THE WITNESS: Yes, sir. Thank you. Next  
3 witness.

4 MS. EDWARDS: I have no further witnesses, Your  
5 Honor.

6 THE COURT: Okay. Attorney Edwards.

7 MS. EDWARDS: Your Honor, with respect to the  
8 Miranda issue, under Third Circuit law the questions  
9 that were posed to the defendant were well within the  
10 limits that are recognized as falling within the  
11 exception to the Miranda rule or Customs-related  
12 inspections. They were posed directly to the issue of  
13 whose items, who was responsible, and who each of the  
14 particular pieces of luggage belonged to. And those are  
15 basic questions, you know, who owns which piece of  
16 luggage. That's fundamental to any CBP officers's duty  
17 at the Customs border. The questions, they began in  
18 Customs due to the fact they had purchased so many  
19 bottles of alcohol, from there when the inspection  
20 revealed the anomalies in the brick, the brick-like  
21 structures or shapes in the suitcase. All of the  
22 suitcases were brought into hard secondary; they were  
23 asked the basic five questions. And, in fact, the  
24 incriminating statement that the Government plans to  
25 introduce was not even the product of the question, the

1       interrogation. It was voluntarily, as the witness  
2       described, interjected to him.

3               THE COURT: When you say, "the incriminating  
4       statement," which one are you referring to?

5               MS. EDWARDS: When Miss Brooks stated that the  
6       bag was also hers, that she had packed it as well and it  
7       belonged to both of them.

8               THE COURT: Go ahead.

9               MS. EDWARDS: I outlined the case law in the  
10       papers. The testimony was consistent with the law and  
11       what was anticipated. And I don't really have much to  
12       elaborate.

13              THE COURT: No Miranda warnings were given at  
14       any time, for the period of time about which Mr.  
15       Vanterpool, Mr. Ramnes testified, correct?

16              MS. EDWARDS: Correct.

17              THE COURT: Okay. Was there any sense that  
18       there was something criminal afoot at that time?

19              MS. EDWARDS: Well, I mean --

20              THE COURT: Well, my question is yes or no,  
21       then I'll let you explain.

22              MS. EDWARDS: Yes.

23              THE COURT: Okay. And what was that?

24              MS. EDWARDS: The question wasn't specifically  
25       posed. However, once he saw the brick-like shapes in

1 the suitcases, it was clear that that's what prompted  
2 him to move the luggage into the hard secondary. So, I  
3 think it is fair to assume that raised his suspicions.

4 THE COURT: Okay. So, are you saying that at  
5 that time the agent had formed, you can infer that the  
6 agent formed or believed that there was some clear  
7 criminal undertaking that was going on here? Or are you  
8 saying that he was investigating to assess whether there  
9 was any?

10 MS. EDWARDS: I'm not even saying that there  
11 was a clear indication of much. I'm saying that it is  
12 fair to infer that he was curious about what was in  
13 those packages. Now, it could have been anything. But  
14 certainly not a clear indication. I think it became  
15 clear upon the dog alerting. However, no questions were  
16 posed to the defendants after that point.

17 THE COURT: Just to be clear, you said that the  
18 incriminating statement that the Government intends to  
19 use would be the one that was, I think, referred to as  
20 the one where Miss Brooks interjected. Is that the  
21 limit of the Government's statement? Does the  
22 Government seek to introduce any other statement?

23 MS. EDWARDS: Well, in fairness, the Government  
24 would reveal the fact that she later recanted any claim  
25 that it must have gotten mixed up. I don't think it

1       would --

2               THE COURT: I'm just trying to get a sense to  
3       figure out the scope of Attorney DiRuzzo's, whether his  
4       motion reaches something that you're not planning to  
5       introduce. So, I just want to know if you were planning  
6       to introduce something beyond the incriminating  
7       statement. And I asked the question because of what you  
8       said, the incriminating statement the Government plans  
9       to use, and that was the one where the bag is  
10      identified. I just want to know if you plan to use  
11      other statements, and I'll just ask Attorney DiRuzzo to  
12      limit his argument to the thing you plan to use as  
13      opposed to something you don't plan to use.

14             MS. EDWARDS: Understood, Your Honor.

15             THE COURT: Do you plan to use something more  
16      than what you refer to as the incriminating statement?

17             MS. EDWARDS: I would say I plan to use the  
18      denial.

19             THE COURT: Okay. Go ahead. Anything else?

20             MS. EDWARDS: Again, I would just reiterate  
21      that there -- even though there might have some, there  
22      might be an indication or some question in the officer's  
23      mind that the items could potentially contain something  
24      that were, that was illegal, that does not -- just  
25      having that potential, where there is no clear

1       indication does not cross the line as the Third Circuit  
2       has made clear in a number of decisions.

