

No. 23-14

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IN THE  
*Supreme Court of the United States*

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DELILAH DIAZ,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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**JOINT APPENDIX**

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Petition for Writ of Certiorari Filed: June 30, 2023  
Certiorari Granted: November 13, 2023

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SOUTHERN DISTRICT OF CALIFORNIA (Case No.  
3:20-cr-02546-AJB)

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JA1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

November 2019 Grand Jury

UNITED STATES OF  
AMERICA,

Plaintiff,

v.

DELILAH  
GUADALUPE DIAZ,  
Defendant.

Case No. 20CR2546 AJB

I N D I C T M E N T

Title 21, U.S.C., Secs.  
952 and 960 – Important  
of Methamphetamine

[FILED: August 21,  
2020]

The grand jury charges:

On or about August 17, 2020, within the Southern District of California, defendant DELILAH GUADALUPE DIAZ did knowingly and intentionally import 500 grams and more, to wit: approximately 27.98 kilograms (61.68 pounds) of a mixture and substance containing a detectable amount of methamphetamine, a Schedule II Controlled Substance, into the United States from a place outside thereof; in violation of Title 21, United States Code, Sections 952 and 960.

DATED: August 21, 2020.

A TRUE BILL:

/s/

Foreperson

ROBERT S. BREWER, JR.  
United States Attorney

By: /s/  
ERIC R. OLAH  
Assistant U.S. Attorney

JA2

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF  
AMERICA,

Plaintiff,

v.

DELILAH  
GUADALUPE DIAZ,

Defendant.

Case No. 20CR2546 AJB

Hon. Anthony J.  
Battaglia

**MOTIONS IN LIMINE**

DATE: December 14, 2020

TIME: 3:00 PM

[FILED: 11/25/2020]

\* \* \*

[13:15]

**Motion to Exclude testimony regarding Drug  
Trafficking Organization's sole use of knowing  
couriers and/or any agents' lack of experience with  
"unwitting couriers"**

As previously mentioned, the government has not at the time of filing on November 25, 2020, provided the defense with expert notice, but it is anticipated that the government will supply notice of its intent to introduce testimony concerning the "modus operandi" of drug trafficking organizations. Specifically, the government may seek to introduce testimony regarding unknowing couriers or "blind mules." The

purpose of this testimony is to show that narcotic traffickers do not entrust large and valuable quantities of narcotics to unknowing couriers. In other words, the government will use this testimony to argue that Ms. Diaz must have known about the drugs, and therefore is guilty, because other completely unrelated people, in unrelated cases, knew about the drugs hidden in their vehicles.

Such testimony should be excluded, for at least three different reasons. First, the testimony is demonstrably false, hardly probative, and highly prejudicial, and thus runs afoul of Rules 401 and 403. Second, the testimony is a direct comment on the ultimate issue—Ms. Diaz’s knowledge—and thus is improper under Rule 704(b). Finally, the government has provided no expert notice of its intention to introduce such testimony.

#### **A. Rule 401/403**

Ms. Diaz objects to any expert testimony suggesting that drug-trafficking organizations do not use unknowing couriers, because the government knows or should know that such testimony is, at best, highly misleading.<sup>7</sup> Recent investigations by the

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<sup>7</sup> As the Ninth Circuit stated in its unpublished opinion in *United States v. Venegas-Reynoso*, 524 F. App’x 373 (9th Cir. May 17, 2013), “we believe it is unlikely that going forward the government will present expert testimony from law enforcement officials to the effect that drug traffickers do not, and would not ever, utilize blind mules to import large quantities of drugs into the United States. In view of the *Chavez* complaint, such a statement would not be truthful. As stated in the recent unpublished decision in *United States v. Flores*, No. 11-50431, 2013 WL 681155, at \*2 (9th Cir. Feb. 26, 2013), “[w]e trust that the government will not submit expert testimony that it knows is

government have established that drug-trafficking organizations regularly use people to smuggle drugs without their knowledge. Thus, any purported expert testimony to the contrary would mislead the jury and should be excluded under Federal Rule of Evidence 403.

As detailed in Exhibit B attached to this motion, the use of unknowing couriers to smuggle drugs is now widely accepted. The myriad schemes using innocent people as unwitting drug couriers have been detailed in official government memoranda, affidavits from federal law enforcement officials, and a variety of news reports. In fact, the United States Attorney's Office has released a memorandum illustrating several examples of the ways in drug trafficking organizations have utilized unwitting couriers to import drugs into the United States, including a scheme in which people were offered supposedly legitimate employment in the United States, but were instead used to transport drugs into the country, without their knowledge. *See Exhibit B*. The examples listed at Exhibit B clearly demonstrate that drug-trafficking organizations do use unknowing couriers to smuggle drugs.

Given that drug-trafficking organizations *do* use unknowing couriers, the government should not be permitted to elicit testimony that they do *not*. To allow such testimony would be to sanction the presentation of clearly misleading evidence in the guise of expert experience. Plainly this is improper. *See Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 595 (1993) (“Expert evidence can be both powerful and quite

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inaccurate.” *Venegas-Reynoso*, 524 F. App'x at 377 (9th Cir. May 17, 2013)(unpublished).

misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 of the present rules exercises more control over experts than over lay witnesses.” (citation omitted); *cf. United States v. Kojayan*, 8 F.3d 1315, 1319 (9th Cir. 1993) (“More significantly, we’re taken aback by the government’s assertion that it is *ever* fair advocacy for a lawyer to make false statements in court.”) (emphasis added, internal quotation marks omitted).

Although the government may claim that unknowing-courier testimony is generally admissible, this is simply is not the law. *See United States v. Sepulveda-Barraza*, 645 F.3d 1066, 1070 (9th Cir. 2001) (amended) (per se rules of admissibility for this type of testimony “would be inconsistent with the case-by-case approach mandated by Federal Rule of Evidence 403.”). Rather, under a proper Rule 403 balancing, such testimony should be excluded.

In *Varela-Rivera*, for instance, the defense “was based entirely on the contention that [the defendant] did not know the drugs were in the car.” 279 F.3d at 1177. Thus, knowledge was clearly at issue. The government introduced general evidence about drug smuggling organizations, as well as expert testimony that “a drug smuggler would not risk using an unknowing courier to transport drugs.” *Id.* The Ninth Circuit held that the agent’s testimony about the structure and methods of drug trafficking organizations and the fees paid to couriers within those organizations should have been excluded pursuant to Rules 401 and 403 of the Federal Rules of Evidence. *Id.* at 1179. In other words, the testimony—including unknowing courier testimony—was

irrelevant (Rule 401) and unduly prejudicial (Rule 403). *See id.*

In contrast to *Varela-Rivera*, the cases that have allowed unknowing courier testimony have done so only under specific circumstances—something beyond the defendant merely denying knowledge—that are not present here. And those cases were decided without the benefit of the information that the government has recently learned about the existence of unknowing couriers. In *United States v. Cordoba*, for instance, “the government’s expert testified that sophisticated narcotics traffickers do not entrust 300 kilograms of cocaine to someone who does not know what he is transporting.” 104 F.3d 225, 229 (9th Cir. 1997). While the Ninth Circuit allowed this testimony, it explained that it “was properly admitted to assist the jury in understanding modus operandi in a *complex criminal case*.” *Id.* at 230 (emphasis added).

In *United States v. Murillo*, 255 F.3d 1169 (9th Cir. 2001), the government offered expert testimony on the modus operandi of couriers involved in drug trafficking organizations, including that “drug traffickers do not entrust large quantities of drugs to people who are unaware that they are transporting them.” 255 F.3d at 1176. Although the Ninth Circuit affirmed, it did so because Mr. Murillo opened the door to the testimony, by “designat[ing] a fingerprint expert before trial and argu[ing] in his defense at trial that no fingerprints were found on the drug packages.” *Id.* at 1177; *see also McGowan*, 274 F.3d at 1254-55 (explaining that the basis of *Murillo* was the fact that the defendant in *Murillo* opened the door, and noting that “the issue *Murillo* was purely one of the relevance of the testimony under Fed.R.Evid. 401 and 704;



*Murillo* did not involve an evidentiary challenge under Fed.R.Evid. 403, as did *Vallejo* and the case at bar. Thus, *Murillo* is inapposite.”<sup>8</sup>).

Echoing *Murillo*, the Ninth Circuit’s now-amended decision in *Sepulveda-Barraza* makes clear that its allowance of unknowing courier testimony was largely determined by the fact that the defendant designated and called an expert to testify that drug traffickers do use unknowing couriers. *See* 645 F.3d at 1072. Indeed, the Court specifically held, “[b]ecause [the defendant] provided notice that he would call an expert to testify regarding drug trafficking organizations’ use of unknowing couriers, [the government expert’s] testimony made it less probable that [the defendant] was acting as an unknowing courier, and therefore the evidence was relevant.” *Id.*

Here, unlike *Cordoba*, the jury is not faced with a complex criminal case. Moreover, unlike *Murillo* and *Sepulveda-Barraza*, Ms. Diaz has not designated any experts in the use of unknowing couriers, based her defense on a lack of fingerprints, or in any way opened the door to testimony regarding unknowing couriers. Thus, there is no special circumstance that could arguably justify the admission of such testimony.

There is, however, significant concern for unfair prejudice. In addition to the fact that the government has actual evidence that unknowing couriers are used

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<sup>8</sup> It should be noted, however, that in *United States v. Sepulveda-Barraza*, 645 F.3d 1066, the Ninth Circuit stated, “While *Sepulveda-Barraza* argues that *Murillo* upheld the admissibility of drug courier modus operandi only because the defendant had argued in his defense at trial that no fingerprints were found on the drug packages, *Murillo* imposed no such limitation on the scope of its holding.” 645 F.3d at 1072.

by drug traffickers, the proffered testimony is also prejudicial because it allows the government to introduce, through an “expert” law enforcement official, strong evidence of guilt that has nothing whatsoever to do with the actual evidence against her, *i.e.*, Ms. Diaz must have known, because other completely unrelated people knew. Such testimony is hardly probative, highly prejudicial, and basically unfair. *See Vallejo*, 237 F.3d at 1018.

Additionally, unknowing courier testimony is unfairly prejudicial because, no matter how narrowly tailored, it necessarily links the defendant to a larger drug trafficking organization. If such organizations only use couriers who know what they are doing, by implication, the defendant must know he or she is working for a drug trafficking organization and thus must be a part of that organization. Evidence conveying such implication has been specifically rejected on Rule 403 grounds. *See Vallejo*, 237 F.3d at 1018. As noted in *Vallejo*, testimony “regarding the fee paid to couriers within drug trafficking organizations” is inadmissible under Rule 403, because it “improperly link[s][the defendant] to a vast drug trafficking organization, unfairly imputing the organization’s knowledge of the drug in the cars to [the defendant].” 237 F.3d at 1018. This reasoning is equally applicable to the proffered unknowing courier testimony here, which always links the defendant to some larger organization.

This Court, therefore, should preclude any expert testimony regarding unknowing couriers under Rule 403.

