

## APPENDIX

A  
Fifth Circuit Opinion

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 23, 2022

Lyle W. Cayce  
Clerk

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No. 21-10729

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

PAUL MICHAEL MALAGERIO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:20-CR-154

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Before SMITH, CLEMENT, and HAYNES, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:

Paul Malagerio was seized by federal agents under an administrative warrant. A search of his trailer revealed several firearms that Malagerio, an illegal alien, could not lawfully possess. He moved to suppress evidence of the weapons, maintaining that the arrest and search violated the Fourth Amendment.

The district court denied Malagerio's motion, and he appeals. Malagerio says that the agents exceeded the scope of their administrative warrant by arresting him not in a public place but in his doorway. We conclude that

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the district court did not err in finding that Malagerio was not arrested in his home or its curtilage. As for the search of the trailer, the record confirms the district court's finding that Malagerio consented. Because there was no error in the denial of the motion to suppress, we affirm the conviction.

I.

Malagerio is a Canadian citizen. He last entered the United States in 2013 without a visa, meaning that he could not legally remain for more than six months. In 2020, the Department of Homeland Security received a tip that Malagerio was in the country illegally. After further investigation, the senior detention deportation officer in charge of the case found probable cause that Malagerio was present unlawfully and issued an administrative warrant for his arrest.

A team of at least six agents was dispatched to arrest Malagerio around 7:00 am. The agents were concerned that Malagerio, who works in the exotic animals industry, might have access to firearms or dangerous animals. Malagerio was living in a trailer park; the owner of the trailer park allowed the agents to enter the property to talk to Malagerio. One of the officers had his bodycam turned on at this point and for about three minutes thereafter, though there is no audio until about halfway through that period.

An agent, having already unholstered his gun, then knocked on Malagerio's door and told him to come out with his hands up. Malagerio responded that he would be out shortly and came to the door about sixty to ninety seconds later. In the meantime, the agent on point had knocked repeatedly and "ordered" Malagerio to come out. By the time Malagerio came to the door, most or all of the agents had trained their guns on him, including one shotgun.

The agents instructed Malagerio several times to keep his hands up and exit the trailer. Malagerio complied and was promptly handcuffed. The

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video ends around that point.

According to the agents, Malagerio verbally consented to the search of his trailer. Malagerio also signed a written consent, though it is not clear when he did so. For his part, Malagerio remembers telling the agents they would need to get a search warrant. Either way, the search transpired, and the officers discovered three firearms.

As an illegal alien, Malagerio could not lawfully possess the firearms. The government therefore indicted him for violating 18 U.S.C. § 922(g)(5) and § 924(a)(2). Malagerio moved to suppress all the evidence resulting from the encounter. As relevant on appeal, Malagerio maintained that his arrest and the search of his trailer violated the Fourth Amendment.

The district court held a lengthy suppression hearing in which Malagerio and three officers gave their versions of the events. The district court denied Malagerio's motion and made oral and written factfindings.

After reviewing the testimony and video, the court deemed the officers credible and Malagerio not credible. It also determined that Malagerio had not been arrested in his home because knocking on his door and instructing him to exit did not constitute a seizure. Even if his Fourth Amendment rights were violated, the court reasoned that the good-faith exception would mean that exclusion of evidence was not necessary. In reaching those conclusions, the court relied on *Abel v. United States*, 362 U.S. 217 (1960), in which the Court had affirmed the admissibility of evidence gathered per a home arrest without a judicial warrant. The court also found that Malagerio gave effective consent to the search of his trailer.

Malagerio stood trial, maintaining that, while he had been present in the United States illegally and had possessed firearms, he had not *known* he was present illegally. That defense proved unavailing, and the jury found Malagerio guilty. On appeal, Malagerio challenges the denial of his motion

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to suppress, but he does not otherwise object to his trial or sentence.

## II.

Malagerio's primary theory on appeal is that he was arrested unlawfully, meaning that any evidence gathered from the subsequent search must be suppressed. His position depends on several premises. To prevail, his arrest must have been illegal, that illegality must be of the type that triggers the exclusionary rule, and the arrest must have poisoned the search. Instead of working through each of those premises, we focus on the district court's factual findings, which are not clearly erroneous and, instead, are supported by the record. Specifically, the district court found that Malagerio was not arrested in his home or its curtilage, so there was no Fourth Amendment violation.

### A.

When considering the denial of a motion to suppress, this court reviews legal conclusions *de novo* and factual findings for clear error. *See, e.g., United States v. Charles*, 469 F.3d 402, 405 (5th Cir. 2006). We view the evidence in the light most favorable to the prevailing party, here the government. *See United States v. Gibbs*, 421 F.3d 352, 357 (5th Cir. 2005).

### B.

Malagerio was arrested under an administrative warrant based on the suspicion that he was unlawfully present in the United States. Administrative warrants do not comply with the requirements that the Fourth Amendment places on judicial warrants. *See, e.g., Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011). In the immigration context, administrative warrants can be issued without probable cause that a crime has been committed<sup>1</sup> and without the

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<sup>1</sup> Unlike those who enter the United States illegally, aliens who overstay their visas

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involvement of “a neutral and detached magistrate.” *United States v. Lucas*, 499 F.3d 769, 777 (8th Cir. 2007) (en banc). To arrest someone without a judicial warrant and with no suspicion that a crime has been committed would ordinarily be unconstitutional. But deportation is not a criminal punishment. *Mahler v. Eby*, 264 U.S. 32, 39 (1924). Thus, “immigration officers may seize aliens based on an administrative warrant attesting to probable cause of removability.” *City of El Cenizo v. Texas*, 890 F.3d 164, 187 (5th Cir. 2018).

Malagerio waives any contrary position and maintains, instead, that, although the agents might have been legally entitled to arrest him in a public place, they were not permitted to seize him within his home. The district court found that Malagerio was not seized until after he had exited his home (the trailer) and that he was not located on any curtilage of that home.

Those findings are not clearly erroneous. It follows that we need not decide whether an administrative warrant may be used to arrest an alien in his home. We leave that important question for another day.

