
No.

SUPREME COURT OF THE UNITED STATES

ALMA GARZA
PETITIONER,

v.

UNITED STATES OF AMERICA
RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

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I. Question Presented

Whether law enforcement authorities, who use possible administrative delay in obtaining a warrant as justification for seizing a package containing suspected contraband, shipping it to another state, and then applying for a warrant, violate Fourth Amendment warrant requirements set forth in Coolidge v. New Hampshire 403 U.S. 443, 469-471 (1971), United States v. Place 462 U.S. 696, 701-702 (1983), and Chapman v. United States 365 U.S. 610, 616 (1961).

II. PARTIES TO THE PROCEEDING

Alma Garza, petitioner on review, was the appellant-defendant in proceedings in the Ninth Circuit Court of Appeal.

The United States of America, respondent on review, was the appellee-plaintiff.

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V. Petition for Writ of Certiorari

Alma Garza, an inmate currently at FCI Victorville, in Victorville, California, by and through W. Scott Quinlan, her CJA appointed counsel from the Eastern District of California, respectfully petitions this Court for a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals reviewing her conviction in district court Case No. 1:22-cr-00062-JLT-SKO-4 prosecuted by the United States of America.

VI. Opinions Below

The unpublished decision of the Ninth Circuit Court of Appeals in Case No. 25-2794 denying Ms. Garza's direct appeal by Memorandum decision filed March 25, 2026, together with Judge Lefkow's dissent, is attached at Appendix ("App.") at 1-10.

The decision of the United States District Court denying Ms. Garza's motion to suppress evidence by order filed September 6, 2022 is attached at Appendix ("App") at 11-15.

The decision of the United States District Court denying Ms. Garza's motion for reconsideration by order filed June 25, 2024 is attached at Appendix ("App") at 16-23.

The Ninth Circuit Court of Appeals denied Ms. Garza's petition for rehearing and rehearing en banc in Case No. 25-2794 by order filed April 28, 2026, with a dissent by Judge Lefkow. That order and Judge Lefkow's dissent is attached at Appendix ("App") at 24.

VII. Jurisdiction

Ms. Garza's petition for rehearing and rehearing en banc was denied on April 28, 2026. Ms. Garza invokes this Court's jurisdiction under 28 U.S.C. §1254(1), having timely filed this petition for a writ of certiorari within ninety days of the denial of a timely petition for rehearing by the United States Court of Appeals for the Ninth Circuit. The Court of Appeals had jurisdiction in the first instance pursuant to 28 U.S.C. §§1291 and 1294.

VIII. Constitutional Provisions Involved United States Constitution, Amendment IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

IX. Statement of the Case

This case involves a package mailed by petitioner. Based upon wiretapped conversations that were part of an ongoing investigation, law enforcement authorities had probable cause to believe that it contained contraband. The package was shipped from Fresno, California to be delivered to Las Cruces, New Mexico in two days, and was intercepted by law enforcement authorities in Texas en route one day after mailing.

The general principles pertaining to such seizures were stated by this Court in United States v. Place 462 U.S. 696, 701 (1983), as follows:

“In the ordinary case, the Court has viewed a seizure of personal property as per se unreasonable within the meaning of the Fourth Amendment unless it is accompanied pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized. Where law enforcement authorities have probable cause to believe that a container holds contraband or evidence of a crime, but have not secured a warrant, the Court has interpreted the Amendment to permit seizure of the property, pending issuance of a warrant to examine its contents. . .”

Instead of temporarily detaining the package while applying for a warrant in Texas or having a warrant ready in New Mexico when it arrived there the next day, the officers seized the package without a warrant and directed it back to Fresno, California. This was, under the above authority, a per se unreasonable seizure under the Fourth Amendment.

The stated reason for shipping the package to Fresno, California was a subjective belief a warrant could be obtained faster in Fresno. The package was directed back to Fresno because the package had to be in the Eastern District of California for an Eastern District Magistrate Judge to have venue to issue a warrant under the provision of Rule 41(b)(1) of the Federal Rules of Criminal Procedure.

X. Trial Court Proceedings

Defendant Alma Garza was convicted of conspiracy to distribute a controlled substance from November 2, 2021 to March 31, 2022 (Count One) and of possession with intent to distribute a controlled substance on January 27, 2022 in Fresno, California (Count Two), and sentenced to prison on September 30, 2024. A third count was dismissed prior to trial.

Prior to trial, Ms. Garza filed a Motion to Suppress the unlawful seizure of a package she mailed for JR Torrecillas on Thursday, January 27, 2022, in Fresno, California.¹

In her motion to suppress, Ms. Garza noted that as the mailer of the package she had a possessory interest in the package. She had paid for the package to be delivered in Las Cruces, New Mexico within two days(App-011, 012). Ms. Garza also tracked the package and agreed to pick up the package for JR when notified it was sent back to Fresno.

Facts establishing probable cause to seize and search the package were known of by investigating officers on Thursday, the evening of January 27, 2022, the day petitioner mailed it (App-012, 025).

The government acknowledged that “several hours after Ms. Garza mailed the parcel, (on Thursday) the wiretap revealed additional evidence providing probable cause that the parcel contained contraband.”² The next day, Friday January 28, 2022, the package was located in Texas, seized, and rerouted back to Fresno, California (App-012).

¹ Defendant moved pre-trial to suppress the contents of the package she mailed, and later filed a “notice” informing the Court of her intent to move to suppress her custodial interview and seizure of her cell phone based solely on her arrest for mailing those drugs on January 27, 2022, as fruit of the poisonous tree, in the event the denial of the suppression motion was reversed. The trial court agreed with the government that there was no reason to take any action at that time with respect to that “notice”(1-ER-65,66 set forth at App-026, 027).

² This acknowledgement of probable cause was conceded in the government’s opposition to the suppression motion at 3-ER-415 set forth in the Appendix at Appendix (“App”) 25.

The package arrived in Fresno on Saturday, January 29, the same day it was guaranteed to arrive in New Mexico. Agents then applied for a warrant electronically, which was verified telephonically to the magistrate on Sunday, who at that time signed it (App-012, 013).

The investigation was centered in Fresno; the lead law enforcement agent was employed out of Fresno; a Fresno AUSA was involved with the case; any drugs seized would be stored in Fresno and would be tested at a Fresno-based laboratory (App-012, 013).

The warrant affiant stated that he rerouted the package back to Fresno where he planned to apply for a warrant to search the parcel id. He had probable cause to seize the package on Thursday before he located it in Texas on Friday. He contended that he could apply for a warrant faster in Fresno without any showing that he had ever tried to apply for a warrant in Texas, where the package was located, or in New Mexico where it was scheduled to be the next day (App-013). The trial court cited that foundationless supposition about getting a warrant faster in Fresno, California, in denying suppression. The trial court ruled that detaining the package and shipping it back to California was a reasonable investigative detention (App-015).

The trial court did not acknowledge that where police know in advance the location of the evidence, and intend to seize it upon probable cause, a warrant to seize it is required by Coolidge v. New Hampshire 403 U.S. 443, 469-471 (1971), and United States v. Place 462 U.S. 696, 701-702 (1983). Nor did the trial court acknowledge Ms. Garza's possessory interest in the package when it was seized without a warrant and prevented from arriving in Las Cruces, New Mexico within the guaranteed two-day delivery date.

XI. Appellate Proceedings

On appeal, defendant cited Coolidge v. New Hampshire 403 U.S. 443, 469-471 (1971), United States v. Place 462 U.S. 696 at 701-702 (1983), United States v. Licata 761 F.2d 537 (9th Cir., 1985), and Corngold v. United States 367 F.2d 1 at 4 (9th Cir., 1966 en banc), for the necessary showing the government must make for a warrantless seizure of a package upon probable cause.