**B. Rule 704(b)**

Allowing the government to introduce expert testimony that drug-trafficking organizations do not use unknowing couriers would also violate Rule 704(b). *See, e.g., United States v. Gutierrez-Farias*, 294 F.3d 657, 662-63 (5th Cir. 2002); *United States v. Ibarra*, 493 F.3d 526, 532 (5th Cir. 2007). Rule 704(b) provides: “In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.” Fed. R. Evid. 704(b).

Unknowing courier testimony offends this rule: if all couriers know there are drugs hidden in their cars, it necessarily follows that the defendant also knew—i.e., had the requisite mens rea. For this reason, the Fifth Circuit rejects such testimony under Rule 704(b). In *Gutierrez-Farias*, 294 F.3d at 658-59, federal agents found marijuana in the tires of a tractor being towed on a pickup truck and the defendant denied knowledge. The government’s proposed expert testimony included a description of the different roles and hiring practices in drug-trafficking organizations. *See id.* at 661-62. When the expert testified, he talked about the need to trust the courier, and concluded, “just as in any other business, the people need a certain amount of credentials, if you will, to be employed or to be sought out by a narcotics trafficking organization.” *Id.* at 662.

The Fifth Circuit held this testimony violated Rule 704(b): “The clear suggestion of [the agent’s] testimony is that, because most drivers know there are drugs in their vehicles, [the defendant] must have known too.

Although admittedly [the agent] did not say the magic words—‘In my expert opinion [the defendant] knew the marijuana was in the tires’—we believe his testimony amounted to the functional equivalent of such a statement.” *Id.* at 663.

In *Ibarra*, 493 F.3d at 532 (5th Cir. 2007), the Fifth Circuit applied its Rule 704(b) analysis specifically to unknowing courier testimony. There, “the district court allowed [a] DEA Agent . . . to testify that in his experience he had never seen a courier entrusted with an amount of cocaine of that size (worth approximately \$4 million) without the courier knowing that he was carrying something illegal.” *Id.* Reversing, the court made clear that such testimony was improper under Rule 704(b) because it commented upon the ultimate issue. *See id.*; accord *United States v. Ramirez-Velasquez*, 322 F.3d 868, 879 (5th Cir. 2003) (“The government goes too far in soliciting the functional equivalent of an opinion whether the defendant knew he was carrying drugs.”); *United States v. Mendoza-Medina*, 346 F.3d 121, 129 (5th Cir. 2003) (finding that district court abused its discretion in admitting agent’s testimony involving “generalized statements regarding distributors having to trust their couriers and includ[ing] the profile that couriers often bring their wives and children along.”).

Here, the testimony that drug traffickers do not use unknowing couriers would be equally the “functional equivalent” of telling the jury that Ms. Diaz knew of the drugs. This would be an improper comment on the ultimate issue.

The government will likely argue that *United States v. Murillo*, 255 F.3d 1169 (9th Cir. 2001), reached the opposite conclusion. But this is

misleading, as *Murillo* contains little by way of analysis. The entirety of its reasoning is contained in four sentences:

Under Rule 704(a), experts are allowed to give their opinions regarding ultimate factual issues. A limited exception to this general rule exists in criminal cases in that expert witnesses may not testify as to the mental state of a defendant in a criminal case when the mental state constitutes an element of the crime charged. Here, the prosecution limited its questioning to (1) whether in Agent Delaney's experience, drug traffickers entrusted thousands of dollars of drugs to couriers who did not know they were transporting them and (2) why, in his experience, traffickers did not do so. Because this limited questioning only evoked expert testimony as to Agent Delaney's experience with drug traffickers and not any 'explicit opinion' of Murillo's state of mind or knowledge of his transportation of drugs, we hold that the expert testimony here did not violate Rule 704(b).

*Murillo*, 255 F.3d at 1178 (quotation marks and citations omitted).

Notably, *Murillo* did not consider that unknowing courier testimony is the functional equivalent of testimony as to the ultimate issue of a defendant's state of mind. *See United States v. Morales*, 108 F.3d 1031, 1033, 1037 (9th Cir. 1997) (*en banc*) (holding that Rule 704(b) is violated if the expert's testimony "necessarily impl[ies] the mens rea element."). As such, it cannot control the outcome of this case. *See*

*Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285, 1288 (9th Cir. 1985) (“unstated assumptions on non-litigated issues are not precedential holdings binding future decisions.”); *Webster v. Fall*, 266 U.S. 507, 511 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.”). Accordingly, this Court should not permit the government’s proposed unknowing courier testimony.

Moreover, following Murillo’s characterization of the testimony—one agent’s experience with whether drug trafficking organizations use unknowing couriers—creates another issue. For example, the Government may seek to have a purported export testify not only as to why drug trafficking organizations use knowing couriers but also **to that agent’s lack of experience, as an agent, with the use of unwitting couriers**. This testimony should be excluded as irrelevant under Rule 401 and more prejudicial than probative under Rule 403. One agent’s alleged lack of experience with the use of unwitting couriers is not relevant. It is simply one agent’s experience and constitutes only anecdotal evidence, which runs in direct contravention to established knowledge that drug trafficking organizations in fact do use unknowing couriers.

It is also unduly prejudicial and should be excluded under Rule 403 because it would leave a misimpression in the juror’s minds. This Court, the Government, and HSI as an organization are well aware that drug trafficking organizations use (and have used in the past) unwitting couriers and allowing testimony that one agent has not experienced a case

with an unwitting courier is unduly prejudicial and must be excluded.

**C. Notice / Discovery**

Finally, any unknowing courier testimony should be not be permitted, because the government has failed to provide notice and discovery. Should the government provide such notice after these motions are filed, the defense reserves the right to comment on the deficiency of that notice and discovery.

[21:26]

\* \* \*

JA14

ROBERT S. BREWER, JR.  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF  
AMERICA,

Plaintiff,

v.

DELILAH  
GUADALUPE DIAZ,  
Defendant.

[FILED: 11/30/2020]

Case No. 20CR2546 AJB

**THE UNITED  
STATES' MOTIONS IN  
LIMINE TO:**

1. Admit Defendant's Statements
2. Admit Expert Testimony
3. Admit Border Crossing Records
4. Admit GPS Tracking Data and Map
5. Admit Demeanor Evidence
6. Exclude Evidence Not Timely Produced as Reciprocal Discovery

DATE: December 14, 2020

TIME: 3:00 PM

PLACE: Courtroom 4A

JUDGE: Honorable  
Anthony J. Battaglia



The Plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Robert S. Brewer, Jr., United States Attorney, and Eric R. Olah and Joseph J.M. Orabona, Assistant United States Attorneys, hereby files its Motions in Limine.

\* \* \*

[9:17]

**5. Structure and Operation of Drug Trafficking Organizations**

In addition to the value of the seized methamphetamine, the Court should permit Agent Flood to testify on the general structure and operation of drug trafficking organizations. The Ninth Circuit routinely affirms the admission of such testimony, including in importation cases in which the defendant denied knowledge. *See United States v. Valencia-Lopez*, 971 F.3d 891, 901 (9th Cir. 2020) (“We do not question that expert modus operandi testimony is admissible in drug smuggling cases involving unknowing or coerced couriers.”); *United States v. Gilmore*, 811 F. App’x 997, 999 (9th Cir. 2020) (unpublished) (affirming methamphetamine importation conviction and admission of testimony on “the structure and operation of drug trafficking organizations” because it “was presented in response to the heart of appellant’s defense of being an unknowing drug courier”); *United States v. Quintero*, 567 F. App’x 522, 523 (9th Cir. 2014) (unpublished) affirming importation conviction, explaining testimony “about the structure and modus operandi of drug trafficking organizations” was probative of “whether Quintero had knowledge of the heroin concealed within the drive shaft of his car.”); *United*

*States v. Quintero-Mendoza*, 561 F. App'x 607, 608 (9th Cir. 2014) (unpublished) (affirming importation conviction and admission of “expert testimony as to unknowing couriers and the structure of drug trafficking organizations”); *United States v. Venegas-Reynoso*, 524 F. App'x 373, 375-76 (9th Cir. 2013) (unpublished) (affirming admission of “expert’s testimony relating to the structure and operations of drug trafficking organizations” “because it ‘went right to the heart of [Reynoso’s] defense that he was simply an unknowing courier””) (quoting *United States v. Murillo*, 255 F.3d 1169, 1177 (9th Cir. 2001), *overruled on other grounds as recognized in United States v. Mendez*, 476 F.3d 1077, 1080 (9th Cir. 2007)); *United States v. Majak*, 486 F. App'x 664, 665 (9th Cir. 2012) (unpublished) (affirming admission of “[e]xpert drug-courier testimony,” where it “was relevant because Majak disavowed knowledge as to how the marijuana got into his trunk.”).

Specifically, the United States anticipates Agent Flood testifying that drug trafficking organizations:

- Have drugs loaded into vehicles in Mexico, and couriers typically drive the vehicles to locations in the United States where they are unloaded.
- Pay couriers to import drugs from Mexico into the United States. *See United States v. Sepulveda-Barraza*, 645 F.3d 1066, 1072 (9th Cir. 2011) (explaining expert witness permissibly testified about relationship between drug couriers and traffickers and that “there’s an inherent benefit to making the payment [to a drug courier]” and “having a reliable means of smuggling the load to the intended destination.”).

- Compensate couriers in cash and occasionally in drugs or vehicles. *See United States v. Mejia-Luna*, 562 F.3d 1215, 1219 (9th Cir. 2009) (explaining agent testimony on “the manner and method of payment” “assisted the jury in understanding alien smuggling schemes, their operational framework, and Mejia-Luna’s particular role as a ‘load’ driver in the operation”); *United States v. Gomez*, 725 F.3d 1121, 1129 (9th Cir. 2013) (affirming admission of expert testimony that payment to couriers is “relatively small in comparison to the value of the narcotics being smuggled”); *see also United States v. Manjarrez*, 584 F. App’x 437, 437 (9th Cir. 2014) (“The defendant accepted payment and a vehicle in exchange for importing a large quantity of drugs, 11 kilograms of cocaine, into the country.”).
- Maintain contact with their couriers over cell phone and by using trackers in the courier’s car, and that they frequently change phone numbers.
- Generally do not entrust large quantities of drugs to couriers that are unaware they are transporting them.