Malagerio says that he was “seized in [his] doorway.” Oral Argument at 4:06–08. But “a person standing in the doorway of a house is ‘in a “public” place,’ and hence subject to arrest without a warrant permitting entry of the home.” *Illinois v. McArthur*, 531 U.S. 326, 335 (2001) (quoting *United States v. Santana*, 427 U.S. 38, 42 (1976)). As for Malagerio’s notion that he was arrested in the curtilage, the district court found to the contrary. Malagerio was spread on the hood of his truck that was parked in an open driveway between his trailer and a neighbor’s. Such an open driveway is not curtilage, see *Evans v. Lindley*, No. 21-20118, 2021 WL 5751451, at \*5 (5th Cir. Dec. 2, 2021) (per curiam) (unpublished), and at the very least, the district

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commit only *civil* violations. See 8 U.S.C. § 1227(a)(1)(B). The agents who arrested Malagerio acknowledged that they could not have shown probable cause for a judicial warrant.

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court's finding of no curtilage is protected as plausible in light of the record as a whole.<sup>2</sup>

### III.

Malagerio presents an alternative theory: Even if his arrest did not trigger the exclusionary rule, the warrantless search that turned up the guns would still be unconstitutional. The district court concluded that the search had been permissible because Malagerio consented to it.

Malagerio primarily contests whether his consent was voluntary. But he also advocates factual conclusions that, if correct, would mean he never gave effective consent. The district court considered and rejected his notion of effective consent. As for voluntariness, Malagerio never presented that contention in the district court. Malagerio thus faces daunting standards of review, and the evidence he points to is not close to sufficient. We reject his alternative theory.

#### A.

The government maintains that review is for plain error, and we agree regarding the theory of voluntariness. Meanwhile, the theory that Malagerio never gave effective consent is reviewed for clear error.

In his motion to suppress, Malagerio objected that the agents “searched his home without a warrant or effective consent.” Specifically, he alleged that “[a]t all relevant times, Malagerio refused consent and requested agents obtain a warrant.” He maintained that position in his reply motion, stating that “he did not consent at the time of the search . . . and . . . he

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<sup>2</sup> It is also possible to interpret the record such that Malagerio was seized before he got to his doorway. But the district court found that he was not seized inside his home, and we must view the record favorably to the government. *See Gibbs*, 421 F.3d at 357.



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requested agents obtain a search warrant.”

At no point did Malgerio articulate the theory that he now advances on appeal—that is, that he “was not in a position to give voluntary consent.” The district court accordingly characterized his position as “not contest[ing] the voluntariness of his consent . . . ; instead, he alleges that the did not give consent in any way.” Thus, Malgerio did not advance any theory on voluntariness that was “specific enough to bring the alleged error to the district court’s attention.” *United States v. Fuchs*, 467 F.3d 889, 900 (5th Cir. 2006).

Malgerio’s approach is thus subject to plain error review. Reversal would be appropriate only if, as the initial requirements, there is error and that error “is clear or obvious.” *United States v. Hickman*, 331 F.3d 439, 443 (5th Cir. 2003).

On the other hand, Malgerio did press his effective consent theory in the district court, meaning that he is spared from plain error review on that score. But whether a defendant gave effective consent is a question of fact. See *United States v. Scroggins*, 599 F.3d 433, 440 (5th Cir. 2010). Factual findings are reviewed for clear error, meaning that we may overturn them only if we are left with “a definite and firm conviction that a mistake has been made.” *United States v. Griffin*, 324 F.3d 330, 365 (5th Cir. 2003). Findings regarding the credibility of competing witnesses are especially difficult to overturn. See *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985).

## B.

For consent to excuse a warrantless search, “the government must demonstrate that there was (1) effective consent, (2) given voluntarily, (3) by a party with actual or apparent authority.” *Scroggins*, 599 F.3d at 440. Malgerio has never disputed that he had authority to consent to the search of his trailer, so only the first and second prongs are at issue.

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The existence of effective consent, like its scope, is determined with reference to “objective reasonableness.” *United States v. Stewart*, 93 F.3d 189, 192 (5th Cir. 1996). “Recitation of magic words is unnecessary; the key inquiry focuses on what the typical reasonable person would have understood by the exchange between the officer and the suspect.” *Id.*; see also *Scroggins*, 599 F.3d at 442 (determining that implied consent was sufficient).

Three officers testified that Malagerio consented verbally, and he signed a consent form. In calls from jail, he also mentioned that he had been cooperative. That evidence indicates that Malagerio gave effective consent.

Malagerio counters that the officers’ testimony was internally inconsistent. For instance, one agent remembers initially asking for consent “to enter his trailer to get his Canadian passport and his identification documents,” while another says that the initial consent also covered the firearms. But those discrepancies are minor, and the district court, viewing the testimony as a whole, deemed the officers consistent and credible.

As for the written consent, Malagerio’s objection is stronger—because he was in handcuffs, he could not have signed it before the search, and “an earlier illegal search” cannot be justified “based upon a later consent to an additional search.” *United States v. Melendez-Gonzalez*, 727 F.2d 407, 414 (5th Cir. 1984). But the written consent is irrelevant if, as the officers testified and as Malagerio implied in his jail calls, he consented verbally before the search. We thus reject Malagerio’s theory that he did not effectively consent to the search.

Turning to voluntariness, we apply a six-factor test:

(1) the voluntariness of the defendant’s custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant’s cooperation with the police; (4) the defendant’s awareness of his right to refuse to consent; (5) the defendant’s education and intelligence; and (6) the defendant’s be-

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lief that no incriminating evidence will be found. All six factors are relevant, but no single one is dispositive or controlling.

*United States v. Freeman*, 482 F.3d 829, 832 (5th Cir. 2007) (quotation omitted).

Malagerio's custodial status was not voluntary, but most or all of the remaining factors tilt in favor of the search's being voluntary. The officers described Malagerio as "very cooperative," and "cordial." Malagerio described his own demeanor similarly. That testimony suggests he was not coerced. There is no indication that he is uneducated or unintelligent. And he claims that he feared no discovery of incriminating evidence because "[i]t's just guns in Texas."