No amount of probable cause can justify a warrantless seizure of property in the absence of exigent circumstances Coolidge v. New Hampshire 403 U.S. 443, 469 (1971). Where the police know in advance the location of the evidence and intend to seize it, a warrant to seize it is required id at 471. For Fourth Amendment purposes a seizure is any meaningful interference with a person's possessory interest in property Soldal v. Cook County, Ill 506 U.S. 56, 62-63 (1992) . An attendant search is not required id at 68-69; accord United States v. Jones 565 U.S. 400, 408 (2012).

Petitioner asserted during oral argument on appeal that in directing the package back to Fresno, California to arrive on Saturday, the case agent prevented delivery that same Saturday to Las Cruces, New Mexico, as had been contracted by petitioner. On appeal, neither the majority nor dissenting opinions disputed petitioner's possessory interest in the seized package. The majority opinion placed the burden on petitioner to show that officers had acted "leisurely" in seeking the warrant after probable cause was established, in violation of this Court's precedent requiring that the government establish exigent circumstances justifying the warrantless seizure of contraband after probable cause is established.

The majority found that petitioner had failed to establish that the officers had acted leisurely in seeking a warrant in Fresno, California while the dissenting

opinion found a Fourth Amendment violation because the delay in seeking a warrant was not because of any investigatory need or unavoidable administrative delay, but for the investigator's convenience.

Petitioner filed a petition for rehearing and rehearing en banc with the Ninth Circuit Court of Appeals, renewing her arguments that the package was seized upon probable cause without a warrant in Texas when it was redirected back to Fresno, California to arrive the same day it was guaranteed to arrive in Las Cruces, New Mexico. Petitioner asserted that no facts were proffered that a warrant was applied for in Texas or why one was not prepared in New Mexico to have ready when the package arrived there the next day.

Petitioner asserted that the authorities cited in the majority opinion were investigative detention cases that culminated in probable cause to search, whereas here, agents had probable cause to seize and search the mailed package the day before it was located in Texas on its way to New Mexico.

The case agent asserted administrative delay as a justification for not seeking a warrant in Texas, asserting his belief that he could get one faster in Fresno, California. However, he made no factual showing that he had attempted to obtain a warrant in Texas, and offered no explanation at all for not seeking one in New Mexico.

The issue presented to the en banc Appellate Court was whether an unsubstantiated belief of the case officer that he could obtain a search warrant faster in Fresno, California than in Texas or New Mexico can justify his warrantless seizure of the package in Texas and shipping it to his home District in California. Petitioner pointed out that the Appellate Court placed the burden on her

to show that the officers were acting “leisurely” instead of upon the government to show exigent circumstances for the warrantless seizure in Texas.

The petition for rehearing and rehearing en banc was denied, with Judge Lefkow dissenting from the order denying rehearing, and recommending rehearing en banc.

XII. REASON FOR GRANTING THE PETITION

A. This Court Should Clarify That Suspected Contraband May Not Be Seized Upon Probable Cause Without A Warrant And Shipped To A Different Court Jurisdiction To Avoid Administrative Delay In Seeking A Warrant In The Jurisdiction Where It Was Seized

The subjective speculation of the case officer in this case that he could get a warrant faster in Fresno, California than in Texas or New Mexico does not constitute an exigent circumstance justifying the warrantless seizure of the package in Texas and its shipment to California. Administrative inconvenience is not generally considered an exigent circumstance justifying the warrantless seizure of a package upon probable cause to believe it contains contraband Chapman v. United States 365 U.S. 610, 615-616 (1961).

Corngold v. United States 367 F.2d 1 (9th Cir., 1966, en banc), citing Chapman v. United States, supra, addressed the unlawful search of packages delivered by the defendant to a common carrier in Las Angeles for transport to New York. Addressing the lack of exigent circumstances justifying the warrantless search in that case, id at 4:

“The officers had no warrant, and there were no circumstances which might have justified a search without one. No arrest was made to which a search without a warrant might be incident. The government made no showing that the packages might be removed

before a warrant could be obtained. Appellant was not threatening to remove them, nor was the airline, except under such conditions as the officers saw fit to impose. From the time appellant left the packages with the carrier in Los Angeles they were subject to the effective control of the customs agents. There was nothing to prevent the agents from securing a warrant on a proper showing, either before the packages were shipped from Los Angeles or after they arrived in New York. On this record, search without a warrant was not justified even if the customs agents had probable cause to believe the packages contained contraband.”

Other authority cited by the Court below offers no stronger support.

United States v. Licata 761 F.2d 537 (9th Cir., 1985), held that police are allowed to seize property without a warrant where it is necessary to prevent destruction or removal of evidence pending the application for a search warrant in that jurisdiction id 543. The time it takes to secure a warrant in such circumstances is considered a necessary exigent circumstance id 541-542. Under the Fourth Amendment a finding of both probable cause and exigent circumstances must be made to support a warrantless seizure id 542. The government bears a heavy burden of demonstrating that exceptional circumstances justified departure from the warrant requirement for seizure. “The burden cannot be satisfied by speculation about what may or might have happened” id 543.

Petitioner submits that the government agents were on notice that foundationless speculation that they could get a warrant issued upon probable cause faster in another state did not constitute an exigent circumstance justifying their warrantless seizure of the mailed package in Texas and sending it to California.

The facts of this case do not support an investigative detention of the package to develop or dispel probable cause, and present this Court with an opportunity to establish the circumstances, if any, that perceived administrative delay in obtaining a warrant justifies transporting that package to another court’s jurisdiction for its issuance. The importance of maintaining clear standards for the

admission of evidence in conformity with the Fourth Amendment warrants this Court granting certiorari Jones v. United States 357 U.S. 493, 494 (1958).

XIII. CONCLUSION

For the foregoing reasons, Ms. Garza respectfully requests that this Court issue a writ of certiorari to review the judgment of the Ninth Circuit Court of Appeals.

Dated this 15th day of June, 2026.

Respectfully submitted



W. Scott Quinlan
Counsel of Record

APPENDIX

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 25 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALMA GARZA,

Defendant - Appellant.

No. 25-2794

D.C. No.

1:22-cr-00062-JLT-SKO-4

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Jennifer L. Thurston, District Judge, Presiding

Argued and Submitted March 6, 2026
San Francisco, California

Before: M. SMITH and R. NELSON, Circuit Judges, and LEFKOW, District
Judge.**

Dissent by Judge Lefkow.

Defendant-Appellant Alma Garza appeals her jury conviction and sentence
for drug conspiracy and possession charges. Because the parties are familiar with

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Joan H. Lefkow, United States District Judge for the
Northern District of Illinois, sitting by designation.

the facts, we do not recount them here, except as necessary to provide context to our ruling. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

1. The district court did not err in denying Garza's motion to suppress. We review the denial of a motion to suppress de novo, the district court's underlying factual findings for clear error, and the decision not to hold an evidentiary hearing for abuse of discretion. *United States v. Quoc Viet Hoang*, 486 F.3d 1156, 1159, 1163 (9th Cir. 2007). "[T]he main Fourth Amendment interest in a mailed package attaches to the privacy of its contents, not the speed with which it is delivered." *United States v. Gill*, 280 F.3d 923, 929 (9th Cir. 2002) (quoting *United States v. Hillison*, 733 F.2d 692, 696 (9th Cir. 1984)). Once probable cause is established, a longer warrantless detention is permitted to apply for and receive a search warrant. *See United States v. Lozano*, 623 F.3d 1055, 1061 (9th Cir. 2010) ("Probable cause is sufficient to support the subsequent detention of the package." (cleaned up)).

Garza has not put forth any evidence that the investigators here were "leisurely" in seeking the warrant. *See Gill*, 280 F.3d at 929. The less-than-three-day warrantless detention period here is shorter than the six-day period deemed permissible in *Gill*, where the evidence showed that investigators acted diligently. *See id.* at 929; *see also United States v. Van Leeuwen*, 397 U.S. 249, 252–53 (1970) (29-hour warrantless detention of the packages during the investigation

was justifiable based on clerk's and officer's reasonable suspicions). Nor was an evidentiary hearing necessary where Garza failed to "allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to conclude that contested issues of fact exist." *Quoc Viet Hoang*, 486 F.3d at 1163 (cleaned up).