The Ninth Circuit routinely affirms the admission of expert testimony on the last point. *See Sepulveda-Barraza*, 645 F.3d at 1072 (“expert testimony on drug trafficking organizations and the behavior of unknowing couriers is admissible when relevant, probative of a defendant’s knowledge, and not unfairly prejudicial under the standard set forth in the Federal Rules of Evidence.”); *United States v. Murillo*, 255 F.3d 1169 (9th Cir. 2001), *overruled on other grounds*

by *Muehler v. Mena*, 544 U.S. 93 (2005) (allowing expert testimony about “how drug traffickers do not entrust large quantities of drugs to people who are unaware that they are transporting them.”); *United States v. Gil-Garcia*, 769 F. App’x 479, 481 (9th Cir. 2019) (unpublished) (affirming admission of testimony “that it was unlikely that a drug trafficking organization would use an unknowing courier due to the difficulty and financial risks” as “relevant, probative of defendant’s knowledge and not unfairly prejudicial”); *United States v. Quintero*, 567 F. App’x 522, 523 (9th Cir. 2014) (unpublished) (rejecting challenge to admission of “testimony that drug trafficking organizations do not use blind mules”); *United States v. Gomez*, 725 F.3d 1121, 1129 (9th Cir. 2013) (“The bulk of Agent Banos’ testimony plainly passes muster. For example, Agent Banos testified that, *in his experience* (that is, applying his expertise), drug organizations do not use unknowing couriers.”); *United States v. Wilson*, 533 F. App’x 765, 766 (9th Cir. 2013) (unpublished) (“admitting testimony regarding the use (or, rather, nonuse) of unknowing drug couriers was proper in this case”); *United States v. Russell-Guerrero*, 533 F. App’x 738, 739 (9th Cir. 2013) (unpublished) (affirming admission of HSI Special Agent’s testimony about unknowing couriers in part “because Defendant claimed that he had no knowledge of the drugs”); *United States v. Venegas-Reynoso*, 524 F. App’x 373, 376 (9th Cir. 2013) (unpublished) (affirming admission of “expert’s opinion regarding the non-use of blind mules by drug traffickers”); *United States v. Flores*, 510 F. App’x 594, 595 (9th Cir. 2013) (unpublished) (affirming methamphetamine importation conviction and

admission of expert testimony on blind mules, which “was probative in light of Flores’s theory that he was an unknowing courier”); *United States v. Castellanos*, 524 F. App’x 360, 362 (9th Cir. 2013) (unpublished) (affirming admission of expert testimony that drug trafficking organizations generally do not use unknowing couriers); *United States v. Cordoba*, 104 F.3d 225, 229 (9th Cir. 1997) (“expert testimony that drug traffickers do not use unknowing transporters was clearly probative of Cordoba’s knowledge that he possessed narcotics”).

[12:14]

\* \* \*

JA20

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF  
AMERICA,

Plaintiff,

v.

DELILAH  
GUADALUPE DIAZ,

Defendant.

Criminal Case No.  
20-CR-2546 AJB

**TRIAL  
STIPULATIONS**

Date: January 4, 2021

Time: 8:30 a.m.

Judge: Honorable  
Anthony J. Battaglia

[FILED: 12/11/2020]

The PARTIES HAVING AGREED, IT IS HEREBY STIPULATED between plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Robert S. Brewer, Jr., United States Attorney, and Eric R. Olah and Joseph Orabona Assistant U.S. Attorneys, and Defendant DELILAH GUADALUPE DIAZ, by and through her counsel, Danielle Iredale, that the following facts are true beyond a reasonable doubt:

1. The entire substance contained inside 56 packages and seized from the white Ford Focus with California license plate number 6FRV627 was methamphetamine, a Schedule II federally controlled substance, with an actual weight of 24.82 kilograms, or 54.71 pounds, which excludes the packaging materials. The methamphetamine had a purity of 99%.

2. This stipulation may be entered into evidence without objection in lieu of witness testimony.

JA21

3. This stipulation is being entered into freely and voluntarily by all parties.

**SO STIPULATED AND AGREED.**

DATED: 12/8/20 Respectfully submitted,

ROBERT S. BREWER, JR.

United States Attorney

*Eric R. Olah* 12/11/20

ERIC R. OLAH

JOSEPH J.M. ORABONA

Assistant U.S. Attorneys

*Danielle Iredale*

DANIELLE IREDALE

Counsel for Defendant

*Delilah Diaz*

DELILAH GUADALUPE DIAZ

Defendant

JA22

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  Plaintiff,	No. 3:20-CR-2546 AJB March 16, 2021
v.	
DELILAH GUADALUPE DIAZ,  Defendant.	Courtroom 4A San Diego, California

**TRANSCRIPT OF PROCEEDINGS**

(Jury Trial – Day 1)

BEFORE THE HONORABLE ANTHONY J.  
BATTAGLIA, DISTRICT JUDGE

COURT REPORTER AMANDA M. LeGORE  
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FOR THE MICHAEL WHEAT  
PLAINTIFF: Assistant U.S. Attorneys  
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JA23

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FOR THE  
DEFENDANT:

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[145:10 – 13]

**DIRECT EXAMINATION  
[OF OFFICER NICK GUEVARA]**

BY MR. OLAH:

Q. Good afternoon, Officer Guevara.

Where do you work?

A. I work for the San Ysidro Port of Entry, U.S.  
Customs Border Protection.

\* \* \*

[150:21]

Q. Were you working on August 17th, 2020?

JA24

A. I was.

Q. At which port of entry?

A. At the San Ysidro port of entry.

Q. And what shift were you working that day?

[151]

A. I was working from 2200 hours to 0600 hours.

Q. And for those of us not in the military, can you translate that?

A. 10:00 p.m. to 6:00 a.m.

Q. Do you work that shift often?

A. I do. That is my normal shift.

Q. And on that day, at that shift, what – what was your assignment? Were you in primary, secondary, or elsewhere?

A. I was the primary officer.

Q. Did you encounter a white Ford Focus that morning?

A. I did.

Q. Did that car have California license plates?

A. It did.

Q. Do you recall the approximate time of that initial encounter?

A. Approximately – it was – it was around 2:00 in the morning.

Q. And was it dark at 2:00 in the morning, when you encountered this car?

A. It was.

JA25

\* \* \*

[153:17 – 19]

Q. When this car pulled into your lane, was anyone in the car with the driver?

A. No.

\* \* \*

[158:13]

Q. Officer Guevara, what just happened right here?

A. As soon as the vehicle pulled up, I had noticed that the vehicle didn't have too many crossing histories on the plates. I asked her to roll down the rear window, and I believe she said it was manual. So I stepped out of my booth, and that's when I attempted to roll the window down, by opening up the door. And the window rolled halfway down, and I felt some resistance on it. And I heard a – a crunch-like sound in the door. So I rolled it manually up one more time, then I rolled it back down a second time. And I heard a – again, the crunch-like sound. And I felt the – the window resisting me to fully roll it down.

Q. Can you describe for the jury what that sound is, beyond [159] “crunch-like”?

A. Crunch-like sound. If you ever grabbed a bag of cereal, and you just started crunching it around, that's the sound that I – I was hearing inside the door. So like a – more like a vacuum-sealed.

\* \* \*

[160:18 – 20]

Q. Did you at some point ask her about the car?

A. I did. I asked her if the car belonged to her, and she stated it was her boyfriend's car.

\* \* \*

[164:5]

Q. And on which part of the car did you start your physical inspection?

A. It was the driver rear door window.

Q. Why did you start there?

A. Normally – on the norm, historically, if – if vehicles do have contraband, whatever the contraband may be, it's usually in the doors. The doors have larger pockets for contraband to fit.

Q. And have you worked – you've worked in the seizure lot before?

A. I do. I'm one of the lead officers back there.

Q. Okay. And you have inspected vehicles in secondary and found what?

A. Normally, if they do have contraband, that's one of the main locations where they just fill up the contraband, whatever it may be.

Q. And did you initially ask the defendant to roll that window down?

A. I did.

Q. Okay. Did she start to do that?

A. She did. She – she turned around and she reached back, [165] and she said it was manual. And

that's when I began my physical inspection, and I started manually rolling it down myself.

Q. And did you – you talked about the – calling for assistance.

What assistance was rendered at – in the primary lane?

A. So I had reached over to my – my radio, and I – I radioed for AT Set, which is our anti-contraband team, to come and assist me so I can utilize their buster. And that tool is what measures density.

Q. I'll cut you off there and ask you that question. What – tell us about the buster. What is a buster?

A. The buster, what it is, is it – it's a – a – it utilizes density. It shoots out radiation. It's not harmful radiation. But it shoots back a little bit of radiation, and it bounces right back. And it gives you a measurement of how high the buster reading is for that door or that panel.

Q. Did a K-9 assist as well?

A. Yes. Later, in time.

Q. Okay. And during this inspection, where there was the buster and the K-9, did you make any observations of the defendant?

A. I did.

Q. What observations did you make?

[166]

A. The observation of her just looking at the rearview mirror. She kept looking at us to see what we were inspecting, the entire time.

Q. Anything else?

A. That's all.

Q. What happened – was this car sent to secondary?

A. No, it was not.

Q. It was not. What happened to it?

A. After – after getting the keys from her, I believe AT Set showed up, utilized the buster. And I had a measurement reading of 57, 59. And that's a pretty high measurement reading for the buster for a door. I believe a door is supposed to be between 15 and 20. It's really small. It's just metal. Only metal and air. And so I got that reading.

I noticed our K-9 officer roaming around, behind that vehicle. And I asked for his – for his help, as well.

Q. Was the defendant escorted out of the vehicle at some point?

A. She was.

\* \* \*

**DIRECT EXAMINATION  
[OF ALEXANDER ZEPEDA]**

BY MR. WHEAT:

[178:22-25]

Q. Mr. Zepeda, how are you employed?

A. I –

Q. How are you employed?

A. I'm employed at the Customs and Border Protection.

\* \* \*

[179:24]

Q. And, sir, did you have an opportunity to encounter a white Ford Focus, 2008?

[180]

A. That is also correct.

MR. WHEAT: Your Honor, at this time, I would ask that the witness be shown Government's Exhibit 1-5, previously admitted.

THE COURT: You may.

Let's go ahead and bring that up. The screen is on for the jury.

BY MR. WHEAT:

Q. Do you recognize that, sir?

A. I do.

Q. What do you recognize that to be?

A. It is a white-colored 2008 Ford Focus.

Q. And did you have any involvement with that vehicle?

A. I did.

Q. What did you do with it, sir?

A. I performed the inspection on the 2008 Ford Focus.

Q. And the inspection you performed, was that a primary or a secondary inspection?

A. It's a secondary inspection.

\* \* \*

[186:4]

Q. And what happened after you disassembled the door?

A. Upon disabling – upon entering inside the door, I noticed five concealed packages located inside the natural space of the door.

Q. If you could look at 2-5 now.

What does that picture depict, sir?

A. That is also the driver's side door with the plastic taken off.

Q. And do you see something in that photograph that doesn't normally come in a Ford Focus?

A. There are packages located inside the vehicle.

Q. And how – could you describe the packages, for the ladies and gentlemen of the jury.

A. It is a vacuum-sealed package with markings, inside the vehicle.

Q. Okay. And approximately how many do you see in this photograph?

A. In this photograph, you can see approximately around four to five.

Q. Okay. On the upper right-hand side of the photograph, there appears to be some type of a plastic sheet with some black tar towards the bottom, above the exhibit sticker.

[187]

Do you see that, sir?

A. I do.

Q. What is that, sir?

A. That is the plastic shielding located inside the door. It is – it is a factory compartment that is built in the door of vehicles.