It is less clear whether Malagerio knew he had the right to refuse. He says that he knew he had that right and exercised it, but the district court deemed him incredible. Even assuming Malagerio did not understand his right to refuse consent, that still leaves four factors in favor of voluntariness. We perceive no error in the denial of the motion to suppress on this ground, much less the kind of obvious error that would be necessary to prevail on plain error review.

Malagerio has not made the requisite showing that his consent to the search was either ineffective or involuntary. His challenge to the lawfulness of the search thus fails. Having rejected the challenges to the arrest and the search, we AFFIRM the conviction.

**B**  
**District Court Judgment**

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

UNITED STATES OF AMERICA

v.

**PAUL MICHAEL MALAGERIO**§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **5:20-CR-00154-H-BQ(1)**§ USM Number: **16273-509**§ **Benjamin Paul Garcia**

§ Defendant's Attorney

**THE DEFENDANT:**

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	<b>1 of the indictment filed November 10, 2020.</b>

The defendant is adjudicated guilty of these offenses:

**Title & Section / Nature of Offense**

18 U.S.C. §§ 922(g)(5), 924(a)(2) - ILLEGAL ALIEN IN POSSESSION OF FIREARMS

**Offense Ended**

11/03/2020

**Count**

1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ Remaining count(s) are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

**July 15, 2021**

Date of Imposition of Judgment



Signature of Judge

**James Wesley Hendrix**  
**United States District Judge**

Name and Title of Judge

**July 15, 2021**

Date

DEFENDANT: PAUL MICHAEL MALAGERIO  
CASE NUMBER: 5:20-CR-00154-H-BQ(1)

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:  
28 months as to count 1.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PAUL MICHAEL MALAGERIO  
CASE NUMBER: 5:20-CR-00154-H-BQ(1)

## **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **One (1) year.**

## **MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
  - ☒ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.



DEFENDANT: PAUL MICHAEL MALAGERIO  
CASE NUMBER: 5:20-CR-00154-H-BQ(1)

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at [www.txnp.uscourts.gov](http://www.txnp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_



DEFENDANT: PAUL MICHAEL MALAGERIO  
CASE NUMBER: 5:20-CR-00154-H-BQ(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.
2. As a condition of supervised release, upon completion of his term of imprisonment, the defendant is to be surrendered to a duly authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported, the defendant shall remain outside the United States unless legally authorized to reenter.  
  
In the event the defendant is not deported upon release from imprisonment or surrendered to a duly authorized immigration officer for deportation as described above, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the standard conditions recommended by the U.S. Sentencing Commission and shall comply with the mandatory and special conditions stated in the Judgment.
3. In the event the defendant is not deported upon release from imprisonment or surrendered to a duly authorized immigration official, the defendant must immediately report, continue to report, or surrender to U.S. Immigration and Customs Enforcement and follow all their instructions and reporting requirements until any deportation proceedings are completed.

DEFENDANT: PAUL MICHAEL MALAGERIO  
CASE NUMBER: 5:20-CR-00154-H-BQ(1)

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- |   |                               |  |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution                         |
| <input type="checkbox"/> the interest requirement for the           | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

\*\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: PAUL MICHAEL MALAGERIO  
CASE NUMBER: 5:20-CR-00154-H-BQ(1)

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☐ Lump sum payments of \$ \_\_\_\_\_ due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:  
**It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several  
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

C

Denial of Motion to Suppress

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL MICHAEL MALAGERIO,

Defendant.

No. 5:20-CR-154-H-BQ-1

**ORDER DENYING MOTION TO SUPPRESS**

Before the Court is Paul Michael Malagerio's Motion to Suppress, which challenges the lawfulness of his arrest, the questioning that he was subjected to during and after his arrest, and the search of his home. Dkt. No. 26. Malagerio argues that administrative warrants do not give officers authority to seize an individual in his home and, therefore, that because Malagerio was arrested in his home pursuant to an administrative warrant, his arrest was unlawful. Dkt. No. 42 at 2–11. Malagerio also alleges that he never received *Miranda* warnings. Dkt. No. 26 at 11. Finally, Malagerio alleges that he did not consent to a search of his home. *Id.* at 9.

The Court has reviewed the motion, Dkt. No. 26, the government's response, Dkt. No. 34, and Malagerio's amended reply, Dkt. No. 42. The Court also conducted an in-person evidentiary hearing. Dkt. No. 43. The Court finds the testimony of three officers involved in the arrest to be credible and finds the testimony of Malagerio to be incredible.

Considering the testimony and exhibits presented at the hearing, the Court rejects each of Malagerio's arguments for suppression. First, the Court finds that officers did not seize Malagerio in his home. Additionally, Malagerio fails to point the Court to any



authority supporting his contention that administrative warrants do not give officers authority to seize an individual in his home, so the Court concludes that even if officers did seize Malagerio in his home, the good-faith exception to the exclusionary rule would apply. Additionally, the Court finds that Malagerio received *Miranda* warnings and waived his rights. Finally, the Court finds that Malagerio consented to the search of his home prior to the commencement of the search. Therefore, the Court denies Malagerio's Motion to Suppress.

## **1. Findings of Fact and Procedural Background**

### **A. Findings of Fact**

On February 17, 2020, the Court conducted an in-person evidentiary hearing on Malagerio's motion. Dkt. No. 44. The government called three witnesses: (1) Immigration Customs Enforcement (ICE) and Enforcement and Removal Operations (ERO) Deportation Officer Dusty Rowden, (2) Homeland Security Investigations (HSI) Special Agent Tim Raymond, and (3) Homeland Security Investigations Resident Agent-in-Charge Charles Cobb. Dkt. No. 45. The government admitted into evidence government's exhibits 1–14.<sup>1</sup> *Id.* Malagerio also testified on his behalf. *Id.* Malagerio admitted into evidence defendant's exhibits 1–4.<sup>2</sup> *Id.*

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<sup>1</sup> These exhibits included: a copy of the email initiating the investigation into Malagerio; copies of the administrative warrant issued as to Malagerio; investigative notes drafted by Rowden; a consent-to-search form signed by Malagerio; a record of deportable/inadmissible alien for Malagerio; an HSI investigation report for Malagerio; a photo from Malagerio's Facebook page; excerpts of some of Malagerio's jail calls; a copy of Rowden's *Miranda*-warning card; and body-camera footage of Malagerio's arrest.