2. The district court did not err in giving the deliberate ignorance jury instruction. We review the decision to give a deliberate ignorance instruction for abuse of discretion, but the instruction's substance de novo. *United States v. Yi*, 704 F.3d 800, 804 (9th Cir. 2013). "An instruction is appropriate if it is supported by law and has foundation in the evidence." *Id.* (cleaned up).

Here, the deliberate ignorance instruction was appropriately given because Garza argued she lacked actual knowledge of the package's contents and trial evidence supported a deliberate avoidance mens rea argument. *See id.* at 804; *United States v. Ramos-Atondo*, 732 F.3d 1113, 1119 (9th Cir. 2013). Nor was the substance of the instruction deficient. We have previously upheld the use of the model instruction at issue here. *See, e.g., Yi*, 704 F.3d at 805. The only drugs at issue in Garza's trial were federally controlled substances, so the district court did not err in using the word "drugs" to stand in for federally controlled substances.

3. The district court did not err in denying Garza's motions for acquittal and for a new trial. We review a motion for acquittal based on insufficiency of the evidence de novo and the district court's denial of a motion for a new trial for abuse

of discretion. *See United States v. Chhun*, 744 F.3d 1110, 1117 (9th Cir. 2014). Given Garza’s admissions regarding her suspicions about the package and her more general knowledge of JR’s criminal activities, it was not irrational for the jury to convict. *See id.* at 1117–18.

4. The district court did not err in overruling Garza’s sentencing objections. We review “the district court’s identification of the correct legal standard [regarding a sentencing issue] de novo and the district court’s factual findings for clear error,” while “a district court’s application of the Sentencing Guidelines to the facts of a given case [is] reviewed for abuse of discretion.” *United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170 (9th Cir. 2017) (en banc). We also review the substantive reasonableness of a sentence for abuse of discretion. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

As to Garza’s argument that the district could erred in not granting a minor-role reduction, she failed to show she was “substantially less culpable than the average participant in the charged criminal activity” as compared to her “co-participants.” *United States v. Diaz*, 884 F.3d 911, 914 (9th Cir. 2018) (cleaned up). Nor was the district court required to “tick off sentencing factors to show that it considered them.” *Id.* at 914–15.

The district court similarly did not err in denying Garza’s requested downward departure for acceptance of responsibility, as the reduction “is not intended to apply

to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse.” U.S.S.G. § 3E1.1, cmt. n.2. This is not the rare circumstance where the defendant put on a defense so minimal that she might still qualify for the reduction.

Nor did the district court err by not independently addressing Garza’s methamphetamine purity objection. *See Carty*, 520 F.3d at 992 (9th Cir. 2008); *cf. Rita v. United States*, 551 U.S. 338, 356 (2007) (“[W]hen a judge decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation.”). It suffices that the district court read and considered the presentence report, Garza’s objections to that report, and the sentencing memoranda.

Finally, the district court did not err in denying Garza’s request for a downward departure based on her age and rehabilitation. The below-Guidelines sentence reflected the district court’s review of the relevant papers and understanding of the relevant facts, including the “very large amount of drugs at issue.” Indeed, the sentence was below guidelines in part because the district court “var[ied] downward for [Garza’s] age.”

AFFIRMED.

FILED

United States of America v. Garza, No. 25-2794
LEFKOW, District Judge, dissenting:

MAR 25 2026
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I respectfully disagree with the majority's conclusion that the district court correctly denied Garza's motion to suppress. The majority does not engage with how the facts of *Garza* differ from most of the Fourth Amendment mailed-packages cases, in which packages are detained for further investigation based on reasonable suspicion. *See, e.g., United States v. Gill*, 280 F.3d 923 (9th Cir. 2002); *United States v. Aldaz*, 921 F.2d 227 (9th Cir.1990). Garza's package was detained, the government admits, with sufficient evidence to seek a judicial finding of probable cause, meaning there was no investigatory need to continue detaining the package. It was held for almost three days for the government's convenience. The majority at once acknowledges that probable cause is different from reasonable suspicion by citing *United States v. Lozano*, 623 F.3d 1055 (9th Cir. 2010), for the proposition that a package may continue to be held even after establishing probable cause, but it proceeds to analyze the delay using *Gill*, a reasonable suspicion case.

The majority holds that, "[o]nce probable cause is established, a longer warrantless detention is permitted to apply for and receive a search warrant." Majority at 2 (citing *Lozano*, 623 F.3d at 1061 ("[P]robable cause is sufficient to support the subsequent detention of the package." (cleaned up))). Neither the majority nor *Lozano* provides any reasoning to support their unequivocal statements and neither expresses any limiting principles. In *Lozano*, it is not even

clear to what extent, if at all, the agents detained the package after they had evidence of probable cause before applying for the warrant. *Lozano*, 623 F.3d at 1059. Instead, *Lozano* relies on the same statement made in a footnote in *United States v. Quoc Viet Hoang*, 486 F.3d 1156, 1160 n.1 (9th Cir. 2007) (where there was a 2.5 hour delay between obtaining probable cause and issuing a warrant), which in turn offers no reasoning but a citation to *United States v. Hernandez*, 313 F.3d 1206, 1213, 1208 (9th Cir. 2002) (where there was a 20-hour delay between obtaining probable cause and issuing a warrant). The cited portion of *Hernandez* mentions probable cause only obliquely to note that in another case, *United States v. Aldaz*, 921 F.2d 227 (9th Cir.1990), we held a five-hour delay between probable cause and executing a warrant was not unreasonable because it was due to the administrative hurdles of securing a warrant. *Hernandez*, 313 F.3d at 1213 (citing *Aldaz*, 921 F.2d at 1231). Simply put, neither the majority nor any of the cases it relies on has articulated a principled reason for why a “longer warrantless detention” of almost three days after probable cause has been established “is permitted.” Majority at 2; compare *United States v. Dass*, 849 F.2d 414, 415 (9th Cir. 1988) (citing *United States v. Van Leeuwen*, 397 U.S. 249, 253 (1970)) (“[W]e are reluctant to extend the *Van Leeuwen* outer boundary of 29 hours [from reasonable suspicion to warrant execution] to a period not measured in hours, but rather in days[.]”).

The majority goes on to reason that because the six-day delay between package detention and search warrant execution in *Gill* was reasonable, *Garza* should be treated the same. But comparing the six days in *Gill* to the almost-three days in *Garza* is comparing apples to oranges. Finding the comparable time period in *Gill* requires assessing when probable cause was established in that case. In *Gill*, the package was detained under reasonable suspicion on Thursday to *investigate* it, which the officer diligently did over the next several days. *Gill*, 280 F.3d at 925–26. By Monday, the investigating officer still had not developed probable cause. *See Gill*, 280 F.3d at 926. The officer then continued his investigation, gathered more information, and completed his search warrant application on Tuesday. *Gill*, 280 F.3d at 926–27. The warrant was signed on Wednesday, as the magistrate judge was unavailable on Tuesday. *Gill*, 280 F.3d at 927. Therefore, the comparable time period in *Gill*—the delay between obtaining probable cause and executing a warrant—was about 24 hours. This makes *Gill* similar to *Aldaz* or *Hernandez*, where the probable cause-to-warrant delay was a matter of hours, rather than a period of days as it was here and in *United States v. Dass*, 849 F.2d 414 (9th Cir. 1988).

Garza should be compared to *Dass*, the Ninth Circuit case that grapples with the effect on a sender’s Fourth Amendment rights when investigators purposefully delay a package after obtaining sufficient evidence for probable cause. In *Dass*, we

recognized that “short delays in obtaining a search warrant for mailed packages” may be reasonable, citing *United States v. Van Leeuwen*, 397 U.S. 249 (1970), but we held that the circumstances did not justify delays of seven and more days where dog sniffs provided the immediate basis for probable cause. *Dass*, 849 F.2d at 415–16. *Van Leeuwen* and *Dass* require us to assess the reasonableness of the delay under the facts presented.