3               THE COURT:   Okay.   Now, let me hear you about  
4       the administrative subpoena and, you know, the testimony  
5       that was elicited has indicated there is a cross  
6       designation.   Do I need anything more than that?

7               MS. EDWARDS:   Well, I would submit that you  
8       frankly do not even need that.   I introduced that as an  
9       abundance of caution.   However, I would submit that the  
10      defendant has no standing, no basis to pretty much  
11      challenge a subpoena that was issued to a third party.  
12      The information is information that is strictly business  
13      records and that do not border on any privacy interests,  
14      at least not any reasonable, with the exception of the  
15      location information.   I confess I am not a tech person.  
16      If the defendant can explain further, point out which  
17      documents or which part of the return he believes reveal  
18      location information, I would certainly -- I don't plan  
19      to use any of that information.   And I can attest that  
20      such precise location information was even provided.  
21      But to the extent that it was, the Government is not  
22      going to be using it.   As already stated, the Government  
23      obtained the search warrant for her phone and that  
24      information was provided with respect to the search  
25      warrant.



1           THE COURT: Just so we're clear, I want to make  
2           sure that the limit of the Government's evidence is  
3           clear. The Government plans to introduce what,  
4           subscriber information at the very least?

5           MS. EDWARDS: Subscriber information and a list  
6           of the phone calls that were made, including the  
7           telephone numbers dialed and the telephone numbers  
8           received, calling the defendant's phone at times of  
9           those calls.

10          THE COURT: All right. Anything else?

11          MS. EDWARDS: No, Your Honor.

12          THE COURT: Attorney DiRuzzo.

13          MR. DIRUZZO: Your Honor, with respect to the  
14          statements that my client made, I believe that the  
15          record of evidence is clear she was not free to leave.  
16          She was summoned or beckoned over both to the Soft  
17          Secondary and hard secondary. She was placed in a room  
18          that had four doors that were locked. She did not have  
19          a key, so she was not free to leave. I think it was  
20          also clear that the --

21          THE COURT: You agree that if someone blurts  
22          something out that the constitutional protection for the  
23          blurting is not as strong as if the officer is  
24          questioning someone?

25          MR. DIRUZZO: Yes. I believe a volunteered

1 response is very different from one that is given as a  
2 result of the will being overcome.

3 THE COURT: Okay. Is there any record evidence  
4 that the statement -- you know what just occurred to me?  
5 Attorney DiRuzzo, do you wish to put on any evidence?

6 MR. DIRUZZO: No, Judge.

7 THE COURT: Okay. Was there any record  
8 evidence that your client did anything but blurt out or  
9 interject, I think, as the Government witnesses said?  
10 Is there anything to contradict that on the record  
11 before me?

12 MR. DIRUZZO: Your Honor --

13 THE COURT: Let me start with a baseline  
14 question. You agree that the agent testified that, I  
15 think it was Officer Vanterpool, that your client  
16 volunteered, interjected a statement about the ownership  
17 of the luggage?

18 MR. DIRUZZO: He did testify to that, correct.

19 THE COURT: All right. Is there anything that  
20 contradicts that on the record before me?

21 MR. DIRUZZO: No, because his recollection -- I  
22 stated, at least on one occasion, if not more, that his  
23 recollection as to exactly what was said wasn't  
24 particularly good, which is why I moved my moving papers  
25 to cite to the Government's Bates Numbers 579, 580 on

1       Page 2 of my motion as to statements that my client  
2       allegedly made.

3               THE COURT: On at least two occasions on the  
4       record before me in this hearing, though, I thought that  
5       Officer Vanterpool said, and he reiterated something  
6       along the lines, as I said, she interjected. She came  
7       over. Is there anything to contradict that on the  
8       record before me?

9               MR. DIRUZZO: No, based on the record before  
10      you.

11              THE COURT: All right. And then there is a  
12      statement that also sounded like it was volunteered, you  
13      know, it must be someone else's luggage, you know,  
14      distancing, Miss Brooks distancing herself from the  
15      ownership of the luggage. Was there any question on the  
16      record before me posed to elicit that response? Just a  
17      yes or no. Then my next question is going to be who  
18      posed if there was one?

19              MR. DIRUZZO: I don't believe so.

20              THE COURT: Okay. Was there any conduct that  
21      caused that response on the part of the Government?

22              MR. DIRUZZO: Well, I would say yes. I believe  
23      that's the entire circumstances here, if you take the  
24      totality of the circumstances bringing my client from  
25      soft --

1           THE COURT: Well, looking at the totality of  
2           the circumstances, is there any evidence that would be,  
3           that would indicate that the questioning at the time was  
4           directed to Miss Nguyen? As I seem to recall, Officer  
5           Vanterpool, I think, being more in contact with Miss  
6           Nguyen and then Miss Brooks volunteered all that she  
7           volunteered.