<sup>2</sup> These exhibits included: an ICE ERO field operations worksheet for Malagerio; a copy of the report Rowden received for Malagerio when he searched the active-warrant database; a copy of a Homeland Security legal-training handbook from 2019; and a letter from ICE to United States Representative Zoe Lofgren (D-CA19).

At the conclusion of the hearing, the Court found that Rowden, Raymond, and Cobb had testified consistently with each other and with the documentary evidence and, therefore, found their testimony credible. Suppress H'rg Tr. at 174–75. In contrast, the Court found that Malagerio was evasive on the witness stand, was impeached, had his testimony undermined by his jail calls, and refused to answer questions that had an irrefutable answer—such as, whether he made certain statements during his own jail calls, which were admitted into evidence and played aloud. *Id.* at 175–76. Accordingly, the Court found Malagerio's testimony incredible. *Id.* In light of these credibility determinations, the Court made various findings of fact outlined in the following paragraphs.

On October 15, 2020, Rowden's supervisor, Senior Detention Deportation Officer David Harshbarger, became aware of a lead regarding a Canadian subject, Malagerio, who had overstayed in the United States. *Id.* at 11–12. That lead came from ICE ERO Assistant Field Office Director for the Dallas Resident Office, Keith Atkins, who had received an email from ICE HSI Special Agent Van Stephens. Government Ex. 1. In his email, Stephens stated that the subject, Malagerio, had caused problems and needed to be removed and that based on some initial investigation, he guessed that Malagerio was an overstay. *Id.* Stephens also requested in his email that Atkins "see what Fug Ops [(Fugitive Operations)]<sup>3</sup> in Lubbock could do with [Malagerio.]" *Id.* As a result, Atkins forwarded the lead to Harshbarger who later passed the lead along to Rowden. Suppress H'rg Tr. at 8.

Rowden began investigating Malagerio on October 26, 2020. *Id.* at 12. Rowden first checked multiple databases to gather information about Malagerio. *Id.* Upon checking the

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<sup>3</sup> Rowden testified at the hearing that the Fugitive Operations Team arrests and investigates illegal aliens in the United States. Suppress H'rg Tr. at 11.

databases, Rowden gathered information on: (1) when Malagerio entered the country; (2) Malagerio's resident status; (3) whether Malagerio had any active warrants; (4) Malagerio's criminal history, including previous arrests; (5) the places where Malagerio had resided; and (6) whether Malagerio had an ICE alien file. *Id.* at 12–14. Based on his investigation, Rowden determined that Malagerio was a Canadian who entered the United States on September 24, 2002 as a visitor and should have left the country within six months of entry—by March 23, 2002.<sup>4</sup> *Id.* at 17–18.

Based on this information, Rowden requested an I-200 form, which is an administrative-arrest warrant for the arrest of an alien. *Id.* at 19. Harshbarger, who had authority to issue such a warrant upon a finding of probable cause that an alien is illegally and unlawfully in the United States, issued the warrant on October 30, 2020. *Id.* at 21–22.

After Harshbarger issued the warrant, Rowden began preparing for Malagerio's arrest. *Id.* at 25. Rowden assembled an arrest team and investigated the operational risk of the arrest by surveilling the property where Malagerio lived and checking Malagerio's social media. *Id.* at 29, 25. Rowden's investigation indicated that Malagerio might have had firearms and several exotic animals, including tigers and a mountain lion. *Id.* at 26.

At 7:00 a.m. on November 3, 2020, the arrest team arrived at Whitley Farms, where the RV in which Malagerio lived was located, to arrest Malagerio. *Id.* at 29. Rowden and the fugitive-operations team led the arrest team, and members of HSI provided support. *Id.* at 83–84. Upon arrival at the farm, the arrest team encountered Jason Whitley, the owner of Whitley Farms, who showed them where Malagerio's RV was and granted the arrest

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<sup>4</sup> Malagerio actually last entered the United States on March 13, 2013. Suppress H'rg Tr. at 15. Rowden's investigation did not reveal this most-recent entry because Malagerio used a different passport with a different name to make his most-recent entry into the United States. *Id.* at 15–16.



team access to the property. *Id.* at 30. Rowden went to Malagerio's RV, knocked, announced that immigration and customs police were present, and ordered Malagerio to exit the RV. *Id.* at 34. At that time, officers had their weapons drawn due to the known risk that Malagerio could have weapons or exotic animals in the RV.<sup>5</sup> *Id.* at 35.

When the arrest team arrived, Malagerio was inside his RV. Malagerio noticed the commotion outside and wanted to go outside to see what was happening. *Id.* at 118, 132. As a result, Malagerio began to get dressed. *Id.* at 120. Between 60 and 90 seconds after Rowden knocked on his door, Malagerio opened his door and exited his RV. *Id.* at 34. Malagerio walked multiple steps away from his RV and stood by his pickup truck before being apprehended and handcuffed by officers. Government Ex. 14. When walking out of the RV and standing by the pickup truck, Malagerio asked officers what the commotion was about. *Id.* at 36.

After handcuffing Malagerio, officers asked him a few biographical questions. *Id.* at 108. These questions included Malagerio's name and immigration status. *Id.* Malagerio did make a comment about being Canadian in response to these questions. Dkt. No. 34 at 8 n.1. Rowden then gave Malagerio his Miranda warnings. *Id.* at 37, 108–09. Malagerio, who speaks English, understood his rights, waived those rights, and agreed to speak. *Id.* at 37–38. As a result, Rowden asked Malagerio whether he had immigration documents, weapons, and exotic animals. Malagerio stated that he had a Canadian passport, three weapons, and no exotic animals in his trailer. *Id.* at 38–39.