The difference between probable cause and reasonable suspicion matters because it informs the reasonableness of a package’s delay. *See Aldaz*, 921 F.2d at 230. If a package is delayed for diligent investigation, courts often find such a delay reasonable and therefore not a Fourth Amendment violation. *See, e.g., Gill*, 280 F.3d at 929. If a package is delayed not because of an investigatory need or an unavoidable administrative delay, but for the investigators’ convenience, as it was here, the delay should be held unreasonable and thus a Fourth Amendment violation.¹

In *Dass*, we relied on two fundamental principles grounding the Fourth Amendment: deterring unreasonable police behavior and requiring judicial determination of probable cause. *Dass*, 849 F.2d at 416. We rejected the government’s argument that the delay was acceptable because it did not benefit

¹ Moreover, unlike our guiding cases, we are in an age of electronic communication. This counsels for allowing less than the 29 hours accepted in *Van Leeuwen*, rather than more.

from the delay, stating, “The government’s theory would allow an unlimited period of seizure without judicial intervention; to accept its argument would nullify the seizure portion of the search and seizure clause of the fourth amendment.” *Id.* at 416 (citing *Steagald v. United States*, 451 U.S. 204, 215, 212 (1981)). We should be guided by the principles articulated in *Dass*. Instead, we stretch the unsupported language of *Lozano* towards their erosion. The holding today is contrary to *Dass*; it allows investigators to pursue a warrant at their leisure after they have established probable cause; and it opens the door to the very misconduct the Fourth Amendment exists to prevent.

I respectfully dissent.

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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ALMA GARZA,

15 Defendant.
16

Case No.: 1:22-cr-00062 JLT

ORDER DENYING MOTION TO SUPPRESS
(Doc. 177)

TO BE FILED UNDER SEAL

17 Alma Garza moves the Court to suppress a package mailed by her in January 2022. Ms. Garza
18 contends that the seizure occurred without a warrant and, consequently, it violated the Fourth
19 Amendment. Because the Court finds that the officers lawfully seized the package, the motion is
20 **DENIED.**

21 **I. Background**

22 Around noon on January 27, 2022—a Thursday—officers intercepted a telephone call between
23 a known drug trafficker, Horacio Torrecillas and Ms. Garza, in which Torrecillas asked Ms. Garza to
24 mail a package for him. (Doc. 188 at 15) Initially, Garza protested, and asked questioned why the
25 person who was paid to do this work could not do it. *Id.* Even still, Garza travelled to the post office
26 and deposited the package in the mail. *Id.* During the visit to the post office, at about 2:30 p.m., Garza
27 spoke by telephone with Torrecillas. *Id.* She told him that the package could not be delivered by the
28 next day, but it could be delivered by Saturday. *Id.* She verified that she should send the package in

1 this manner, despite the \$75 cost. Id. at 16. Torrecillas agreed, and Garza paid the money and posted
2 the package to be delivered to 1000 La Fonda Drive, Apartment H, Las Cruces, New Mexico. Id.

3 Later that night, at 9:18 p.m., Torrecillas spoke to the recipient of the package and informed
4 him, "I sent you that shit already," and told him that he would have to sign for the package when it
5 was delivered because Garza had accidentally included the signature requirement when she mailed it.
6 Doc. 188 at 16). The recipient told Torrecillo that he was opening a bank account and would send
7 Torrecillo a debit card, so Torrecillo could withdraw the money, which would constitute payment. Id.

8 The next afternoon, on Friday, January 28, 2022, at 4:02 p.m., Torrecillo called Garza and
9 asked her to "check the tracking on the shit." (Doc. 188 at 17) Garza responded, "check what?" Id.
10 Torrecillo replied, "the tracking on the shit we sent." GARZA agreed to do so, but then she forgot to
11 do it. A little while later, at 4:33 p.m. the recipient of the package texted Torrecillo and asked when
12 the package would arrive. Id. Torrecillo informed him that it would arrive either that same day or the
13 day after. Id. Torrecillo said he'd check the tracking info and get back to him. Id. At 7 p.m., Torrecillo
14 contacted Garza and again asked her to check the tracking information because "they were asking." Id.
15 Garza reported that she had forgotten to do it earlier because she was busy. Id. Garza confirmed the
16 package would arrive the next day, Saturday. Id. At 7:50 p.m., Torrecillo reported to the recipient that
17 the package would arrive on Saturday, which was January 29, 2022. Id.

18 During this time on January 27, 2022, agents confirmed that the package was sent from the
19 Hughes Avenue post office, located in Fresno, that it weighed five pounds, three ounces and it was due
20 to be delivered to an address in El Paso, Texas on January 29, 2022. (Doc. 188 at 17) On Friday,
21 January 28, 2022, at the request of investigating officer, HIS Special Agent Andres Varela, Postal
22 Inspectors in El Paso re-routed the package back to Fresno, and it was scheduled to arrive, and did
23 arrive, on January 29, 2002. Id.; (Doc. 188 at 27)

24 Varela asserts that he asked that the package be returned to Fresno because the process would
25 be done quickly in Fresno "because a prosecutor familiar with the investigation, AUSA Justin Gilio,
26 was available and ready to review the warrant and would submit it to a Magistrate Judge in the Eastern
27 District of California over the weekend. I also knew that myself and other agents were ready and
28 available to open the parcel when the judge signed the warrant. And I knew that if narcotics were

1 seized from the parcel, my agency would be storing those drugs in Fresno and sending them to a
2 Fresno-based laboratory for testing.” (Doc. 207-1 at 2.) He based his belief that the search warrant
3 could be obtained more quickly in Fresno on his experience seeking out-of-district warrants on at least
4 five occasions. *Id.* He attested that there would be delay, if he sought the warrant in the Texas court
5 because it “would require securing the availability of a prosecutor in the other district and
6 familiarizing him or her with the case. I also knew that this process could be further delayed by the
7 need to contact law enforcement agents in the other district (either to serve as an affiant on the search
8 warrant application or to assist in the execution of the search warrant). I also knew that the warrant
9 would then have to be reviewed and signed by a magistrate judge in the other district. I further
10 believed that this process was likely to be delayed by the fact that the warrant application would not be
11 ready for a prosecutor’s and judge’s review until over the weekend.” *Id.*

12 Indeed, Varela began drafting the warrant affidavit on Friday, January 28, 2022. (Doc. 207-1 at
13 3) He also reviewed and transcribed the wiretap interceptions and worked with Postal Inspectors to
14 obtain information about other packages sent from Fresno to the La Fonda Drive apartment in New
15 Mexico to support the warrant request. *Id.* On Saturday afternoon (January 29, 2022), the Assistant
16 United States Attorney submitted to the warrant package to the Magistrate Judge. *Id.* For unknown
17 reasons, the Magistrate Judge did not “swear out” and sign the warrant until 10:19 a.m. on Sunday,
18 January 30, 2022. *Id.* Pursuant to the warrant, the agents opened the package on the same day. *Id.*

19 II. Analysis

20 A court should exclude evidence if there was a violation of the defendant’s Fourth Amendment
21 interests. *Mapp v. Ohio*, 367 U.S. 643, 656 (1961). The contours of the Fourth Amendment right
22 depends upon the factual circumstances. In *United States v. Hernandez*, 313 F.3d 1206, 1209–10 (9th
23 Cir. 2002), the Ninth Circuit Court of Appeals held,

24 A person who voluntarily deposits mail in the United States mail for delivery retains a
25 limited possessory interest in the mailed item. See *United States v. England*, 971 F.2d
26 419, 420 (9th Cir.1992). “[T]he mere detention of mail not in [the addressor’s] custody
27 or control amounts to at most a minimal or technical interference with [the addressor’s]
28 person or effects, resulting in no personal deprivation at all.” *United States v. Place*,
462 U.S. 696, 718 n. 5, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (Brennan, J.,
concurring) (quoting *United States v. Place*, 660 F.2d 44, 53 (2d Cir.1981), *aff’d*, 462
U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983)).