8           MR. DIRUZZO: I would think Officer Vanterpool  
9           was primarily but not necessarily talking to the  
10          co-defendant while Mr. Vanterpool's co-agent, the person  
11          named Charles, whom he could not remember, was by  
12          implication dealing with my client. That is a fair  
13          interpretation of the record I would say.

14          THE COURT: Is there anything on the record  
15          that the other agent asked Miss Brooks any questions,  
16          the record before me at this hearing, anything that says  
17          that?

18          MR. DIRUZZO: No. But the Government failed to  
19          call that witness, and so, there is no record evidence  
20          as to what Mr. Charles said or did not say.

21          THE COURT: Okay. All right. Go ahead.

22          MR. DIRUZZO: So to continue, Your Honor, the  
23          Government takes the position in its moving papers  
24          that --

25          THE COURT: Let me ask you this other question.

1 Do you dispute that when it comes to a Customs inquiry  
2 for a duty that Customs has certain authority to assess  
3 whether the dutiable items are, in fact, what they  
4 purport to be, what they are purported to be?

5 MR. DIRUZZO: I --

6 THE COURT: Just a yes or no, and then you can  
7 explain.

8 MR. DIRUZZO: Yes, but I'm --

9 THE COURT: All right. If they get to do that,  
10 Attorney DiRuzzo, what can they do to assess and  
11 determine what the thing that's purported to be  
12 something is actually that thing? What can they do,  
13 legally? Do they get to take a peek? Yes or no.

14 MR. DIRUZZO: I believe a cursory inspection  
15 would be permissible.

16 THE COURT: Okay. All right. Go ahead.

17 MR. DIRUZZO: So, in the Government's moving  
18 papers makes the argument that because my client, who is  
19 undisputed an American citizen, was traveling from the  
20 Virgin Islands back to the United States that somehow  
21 the Fourth Amendment protections are reduced or  
22 minimized. I understand that the case law is out there.  
23 I believe the case law is undecided. I believe that --

24 THE COURT: You say, "the case law," tell me  
25 which case you're referring to.

1 MR. DIRUZZO: United States versus Kiam and  
2 Hyde.

3 THE COURT: Okay. So, you're referring to a  
4 case that originated here and went up to the Third  
5 Circuit.

6 MR. DIRUZZO: Correct. And the reason behind  
7 this, Your Honor, is that the Fourth Amendment applies  
8 obviously within the continental United States and the  
9 Fourth Amendment applies at least in the Virgin Islands  
10 pursuant to the Revised Organic Act. I do not believe  
11 that Congress can arbitrarily interpose, in light of  
12 demarcation, between two geographic areas under the  
13 American flag and then initiate the Fourth Amendment  
14 between those two areas.

15 Now, I understand that for purposes of Customs and  
16 Border, except for levies, excise taxes and the like,  
17 Congress does have the ability on the necessary proper  
18 costs and taxing costs.

19 THE COURT: Assuming for the sake of argument  
20 that your position is one that has, you know, some legal  
21 weight to it, for the sake of argument, if we were to  
22 just pull back on that for the moment, would there not  
23 be enough here for the agents to do what they did,  
24 notwithstanding the issue about a border? That is, at  
25 an airport you agree that luggage can be screened; do

1       you not?

2               MR. DIRUZZO:   Yes.

3               THE COURT:   All right.   And if in screening  
4       that luggage, X-ray, for instance, and you see something  
5       that looks, I don't know, like controlled substance,  
6       contraband, you would agree that you can go a little bit  
7       further; can you not, ask a few questions?

8               MR. DIRUZZO:   Sure.

9               THE COURT:   All right.   So, is there anything  
10       here, if we pull back for the moment from the border  
11       argument I think you are making, is there anything here  
12       that would cast what the agents did in some  
13       constitutionally improper light?  Let's assume for the  
14       sake of argument, this happened at JFK, JFK to  
15       Washington DC, and someone presents some luggage; it's  
16       x-rayed, there are these bricks, these things that look  
17       unusual, and the agents asked a few questions.  No  
18       border there, right?  JFK to Washington International,  
19       no border there.  Could the agents ask a couple  
20       questions about that, whose bag is this, what is this?

21               MR. DIRUZZO:   Well, Your Honor, in the  
22       abstract, I would say the answer to that is yes.  But  
23       the facts of this case --

24               THE COURT:   So that the agents, at least, doing  
25       that here is no different than if they were at JFK on

1 the shuttle flight to DC, right?

2 MR. DIRUZZO: As far as that location, no,  
3 there is no difference. But given that the images of  
4 these bricks packed into a suitcases leads to, I would  
5 submit, a reasonable person to conclude that, at  
6 minimum, some type of criminal activity may be afoot.  
7 Once that happens, it becomes not as simple Customs and  
8 border hazard duty or tax be paid, but it is an  
9 investigatory search and an investigatory operation in  
10 order to ascertain who it belongs to and what it is.