Q. It's a naturally occurring void in the door?

A. That is correct.

Q. Okay. Now, if we could take a look at 2-6.

What does that depict, sir?



A. This is a picture of – showing the driver’s side door, in front, as well as the passenger side – passenger door on the driver’s side.

Q. So that’s the rear driver’s side passenger door on the left side of the car? Is that correct?

A. That is correct.

Q. And does it have a similar structure as the driver’s side door front?

A. It does.

Q. And is it constructed the same way, with a natural void below the window?

A. Yes.

Q. And can you see packages in this picture, as well?

A. I do see packages located inside, as well.

Q. And does it have the same type of plastic factory [188] shielding on that compartment?

A. That is correct.

Q. Now, the packages that are depicted in this photograph, how far up do they extend?

A. They extend approximately to the height of the door.

Q. And would those packages have been – in any way impeded the operation of the window on that door?

MR. IREDALE: Objection. Speculation.

THE COURT: If you know, you may answer. Do you know?

THE WITNESS: They are in the way of the mechanism of the window going up and down.

THE COURT: Overruled.

BY MR. WHEAT:

Q. Sir, if you would look at that photograph, how many packages do you see in that?

A. You can approximately see about five packages located inside.

\* \* \*

[189:19]

Q. So now, if we could go to 2-7, what does that photograph depict?

A. That is now a picture of the passenger side, the rear door.

Q. And it's a similarly configured door, with a naturally occurring void?

A. That is correct.

[190]

Q. And can you see any packages contained within that door?

A. Yes.

Q. Approximately how many do you see there?

A. You can approximately see about four packages located inside.

Q. So if we now move to 2-8. Do you see that, sir?

A. I do.

Q. And what does that photograph depict?

A. This is a photo of the passenger-side front door.

Q. And can you see any packages in the naturally occurring void there?

JA33

A. Yes.

Q. Approximately how many do you see?

A. You can approximately see about six packages located in there.

\* \* \*

[193:10]

Q. What's a quarter panel?

A. It is the natural void space inside a vehicle, located inside the trunk.

Q. So if you look at – go back to 2-10, that area isn't depicted in that photograph, is it?

A. Yes.

Q. And it's because it's covered by some type of carpet?

A. Yes. The left side – the quarter panels are located underneath – they're located beneath the – the carpet that's blocking it.

Q. So you removed the carpet to get to that quarter panel?

A. Yes.

Q. And what happened when you removed the carpet?

A. When I removed the carpet on the left side quarter panel on the driver's side, I located a package in there.

Q. And that's the one that's depicted in 2-11?

[194]

A. Correct.

Q. Now, sir, if you go to Exhibit 2-12. Do you recognize that?

A. Correct.

Q. What do you recognize that to be?

A. That is a package located inside the driver's-side quarter panel.

Q. And is it similarly connected with a string?

A. That is correct as well.

Q. Okay. Did you have an occasion to use that string to remove the packages from the quarter panels?

A. I did.

Q. And what happened when you used that string?

A. After pulling on the string, as well as the package, more packages also connected to a string were being pulled out as well.

Q. After you removed the doors and the packages from the doors and the packages from the quarter panel, were you able to count up the packages?

A. Yes.

Q. And how many total packages did you retrieve from this vehicle?

A. At the end of my inspection of the 2008 white Ford Focus, I located a total of 56 packages located inside the vehicle.

Q. And now showing you what's been admitted as 2-13, would [195] you take a look at that, sir. What is that?

A. That is a scale. And on top of the scale are all of the packages located inside the vehicle.

Q. And is there a reading on the scale?

JA35

A. That is a total weight of 27.98 kilos.

Q. A kilogram?

A. I apologize. Kilograms, yes.

Q. Okay. And how much is a kilogram in pounds?

A. It's almost about double. It's about 2 point – I want to say three –

Q. 2.3 pounds?

A. Kilograms. Yes.

Q. Okay. So at 27.98 kilograms, that's approximately 54 pounds?

A. Roughly, yes.

\* \* \*

[200:10-14]

Q. And in addition to the 54 pounds of methamphetamine, did you seize anything else in this case?

A. Yes.

Q. What was that?

A. I seized the vehicle, as well as the two cell phones.

\* \* \*

JA36

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  Plaintiff,  v. DELILAH GUADALUPE DIAZ,  Defendant.	No. 3:20-CR-2546 AJB March 17, 2021  Courtroom 4A San Diego, California
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**TRANSCRIPT OF PROCEEDINGS**

(Jury Trial – Day 2)

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**DIRECT EXAMINATION  
[OF JEFFREY PORTER]**

BY MR. OLAH:

[29:20-25]

Q. Good morning, Agent Porter.

A. Good morning.

Q. Where do you work?

A. I'm a special agent for Homeland Security  
Investigations.

Q. And what is your job title?

A. Special agent.

\* \* \*

[85:5 – 15]

Q. Agent Porter, you met with and interviewed Ms. Diaz?

A. Yes.

Q. Did you conduct an interview in a room with recording equipment?

A. Yes.

Q. Video recording equipment?

A. Yes.

Q. Was anyone else in the room with you and Ms. Diaz?

A. Yes.

Q. Was the entire interview video recorded?

A. Yes.

\* \* \*

[95:10 – 17]

Q. Agent Porter, was – did Ms. Diaz indicate to you that she and this Jesse boyfriend exchanged numbers?

A. She told me that Jesse didn't have a phone number. That he would contact her using different phone numbers every time. And that she did not have his number, but he had her number.

Q. And clip 8, which we just watched, was her statement that she exchanged numbers with Jesse?

A. It was.

\* \* \*

[97:1 – 22]

Q. Did Ms. Diaz refer to a Jesse throughout the interview?

A. Yes.

Q. And this clip that we just watched, did she refer to him as Jesus?

A. Yes.

Q. And what is her story about how she got from Moreno Valley to Mexico?

A. She told me that her daughter, Ashley Gaw, was already planning a trip to go to Papas & Beer in Rosarito. And when her boyfriend Jesse had asked her to come down to see him at Papas & Beer, she asked Ashley if she could hitch a ride with her and her friends down to Rosarito.

Q. Did you ask her who else was in that truck with the defendant?

A. Yes.

Q. Why did you ask that question?

A. I wanted to know who else she went to Mexico with, so that I would be able to potentially speak with them and corroborate what she had been saying to me.

Q. And she provided you the names of three individuals in that truck with her. Is that right?

A. Yes.

\* \* \*

[99:18]

Q. Follow-up questions for you, Agent Porter.

Did Ms. Diaz state that she had met with two or three of Jesse's friends at the bar?



A. Yes.

Q. Was she able to provide you those friend's names?

A. No.

Q. Did she state that she stayed at a house belonging to one of her – one of Jesse's friends, rather?  
[100]

A. She said she believed it was one of Jessie's friends, yes.

Q. Was she able to provide the name of that individual?

A. No.

Q. Did she – what did she state about when she last had a functioning vehicle?

A. She said she had a vehicle, but she had crashed it a few months earlier.

Q. How many months earlier?

A. I believe she said two to three.

Q. When did – when, that weekend, did Jesse provide the vehicle to her?

A. According to her statement, she said that he offered her the vehicle on Saturday to drive home, but she chose not to drive home. And then, on Sunday, she took the vehicle and drove home. Sunday evening.

Q. And what was her explanation for why she didn't come home Saturday night, when Jesse had given her the car?

A. She told me that she couldn't see at night, and she didn't want to drive that late back to the border.

\* \* \*

JA40

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  Plaintiff,  v. DELILAH GUADALUPE DIAZ,  Defendant.	No. 3:20-CR-2546 AJB March 18, 2021  Courtroom 4A San Diego, California
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**TRANSCRIPT OF PROCEEDINGS**  
(Jury Trial – Day 3)

\* \* \*

**[CLOSING ARGUMENT]**

[BY MR. OLAH]:

[130:1]

In August 2020, we are five to six months into a pandemic. People were canceling travel plans. And yet Ms. Diaz felt it imperative to get to Mexico for a three-day trip.

We heard all of evidence about how she got there, what she did there. But we're here today because of what she came back with. And what she came back with was one key. One key to the car she was in alone. There was no Jesse in the car. There was no Ms. Gaw in the car. It was the defendant at the driver's seat.

She had one key because she had one job: To get that meth, this meth, past the inspection at the port of entry.

Two – she had two cell phones with her. Two cell phones with her (indicating) that Officer Zepeda seized. When asked about those phones, remember what she had to say about the iPhone? And, more importantly, what she didn't have to say about the iPhone?

Someone gave it to her, and she refused to say who "I'm not telling you. It doesn't matter who. They've got nothing to do with this," she said.

2:00 is an important number because that's what time she crossed. 2:00 in the morning. When regular commuters were crossing, going to work, she's trying to blend in. She's trying to blend in with that commuter traffic.

The reason we're here is for the third thing she's [131] got with her, and that's \$368,000 worth of methamphetamine.

And like myself before you, she is surrounded by it.

It's in the front passenger door. It's in the front driver door (indicating). It's in the rear driver side door. It's in the rear passenger side door. And it's in the rear quarter panel, above the trunk.

She – she's in this car for hours, in this cocoon of methamphetamine. Her leg is touching the door. Her arm is touching the door. And she's bringing with her 56 of these (indicating). 56 of these.

Agent Flood told us today what those were worth. Wholesale value. Right? A pound – and, remember, we've got 56 of these with a stipulated weight of 54

pounds. So call this a pound. Call this a grand. She's got these stuffed in the car that she alone is crossing.

The United States has the burden of proving two elements to you beyond a reasonable doubt, and we accept that burden. I submit to you we've presented evidence meeting that burden, but let's talk about our elements here.

Knowingly brought methamphetamine into the United States from a place outside the United States. Come back to this one in a minute.

Knew the substance she was bringing was methamphetamine or some other federally controlled substance.

The substance part, the parties have made easy for [132] you.

We've reached a stipulation, beyond a reasonable doubt, that there were 56 of these (indicating). 56 of these stuffed in this car that Ms. Diaz crossed at 2:00 in the morning.

It's a federally controlled substance with an actual weight of 24.82 kilograms or 54 pounds, which excludes the packaging materials.

The parties have stipulated that this methamphetamine was 99 percent pure. So whether it's some other federally controlled substance is not in dispute. The parties have stipulated to that.

The question becomes how do we know she knows? How we know she knows about the meth?

The first is control. She's the only one in this car. She's been in this car for hours. And while there's this claim that it was just lent to her, look what she's using the cupholder for. It's a spittoon. This is a borrowed car? No, this is a car that she has taken control of. She

has the one key needed to operate it, the one key needed to open the truck, and she's spitting pistachio shells not into a cup, not into the bag; into a cup holder. This is her car.