1 The Court has clarified that the person who mails a package has a limited possessory interest in the
2 package, which is limited solely to its timely delivery. United States v. Conwill, 2016 WL 1092450, at
3 *4 (D. Haw. Mar. 21, 2016); United States v. England, 971 F.2d 419, 420-421 (9th Cir.1992). Actions
4 of law enforcement, which do not delay the timely delivery of the package, do not implicate the Fourth
5 Amendment. United States v. Jefferson, 566 F.3d 928, 934 (9th Cir. 2009). “Before the guaranteed
6 delivery time, law enforcement may detain such a package for inspection purposes without any Fourth
7 Amendment curtailment.” *Id.* at 934-35. After the guaranteed delivery time passes, law enforcement
8 officers must have reasonable suspicion to continue holding the parcel. *Id.* at 934 (quoting United
9 States v. LaFrance, 879 F.2d 1, 7 (1st Cir. 1989)).

10 The evidence is not disputed in this motion. Rather, the dispute lies on the effect of the
11 evidence. As noted above the package was diverted by Agent Varela from El Paso back to Fresno. It
12 arrived back in Fresno on Saturday, the day it was due to be delivered. On that same day, the agent
13 presented the warrant package to the magistrate judge for evaluation and issuance, but—probably
14 because it was a weekend—the judge did not issue it until the next day, on Sunday. Thus, Ms. Garza’s
15 constitutional rights under the Fourth Amendment did not ripen until after the end of the Saturday
16 delivery time. Jefferson, at 934 [“We hold that an addressee has no Fourth Amendment possessory
17 interest in a package that has a guaranteed delivery time until such delivery time has passed. Before
18 the guaranteed delivery time, law enforcement may detain such a package for inspection purposes
19 without any Fourth Amendment curtailment.”]

20 Though the evidence is not clear at what time the Saturday delivery day ends for the USPS, it
21 was likely not before the warrant package was presented to the Magistrate Judge on Saturday
22 afternoon. In any event, the Fourth Amendment was implicated only during Saturday evening and
23 Sunday morning before the court issued the warrant. In reviewing the warrant package issued by the
24 court, it is apparent that the officers had not only reasonable suspicion on Saturday afternoon but had
25 probable cause to believe that criminal activity was afoot.

26 At the hearing on the motion, Ms. Garza’s attorney made much of the fact that the officer
27 should not have diverted the package back to Fresno and should have sought a warrant in Texas.
28 Based upon the evidence presented, this would have likely cause greater delay in the warrant issuing

1 but, even if this occurred, she would not have been able to make out a violation of her limited
2 possessory rights. The government had reasonable suspicion as early as the time Varela had the
3 package diverted back to Fresno and had probable cause by the time the warrant package was
4 completed. Moreover, Ms. Garza has cited no authority that the Fourth Amendment protects
5 investigation by a jurisdiction of her choosing.

6 On the other hand, Ms. Garza argues that the agents had probable cause earlier than when the
7 warrant package was presented to the court. She fails to explain, however, how this violates her
8 Fourth Amendment rights. Indeed, the relevant consideration is whether the officers had legal cause
9 to retain the package after the delivery deadline had passed. For these reasons, the motion to suppress
10 is **DENIED**.

11 **ORDER**

12 Based upon the foregoing the Court **ORDERS**:

- 13 1. The motion to suppress is **DENIED**.
14 2. The Court sets a further status conference before Judge Sheila K. Oberto on September
15 7, 2022 at 1:00 p.m.¹

16
17 IT IS SO ORDERED.

18 Dated: September 5, 2022

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20 UNITED STATES DISTRICT JUDGE
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¹ The parties may stipulate, with an adequate time exclusion, to a different status conference date.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ALMA GARZA,

Defendant.

Case No.: 1:22-cr-00062 JLT

ORDER DENYING MOTION FOR
RECONSIDERATION
(Doc. 487)

Alma Garza moves the Court to reconsider its order denying her motion to suppress. (Doc. 487) She contends the Court committed clear error in failing to suppress the evidence. Because the Court finds no error, the motion is **DENIED**.

I. Background¹

On Thursday, January 27, 2022, officers intercepted a telephone call between a known drug trafficker, Horacio Torrecillas and Ms. Garza, in which Torrecillas asked Ms. Garza to mail a package for him. (Doc. 188 at 15) Initially, Garza protested, because Torrecillas employed someone to mail packages for him. Id. Eventually she agreed to mail the package and travelled to the post office. Id. While there, Garza spoke again with Torrecillas in an intercepted call. Id. She told him that the package could not be delivered by the next day, but it could be delivered by Saturday. Id. She inquired

¹ The Court repeats an abbreviated description of the factual circumstances, from its original order, to ease review.

1 whether she should send the package in this manner despite the \$75 cost. Id. at 16. Torrecillas agreed,
2 and Garza paid the money and mailed the package to be delivered to 1000 La Fonda Drive, Apartment
3 H, Las Cruces, New Mexico². Id.

4 Later that night, Torrecillas spoke to the recipient of the package and informed him, "I sent you
5 that shit already." Doc. 188 at 16. The recipient told Torrecillas that he was opening a bank account
6 and would send Torrecillas a debit card, so Torrecillas could withdraw the money, which would
7 constitute payment. Id.

8 The next afternoon, on Friday, January 28, 2022, Torrecillas called Garza and asked her to
9 "check the tracking on the shit." (Doc. 188 at 17) Garza responded, "check what?" Id. Torrecillas
10 replied, "the tracking on the shit we sent." GARZA agreed to do so, but then she forgot to do it. A
11 little while later, the recipient of the package texted Torrecillas and asked when the package would
12 arrive. Id. Torrecillas informed him that it would arrive either that same day or the day after. Id.
13 Torrecillas said he'd check the tracking info and get back to him. Id. Torrecillas contacted Garza and
14 again asked her to check the tracking information because "they were asking." Id. Garza confirmed the
15 package would arrive the next day, on Saturday. Id. Torrecillas reported this information to the
16 intended recipient. Id.

17 While monitoring the phone calls noted above, on January 27, 2022, agents confirmed that the
18 package was sent from the Hughes Avenue post office located in Fresno, that it weighed five pounds,
19 three ounces and that it was due to be delivered to the address in Las Cruces, New Mexico on January
20 29, 2022. (Doc. 188 at 17) On Friday, January 28, 2022, at the request of investigating officer, HIS
21 Special Agent Andres Varela, Postal Inspectors in El Paso, Texas intercepted the package and re-
22 routed it back to Fresno. (Doc. 188 at 27) It was scheduled to arrive, and did arrive, on January 29,
23 2002. Id.

24 Varela asserts that he asked that the package be returned to Fresno because the process would
25 be done quickly in Fresno "because a prosecutor familiar with the investigation, AUSA Justin Gilio,
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27
28 ² This same address was found on a co-conspirator's phone. The coconspirator confirmed in captured electronic
contacts that he was sourcing the pills and was planning to have "blues" mailed to that address. (Doc. 188 at 12-
14) "Blues," in drug traffickers' slang, refers to fentanyl pills. Id. at 8.