11 THE COURT: What's your understanding of what  
12 precipitated the x-ray of luggage here?

13 MR. DIRUZZO: I don't know if that was in the  
14 record, but I would assume, from personal experience --  
15 and I don't think that anyone can speak to this that all  
16 luggage is x-rayed at the airport, as a matter of  
17 course.

18 THE COURT: All right. All right. So, you're  
19 saying on the record before me all we have here is a  
20 statement that there was a, or evidence that there was a  
21 duty to be paid and then some undertakings that took  
22 place in furtherance of that, whatever it takes to  
23 collect the duty?

24 MR. DIRUZZO: Yes. And there was an x-ray,  
25 that the x-ray, the image of the x-rays depicted bricks



1 in the suitcases.

2 THE COURT: All right. Okay. Go ahead.

3 MR. DIRUZZO: So, Your Honor, given the  
4 totality of the circumstances and given that the  
5 depiction of the bricks in the suitcase-- and I think  
6 the Court can be advised, I don't think there can be any  
7 dispute. These are not small bricks like the size of  
8 mini candies for Halloween. These are large bricks that  
9 are typically associated with large quantities of  
10 illegal substances, and at that point a reasonable, I  
11 would submit a border protection agent who's had, I  
12 assume, the appropriate training, has worked for over  
13 those years, that his senses and his reasonable  
14 perception of the situation lead him to believe that  
15 criminal activity was afoot.

16 Once that comes into play my client's  
17 constitutional right also come to bear. The question  
18 that he had, while maybe serving dual purposes, being  
19 able to ascertain whether a Customs duty had been paid,  
20 whether the items are dutiable, first instance. Also  
21 had the additional objective of ascertaining not only  
22 the nature of the item themselves, was it contraband?  
23 But who actually possessed the item in order to  
24 obviously tag or link the illegal item to any of these  
25 individuals, the defendants, detectives and through

1 parties? So, I'd submit that once that came to bear,  
2 that under the totality of the circumstances my client  
3 should have been Mirandized. Her statements were  
4 volunteered and any response to questioning should be  
5 suppressed.

6 THE COURT: All right, thank you.

7 MR. DIRUZZO: Now, turning to the  
8 administrative subpoena portion, Your Honor. Your  
9 Honor, there is -- the record evidence is the statement  
10 by the agent that somehow based upon his graduation from  
11 the Department of Homeland Security Agency you can see  
12 that that in and of itself is, somehow there is a  
13 blanket delegation. There is no record of evidence as  
14 to actual delegation or re-delegation order. There is  
15 no record of evidence as to what the person who may have  
16 signed this delegation order had the authority to do  
17 that, whether that person --

18 THE COURT: So, are you saying whether or not  
19 cell site location or information is disclosed, you're  
20 saying that there is something improper here?

21 MR. DIRUZZO: Yes.

22 THE COURT: Even if it's not cell site location  
23 information?

24 MR. DIRUZZO: Everything that was received in  
25 response to the administrative subpoena is ultra virus

1       and cannot be admitted into evidence.

2               THE COURT: All right. So, the -- I thought  
3       you were relying on a Supreme Court authority at some  
4       level; were you not?

5               MR. DIRUZZO: Your Honor, I believe I cited to  
6       the traveling both under the Fourth Amendment in  
7       Carpenter and the statutory argument regarding the  
8       ability to issue the administrative subpoena personally.  
9       And that, Your Honor, I believe that the absence of the  
10      statutory scheme and the regulations, along with the  
11      record evidence, there is nothing that would give Mr.  
12      Ramnes the ability to issue the administrative subpoenas  
13      that were attached to my moving papers.

14              And as a result, in addition to that, that the  
15      administrative subpoenas were issued under the reported  
16      Title 8 as compared to Title 21, and there is nothing in  
17      the -- I would submit that the Department of Homeland  
18      Security has not been delegated or re-delegated the  
19      authority to investigate Title 21 violation in the first  
20      instance, including taking any one of these individually  
21      and in conjunction. The Court would be well within its  
22      ability to suppress all information and evidence  
23      obtained in response to the administrative subpoenas.  
24      And that is in -- that's separate and apart from the  
25      Carpenter issue, which I understand Counsel for the

1 Government has conceded that that's not coming in, and I  
2 would obviously accept that concession; although, Your  
3 Honor, I believe that we need to have at least a hearing  
4 to determine if there is a possibility that that  
5 information, which now the Government admits is not  
6 coming into evidence, has led to additional information  
7 that should not be introduced at a trial as well. And I  
8 would submit, Your Honor, that the Court needs to at  
9 least consider that, that possibility, because I don't  
10 believe it to be a capsule of one, but one that is, not  
11 only one of the possibilities that the cell site  
12 location could have led to additional information.