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<sup>5</sup> Considering these operational risks, at the suppression hearing, the Court found that the officers acted reasonably by having their weapons drawn. Suppress H'rg Tr. at 176–77.

After Malagerio admitted to having a passport and weapons in his trailer, Rowden asked Malagerio for consent to enter the RV and search for those items. *Id.* at 39. Malagerio consented to the search.<sup>6</sup> *Id.* And Malagerio, who was in his RV during the search, directed officers to his ID and weapons. *Id.* In fact, Malagerio provided this direction, despite being handcuffed, by motioning his head toward different locations. *Id.* at 42–43. This search resulted in officers finding Malagerio’s Canadian passport, other Canadian identification documents, money, and three firearms. *Id.* At no time during the search did the defendant mention a warrant or state that officers would need a warrant to search his RV. *Id.* at 91. Additionally, throughout the process, Malagerio was calm and cooperative with officers. *Id.* at 111.

Upon completion of the search, officers transported Malagerio to a federal building for processing. *Id.* at 44. During the booking process, Malagerio was not confrontational or angry. *Id.* at 45. The booking officers allowed him to make ten or more phone calls, which is more than usual. *Id.*

HSI did not open an investigation into Malagerio for violation of 18 U.S.C. § 922(g) until after Malagerio’s arrest. *Id.* at 91. The HSI investigation was opened when Raymond drafted a report after the arrest stating that Malagerio, a Canadian citizen in the United States without authorization, was found to be in possession of three firearms. *Id.* at 91; Government Ex. 7.

Once officers completed booking Malagerio at the federal building, they transported Malagerio to the Lubbock County Detention Center. Suppress H’rg Tr. at 94. While in jail,

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<sup>6</sup> Malagerio memorialized his consent by signing a written consent form. *Id.* at 40. It is unclear from the evidence whether Malagerio signed the consent form before or after the search was completed.

Malagerio made multiple calls, some of which were made on the day of his arrest. *Id.* at 92. In those jail calls, Malagerio made statements that he was cooperative, surrendered his weapons, thought he could possess weapons because he lived in Texas, thought the ICE officers were “not bad guys,” and had no issue with officers taking his guns. *Id.* at 93–97. Malagerio did not mention in any of the jail calls that he demanded to see a search warrant or that he was frustrated with the search of his RV. *Id.* at 94.

## **B. Procedural History**

The government filed a Criminal Complaint against Malagerio alleging that Malagerio committed the offense of Illegal Alien in Possession of Firearms. Dkt. No. 1. A grand jury later indicted Malagerio for being an illegal alien in possession of firearms. Dkt. No. 12. Malagerio moved to suppress all evidence and testimony arising from his arrest, the questioning that officers subjected him to during his arrest, and the search of his RV. Dkt. No. 26 at 14. The government responded in opposition. Dkt. No. 34.

## **2. Legal Standards**

The Fourth Amendment of the United States Constitution grants “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Fifth Amendment requires that no person “shall be compelled in any criminal case to be a witness against himself.” Generally, evidence derived from an unreasonable search or seizure, or in violation of the Fifth Amendment, must be suppressed. *See United States v. Alvarado-Zarza*, 782 F.3d 246, 249 (5th Cir. 2015) (“Evidence derived from an unreasonable search or seizure generally must be suppressed under the fruit-of-the-poisonous-tree doctrine.”); *Miranda v. Arizona*, 384 U.S. 436, 462 (1966) (“[A] confession obtained by compulsion must be excluded . . .”).

“Generally, on a motion to suppress, the defendant has the burden of proving, by a preponderance of the evidence, that the evidence in question was obtained in violation of [his] constitutional rights.” *United States v. Guerrero-Barajas*, 240 F.3d 428, 432 (5th Cir. 2001). But “if a defendant produces evidence that he was arrested or subject to search without a warrant, the burden shifts to the government to justify the warrantless search.” *United States v. Roch*, 5 F.3d 894, 897 (5th Cir. 1993). Additionally, “if a defendant shows that a confession was obtained while he was under custodial interrogation, the government then has the burden of proving that the defendant voluntarily waived his privilege against self-incrimination.” *United States v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1977).

“The judge’s role at a suppression hearing is to determine the credibility of witnesses and find the facts.”<sup>7</sup> *United States v. Jones*, 187 F. Supp. 3d 714, 723 (M.D. La. 2016). “At a suppression hearing, it is ‘well within the trial court’s discretion’ to weigh the evidence and make credibility determinations regarding conflicting testimony.” *Id.*; see *Norman*, 2013 WL 6498979, at \*21.

### 3. Analysis

#### A. The Court denies Malagerio’s request to suppress the evidence arising from his arrest because officers properly arrested Malagerio pursuant to a valid administrative warrant.

First, the Court finds that Rowden obtained a valid administrative warrant before arresting Malagerio. Suppress H’rg Tr. at 179. Prior to Malagerio’s arrest, Rowden investigated Malagerio and determined that he was a Canadian citizen who entered the United States as a visitor and had stayed in the country longer than authorized. *Id.* at 17–

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<sup>7</sup> See *Norman v. Stephens*, No. CIV.A. H-13-0624, 2013 WL 6498979, at \*21 (S.D. Tex. Dec. 11, 2013); *United States v. Jones*, No. CRIM.A. L-12-10, 2012 WL 1309837, at \*7 (S.D. Tex. Apr. 16, 2012).

18. After Rowden presented this information to Harshbarger, who had authority to issue administrative warrants, Harshbarger issued a Warrant for Arrest of Alien as to Malagerio pursuant to 8 U.S.C. § 1226(a). *Id.* at 21–22. Additionally, at the hearing, Malagerio conceded that there was probable cause to support such a warrant. *Id.* at 162–163. At the hearing, Malagerio did not challenge the constitutionality of administrative warrants and instead conceded that administrative arrest warrants are valid and that officers may arrest individuals pursuant to properly issued administrative arrest warrants. *Id.* at 159–160. Accordingly, the Court finds that officers arrested Malagerio pursuant to a valid administrative warrant and rejects Malagerio’s argument that officers did not have a warrant. *Id.* at 179.