1 was available and ready to review the warrant and would submit it to a Magistrate Judge in the Eastern
2 District of California over the weekend. I also knew that myself and other agents were ready and
3 available to open the parcel when the judge signed the warrant. And I knew that if narcotics were
4 seized from the parcel, my agency would be storing those drugs in Fresno and sending them to a
5 Fresno-based laboratory for testing.” (Doc. 207-1 at 2.) He based his belief that the search warrant
6 could be obtained more quickly in Fresno on his experience seeking out-of-district warrants on at least
7 five occasions. Id. He attested that there would be delay if he sought the warrant in the Texas court
8 because it “would require securing the availability of a prosecutor in the other district and
9 familiarizing him or her with the case. I also knew that this process could be further delayed by the
10 need to contact law enforcement agents in the other district (either to serve as an affiant on the search
11 warrant application or to assist in the execution of the search warrant). I also knew that the warrant
12 would then have to be reviewed and signed by a magistrate judge in the other district. I further
13 believed that this process was likely to be delayed by the fact that the warrant application would not be
14 ready for a prosecutor’s and judge’s review until over the weekend.” Id.

15 Varela began drafting the warrant affidavit on Friday, January 28, 2022. (Doc. 207-1 at 3) He
16 also reviewed and transcribed the wiretap interceptions and worked with Postal Inspectors to
17 obtain information about other packages sent from Fresno to the La Fonda Drive apartment in New
18 Mexico to support the warrant request. Id. On Saturday afternoon (January 29, 2022), the Assistant
19 United States Attorney submitted the warrant package to the Magistrate Judge. Id. The Magistrate
20 Judge swore out and signed the warrant the next morning (Sunday, January 30, 2022) at 10:19 a.m. Id.
21 Once the warrant was issued, the agents opened the package and discovered what they recognized to
22 be methamphetamine and cocaine. Id.

23 About two weeks after hearing argument on the motion to suppress, the Court issued an order
24 denying the motion. (Docs. 218, 220) Because the Court had granted Ms. Garza’s request to seal
25 portions of the evidence upon which the motion was based and the order contained information that
26 had been sealed, the Court issued the order under seal. (Doc. 220) Due to inadvertence, the clerk’s
27 office sent notice of the filing of the order to counsel but did not attach the order. Counsel did not
28 appreciate that the order had issued until more than a year later, on September 23, 2023, when, after

1 their inquiry, the clerk's office served the order. The current motion for reconsideration was filed on
2 May 17, 2024 (Doc. 487), approximately eight months after the motion was served.

3 **II. Analysis**

4 "Although not expressly authorized by the Federal Rules of Criminal Procedure, motions for
5 reconsideration are allowed in criminal cases." United States v. Jones, 916 F.Supp.2d 83, 86 (D.D.C.
6 2013). "No precise 'rule' governs the district court's inherent power to grant or deny a motion to
7 reconsider a prior ruling in a criminal proceeding. Rather, the district court's authority to revisit a
8 ruling on a suppression motion 'is within its sound judicial discretion.'" United States v. Lopez-Cruz,
9 730 F.3d 803, 811 (9th Cir. 2013) quoting United States v. Raddatz, 447 U.S. 667, 678 n. 6 (1980).

10 Local Rule 430.1(i) requires parties moving for reconsideration in criminal cases to
11 demonstrate "what new or different facts or circumstances are claimed to exist that did not exist or
12 were not shown upon such prior motion or what other grounds exist for the motion." "But as is true of
13 motions for reconsideration in civil cases, motions for reconsideration in criminal cases are almost
14 always denied when they rest on arguments or evidence the moving party previously raised or could
15 have raised and denial would not cause manifest injustice." United States v. Davis, 2021 WL 1122574,
16 at *2 (E.D. Cal. Mar. 24, 2021), *aff'd*, 2022 WL 1090945 (9th Cir. Apr. 12, 2022).

17 **i. The motion for reconsideration is untimely**

18 Because there is no express rule allowing motions for reconsideration of an order issued in the
19 criminal law context, there is, likewise, no specific rule that dictates the timeliness of a such a motion.
20 United States v. Jones, 608 F.2d 386, 390 (9th Cir. 1979). "The Supreme Court, however, has held that
21 a motion for reconsideration is timely at least 'when filed within the original period for review.'
22 United States v. Healy, 376 U.S. 75, 78, 84 S.Ct. 553, 555, 11 L.Ed.2d 527 (1964)." United States v.
23 Jones, 608 F.2d at 390. Without identifying a bright-line deadline as to the timing of a motion to
24 reconsider, United States v. Wardlow, 951 F.2d 1115, 1116 (9th Cir. 1991), the Court upheld a
25 determination that seeking reconsideration two weeks after the ruling on the motion to suppress was
26 not timely, in light of the fact that the motion was made the day before trial was scheduled to begin
27 and a jury was "standing by."

28 In this case, more than eight months passed between the time the Court served the order on the

1 motion to suppress and the defendant's filing of her motion for reconsideration. The explanation for
2 the delay was simply that the attorney had not closely read the order until then. The government
3 argues that Local Rule 430.1, which addresses motion for reconsideration in the criminal case context,
4 references Local Rule 303 for the proposition that motions for reconsideration must be filed within 14
5 days. In any event, the Court is confident that in the absence of a changed circumstance, delay of eight
6 months is too long. Thus, the Court **DENIES** the motion as untimely.

7 **ii. Even if the motion for reconsideration were timely, it fails to demonstrate**
8 **reconsideration is appropriate.**

9 Ms. Garza identifies no new law or facts or circumstances she could not have raised when she
10 filed her motion originally. (Doc. 487) Rather, she argues the Court committed clear error in its ruling
11 on her motion. *Id.* The Court disagrees.

12 In *United States v. Hernandez*,³ 313 F.3d 1206, 1209–10 (9th Cir. 2002), the Ninth Circuit
13 Court of Appeals held,

14 A person who voluntarily deposits mail in the United States mail for delivery retains a
15 limited possessory interest in the mailed item. *See United States v. England*, 971 F.2d
16 419, 420 (9th Cir.1992). “[T]he mere detention of mail not in [the addressor’s] custody
17 or control amounts to at most a minimal or technical interference with [the addressor’s]
18 person or effects, resulting in no personal deprivation at all.” *United States v. Place*,
462 U.S. 696, 718 n. 5, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (Brennan, J.,
concurring) (quoting *United States v. Place*, 660 F.2d 44, 53 (2d Cir.1981), *aff’d*, 462
U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983)).

19 To detain a package, postal employees must have a reasonable and articulable suspicion based upon
20 the totality of the circumstances that the package contains evidence of illegal activity. *Hernandez*, at
21 1210-1211. Officers are allowed “to draw on their own experience and specialized training to make
22 inferences from and deductions about the cumulative information available to them that ‘might well
23 elude an untrained person.’” *Hernandez*, at 1211, internal citations omitted. If this suspicion is
24 lawfully drawn, “detention, without a warrant, while an investigation was made” is “certainly
25 justified.” *United States v. Van Leeuwen*, 397 U.S. 249, 252 (1970).

26 In the weeks leading up to January 27, 2022, the officers had the information from the co-
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28 ³ The Court held similarly in *United States v. Aldaz*, 921 F.2d 227, 229 (9th Cir. 1990). [“Postal authorities may
seize and detain packages if they have a reasonable and articulable suspicion of criminal activity.”]

1 conspirator that the coconspirator was planning to have fentanyl pills mailed to the Las Cruces
2 address. (Doc. 188 at 12) They intercepted the phone call from Torrecillas telling Garza to mail the
3 package to the Las Cruces address. (Doc. 188 at 15) They also had the phone calls between Torrecillas
4 and the intended recipient of the package in which Torrecillas said, "I sent you that shit already," and
5 in which the recipient told Torrecillas he would mail him a debit card, so Torrecillas could without
6 money from a bank account to pay for the package. *Id.* at 16. All of this constitutes reasonable
7 suspicion that there was contraband in the package.