13 THE COURT: All right. Attorney Edwards.

14 MS. EDWARDS: Briefly, Your Honor. To address  
15 the Miranda issue, Counsel just stated that concededly  
16 there would be some, there might be some overlap between  
17 CBP's purposes and criminal investigative purposes and  
18 that is expressly -- the Third Circuit has expressly  
19 stated that any beeline in terms of Miranda warning in  
20 the context of such interviews is not crossed when there  
21 is mere overlap between questions geared toward an  
22 assessment of the admissibility of an individual or  
23 effect and questions bearing on a potential criminal  
24 prosecution. And so, to the extent that there were any,  
25 there was any overlap when any questions were elicited

1 or volunteered, that under the Third Circuit those  
2 questions were well within the line. They did not cross  
3 them.

4 With respect to the administrative subpoenas,  
5 again, the right to challenge under Fourth Amendment  
6 principles stems from and requires that there be a  
7 protected privacy interest, and the Delta records. The  
8 defendant simply doesn't have any privacy interests that  
9 are recognized anyway.

10 THE COURT: So, is it the Government's position  
11 that even if there is a delegation problem he doesn't  
12 have standing, he is not in the shoes of the person who  
13 ought to be complaining about this?

14 MS. EDWARDS: That's correct, as a nonparty to  
15 the subpoena. Now, Delta, if they believed that there  
16 was an issue with the statute, that it had crossed the  
17 bounds then Delta is the party who, having its records  
18 subpoenaed, could step in and intervene, request the  
19 court, request to quash the subpoena. But that simply  
20 isn't what happened in this case. They chose to comply  
21 with it.

22 THE COURT: All right. So, is there some  
23 circumstance under which his client could complain?

24 MS. EDWARDS: Not that I've been able to find  
25 in terms of Fourth Amendment in terms of suppression.

1       The only instance in which I found a court to even  
2       entertain --

3               THE COURT: I think your brother used the term  
4       "ultra virus." And as I tried to ask him what's the  
5       constitutional violation, I think, with respect to at  
6       least one of these entities, but actually ultra virus.

7               MS. EDWARDS: Correct. And the case law that I  
8       have found, specifically from the Tenth and the Sixth  
9       Circuits, squarely address and reject that notion as a  
10      nonparty, where an individual lacks any privacy interest  
11      at stake, that they can intercede or seek to suppress  
12      evidence coming in at trial. So, even though it's under  
13      the guise, in this instance, of moving just for the sake  
14      of a statute, but the remedy sought is suppression in a  
15      criminal case.

16              I found another instance where, the only instance  
17      where a nonparty was even entertained was at a stage  
18      when the subpoena had not yet been complied with, and it  
19      was a question of whether the defendants could stand up  
20      and actually prevent the party from complying with it.  
21      Ultimately, the court decided it could not. However, it  
22      entertained it up to that point. The rest of the  
23      circuits that have addressed the issue have squarely  
24      refused to even entertain any notion and said that there  
25      is no right. And particularly, in this regard where the

1 statute itself does not provide suppression as a remedy  
2 or even the court's intervention, that the courts have  
3 said that intervening would be outside the scope of its  
4 jurisdiction.

5 THE COURT: All right. So, the Court should  
6 take no pause even if there is a delegation issue?

7 MS. EDWARDS: I'm sorry?

8 THE COURT: The Court should take no pause even  
9 if there is a delegation issue?

10 MS. EDWARDS: Yes. And I would further note  
11 that, as pointed out in the Government's paper, the  
12 authority under which the subpoenas were issued was  
13 under the authority of Title 18, United States Code,  
14 Section 967, I believe. But I have a problem with  
15 transposing numbers, so I just want to make sure I  
16 didn't in this instance. But it wasn't sought under the  
17 auspices of any power under the DEA; although, the agent  
18 could have. It was sought under a different statute  
19 regardless, that the agent does have the power to  
20 investigate drug trafficking. And, in particular, the  
21 evidence sought was related to an investigation that  
22 overlaps with Title 18, United States Code, Section 545,  
23 which is smuggling.

24 THE COURT: All right, thank you.

25 Before the Court is the defense's motion to

1 suppress certain evidence, specifically the defense  
2 seeks to suppress a statement made by defendant Brooks  
3 on or about September 24, 2018 at the airport. He also  
4 seeks to suppress certain items that were obtained from  
5 third parties, including Delta and Sprint.