Additionally, at the suppression hearing, Malagerio argued that officers improperly arrested him because they seized him in his home pursuant to an administrative warrant that did not give officers authority to seize him in his home. *Id.* at 163. This argument fails for two reasons: (1) the facts do not support that officers seized Malagerio in his home; and (2) even if officers seized Malagerio in his home, they acted in objective good faith when relying on the warrant to arrest Malagerio.

**i. The Court finds that officers did not seize Malagerio in his home.**

Malagerio’s argument fails because it rests on the faulty factual assumption that officers seized him within his home. Because Malagerio did not submit to the authority of officers until he stepped away from his RV and followed commands to hold his hands above his head, the Court finds that he was not seized in his home. “Supreme Court and Fifth Circuit caselaw makes clear that a Fourth Amendment seizure occurs in one of two ways: either an officer applies physical force or an officer makes a show of authority to which an

individual submits.” *Arnold v. Williams*, 979 F.3d 262, 268 (5th Cir. 2020); see *Brendlin v. California*, 551 U.S. 249, 254 (2007) (“A police officer may make a seizure by a show of authority and without the use of physical force, but there is no seizure without actual submission; otherwise, there is at most an attempted seizure, so far as the Fourth Amendment is concerned.”). Here, the officers did not apply physical force until they handcuffed Malagerio after he exited his RV and walked over to his pickup truck. See Government Ex. 14. Thus, unless he submitted to the show of authority, Malagerio was not seized within his house under the Fourth Amendment.<sup>8</sup>

Malagerio did not submit to the authority of the officers until after he exited his RV. In fact, Malagerio testified during the suppression hearing that when officers arrived, he began dressing, even before they knocked on his door, because he wanted to see what was happening. Suppress H’rg Tr. at 118, 132. Additionally, after officers knocked, Malagerio did not immediately follow the officers’ commands and exit the RV; instead, he waited 60–90 seconds after the knock to exit. *Id.* at 34. Finally, as shown on the body-camera footage, when Malagerio exited, he did not immediately put his hands up as the officers ordered. See Government Ex. 14. Instead, Malagerio turned around and closed the door on his RV, and even lowered his hands to fix his shirt as he was walking away from the RV, in violation of the officers’ orders. *Id.* Therefore, Malagerio submitted to the officers’ authority only after he had taken multiple steps away from his RV and finished fixing his shirt. Because Malagerio was not within his home or its curtilage when he finally submitted, the Court finds that officers did not seize Malagerio within his home.

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<sup>8</sup> At the hearing, Malagerio conceded that officers did not enter his RV to arrest him. Suppress H’rg Tr. at 164. Instead, Malagerio claimed that he submitted to the authority of the officers within his home and, therefore, was seized within his home. *Id.*

**ii. The Court finds that even if officers violated the Fourth Amendment while executing the warrant, the good-faith exception would apply.**

“[E]ntry into a home to . . . make an arrest is unreasonable . . . unless done pursuant to a warrant.”<sup>9</sup> *United States v. Barrera*, 464 F.3d 496, 501 (5th Cir. 2006) (quoting *Steagald*, 451 U.S. at 211). “[A]n arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” *Id.* (quoting *Payton v. New York*, 445 U.S. 573, 603 (1980)). Malagerio argues that his arrest violated the Fourth Amendment because an administrative warrant does not give officers authority to enter a home to make an arrest, but even if that were correct, the argument will fall short because the good-faith exception to the exclusionary rule applies. Supreme Court and Fifth Circuit precedent indicate that officers may enter a home to execute an administrative arrest warrant, and Malagerio has failed to point the Court to any authority indicating otherwise. Thus, the officers acted in objective good-faith reliance on the warrant while arresting Malagerio.

Before reaching a constitutional question, courts must first consider non-constitutional questions that would be dispositive. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 205 (2009) (“[I]t is a well-established principle governing the prudent exercise of this Court’s jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case[.]” (quoting *Escambia Cty. v. McMillan*, 466 U.S. 48, 51 (1984))); *United States v. Johnson*, 956 F.3d 740, 743 (5th Cir. 2020) (“[W]e are obliged to consider nonconstitutional issues that would be

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<sup>9</sup> Officers may enter a house to make an arrest without a warrant when there are exigent circumstances. *Steagald v. United States*, 451 U.S. 204, 211 (1981). Here, the government does not argue that this exigent-circumstances exception applies, and Rowden conceded that he did not rely on exigent circumstances when he arrested Malagerio. Suppress H’rg Tr. 63–64.

dispositive of the appeal before we reach a constitutional question.”). The question of whether the good-faith exception to the exclusionary rule applies is a non-constitutional question, and, therefore, if the Court finds that the good-faith exception applies, it need not reach the constitutional question of whether officers can make a criminal arrest on the basis of an administrative warrant. *See United States v. Smith*, 1994 WL 57613, at \*2 (5th Cir. Feb. 17, 1994) (per curiam).

“Whether the exclusionary sanction is appropriately imposed in a particular case . . . is an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.” *United States v. Leon*, 468 U.S. 897, 906 (1984) (internal quotations omitted). “[T]he application of the [exclusionary] rule has been restricted to those areas where its remedial objectives are thought most efficaciously served.” *Id.* at 908. Thus, “when the police act with an objectively ‘reasonable good-faith belief’ that their conduct is lawful, or when their conduct involves only simple, ‘isolated’ negligence, the ‘deterrence rationale loses much of its force,’ and exclusion cannot ‘pay its way[.]’” *Davis v. United States*, 564 U.S. 229, 238 (2011). As a result, the Fifth Circuit has applied the good-faith exception where a magistrate judge who issued a warrant did not have authority to do so because, at the time of issuance, it was unclear whether the magistrate judge properly issued the warrant and there was no evidence of foul play. *United States v. Ganzer*, 922 F.3d 579, 588 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 276 (2019).