8 In her motion for reconsideration, Garza argues, as she did in her original motion, that because
9 the officers had more than reasonable suspicion that the package contained contraband, they had to
10 obtain a search warrant rather than to detain it while obtaining a search warrant that would allow them
11 to search it. (Doc. 493 at 2-3) First, this argument is contrary to that urged in her original motion in
12 which she asserted, "... once probable cause to search or seize is established, officers may detain the
13 mailed package for a reasonable time while they seek a warrant (United States v. Leeuwen (1970) 397
14 U.S. 249, 250; United States v. Gill, *supra* at 929)." (Doc. 177 at 3)

15 Second, Garza's current argument is that when officers have only suspicion that a package
16 contains contraband, they may detain it, but when they have probable cause to believe the package
17 contains unlawful material, they may not detain it but must, instead, obtain a warrant before they may
18 detain it. The Court declines to adopt this position.

19 Ms. Garza relies upon United States v. England, 971 F.2d 419, 421 (9th Cir. 1992), for the
20 proposition that the postal inspectors were not allowed to re-route the package back to Fresno but had
21 to, instead, seek a warrant in Texas.⁴ However, England does not support this position. Rather, in
22 United States v. Gill, 280 F.3d 923 (9th Cir. 2001), the Court found that the postal inspector acted
23 reasonably when he detained a suspicious package while conducting an investigation in California
24 (where the package was deposited for mailing), and then shipped the package to Washington (to a
25 location near to where the package was intended to be mailed) to allow the ongoing investigation
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27 ⁴ Implicitly, then Ms. Garza concedes that the package could be removed from the stream of mail for the
28 purpose of seeking a warrant, though does not explain why she believes Texas was the proper forum for that to
occur. Texas is not where the package originated or was due to be delivered and was simply the location where
the officer interrupted the package's voyage to New Mexico.

1 there. *Id.* at 928. The Court held reasonable suspicion existed, which justified the detention of the
2 package. *Id.* The Court rejected the claim that delay in delivery of the package violated the Fourth
3 Amendment. *Id.* at 929. The Court held, “this Court has stated that “the main Fourth Amendment
4 interest in a mailed package attaches to the privacy of its contents, not the speed with which it is
5 delivered.” *United States v. Hillison*, 733 F.2d 692, 696 (9th Cir.1984) (nine hour delay reasonable)
6 (citation omitted). *See also Van Leeuwen*, 397 U.S. at 253, 90 S.Ct. 1029 (29 hour detention of
7 packages sent by first class mail not unreasonable); *Aldaz*, 921 F.2d at 229–31 (five day delay not
8 unreasonable).” *Id.* The Court concluded, “Even with express mail, [the sender’s] predominant interest
9 was in the privacy of the package and not merely prompt delivery. On these facts, the delay was not
10 unreasonable.” *Id.*

11 In *United States v. Beard*, 16 F.4th 1115, 1116 (5th Cir. 2021), the defendant moved to suppress
12 evidence found in a package he mailed from Houston, Texas to Hammond, Louisiana. Once the
13 package arrived in Louisiana, they detained it and re-routed it back to Texas. *Id.* The officer explained
14 that he thought that getting a search warrant in Louisiana would take longer than in Texas due to the
15 need to have local people “get up to speed.” *Id.* at 1117–1118. At the time, the officer thought that the
16 package would arrive back in Texas in two days, but, in fact, it took five days to arrive. *Id.* at 1118.

17 On appeal, the defendant conceded that the original detention was permitted because it was
18 supported by reasonable suspicion. *Beard*, at 1118. He argued, however, that the detention became an
19 unlawful seizure when it was rerouted back to Texas, because investigatory efforts could have been
20 made in Louisiana. *Id.* The court disagreed and held that the package “had extensive connections to
21 Houston: it was mailed from a post office there, the sender (Beard) used the Houston post office
22 frequently, and the investigation of Beard’s drug-trafficking activity was being conducted by [the
23 officer] in Houston. Moreover, [the officer] requested that the package be rerouted to Houston because
24 he believed that there was no difference in the time it would take to obtain a warrant in Houston versus
25 Hammond.” *Id.* at 1121. Thus, despite Ms. Garza’s argument to the contrary, she had no Fourth
26 Amendment right to have the package held in Texas while Texas officers obtained a search warrant, nor
27 may she complain that it was returned to California.

28 In addition, Ms. Garza reiterates many of the same arguments she raised in her original motion

1 but presses the Court to come to a different result.⁵ The Court resists this invitation and notes that
2 these arguments fail to meet the standards for a motion for reconsideration.

3 **ORDER**

4 Based upon the foregoing the Court **ORDERS** that the motion for reconsideration (Doc. 487)
5 is **DENIED**.

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7 IT IS SO ORDERED.

8 Dated: June 25, 2024


UNITED STATES DISTRICT JUDGE

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27 ⁵ Ms. Garza expands her reasoning for seeking an evidentiary hearing. She offers no explanation why these
28 grounds were not offered in her original motion. At that time, she stated only that at an such a hearing, she
would “cross-examine the government’s witnesses.” (Doc. 177 at 2) A motion to reconsider is not a second bite
at the apple.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 28 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALMA GARZA,

Defendant - Appellant.

No. 25-2794

D.C. No.

1:22-cr-00062-JLT-SKO-4

Eastern District of California,
Fresno

ORDER

Before: M. SMITH and R. NELSON, Circuit Judges, and LEFKOW, District Judge.*

Judges M. Smith and R. Nelson have voted to deny the petition for panel rehearing and rehearing en banc. Judge Lefkow would grant the petition for panel rehearing and would recommend granting the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for panel rehearing and rehearing en banc is **DENIED**.

* The Honorable Joan H. Lefkow, United States District Judge for the Northern District of Illinois, sitting by designation.

1 H).² (*Id.*)

2 In addition to the above information that investigators knew about the recipient, several hours
3 after Garza mailed the parcel, the wiretap revealed additional evidence providing probable cause that the
4 parcel contained contraband. In a call that evening, Torrecillas was intercepted speaking with a then-
5 unidentified male (UM9), who was using the phone subscribed to Ramona Chatman: (559) 400-9274.
6 (*Id.* at 1296). During the call, Torrecillas stated, “I sent you that shit already,” but explained that UM9
7 would have to sign for it because Torrecillas’s cousin (Garza) accidentally included a signature
8 requirement. (*Id.*) UM9 and Torrecillas then discussed UM9 sending Torrecillas a debit card so that
9 UM9 could deposit money into the account to pay Torrecillas. (*Id.*)

10 Based on the belief that the parcel contained contraband, the government tracked it down the
11 next day, January 28, 2022, located it in Texas, and rerouted it back to Fresno. (*Id.* at 1298; Defendant’s
12 Attachment 2 at 20968). The parcel arrived in Fresno the following day, January 29, 2022, (*id.*) and the
13 government applied for a federal search warrant on that same day, (Government’s Exhibit 1, Decl. of
14 HSI Special Agent Andres Varela, at ¶ 10). The warrant included all the above information; some
15 additional intercepted communications between the parties that occurred on January 28, 2022,
16 concerning the parcel’s delivery status, (Defendant’s Attachment 1, at 1297); and a description of
17 parcels previously sent from the Fresno area to the 1000 La Fonda Dr. apartments in Las Cruces, NM,
18 (*id.* at 1298). The next morning, January 30, 2022, the Honorable Stanley A. Boone, U.S. Magistrate
19 Judge for the Eastern District of California, signed the federal search warrant. (*Id.* at 1302). And the
20 same morning, members of the investigative team opened the parcel and found over 1,300 grams of
21 methamphetamine and a small sample of cocaine. (Defendant’s Attachment 2, at 20968).

22 The government charged Garza with conspiracy to distribute and to possess with intent to
23 distribute cocaine and 50 grams or more of actual methamphetamine.³ (Doc. 126). On July 18, 2022,
24 Garza filed a motion to suppress the contents of the searched parcel and its fruits. (Doc. 177).

26 ² The note correctly spelled the city name: “Las Cruces” instead of “Lost Cruces” like Garza’s
27 parcel.

28 ³ Garza is also charged in Count 3 with distribution of 400 grams or more of a mixture or
substance containing a detectable amount of fentanyl for conduct that occurred on another day.

