UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

VERNON D. NELSON	§	
	§	
V.	§	CRIMINAL ACTION NO. 5:18-CR-870
	§	
UNITED STATES OF AMERICA	§	
	§	

ORDER

On November 20, 2018, Defendant was indicted for conspiracy to possess with intent to distribute and actual possession with intent to distribute 50 kilograms or more of marijuana in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(C). (Dkt. No. 14 at 1–2). On December 21, 2018, Defendant filed a Motion to Suppress, (Dkt. No. 22), arguing that the Border Patrol Agent (BPA) did not have reasonable suspicion to send him to secondary or conduct an investigatory stop and that he was subject to a custodial interrogation without being advised of his *Miranda* rights. (*Id.* at 5–7; Dkt. No. 30 at 6–13).

United States Magistrate Judge Diana Song Quiroga conducted an evidentiary hearing on February 12, 2019. The parties filed supplemental briefing, and the Magistrate Judge issued a Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1) summarizing her findings and conclusions and recommending that Defendant's Motion to Suppress (Dkt. No. 22) be **DENIED** because the BPA had reasonable suspicion of drug activity and Defendant was not subject to a custodial interrogation. (Dkt. No. 34 at 5–18). Defendant timely filed objections. (Dkt. No. 44). The Government responded. (Dkt. No. 45).

When a party objects to a magistrate judge's report, the district court is required to conduct a de novo review only of those portions of the report to which a party has specifically objected. *See* 28 U.S.C. § 636(b)(1)(C). The Court thus conducts a de novo review of the proceedings, taking Defendant's objections into account. Having considered the entire record, as well as arguments advanced by the parties, the Court holds (1) that there was "reasonable suspicion to believe that criminal activity "'may [have been] afoot,'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989) (quoting *Terry v. Ohio*, 88 S. Ct. 1868, 1884 (1968))) (citing *United States v. Cortez*, 449 U.S. 411, 417 (1981)), justifying either a referral to secondary inspection or an investigatory stop, (2) that the stop was not impermissibly prolonged, and (3) that Defendant was not subject to a custodial interrogation for *Miranda* purposes.

The Court hereby **OVERRULES** Defendant's objections and **ADOPTS** the Report and Recommendation (Dkt. No. 34). Accordingly, Defendant's Motion to Suppress (Dkt. No. 22) is **DENIED**.

It is so **ORDERED**.

SIGNED May 9, 2019.

Marina Garcia Marmolejo
United States District Judge