Relevant here, Supreme Court precedent indicates that officers may enter an arrestee’s home to execute an arrest pursuant to an administrative warrant. *See Abel v. United States*, 362 U.S. 217, 234, 237, 239–40 (1960). In *Abel*, the FBI investigated a defendant who it believed to be a Russian spy committing espionage. *Id.* at 221. The FBI



notified INS of the defendant's suspected status as an alien, and INS officers obtained an administrative arrest warrant for the defendant. *Id.* at 221–22. INS officers planned to arrest the defendant at a hotel room where he resided and agreed to allow the FBI to attempt to interview the defendant before making their arrest. *Id.* at 223. FBI officers initiated the encounter by knocking on the defendant's hotel room door, entering without invitation, and asking the defendant questions. *Id.* The defendant answered some questions, but when he did not cooperate with the espionage investigation, the FBI officers signaled for the INS officers, who were waiting in the next room to arrest the defendant pursuant to the administrative arrest warrant. *Id.* INS agents entered the room, arrested the defendant, and searched the defendant and his hotel room. *Id.* Even though the FBI tipped off INS and the arrest happened at the defendant's residence, the Supreme Court held that the arrest was valid under the authority of an administrative warrant, that the search incident to the arrest was valid, and that evidence found during the warrant's execution could be used for criminal prosecution. *Id.* at 234, 237, 239–40.

In this case, in contrast to the INS officers in *Abel*, the arresting officers did not enter Malagerio's home. *Id.* at 164. Therefore, *Abel* indicates that the officers who arrested Malagerio acted reasonably when they knocked on Malagerio's door and arrested him only after he exited the RV.

Additionally, the arresting officers did not use the administrative arrest warrant for an illegitimate purpose. In *Abel*, the Supreme Court held that officers use an administrative warrant for illegitimate purposes where “the decision to proceed administratively toward deportation was influenced by, and was carried out for, a purpose of amassing evidence in the prosecution for crime.” *Id.* at 230. At the hearing, the government presented the email

from Stephens to show that officers started investigating Malagerio for the purpose of removal. Government Ex. 1. Additionally, Raymond testified that fugitive operations led the charge to arrest Malagerio and that HSI, which only gets involved in deportation proceedings if there is a possibility of criminal charges, was present at the arrest only as support. Suppress H'rg Tr. at 83–84. This evidence indicates that the decision to proceed toward deportation was not influenced by or carried out to amass criminal evidence.

*Abel* provides strong support for this finding. In *Abel*, the FBI participated in the defendant's arrest to a much greater degree than HSI in this case. The FBI took charge by informing INS that the defendant was unlawfully present in the United States, entering the defendant's home first, and signaling INS officers to arrest only after the defendant refused to cooperate. 362 U.S. at 222–24. Yet, in *Abel*, the Supreme Court declined to overturn the lower courts' findings that the INS officers had not used the administrative warrant for an illegitimate purpose. *Id.* at 230. Also, the Supreme Court held that the lower courts did not err in “not finding that the administrative warrant was here employed as an instrument of criminal law enforcement to circumvent the latter's legal restrictions, rather than as a bona fide preliminary step in a deportation proceeding.” *Id.* Here, compared to the FBI in *Abel*, HSI played a minor role in Malagerio's arrest because HSI opened an investigation into Malagerio only after his arrest, and it played a support role in Malagerio's arrest. *Id.* at 91; Government Ex. 7. Therefore, the Court finds that officers did not use the administrative warrant in this case for an illegitimate purpose. This finding further indicates that Rowden and the other arresting officers acted in objectively reasonable good faith that their conduct was lawful.

Finally, Malagerio fails to cite any authority supporting his argument that officers did not act reasonably and in good faith when they arrested Malagerio. Malagerio first argues that the officers did not act with an objectively reasonable good-faith belief that their conduct was lawful because an administrative warrant does not give officers authority to seize a defendant in his home. Malagerio cites multiple cases to support this argument, *see* Dkt. No. 42 at 2–3, but none of the cited cases address administrative arrest warrants.<sup>10</sup> In fact, *Castellanos*, the case that Malagerio stated provided the strongest support for his argument, Suppress H’rg Tr. at 158, addresses consent searches and the scope of border searches. *Castellanos*, 518 F.3d at 971. It provides no discussion of administrative warrants or whether such warrants give authority to arrest in a home. *Id.* Accordingly, Malagerio has not pointed the Court to any precedent stating that administrative warrants do not grant officers authority to conduct an arrest in the home. Additionally, the Court has not located any such authority. Therefore, considering *Abel*, which condoned an arrest in a home pursuant to an administrative warrant, the Court rejects Malagerio’s first argument that the good-faith exception does not apply.

Malagerio also argues that the officers did not act with an objectively reasonable good-faith belief that their conduct was lawful because DHS regulations and training manuals recognize that an administrative warrant does not grant authority to enter a home. Dkt. No. 42 at 3–6, 8–10. Even if the Court defers to the DHS regulations and training materials to assist in its determination of whether the good-faith exception applies, those regulations do not prevent the conduct that the officers engaged in during the arrest.

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<sup>10</sup> *See generally* *United States v. Lonabaugh*, 494 F.2d 1257 (5th Cir. 1973); *United States v. Castellanos*, 518 F.3d 965 (8th Cir. 2008); *United States v. Abdi*, 463 F.3d 547 (6th Cir. 2006); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211 (D.C. Cir. 1981).

Officers did not enter Malagerio's RV before they arrested him. *Id.* at 164. Additionally, the regulations that Malagerio cites do not prevent the type of conduct that occurred here—knocking on the door of a residence and commanding the resident to come out. *See* Def. Ex. 3, 4. Therefore, the Court rejects Malagerio's second argument that the good-faith exception does not apply.