1 street names, appearance, how they are used, the effect on the human body, effects of overdose,
2 and their legal status in the United States. (*Id.*)

3 The Government objects that “[m]uch of the fact sheet is irrelevant and contains
4 legislative facts which are not properly the subject of judicial notice. Taking judicial notice as
5 Garza requests would also serve to confuse the issues, mislead the jury, and waste time.” (Doc.
6 567. The Government requests that the Court “either order Garza to identify each specific fact she
7 seeks to be judicially noticed, and allow the government a chance to respond, or deny defendant’s
8 motion in whole.” (Doc. 567.)

9 Defendant indicates that she simply wishes for the Court to take judicial notice that the
10 Fact Sheet was published by the DEA in 2021. (Doc. 591.) She intends to use the Fact Sheet to
11 cross examine Agent Riley, who may testify that M-30 pills were typically fentanyl pills in 2021.
12 (*Id.*) Defendant maintains she is entitled to cross examine him with official DEA publications
13 stating otherwise and the Fact Sheet indicates M-30s may contain no controlled substance, a
14 different controlled substance, or a different amount of a controlled substance. (*Id.*)

15 It is well established that the Court may take judicial notice of the existence, but
16 consideration of the record does not extend to the truth of the matters asserted within that record.
17 *United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 974 (E.D. Cal. 2004) To the extent the
18 Defense simply wants to present the public record to Agent Riley as a DEA publication, the
19 request is **GRANTED**, but this alone, does not permit the presentation of the contents of the
20 document to the jury. As to the contents of the request, the request is **DENIED without**
21 **PREJUDICE.**

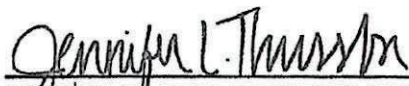
22 **3. Defendant’s Reservation of Right to Move to Suppress (Doc. 536)**

23 Defendant moved to suppress the results of the search of the package mailed by her in
24 January 2022. (Doc. 177.) That motion was denied on September 6, 2022 (Doc. 220), as was the
25 Defendant’s motion for reconsideration of that order. (*See* Doc. 502.) On August 30, 2024, the
26 Defense filed a “notice” that should the ruling on the motion to suppress be reversed on appeal,
27 she would also move to suppress her custodial interview and the search of her phone as the fruit
28 of the poisonous tree. (Doc. 536.) The Court agrees with the Government, (*see* Doc. 575 (also

1 reserving right to oppose any fruit of the poisonous tree arguments)), that there is no reason for
2 the Court to take any action with respect to this notice.

3
4 IT IS SO ORDERED.

5 Dated: September 16, 2024


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Eastern District of California

UNITED STATES OF AMERICA

v.

ALMA GARZA

AKA: Alma Lucia Garza

JUDGMENT IN A CRIMINAL CASE

Case Number: **1:22CR00062-004**

Defendant's Attorney: W. Scott Quinlan, Appointed

THE DEFENDANT:

- ☐ pleaded guilty to count(s) ____.
- ☐ pleaded nolo contendere to count(s) ____, which was accepted by the court.
- ☒ was found guilty on count(s) 1 and 2 of the Third Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846, 841(a)(1)	Conspiracy to Distribute and Possess with Intent to Distribute Cocaine, Methamphetamine, and Fentanyl (Class C Felony)	3/31/2022	1
21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2	Possession with Intent to Distribute Cocaine and Methamphetamine, and Aiding and Abetting (Class C Felony)	1/27/2022	2

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

- ☐ The defendant has been found not guilty on count(s) ____.
- ☐ Count(s) ____ dismissed on the motion of the United States.
- ☐ Indictment is to be dismissed by District Court on motion of the United States.
- ☒ Appeal rights given. ☐ Appeal rights waived.

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 or fine, the defendant must notify the court and United States attorney of material changes in economic circumstances.

4/21/2025

Date of Imposition of Judgment

/s/ Jennifer L. Thurston

Signature of Judicial Officer

Jennifer L. Thurston, United States District Judge

Name & Title of Judicial Officer

4/29/2025

Date

DEFENDANT: ALMA GARZA
CASE NUMBER: 1:22CR00062-004

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 80 months on each of Counts 1 and 2, to be served concurrently for a total term of 80 months.

- ☐ No TSR: Defendant shall cooperate in the collection of DNA.
- ☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends that the defendant be incarcerated near Fresno California facility, but only insofar as this accords with security classification and space availability. The court recommends the defendant participate in the 500-Hour Bureau of Prisons Substance Abuse Treatment Program.
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district
- ☐ at ____ on ____.
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☒ before 12:00 PM on 5/27/2025.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Officer.
- If no such institution has been designated, to the United States Marshal for this district.
- ☐ Other, Please Specify:

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

By Deputy United States Marshal

DEFENDANT: **ALMA GARZA**

CASE NUMBER: **1:22CR00062-004**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:
24 months on Count 1, and 24 months on Count 2, all to be served concurrently for a total term of 24 months.

MANDATORY CONDITIONS

You must not commit another federal, state or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two (2) periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
- ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
- ☒ You must cooperate in the collection of DNA as directed by the probation officer.
- ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense.
- ☐ You must participate in an approved program for domestic violence.

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

DEFENDANT: ALMA GARZA

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CASE NUMBER: 1:22CR00062-004

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must submit your person, property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer or any law enforcement officer under the immediate and personal supervision of the probation officer, based upon reasonable suspicion of unlawful conduct or a violation of a condition of supervision, without a search warrant. Failure to submit to a search may be grounds for revocation. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
2. You must submit to substance abuse/alcohol abuse testing to determine if you have used a prohibited substance. You must not attempt to obstruct or tamper with the testing methods.
3. You must possess and use only those cellular phones and phone numbers (including Voice over Internet Protocol [VoIP] services) that have been disclosed to the probation officer upon commencement of supervision. Any changes or additions are to be disclosed to the probation officer prior to the first use.
4. You must participate in a co-payment plan for treatment, testing and/or medication and shall make payment directly to the vendor under contract with the United States Probation Office. Your co-payment will be determined utilizing a Sliding Fee Scale based upon your disposable income.

DEFENDANT: **ALMA GARZA**
CASE NUMBER: **1:22CR00062-004**

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

TOTALS

<u>Processing Fee</u>	<u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Fine</u>	<u>Restitution</u>
	\$200.00	\$0.00	\$0.00	\$0.00	0.00

☐ The determination of restitution is deferred until ____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement \$ ____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived for the ☐ fine ☐ restitution

☐ The interest requirement for the ☐ fine ☐ restitution is modified as follows:

☐ If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

☐ Other:

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

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

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

DEFENDANT: ALMA GARZA

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CASE NUMBER: 1:22CR00062-004

SCHEDULE OF PAYMENTS

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

- A. ☐ Lump sum payment of \$ ____ due immediately, balance due
☐ Not later than ____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B. ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C. ☐ Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after the date of this judgment; or
- D. ☐ Payment in equal ____ (e.g. weekly, monthly, quarterly) installments of \$ ____ over a period of ____ (e.g. months or years), to commence ____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or
- E. ☐ Payment during the term of supervised release/probation will commence within ____ (e.g. 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F. ☐ Special instructions regarding the payment of criminal monetary penalties:

If incarcerated, payment of any unpaid criminal monetary penalties in this case is due during imprisonment at the rate of 10% of the defendant's gross income per month or \$25 per quarter, whichever is greater. Payment shall be made through the Bureau of Prisons Inmate Financial Responsibility Program.

The defendant shall make payments toward any unpaid criminal monetary penalties in this case during supervision at the rate of at least 10% of your gross monthly income. Payments are to commence no later than 60 days from placement on supervision. This payment schedule does not prohibit the United States from collecting through all available means any unpaid criminal monetary penalties at any time, as prescribed by law.

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

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States: The Preliminary Order of Forfeiture is hereby made final as to this defendant and shall be incorporated into the Judgment.

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