6 I'll deal with Delta and Sprint first. It seems to  
7 me that the defense's argument, while there may be some  
8 interesting notions about whether the Government  
9 complied with the delegation authority or delegation  
10 protocol, it seems to me that's not the significant  
11 point that will determine the outcome here. The  
12 question is, are the things that the Government seeks to  
13 admit, are they things which the defendant could say I  
14 own, I control, I have an interest in privacy, or I  
15 would otherwise like to be in a position to contest  
16 their disclosure? In other words, does the defendant  
17 have any claim to say I have standing to object to what  
18 is being disclosed here? And the Court doesn't find  
19 there is any standing the defendant has to object to the  
20 disclosure of the records that are owned by Delta or  
21 owned by Sprint.

22 With respect to the statement on September 24, 2018  
23 at the airport, the circumstance that led to that  
24 statement certainly don't fall within the paradigm that  
25 you typically see when a defendant makes an utterance



1 under pressure or under some circumstance that would be  
2 regarded as improper or constitutionally impermissible.  
3 What we have here are two individuals who were traveling  
4 through the airport obligated to pay duty. During the  
5 course of paying that duty, the bags were x-rayed and an  
6 anomaly was detected, that anomaly led to some  
7 questioning. There is nothing untoward or  
8 constitutionally impermissible with that happening under  
9 these circumstances or certainly at the airport where  
10 these circumstances developed.

11 The objectionable, as the Government referred to  
12 the incriminating statement that was uttered, it was an  
13 utterance that was volunteered. It wasn't something  
14 that the Government sought, and from the record before  
15 the Court it's not even clear that anyone posed a  
16 question to the defendant Brooks here. So, the Court  
17 doesn't find anything constitutionally impermissible in  
18 the utterance. It seems that it's a statement that was  
19 volunteered. And to the extent that it's incriminating  
20 that may be unfortunate for the defendant, but it's not  
21 constitutionally problematic.

22 So, for that reason, the motion to suppress the  
23 September 24, 2018 statement made at the airport by Miss  
24 Brooks is denied, and the same result with respect to  
25 the Delta and Sprint documents.

1           All right, I think that takes care of the major  
2           issues before trial. There were some other motions, I  
3           think, the defense had, some of which I suspect defense  
4           is going to enter a position on, given the Third  
5           Circuit's recent decision. So, I suspect with respect  
6           to the Court presiding in this matter or the matter  
7           being in this Court, I suspect defense's position is  
8           that you no longer proceed on that, given the  
9           precedential opinion issued by the Circuit. Is that  
10          right, Attorney DiRuzzo?

11                 MR. DIRUZZO: Yes, Your Honor. With the caveat  
12           that I am still considering that case, my options,  
13           including but not limited to the Second Circuit. So, I  
14           understand that this Court is bound by the precedential  
15           opinion and, as a result, I understand the Court had to  
16           deny Document Entries 27 and 28 accordingly, and I  
17           understand that.

18                 THE COURT: All right. Is there anything else  
19           we need to tend to before trial? Trial is set for when?

20                 MR. DIRUZZO: Monday, Your Honor. Yes, there  
21           is one outstanding motion for the Court's consideration,  
22           and that's Docket Entry 34, that deals with the  
23           appointment of Acting Attorney General Whitaker.

24                 THE COURT: Yes, that's denied.

25                 MR. DIRUZZO: Then with that, Your Honor, we

1       have worked out an 11(a)(2) Plea that we would be  
2       proceeding with, if the Court will so let us.

3               THE COURT: All right. This is reserved in the  
4       matter, a certain matter?

5               MR. DIRUZZO: Yes, the denials.

6               THE COURT: All right. So, you have the  
7       application and the documents, Attorney DiRuzzo? You  
8       wish to hand those up to Ms. Brann.

9               MR. DIRUZZO: Your Honor, there is one thing.  
10       Since it was executed right before the beginning of this  
11       hearing, neither of the parties have copies for their  
12       record, so I'm going to hand it up to Ms. Brann, but we  
13       hope to get a copy back.

14              THE COURT: All right, yes.

15              [Documents tendered to the Court.]

16              Attorney DiRuzzo, did you do an application?

17              MR. DIRUZZO: For this, yes, Your Honor. I  
18       handed it up as well.

19              THE COURT: No, the plea application.

20              MR. DIRUZZO: I forgot that, Your Honor. You  
21       have to excuse me. In negotiating the plea agreement  
22       today, I didn't do that.

23              THE COURT: All right. What we'll do is we'll  
24       give you a few -- do you have the documents?

25              MR. DIRUZZO: I don't believe I printed that

1       one out, Your Honor.

2               THE COURT: All right. Ms. Brann will give you  
3 a copy of the form, the plea application. You can fill  
4 that out and then we'll resume when you're done with  
5 that.

6               MR. DIRUZZO: Okay.

7               THE COURT: All right. So, we'll take a  
8 seven-minute break.

9               THE CLERK: All rise. Court stands in recess  
10 for seven minutes. Remain standing until His Honor  
11 leaves the courtroom.