Given the above facts and authorities, the Court finds that the arresting officers acted in an objectively reasonable good-faith belief that their conduct was lawful. Therefore, the Court finds that even if officers seized Malagerio in his home and violated the Fourth Amendment, the good-faith exception to the exclusionary rule would apply.<sup>11</sup>

**B. The Court denies Malagerio's request to suppress his statements during his arrest because Malagerio received *Miranda* warnings and waived his rights before making the statements that the government seeks to admit.**

Because the Court finds that officers read Malagerio his *Miranda* warnings and that Malagerio waived his rights, it concludes that Malagerio's post-*Miranda* statements are not subject to suppression. In a criminal case, "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless the defendant has been given the prophylactic warnings mandated by *Miranda*." *United States v. Salinas*, 543 F. App'x 458, 462 (5th Cir. 2013) (citing *Miranda*, 384 U.S. at 444) (internal quotations omitted). After a defendant has received his *Miranda* warnings, he may waive those rights, including the right to remain silent, "provided the waiver is made voluntarily, knowingly[,] and intelligently." *Miranda*, 384 U.S. at 444. Malagerio does not argue that any waiver of his *Miranda* rights was not made voluntarily, knowingly, and

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<sup>11</sup> Because the Court finds that the good-faith exception would apply if officers seized Malagerio in his home, it need not and does not address the constitutionality of arresting an individual in his home pursuant to an administrative warrant.

intelligently; instead, he argues that he did not receive *Miranda* warnings at all and that he did not waive his rights. *See* Dkt. No. 26 at 10–14.

The Court finds that Malagerio received *Miranda* warnings. Suppress H'rg Tr. at 179–180. Three witnesses, who the Court finds credible, testified that Malagerio received them, *Id.* at 37–38, 86, 109, while only one witness, Malagerio—who the Court finds to be incredible—testified that officers did not give the warnings, *Id.* at 122.

Additionally, the Court finds that Malagerio waived his rights. *Id.* The same three witnesses that testified that Malagerio received his *Miranda* warnings also testified that Malagerio waived his rights and agreed to talk. *Id.* at 37–38, 86, 109. This testimony is corroborated by Malagerio's jail calls where he discusses that he was extremely cooperative with officers during the encounter. *Id.* at 93–97.

Because the Court finds that Malagerio received his *Miranda* warning and voluntarily, knowingly, and intelligently waived his rights, it concludes that the government did not receive the statements it plans to admit in violation of Malagerio's rights. Accordingly, the Court denies Malagerio's request to suppress the statements that he made to law enforcement during and after his arrest.<sup>12</sup>

**C. The Court denies Malagerio's request to suppress evidence found during the search of his RV because Malagerio gave consent to search.**

The Court finds that Malagerio consented to the search of his RV and, therefore, concludes that the evidence discovered from that search is not subject to suppression. *Id.* at 180. “It is well settled under the Fourth and Fourteenth Amendments that a search

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<sup>12</sup> Malagerio's motion does request suppression of statements made prior to receiving *Miranda* warnings. *See* Dkt. No. 26 at 14. The government has agreed not to admit at trial any statements made before Malagerio received his warnings. Dkt. No. 34 at 8 n.1. Therefore, the Court denies this request as moot.

conducted without a warrant issued upon probable cause is per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973) (internal quotations omitted). Therefore, “a warrantless search of the person is reasonable only if it falls within a recognized exception.” *Missouri v. McNeely*, 569 U.S. 141, 148 (2013). “[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent.” *Schneckloth*, 412 U.S. at 219. “[T]o satisfy the consent exception, the government must demonstrate that there was (1) effective consent, (2) given voluntarily, (3) by a party with actual or apparent authority.” *United States v. Scroggins*, 599 F.3d 433, 440 (5th Cir. 2010). Malagerio does not contest the voluntariness of his consent or whether he had actual or apparent authority to consent; instead, he alleges that he did not give consent in any way. Dkt. No. 26 at 9–10; Dkt. No. 42 at 11–12.

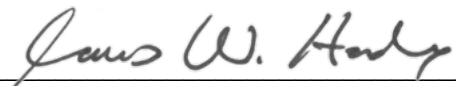
The Court finds that Malagerio gave effective consent to search his RV. Suppress H’rg Tr. at 180. To determine whether a defendant gave “effective consent,” courts look to whether the defendant signaled consent. *Id.* at 442 (“By entering the house under these circumstances, Bell signaled consent to the officers as well.”). Here, three credible witnesses testified that Malagerio consented to a search of his RV before officers began the search and even helped officers find his guns and identifying information during the search. *Id.* at 39, 86–87; 110. Only one witness, Malagerio, testified that the officers did not obtain consent to search. *Id.* at 129. Additionally, the government produced a consent form, signed by Malagerio, memorializing his consent. *See* Government Ex. 5. Finally, Malagerio’s jail calls confirm that he gave consent to search. In those calls, Malagerio states that he gave up his shotgun, was more than cooperative, and had no issue with giving up his guns. *Id.* at

93–97. Also, Malagerio did not state in any of his jail calls that the officers needed a warrant to search his RV or that he did not consent to a search. *Id.* Accordingly, the Court finds that the government has met its burden of showing that Malagerio gave effective consent to search his RV. Therefore, the Court denies Malagerio’s request to suppress evidence found during the search of his RV.

#### **4. Conclusion**

Malagerio moved to suppress evidence arising from his arrest, the officers’ questioning during and after his arrest, and the search of his home. Dkt. No. 26. The government demonstrated—through testimony, documentary evidence, video footage, and recorded phone calls—that officers did not seize Malagerio in his home, that Malagerio received his *Miranda* warnings and waived his rights, and that Malagerio consented to the search of his home. Additionally, the Court concludes that even if officers had seized Malagerio in his home, they would have acted with an objectively reasonable good-faith belief that their conduct was lawful given the case law indicating that such action is lawful and the lack of authority indicating otherwise. Therefore, for the reasons described above and those explained during the suppression hearing, the Court rejects each of Malagerio’s grounds for suppression and denies Malagerio’s Motion to Suppress.

So ordered on February 22, 2021.

  
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JAMES WESLEY HENDRIX  
UNITED STATES DISTRICT JUDGE