Her bags are in the trunk her bags. Two bags in the trunk. She's got her pistachio shells in the cup holder. She's got the key in her hand. And she's got her bags in the [133] trunk. She's in command of this vehicle, and I want to distinguish those two: Control of the car and command of the vehicle. Command of the vehicle is demonstrated by the defendant. When Officer Guevara says, "Ma'am, can you roll down that back window," she knows. Right? She knows. "Give me a minute. Let me try to reach this back here." She knows there's no figure here, because she's been in that car for hours.

She knows that when he says, "Pop the trunk," she's flying out of that car door. "You're going to need this. You're going to need in key to open that trunk." And she's happy to give it to him. Because she knows the trunk looks like that. You heard from the defense auto expert today who said this trunk looks like what he teaches his students. It's buttoned down. It's clean. It's concealing some of these packages (indicating). She's happy to give up that key that she knows opens that trunk because she knows that's what it looks like.

She's surrounded by meth. Again, we're talking about how she – how we know she knows that she is surrounded by it. She's encapsulated by it. How can you not know that that is in the driver's side door (pointing)?

Officer Guevara took the stand and described to you his encounter, and how he knew to look in the back

window because that's a common spot for drugs to be hidden.

[134]

And you remember what he said when he rolled that window down. That crunch. Right? That crunch is that window you're looking at hitting these (indicating). Hitting these.

You don't think the defendant, at some point on this drive, rolled those windows down?

I've touched on value already.

We heard from Officer Flood – or, excuse me, Agent Flood this morning, telling you how he arrived at these figures. Right? I looked at the seizure date: August 2020. I look at the pure substance. Right? So he looks at the pure substance. And he does some simple math. Right? One kilogram is about 2.2 pounds. You do the math, you're looking at 54 pounds.

The pound price is what he uses for wholesale.

If you're buying in bulk, each of these is worth a grand. And she's got 56 of them. He says, conservative low-end estimate, using that thousand-dollar-a-brick price, a thousand-dollar-a-pound price, you're looking at 54 grand.

But look at that range he used, or that range that's available per pound. You can safely double this 54,000 and still be within the range of fair market value wholesale price.

And if these drugs reach the communities they're intended for, if these reach the users, that number goes sky high. Low-end figure, \$368,000. Again, look at that range of the fair market value.

[135]

He used the \$15 per gram. He could have used the \$40 per gram. Again, you can safely double – double that, and you’re talking about more than a half million dollars of meth surrounding the defendant.

She knows. This is too valuable of product for her not to know.

We heard from Agent Flood about payment to couriers, how there’s a risk involved in this business. And one of the ways to minimize risk, to minimize risk of losing this (indicating) is to pay your drivers. Pay your couriers. And that payment can take a few forms. Traditionally, cash. But also cars or drugs. You get to keep the load vehicle. You get to use the load vehicle. And I want you to recall one of the post-arrest clips – the interview clips that we saw of Ms. Diaz.

The “he,” in the sentence is Jesse. She’s describing how after stewing with Jesse all day on Saturday, all is forgiven. And he says, “You can use my car.” Her quote: “He goes, you can just use this car.” Jesse said, “Maybe, if you like it, you could even buy it from me.” Critically, defendant says, “Because I don’t have a car right now, and I need a car, you know.”

Remember that quote when you’re reflecting on Agent Flood’s testimony about courier compensation. She told Agent Porter she had crossed – or crashed her car four to five [136] months ago. She went four to five months in Moreno Valley without a car.

And Jesse, the hero, comes through with one on Saturday night.

We’ve talked about her control and command of the car. We’ve talked about how she is surrounded by meth. From any one of these bullet points, you can and should infer knowledge.

JA46

These are bullet points of how we know she knows. I want you to consider her conduct and lies at primary. You saw a clip of Officer Guevara's encounter with Ms. Diaz, how he shot out of that booth and asked her to roll down the window just by looking at the crossing history. It was red flag number one for Officer Guevara. She lies to him when she says – I should back it up. He asks, "How often do you cross?" "Like six months," is the response.

And do you remember? Do you remember in the video, Officer Guevara's reaction to that? Like the first time he shows emotion in that video. Six months? Six months?

Here's Ms. Diaz's crossing history. The first row there shows this offense, her crossing on August 17th. Remember, subtract the three hours because this is in Eastern time. At 2:11 a.m.

She said she hadn't crossed in six months. Is that what this table shows? No. She crossed three months prior. [137] She crossed on May 2nd. And note the time. For a driver who can't really see at night, she crossed at 10:30 at night three months ago. Not six months ago.

And that wasn't the only one. It's not like she forgot about one. Look at the next entry. She crossed just two days prior, on April 30th. You may be willing to forgive the last one there. The last entry here, or noted on this slide, is five months to the day prior to her offense. Five, six months that's forgivable. Forgetting about two inbound crossings two days apart, I submit to you she's lying when she says it's been six months since I crossed. She's lying in primary.

Let's look at those last two crossings prior to the offense date.



JA47

In the top left corner of this image, you can see the license plate numbers, 6WXG089. Again, that's our 10:30 at night crossing. That's not the load vehicle. That's not the load vehicle. And it's different from the one she crossed in two days prior, on April 30th. You've got this license plate number 5MZK287.

She told Agent Porter she had crashed her car four to five months ago, and yet she's crossing two different ones three months ago? She's lying to Officer Guevara. She's lying to Agent Porter. She's trying to distance herself from the crunch that Officer Guevara heard. She knows about these [138] drugs. She's crossing at 2:00 in the morning.

Sometimes as an attorney I have to ask silly questions, and I think I heard some snickers when I asked Officer Guevara, before we had heard her story, was it dark at 2:00 in the morning? Yes, it was dark. Had it been dark for a few hours before? Yes. Was it going to be dark for a few hours after that? Yes.

And now you all know those were silly but relevant questions to evaluating her claim to Agent Porter that she didn't go home Saturday night because, quote, I can't really see at night.

The time of day wasn't the only red flag to Officer Guevara. The crossing history was a red flag. Her saying San Diego was a red flag. Everyone else was going up to L.A. They're commuters coming back from the weekend.

He was asked, You sure she didn't say Moreno Valley? And what did he say? I still hear San Diego. I heard San Diego. On the referral slip that I wrote after this encounter and signed my name to, I heard San Diego.

San Diego was a slip. San Diego was a slip. She only needed to get to San Diego because once she gets being past primary, this is worth \$368,000 (indicating). But because of these red flags, they're worth nothing. They're worth nothing.

She says, "I work in aerospace." The parties have [139] stipulated to that. They've stipulated to that. She's trying to blend in with those commuters. The big red flag, right, for Officer Guevara is that crunch. That glass meeting packaged methamphetamine. Crunch.

We paused the video at the next point. Right? He asked, "Can you open that trunk again?" She's happy to do so because she knows that trunk looks like it's supposed to. She knows it's buttoned down. Just her bags. There's no bricks laying around. There's no bricks in her bag. She knows that trunk is buttoned down. It's a stage. She gives him that single key.

Remember what Officer Guevara described to us when he takes possession of that key?

There's no mail key. There's no house key. It's a key ring with one key. He takes that – takes that mic and calls for backup. He knows it's a loaded car.

He already talked about her responses in response to his questions. You know, crossing history. Six months? That's not true. And neither is her claim that this is her boyfriend's car. The claim she throws out there when those other officers arrive, that's when the boyfriend story comes up.

You heard about the discovery of a GPS device, and you got to see some maps showing this journey. Right? Around Mexico. Before we dive into that journey, I want you to think [140] about what Agent Flood told us about how drug trafficking organizations operate.

It's a risky business. It's a risky business, and they take precautions to protect their product. And they did so in this case.

You heard from Mr. Davis this morning as well. He – he looked this very device up, and said, “60 bucks on Amazon.” That's pretty cheap insurance. Right? Marrying that back up to Agent Flood's testimony: Yeah, you can use both. You can use a GPS device to keep track of valuable cargo load, just like you can use a paid courier. There are two ways to keep your product safe and ensure it gets to market.

Agent Porter told us about the final ping. And the final – remember there's that data table with 351 entries, documenting where at least the tracker – whether it's in the car the whole time, nobody knows. But we know that it's in the seizure lot the following morning. We know it's there when Ms. Diaz couldn't get past primary inspection.

Saw this map. Saw this map and the various stall times. Really, it calls 15 hours of activity.

I want you to think about the interview, the statements that were made about this car, and whether they match the data.

Where was the car parked? Was it just out in front of the house? Again, the house is allegedly in Rosarito. It was parked on the side right there.

[141]

Was the car parked at the house when you guys were there? Mm-hmm. The whole time? I don't know. I think so.

Does that map look like a car is parked there the whole time? Or is it going on a journey through eastern Tijuana, down south, into Rosarito, and then finally

back up to the border? Is that a car that's parked outside the house? Did anybody come or go besides him, that you saw? I didn't see anybody. This car wasn't parked outside the house all week.

We've got two cell phones involved in this case. And, again, we've already touched on those statements.

Agent Flood talked to us about the importance of cell phones. The communications that occur in the course of a smuggling event. They're important. Right? They're another way to keep track of your load.

In her interview, the defendant confirmed: Two phones. I had two phones. They were in my purse. The iPhone, well, yeah, that was given to me.

Agent Porter asked a very important follow-up question. By whom? Who gives away an iPhone? Why do you have two – why do you have two phones coming back with \$368,000 worth of meth?

Her answer is in clip 22. Can we play that, please.

(Video playing with audio.)

MR. OLAH: I'm not going to say to a federal agent investigating the case, asking about my weekend in Mexico, [142] asking me about the \$368,000 of meth in my car – "I'm not going to tell you."

In opening, we heard this attack on Agent Porter and him ignoring obvious signs of innocence. What is that? He's an agent. He discovers leads. He pursues them. That's how he talked to the RO. Right? He made a trip to Moreno Valley to serve subpoenas. He follows leads. And she didn't want him to do that. She didn't even want to give him the name of whoever gave this phone.

She's refusing, throughout the interview, to identify co-conspirators. She's happy to give the name of her daughter. She's happy to give the name of Cheyanne Romero. She's happy to give the name of Zina Watson. And that's it. That's it.

Jesse Gutierrez. There's one slip of Jesus Gutierrez. But that's it. Right? The guy who allegedly gave this car, we know nothing about him because she told us nothing about him. They met in Moreno Valley. A few months later she crosses the border during the pandemic, and she comes back with the car.

Is it Jesse? Is Jesus? Is it Gutierrez? Is he something else? Is he even real? At least we got a first name out of him. Right?

What about the two to three guys she said show up Friday night at Papas & Beer? Well, who are they? She took an international trip. You hung out at a bar for a few hours. [143] The guy shows up. He's got two to three people. Not a name given. Not a name given.

That's the only person she – that's not – those aren't the only people she can't identify. She says Friday night she goes to a house. One of Jesse's friends. Who? I don't know. I just stayed at the guy's house. Didn't catch the name.

Getting back to identifying Jesse. Earlier in the interview, she's asked about, "Well, how did you meet this guy?" This – this – this mysterious Jesse.

Three months before the offense, we exchanged numbers, you know? Not, "I gave him my number." We exchanged numbers. I had his number, is what she's saying.