12              [Recess at 5:04.]

13              [After recess, in open court at 5:15 pm.]

14               THE COURT: Attorney DiRuzzo, why are we here?

15               MR. DIRUZZO: We're here for a change of plea  
16 on 11(a)(2), Your Honor.

17               THE COURT: Okay. Have your client come  
18 forward, please.

19               THE CLERK: Please raise your right hand to  
20 take the oath.

21               THEREUPON, Defense Witness, FENDI BROOKS, after  
22 having been first duly sworn, was examined and testified  
23 as follows:

24               THE COURT: Good afternoon.

25               THE DEFENDANT: Good afternoon.

1 THE COURT: Tell us your name, please?

2 THE DEFENDANT: Fendi Brooks.

3 THE COURT: Miss Brooks, how old are you?

4 THE DEFENDANT: I'm 26.

5 THE COURT: How far have you gone in school?

6 THE DEFENDANT: College, associate's degree.

7 THE COURT: Do you read and write in English?

8 THE DEFENDANT: Yes.

9 THE COURT: And you had an opportunity to have  
10 the documents in this case explained to you by your  
11 attorney?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you satisfied with the  
14 representation you've received from your attorney in  
15 this case?

16 THE DEFENDANT: Yes.

17 THE COURT: Has anyone made any promises to  
18 have you enter into a plea?

19 THE DEFENDANT: No.

20 THE COURT: Has anyone made any threats to have  
21 you enter into a plea?

22 THE DEFENDANT: No.

23 THE COURT: So, you're entering this plea of  
24 your own free will?

25 THE DEFENDANT: Yes.

1           THE COURT: Have you taken any controlled  
2 substances in the past 48 hours?

3           THE DEFENDANT: No.

4           THE COURT: Is the plea agreement that you have  
5 between you and the United States the entire agreement  
6 that you have between you and the United States?

7           THE DEFENDANT: Yes.

8           THE COURT: According to your plea agreement,  
9 you have agreed to plead guilty to Count One of an  
10 Indictment. Count One charges you with the violation of  
11 Title 21, US Code, Section 846 and 841. It carries a  
12 minimum mandatory term of imprisonment of ten years, a  
13 maximum term of imprisonment of life, a term of  
14 supervised release of at least five years, a maximum  
15 fine of \$10 million and a special assessment of \$100.

16           You understand that if I accept your plea today I  
17 can sentence you up to the maximum I just outlined. Do  
18 you understand?

19           THE DEFENDANT: Yes.

20           THE COURT: Ordinarily, when a defendant is  
21 charged in federal courts, such as this, with a crime  
22 such as this, you have certain rights. For instance,  
23 you the right to trial. At that trial, the Government  
24 would have to prove your guilt beyond a reasonable  
25 doubt; you would have the right to compel the attendance

1 of any witnesses; you would have the right to  
2 cross-examine any witnesses. If you chose not to  
3 present any evidence; if you chose not to testify that  
4 could not be held against you. As I said, the  
5 Government would have to prove your guilt beyond a  
6 reasonable doubt and a jury unanimously would have to  
7 find you guilty beyond a reasonable doubt.

8 Throughout the entire proceeding, you have the  
9 right to the assistance of counsel. You understand that  
10 if I accept your plea today you would have waived, that  
11 is, given up your right to trial as I just outlined. Do  
12 you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: According to your plea, you have  
15 agreed to reserve the right to appeal the denial of your  
16 motions to suppress. It says "suppress and dismiss."  
17 Is that the understanding of the parties?

18 MR. DIRUZZO: Yes, Your Honor.

19 MS. EDWARDS: Yes, Your Honor.

20 THE COURT: All right. The plea agreement also  
21 indicates that the defendant waives the right to appeal  
22 any sentence imposed within the maximum provided by the  
23 statute of conviction, and the defendant also agrees to  
24 waive the right to petition under Title 28, Section 2255  
25 with exception of a claim of ineffective assistance of

1       counsel. And with respect to the general appeal, it is  
2       expressly -- the waiver expressly retains the right to  
3       appeal the Court's decision with respect to the  
4       defendant's motion to suppress or dismiss. Do you  
5       understand that you have waived your right to appeal and  
6       petition, as I have just outlined, with the exceptions  
7       that I have just outlined, which are more fully detailed  
8       in the plea agreement? Do you understand that?

9               THE DEFENDANT: Yes.

10              THE COURT: I want you to listen carefully now  
11       because I'm going to ask the Government to outline the  
12       facts if this matter were to proceed to trial. You need  
13       to listen carefully because at the end of the  
14       Government's recitation I'm going to ask you if what she  
15       said is true and accurate and if you agree that the  
16       Government could prove those facts beyond a reasonable  
17       doubt. Attorney Edwards.