And then later in the interview, when it's time to figure out who Jesse is, do you have Jesse's phone

number? A good question from a good agent investigating how \$368,000 made it to the port of entry.

The answer? “Uhm, he has different numbers. I – I don’t know which. He called me random numbers, you know.” No, we don’t know because earlier you told us you exchanged numbers. She’s concealing Jesse.

How do you get ahold of this guy you’ve been dating for two to three months, who you crossed an international border during a pandemic to meet? How do you get ahold of this guy?

[144]

He calls me. He calls me. I have no way to reach him. Apparently.

And then Agent Porter asks a pretty simple absolute statement. Never is yes or no. Never is yes or no. “You never call him?” “Uhm, not really.” “Do you call him or not?”

We’re now at the point of defendant’s story. And I don’t think you should give – let me rephrase. You ought not give much stock to the defendant’s story because this is a list of things that show she knows about the drugs. We’ve ticked through the first nine. And, at this point, do you believe any part of that story?

The story begins with a call from Jesse. Yeah, he did call me. So there should be a call on her phone from Thursday. The Thursday that she, quote, decided. And I want to be clear. I don’t want to be accused of taking a quote out of context. As you watch the clips, this decision on Thursday is in relation to her decision to go meet this boyfriend in Mexico.

What I submit to you is that what she actually decided was that she was going to do this. (Knocking hand on box.) She was in. She was signed up. Yeah, let's do it. She decided that on Thursday and didn't go down until Friday, she said.

She claims she went down on Friday and before we play clip 11, I want you to listen to, again, how willing she is to [145]provide the names of her daughter, of Cheyanne Romero, and Zina Watson. I want you to listen, if she throws out the name Gustavo Macias. And I want you to listen as she confirms how many people were in the car. Excuse me. In the truck that she allegedly goes down in.

She's going to say "four." Let's play clip 11, please.  
(Video playing with audio.)

MR. OLAH: Thank you.

"There's four of you that went down?" "Um-hmm. There's four of us in that truck."

Was there four or were there five?

I submit to you the defendant was not in that truck because her story doesn't align with what Gustavo told federal agents. And Gustavo told you that story that he told the agents.

There's something the two of them agree on. At least when you take his statement to federal agents.

Again, the magic number here is four. There were four in the truck. And they almost align. Right? They align until that last one. They agree Ms. Gaw is in the car – in the truck. They agree that Cheyanne is in the truck. They agree that Zina is in the truck. Who's the odd man out? It's the one not in the outbound crossing photo.

Gustavo is there. Gustavo is in that picture. So [146] when he says to federal agents in December and again as recently as Saturday, five days ago, that that's me and that I've never seen the defendant, I submit to you that's the case.

He also told federal agents about stopping at an Airbnb to drop off bags. As in he comes down, they stop at the Airbnb, drop off the bags, and then go and take a taxi to Papas & Beer. That makes sense. Right? That's what you do when you travel. You check in. You get rid of your bags. And that's not what the defendant said.

The defendant didn't know about Gustavo being in the truck because she wasn't in it.

She didn't know about the stop to the Airbnb because she wasn't with them. And what she told Agent Porter was that they went straight there. They crossed the border, all the way to Papas & Beer. Where – what? She hung out at a bar for two hours with her bags? The two bags that we saw in the back of her trunk the night of the crossing?

Her story doesn't make sense. And the details between what she said to Agent Porter and what Gustavo told federal agents don't align because she doesn't know who was in that truck because she wasn't in it. The truck is a ploy. The truck is a cover story.

Again, look at the statement on its face. She gets to Papas & Beer. International trip on a Friday night during a pandemic. With her bags/without her bags, we don't know.

[147]

And Jesse – the whole point in going down – shows up with two to three other guys.



Agent Porter, with a very on-point and relevant question. “Who were they?” “I have no idea.” She refuses to identify co-conspirators. She knows about this meth.

Asked about where she stayed: “I think it was a friend’s house. I’m not sure whose house it was.” She wakes up Saturday at a house. “It sucked,” she tells Agent Porter. “I was pissed. I was mad at Jesse.” I believe she said “pissed” twice. I believe she says “mad at Jesse” twice.

And despite my daughter, who I live with, also being in this foreign country, I needed to go home. I needed to go home. But she didn’t. Right?

She didn’t go home in the truck she allegedly came in. She didn’t because these weren’t ready yet (indicating). That’s why she didn’t go home on Saturday. She went to Mexico to bring these back. These weren’t ready. She had no intention of returning in that truck, just like she didn’t go down in that truck.

Remember, it sucked. I was pissed. I was mad. I needed to go home. And he shows up, and everything is forgiven. Everything is forgiven.

Again, Agent Porter with a very on-point question: “So, wait, he shows up Saturday. He offers the car. Everything is cool?” “Yeah.”

[148]

“All right. Well if you need to go home, if you’re pissed at this guy, why don’t you go home on Saturday evening?” Her quote: “Because I can’t see that – when it’s dark, I can’t really see. You know?”

Again, a deserving set of follow-up questions:

“You said you didn’t want to drive at night?”  
“Exactly.” “Here you are driving Sunday night to get home.” “Exactly, I know.”

She leaves Sunday night, if you believe her story, at 7:30. What we do know is that she’s not crossing until 2:00 in the morning. Again, silly testimony but necessary. It was dark at 2:00 in the morning. It had been dark for hours. It was going to be dark for hours still. Can she see or can she not?

You’ve got one verdict form to fill out. It poses two questions to you – to you.

Did she know about the meth? Is she guilty beyond a reasonable doubt of bringing these into the country (indicating)?

I submit to you that the answer is yes. That she is guilty. And that the evidence you’ve seen, this list, leads to one result. I submit to you that any one of these is sufficient to find her guilty beyond a reasonable doubt. We’ve given you ten.

I ask that as you deliberate you consider this list, [149] you consider all of the evidence, and you return the only verdict supported by the evidence that’s been presented to you. And find the defendant guilty.

Thank you.

\* \* \*

**[CLOSING ARGUMENT]**

[BY MS. IREDALE]:

[149:23]

Delilah Diaz is innocent. She did not know there were drugs in the car.

Delilah is a mother who spent years working at [150] Northrop Grumman on the production line as a composite laminator.

In the summer of 2020, she went to the arms of a man she thought was her boyfriend. She thought he wanted to see her. And, instead, he took advantage of her.

Where Delilah felt heartbreak, Jesse Gutierrez saw opportunity – opportunity. And if that wasn't bad enough, from the first moment she pulled up to primary, law enforcement officers investigating the case had already decided she was guilty.

The only issue here is knowledge, and it's the Government's job to prove it beyond a reasonable doubt. Let's go through what the Government brought you to try to reach that very high burden.

First witness, CBPO Officer Guevara. Officer Guevara works at a really busy land port. And I want to be clear. I'm not accusing him of purposefully doing anything wrong. But here's what's important.

Officer Guevara and the Government are relying on a mistake. Ms. Diaz did not say she was going to San Diego. You have clip 1-12. Government clip 1-12. It's in evidence, and you can listen to it as many times as you want.

I submit that when Officer Guevara asked Ms. Diaz where she was going, she said, "Moreno Valley." You can hear "Valley." What is clear, ladies and gentlemen, is that she did [151] not say "San Diego." And that mistake, that initial mistake that they say creates suspicion permeated the entire investigation. It started when she pulled up at primary, and then he wrote it on the referral slip, and he put that in the file.

And then he wrote it in his report, and he put that in the file.

And then Agent Porter, who we'll talk about later, interviewed her and thought, "Well, she already lied." She said, "San Diego," and she's telling me she lives in Moreno Valley. And then it permeated so far down and infected so much the prosecution's case that when Mr. Wheat came up in opening, he said, "We're going to show you, the evidence is going to show that she lied. The evidence is going to show she said, 'San Diego.'" But their first point is already gone.

And, thankfully, it's in the clip that they provided you: Clip 1-12. You'll have it. You can listen to it as many times as you need.

What else is important about that clip and about Officer Guevara? Officer Guevara asks Ms. Diaz to roll down the back window.

Now, these are manual windows, so there's no button in the front seat that you can just press to roll it down. And Ms. Diaz was in the front seat.

And you can see in the clip – and he testified to this. He said, "She tries to reach back, but she could not [152] roll it down herself." So when Officer Guevara, who works at the port, who sees hundreds of cars and knows something from his unique experience regarding where drugs are stored – when he rolls it down and hears a crunch, that sound means something to him.

But there is no evidence – in fact, there's no reason to even think that someone driving a car is going to turn back, get out of the car, open the door, roll down a manual window, hear a crunch. Someone who doesn't work at the port of entry, who doesn't know

anything about how DTOs – and I’m going to say “DTO” for drug trafficking organization – how DTOs store drugs. That doesn’t mean anything to a layperson.

Well, what else did Mr. Wheat say in his opening?

He said, “We’re going to show you that the things she said to Guevara were either not true or half-truths.”

San Diego. Well, the only thing that isn’t true is that she did not say San Diego.

He also said she told him that she – that she was going to work on Monday. Well, Officer Guevara admitted that she didn’t say that. She didn’t say, “I’m going to work on Monday.” Rather, when he asked her, “What do you do for a living?” She said, “I work at Northrop Grumman.”

Now, we’ll talk about the witnesses.

Mr. Valdez confirmed that. But by this point in the case the Government had to agree as well. And you have a [153] stipulation and agreement that Ms. Diaz, on August 17th, 2020, was currently employed at Northrop Grumman. She was on approved medical leave.

And here’s something interesting. The only person who testified, who actually saw Ms. Diaz roll down the front window, was Officer Guevara. He was the only one. Right? Because you’ll see it in the video, clip 1-12, she’s talking to him.

He’s on the lookout for suspicious things. He never said that there was anything weird, anything off, anything suspicious when she rolled down that window.

JA60

So that takes us to Officer Zepeda. Officer Zepeda confirms, "Well, yeah, there were 60 percent more drugs in the back window than in the front." Officer Zepeda confirmed that there were ten packages in the front door and 16 in the back. There were 60 percent less.

So we'll go to Jack Stephens, who is a nice guy. And he just came here and said, "I don't know Ms. Diaz. I sold my car." Seems like we all agree, this guy sold his car to someone who wasn't really Tyler Howard. But everyone agrees Ms. Diaz had nothing to do with the acquisition of the car.

But through the Stephens, we learned something important about Agent Porter. We learned that when Agent Porter contacted another potential witness, Denise Stephens, the owner of that car, he told her, "I think Ms. Diaz is [154] guilty."

Ladies and gentlemen, why would you say that to a potential witness, who's not a juror? This is a potential witness who's supposed to come in here in an unbiased fashion and testify to facts that, by the way, occurred two and a half weeks before Ms. Diaz was arrested. Why would you try to infect the testimony and color it that way?

Well, we know why. And Agent Porter told Delilah Diaz why. He told her why before she even got to tell him anything about what happened that weekend.

He said, "The meth is in the car. You're responsible for it. Nothing you can do about it. And if you lie to me, I'm going to know, and it's going to piss me off," he said to her. Before he asked her anything about the weekend. Now, this is a woman who's now been up all night.

We'll talk about why the evidence shows that she left for the border around 7:20 p.m. The interview occurred at 7:00 a.m. She's been up all night. And since she was arrested around 2:00 something in the morning, she's been in an unfamiliar location. You see her ask for water during the interview. She hasn't been in a comfortable place. There are two men in the interview room, with concrete walls all around her.

She knows she's innocent. She knows she didn't do it. But she has a man telling her, from before she can get a [155] word in, "I know you're guilty. I know you did it. I don't believe you."

So she's on the defensive, and she's tired. We know what lack of sleep does. She is trying to answer his questions. But when you go through those clips, I'm going to ask you please look at the situation where it is clear that they're having two different conversations.

There's a clip and there's a part where she's trying to explain that she drove down Friday and that she drove back in the car on Sunday.

But Agent Porter is saying, "Well, how did you get the car? How did you get the car?" And she said says, "Well, Jesse brought it to me." And he goes, "Well, he brought it Friday." No, no, no, no, no, that's not what happened. But every time she tries to say something, she's interrupted.

And she tries to clarify, but he jumps to a different subject. And she's trying to keep up because she wants to tell him. She can't. She even says – you'll see. You'll see in the clips that you have back there. "I'm trying to explain. But you're not letting me. You're not letting me."

And then Agent Porter, we spent – I don't know. 30 minutes getting in prior crossing records of my client. 30 minutes of the Government's case was spent on something that the jury instruction tells you you can't consider as evidence of guilt.

[156]

My client – I'm going to – I'm going to tell you this right now, has been to Mexico before. She has been to Mexico before. And you know what else? If anyone has two cell phones, I'm going to start advising them to consult a lawyer. Two cell phones. One given to her by a friend.

MR. OLAH: Objection, fact not in evidence.

THE COURT: Sustained.

MS. IREDALE: Respectfully, your Honor, that's in the clip that the Government played during the trial.

THE COURT: No, let's let the jury refer to the clip rather than debate it here.

MS. IREDALE: I'm going to ask you to look at the clips.

The Government wants you to convict her because she had two cell phones.

Maybe I should just sit – sit down right now (taking a seat). Ladies and gentlemen, she had two cell phones. That's it. That's not proof beyond a reasonable doubt. (Standing up.) They have no proof beyond a reasonable doubt.

Let's talk more about Porter. I'm going to try to be really linear on this. But this is an important point. And this is another way that all of the external evidence supports Ms. Diaz, and all of the Government's theory is smoke and mirrors and trying



to fit what they found and what they tried not to find into their preconceived notion about Ms. Diaz's [157] knowledge.

The GPS data shows that the GPS device was activated at 5:39 p.m. Right?

Now, I submit, no one is going to activate the GPS at a stash house. Right? No. So the GPS is remotely activated at 5:39 p.m.

We went through the data points. This is in evidence. There was the chart, and the chart had a time. And it had a latitude and a longitude.

Now, you heard Porter. When the Government was asking him questions, he was a Google Maps aficionado. But when I was asking him questions, he had no idea what it was. But we can all agree that you plot those points into Google Maps and you can see a location.

All of those GPS exhibits that the Government admitted into evidence have writing on the bottom. The writing is only as good as the author. The author of was Agent Porter, who made some mistakes with that GPS data. We know that, and it took us a while. But, finally, it came out, that, oh, that house, on Calle Ruiz Pimentel – actually, the car was there. And you can see between data point 71 and 73, the car was at that place between 7:00 and 7:26 p.m.

Now, I asked him, “Did you – did you plot those points? Did you look? Did you look to confirm that it was a house?”

[158]

“No. I didn't do that.”

JA64

“Okay. Did you look to see that it was a hilly area, like Ms. Diaz had told you: I was at a house on a hilly area”?

“No. I – I didn’t do that.”

Well, then you can see from the data and the pictures that after there’s that stop at the house, the car gets lost before it makes its way to Highway 1, to get in the border line.

So whoever was driving that car left for the border around 7:00 p.m. And Ms. Diaz told the agents – Ms. Diaz said, “We went to the beach.” The GPS shows that. “We went to a market.” The GPS shows that.

Ms. Diaz couldn’t have had her eyes on the car the entire day. That car could have been loaded in the morning, when she was sleeping in the house. And then she and Jesse went about their day, just like she told the agents. They went to the beach. Jesse was with her in the car. He didn’t lose control of the car.

And then you can see the data. The data tells the story. The car got to the house at 7:06. And then the driving is done by a driver who is not very familiar with the area. Look at that exhibit.

You can see it squiggles all over. And it squiggles all over right before it goes into the borderline.

So Ms. Diaz left for the border at 7:30, just like [159] she told the agent. So the 2:00 a.m. number is irrelevant. It’s not her fault she got lost. She was in the border line by 8:53 p.m. And the border line was very long. No one disputes that she was in the border line by 8:53 p.m.

And guess what? We’ve all lost track of time when we’re with someone we like. Ms. Diaz might prefer not

to drive at night. She got on the road at 7:00, in August. It wasn't dark yet.

Yeah, should she have left earlier if she wanted a fully light time? Yes. But it's not inconsistent to say that: I don't like to drive at night. That is not proof beyond a reasonable doubt.

And then this part was – I guess I'm speechless. On Monday, before our Tuesday trial, for the first time Agent Porter ran a search for Jesse Gutierrez. The day before trial. And you can see that. That's in evidence. You can see the date. Oh, I'm sorry. I think it might say March 14th. It's either the Sunday before or the Monday before.

And guess what? They've made a lot about, like, we didn't have a birthday. We just had a name. But they were able to do it in March. What did that show?

That showed that a Jesse Gutierrez crossed on August 19th. Agent Porter talked all about the investigative tools at his disposal. He can put a TEC alert on someone. So he could have put a TEC alert, and they could have stopped that Jesse [160] Gutierrez who came through two days later. He didn't. He could have gone to his address.

But this was rich. He said, "It wasn't practical." He found his address. Didn't turn him over to the defense until the Monday before trial. He found it, but he didn't go talk to him because it wasn't practical.

Let's talk about Gustavo Macias. Gustavo Macias is emblematic of the investigation, and here's why. The agents talk to Gustavo Macias twice. Once in December, once in March. No one is disputing that he told them he didn't know Delilah Diaz. We all know that's a lie, though. And they didn't care to question it,

JA66

because it gave them the little nugget that they wanted. They needed someone to try to undercut her statement. So they didn't care that the things that he was saying didn't make sense.

Wait. You dated her daughter?

And she lives with her daughter. And you've been to her house but you have no idea who this woman is?

They didn't care. They were going to put him on the stand because he gave them what they wanted. Because all of the ways that they thought her – her – her – her interview was undercut, all of those ways were disappearing. But he gave them what they wanted.

He even said, "Yeah, I lied. I didn't – I was nervous." He didn't – he didn't want to be involved in a [161] federal case. So he thought if he says, "I don't know her," they're going to stop bothering him.

But once you sit in that witness stand and you're in front of 14 people who are here, and you're sworn – you're sworn to tell the truth under oath, it is a different situation. And he couldn't do it. He couldn't sit in front of Delilah Diaz and lie. He wouldn't do it. And thank goodness he did because the agents never cared to probe him. They were happy to have him sit on that stand and say something that made no sense. And look at those pictures. It makes no sense. We're looking at two completely different things.

The picture shows that there's someone in the back middle of the truck. Who sits in the middle seat if there's only two people in the back? It doesn't make any sense to make this argument that she wasn't in the truck. How did she get down there, then?

What – what’s the point of lying about that? It’s not a lie. It’s the truth, and they knew it. And they are still standing up here months later. They’ll telling you, “Disregard our witness’s sworn testimony under oath. Disregard it.”

And believe the bizarre story he told agents before. Believe us (pointing). Believe us. You might know, but that’s not proof beyond a reasonable doubt.

We heard from Agent Merklein. Agent Merklein [162] confirmed that the phone belonged to someone – that white iPhone named Orley Patrimoly (phonetic), that it was locked, and that that guy lives in the greater L.A. area, with no criminal history.

Smoke and mirrors. That is not proof beyond a reasonable doubt.

So this part – I don’t know why they brought this guy, but I was glad they did. Herman Valdez, the supervisor at Northrop Grumman. You remember him?

His testimony was fairly brief. He confirmed he’s known Ms. Diaz for at least ten years, working at Northrop Grumman.

You remember what he said right before he left?

MR. OLAH: Objection. Fact not in evidence.

THE COURT: And I struck it.

The jury will disregard the reference to what he said after he was released and on his way out. No comment on that should follow.

MS. IREDALE: You heard him confirm that she was on disability. You heard him confirm that she worked at Northrop Grumman.

And then the Government stipulated and agreed that Ms. Diaz was currently employed with Northrop Grumman on August 17th, 2020.

So their last witness, their star witness: Agent [163] Flood. Agent Flood admitted that he had no involvement in the investigation of this case. Let me just say this again. Their best witness had no involvement in the investigation of this case. And that's been – his testimony has been – it was the first word out of the Government's mouth. It's the first thing they talked about here, the value of the drugs: \$364,000. But Agent Flood also admitted, this is a billion-dollar industry.

MR. OLAH: Objection. He stated no value.

THE COURT: Sustained.

MS. IREDALE: Agent Flood stated that drugs get across the border into the United States. Officer Guevara told us that this amount of drugs was not an unusual amount. And also the relevant number is \$54,000. Because that's the wholesale value. The loss is not \$364,000. That's the uptick.

And guess what? None of it matters because Agent Flood confirmed that drug trafficking organizations use unknowing courier schemes. Period. That exists. We even talked about several. He told you about several. So any argument that no one's going to do this, no one's going to risk losing this money because they're a drug trafficking organization, because they're a business – well, that goes out the window, based on the Government's own expert who said, yeah. He agreed, yeah, there's actually a new scheme they discovered. And by "scheme," it's a scheme where they're using multiple drivers. Right? Multiple drivers. The DTOs doing it [164] November and December.

MR. OLAH: I would object. Agent Flood said he was not familiar with what defense counsel was asking him about.

THE COURT: Sustained.

MS. IREDALE: He acknowledged there were unknowing courier schemes. And, on the stand, he told us about at least three.

So what happened here? From the very beginning, there was tunnel vision. Ms. Diaz unknowing what's in the car, they decide she's guilty. And they want to get to the end. They want to get to a verdict. They want you to say she's guilty. They want you to agree with their faulty investigation. So they keep trying to walk towards it, as they're pelted with reasonable doubt.

Oh, Gustavo Macias admitted that she was in the car? They keep going, undeterred.

Let's just – let's – let's not look for Jesse Gutierrez. They keep going, undeterred.

Well, maybe we should search for Jesse Gutierrez the Sunday before trial. Right? Okay. They keep going, undeterred. Pelted with reasonable doubt.