18              MS. EDWARDS: Your Honor, the Government would  
19       establish that on or about September 24, 2018, Defendant  
20       Fendi Brooks and codefendant Ngoc Nguyen were traveling  
21       on Delta Flight Number 307 from St. Thomas to New York  
22       with a layover in Atlanta. After checking in for their  
23       flights, Defendant Brooks and Codefendant Nguyen  
24       presented themselves at US Customs and Border Protection  
25       or CBP. CBP officers encountered Defendant Brooks and



1 Co-Defendant Nguyen because they had to pay a duty on  
2 the amount of alcohol that they were taking back with  
3 them. During that inspection, a bag checked by Brooks  
4 and bearing Brooks' name but claimed by both Brooks and  
5 Nguyen was x-rayed by CBP. X-ray revealed 12 brick-like  
6 packages were contained within the suitcase. Eleven of  
7 the packages were of a white powdery substance that  
8 field tested positive for cocaine.

9 Defendant Brooks and Nguyen had \$1,300 in \$100  
10 bills on their person. Brooks made all of the travel  
11 arrangements purchasing one-way tickets on September 20,  
12 2018 for travel to St. Thomas to September 21, 2018.  
13 After arriving in St. Thomas on September 21, 2018,  
14 Defendant Brooks purchased tickets to depart St. Thomas  
15 for New York on September 24, 2018.

16 The 11 brick-like packages that tested positive for  
17 cocaine were sent to a forensic lab which confirmed the  
18 substance to be cocaine with a weight, a total weight of  
19 10.9 kilograms. The 12 brick-like substance was  
20 likewise sent to the forensic lab which identified the  
21 substance as cocaine base with a weight of 1,010 grams.

22 THE COURT: And that's what the Government  
23 would prove if this matter were to proceed to trial  
24 beyond a reasonable doubt?

25 MS. EDWARDS: That's correct, Your Honor.

1           THE COURT: Fendi Brooks, is what the  
2           Government said true and accurate?

3           THE DEFENDANT: Yes.

4           THE COURT: You agree that the Government could  
5           prove those facts beyond a reasonable doubt?

6           THE DEFENDANT: Yes.

7           THE COURT: So, you're pleading guilty in fact  
8           because you are guilty?

9           THE DEFENDANT: Yes.

10          THE COURT: All right. I'm going to read Count  
11          One of the Indictment, and then I'll ask you for your  
12          plea. Count One charges on or about September 24, 2018,  
13          in St. Thomas, in the District of the Virgin Islands,  
14          the Defendant, Fendi Brooks, did knowingly and  
15          intentionally combine, conspire, confederate and agree  
16          together, and with other persons, known and unknown, to  
17          possess with the intent to distribute controlled  
18          substances, to wit, 5 kilograms or more of a mixture or  
19          substance containing a detectable amount of cocaine, a  
20          Schedule II narcotic controlled substance, and 280 grams  
21          or more of a mixture or substance containing a  
22          detectable amount of cocaine base, a Schedule II  
23          narcotics controlled substance, all in violation of  
24          Title 21, US Code, Section 846 and 841.

25          Fendi Brooks, how do you plead to Count One of the

1 Indictment, guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: There will be a finding that the  
4 defendant has entered a knowing and voluntary plea,  
5 fully aware of the consequences of that plea. The Court  
6 finds there is a sufficient basis and fact to accept the  
7 defendant's plea of guilty before the defendant's plea  
8 is accepted and the defendant is adjudged guilty of the  
9 crime alleged in Count One of the Indictment.

10 Miss Brooks, a presentence investigation needs to  
11 be conducted before you are sentenced. The presentence  
12 investigation will be disclosed to all parties on  
13 April 26, 2019; presentence conference, May 10, 2019;  
14 position of the parties with respect to sentencing, May  
15 17, 2019; conference regarding sentencing proceedings,  
16 June 3, 2019; final presentence report will be disclosed  
17 to all parties and the Court June 10, 2019; and the  
18 sentencing hearing is set for July 11, 2019.

19 Between now and then, the defendant is remanded to  
20 the custody of the United States Marshal Service pending  
21 her sentencing.

22 That concludes the matter here and there will be no  
23 trial on Monday.

24 Thank you, Counsel.

25 MR. DIRUZZO: Thank you, Your Honor.

1 THE CLERK: All rise. Court stands adjourned.  
2 Remain standing until His Honor leaves the courtroom.

3 [Court adjourned at 5:27 p.m.]

4 - - -

5  
6 CERTIFICATE

7  
8 This document is hereby certified  
9 to be a true and accurate transcript  
10 of the foregoing proceedings.

11  
12  
13 /s/ Persha Stoutt-Warner  
14 PERSHA STOUTT-WARNER, RMR 12/6/19  
15 Official Court Reporter  
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