Oh, no. We found a Jesse Gutierrez. What do we do? Should we – should we go talk to him? No, it's not practical. Tunnel vision. Let's keep going, undeterred.

We have a clip for trial. Clip 1-12. We're not [165] going to listen carefully to what it says at the beginning. We don't care that it clearly says "valley." She said "San Diego." Guevara said she said "San Diego." They keep going, undeterred, undeterred, undeterred. And you're the ones who can stop it. You're the ones who can stop it. Delilah Diaz is innocent.

When I sit down, I don't get to get back up again. I can only address what the Government argued to you

in their first closing argument. Because the Government bears the burden of proof, they get to come up here again. I don't know what they're going to say, so I'm going to ask you, please, please, when they come up here again, I can't get up again. I can't mention things they haven't already discussed. I don't know what they're going to say. But here's what. Please remember that reasonable doubt. Because I submit any one of those doubts is enough. Any one of those doubts is a doubt based on reason. And that's what the law says. If you have a doubt based on reason, you must find Ms. Diaz not guilty.

And that's when I'm going to ask you to do when you pick up that verdict form: Not guilty. And once you do that on question 1, you're done. And then this is over for Ms. Diaz.

Thank you for your time.

\* \* \*

**[FINAL CLOSING ARGUMENT]**

[BY MR. OLAH]:

[166:19]

MR. OLAH: Defense counsel commented at the end there about how she does not get to address points that I'm making now. She got to rebut the arguments that I made when I spoke a half hour ago. And there's a big one that went unanswered.

The fact that defendant said nothing about Gustavo Macias being in the car. The fact that defendant said there were only four people in the car. The fact that defendant [167] said, "We went straight to Papas & Beer." Why doesn't her story line up with Gustavo's story? Gustavo's story to federal agents that



there – yeah, there were four, but it was me and not her.

She doesn't know – she doesn't know Gustavo's in the truck because she is not in the truck. She's covering her tracks. They went down there as a cover story and there's been no response to that fact.

The Court has instructed you at the outset of the trial and in the jury instructions provided. You have them. And I want you to pay close attention to 3.7 and 3.7 – or 3.1 and 3.7, rather. Which tell you that your verdict is to be based solely on the evidence and the law. The evidence and the law.

And there's another jury instruction that I think bears repeating. 3.5. In evaluating that evidence and coming to a verdict, use your reason and common sense. You didn't check that at the jury lounge on Tuesday.

And I want you to apply that reason and common sense when answering some of the questions that have been posed to you by defense counsel.

Is Ms. Diaz lying to federal officers because she's tired? Is that why she's lying? Or is she lying to conceal the obvious?

Her knowledge of \$368,000 worth of meth. The meth [168] she got caught with, is she tired or is she busted? Which is it? I submit the latter. She's trying to cover her tracks.

Apply your reason and common sense to the TECS records.

You just heard how the Government spent – I didn't know this. I wasn't timing it. But a half hour, apparently, on crossing records.

Do the crossing records show nothing? Or is it more proof of more lies? It's proof that contrary to her statement that she hadn't crossed in six months she crossed twice, just three months prior.

The crossing records also show her crossing alone. One time at 10:30 at night, in two different cars. That's what the crossing records show.

Can you consider them for evidence of guilt? No. You can consider them in evaluating her candor to federal officers. First, when she's in a car surrounded by 54 pounds of meth. And, second, in an interview when she's trying to distance herself from that car.

Her statement to Agent Porter was, "I don't have a car. I need a car." What happened to the two you crossed in three months ago? Was there a fourth car that you crash – crashed four to five months ago?

You heard that Agent Flood was the star witness. No, Agent Porter was. Agent Porter is the star witness. He's the [169] one who met with Ms. Diaz the hours after her entry. He's the one who investigated it.

We heard about how his – his investigation was permeated or tainted. His investigation was driven by the post-arrest interview. The post-arrest interview that just does not make sense on its face and didn't withstand the scrutiny of further investigation. Right?

He didn't know Gustavo Macias when he left that interview room. He didn't know him. That took investigation.

Agent Flood testified this morning to help make sense of the case, to provide some context about how drugs get moved from Mexico into this country, where 54 pounds of them become worth \$368,000.

And he explained, it's not a lot of trust in the business. It's too risky to leave this valuable of cargo to someone who doesn't know about them.

So what do you do to make sure your product gets to where it needs to be? You pay them. You pay them. You ensure they have phones to communicate. You use GPS devices. These are all safeguards to – to protect a substantial investment, a substantial product.

From the outset of the trial there has been this finger-pointing at Jesse. We heard about it some more here today.

Getting back to this jury instruction of the reason [170] and common sense dictating your review of the evidence, there are two points I want to make about Jesse. The first is how implausible is that story? How implausible?

Someone is hanging out at the Food4Less in Moreno Valley, looking for single women to exchange numbers with. To date for two to three months, to invite down to Mexico, all in hopes of not paying attention when you're loading up the car you're lending with 54 pounds of meth.

Does that make sense? Or does it make more sense that, as Agent Flood testified to, generally couriers are compensated. Generally, you don't use unknowing couriers. Apply your reason. Apply your common sense to whether the Jesse story makes sense.

The Jesse that she could not identify, the Jesse that she didn't have a phone number for but yet received a call from Thursday and, uhm, exchanged numbers three months prior.

Jesse's not on trial. Jesse's the bogeyman in the post-arrest story that she gave.

The verdict form you have has one name on it. It has one name because one person crossed those drugs alone. One person gave a post-arrest story that just did not add up. Did not align with the objective evidence. You are deciding whether Ms. Diaz knew about the drugs. There's no Jesse on trial here.

And getting back to the jury instruction about common [171] sense and actually looking at the evidence, consider this list. Consider her control and command of this vehicle. Consider that she was surrounded by this very valuable product. Consider that if you believe her story about needing a car, how convenient that she found herself a car that two weeks ago – or two weeks prior, rather, Mr. Stephens thought was worth 2500 but was willing to part for 1500.

Does it make more sense that she was working? That she was being compensated? Or that the DTO just took a chance on this one?

Consider the lies at primary. Consider the lies to Agent Porter. Consider the fact of crossing.

What was the excuse in rebuttal? She left at 7:30. She didn't know it was going to be dark. She had all day Sunday to leave. She didn't leave because the drugs weren't in the car yet. And if she really can't see at night, why would you leave at 7:40? You can't stay another night and leave at the crack of dawn? You can't leave at any point in the daytime? She's crossing at 2:00 a.m. because she's trying to blend in. She's trying to blend in with that commuter traffic.

The two cell phones are relevant. We don't even – she's refusing to identify who provided the one. She's refusing to tell us Jesse's phone number. She's refusing to identify the men she met with on Friday night.

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Her story does not make sense. And when you look at [172] all of the evidence, it leads to one conclusion. That she knew about this meth, and that it was her job to get it past the port of entry.

I ask you to find the defendant guilty of bringing these drugs into this country.

Thank you.

\* \* \*

[1] UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  Plaintiff,  v. DELILAH GUADALUPE DIAZ,  Defendant.	Case No. 3:20-CR-2546 AJB  <b>FINAL JURY INSTRUCTIONS</b>  [FILED: 3/22/2021]
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\* \* \*

[3]

**3.2 CHARGES AGAINST DEFENDANT NOT  
EVIDENCE PRESUMPTION OF INNOCENCE –  
BURDEN OF PROOF**

The charging document in this case is an indictment. The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence. The defendant does not have to prove innocence; the government has the burden of proving every element of the charge beyond a reasonable doubt.

\* \* \*

\* \* \*

[5]

### **3.5 REASONABLE DOUBT DEFINED**

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

\* \* \*

[13]

### **4.14 OPINION EVIDENCE, EXPERT WITNESS**

You have heard testimony from Andrew Flood, and Kenneth Davis who testified to opinions and the reasons for their opinions. This opinion testimony is allowed because of the education or experience of these witnesses.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witnesses education and experience, the reasons

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given for their opinions, and all the other evidence in the case.

\* \* \*



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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES  
OF AMERICA

V.

DELILAH  
GUADALUPE DIAZ (1)

**JUDGMENT IN A  
CRIMINAL CASE**

(For Offenses Committed On  
or After November 1, 1987)

Case Number:  
3:20-CR-02546-AJB

DANIELLE IREDALE  
Defendant's Attorney

USM Number 96021-298

\_

THE DEFENDANT:

pleaded guilty to count(s) \_\_\_\_\_

was found guilty on count(s) ONE (1) OF THE  
INDICTMENT

after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such  
count(s), which involve the following offense(s):

<u>Title and Section / Nature of Offense</u>	<u>Count</u>
21:952, 960 - Importation Of Methamphetamine	1

The defendant is sentenced as provided in pages 2  
through 5 of this judgment.

The sentence is imposed pursuant to the Sentencing  
Reform Act of 1984.

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The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) is dismissed on the motion of the United States.

Assessment : \$100.00 - IMPOSED

—

JVTA Assessment\*: \$

—

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

Fine waived  Forfeiture pursuant to order filed \_\_\_\_\_, included herein.

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 any material change in the defendant's economic circumstances.

OCTOBER 28, 2021

Date of Imposition of Sentence

/s/ \_\_\_\_\_

HON. ANTHONY J. BATTAGLIA

UNITED STATES DISTRICT JUDGE

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

EIGHTY-FOUR (84) MONTHS

Sentence imposed pursuant to Title 8 USC Section 1326(b).

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

- PLACEMENT DESIGNATION TO THE WESTERN REGION OF THE UNITED STATES AT A FACILITY WITH RDAP AND DUAL-DIAGNOSIS PROGRAMS TO FACILITATE FAMILY VISITS
- PLACEMENT IN A DUAL-DIAGNOSIS TREATMENT PROGRAM
- PLACEMENT IN THE BOP RESIDENTIAL DRUG AND ALCOHOL TREATMENT PROGRAM (RDAP)

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

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

at A.M. on

as notified by the United States Marshal.

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

on or before

as notified by the United States Marshal.

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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

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant will be on supervised release for a term of:

**FIVE (5) YEARS**

**MANDATORY CONDITIONS**

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant 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. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.
  - The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4.  The defendant 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.  The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6.  The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the

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probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)

7.  The defendant must participate in an approved program for domestic violence. (check if applicable)

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

\* \* \*

### **STANDARD CONDITIONS OF SUPERVISION**

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their

living arrangements (such as the people living with the defendant), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone they know is engaged in



criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant 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. The defendant 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

**SPECIAL CONDITIONS OF SUPERVISION**

1. Not enter or reside in the Republic of Mexico without permission of the court or probation officer, and comply with both United States and Mexican immigration law requirements.
2. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
3. Submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The offender must warn any other occupants that the premises may be subject to searches pursuant to this condition.

An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the offender has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

4. Participate in a program of drug or alcohol abuse treatment, including drug testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in

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an amount to be determined by the probation officer, based on ability to pay.

5. Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay.