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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ) 19CR227  
)  
vs.  
Buffalo, New York  
JOSEPH BONGIOVANNI, ) November 18, 2021  
Defendant. 9:30 a.m.  
- - - - - X

**EVIDENTIARY HEARING**  
**Transcribed from an Electronic Recording Device**

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE MICHAEL J. ROEMER  
UNITED STATES MAGISTRATE JUDGE

TRINI E. ROSS, ESQ.  
United States Attorney  
BY: JOSEPH M. TRIPI, ESQ.  
BRENDAN T. CULLINANE, ESQ.  
JORDAN ALAN DICKSON, ESQ.  
Assistant United States Attorney  
138 Delaware Avenue  
Buffalo, New York 14202

JAMES P. HARRINGTON, ESQ.  
JESSES COLTON PYLE, ESQ.  
Harrington and Mahoney  
70 Niagara Street  
Third Floor  
Buffalo, NY 14202

**COURT REPORTER: Karen J. Clark, Official Court Reporter**  
**Karenclark1013@AOL.com**  
**100 State Street**  
**Rochester, New York 14614**

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22 P R O C E E D I N G

23 \* \* \*

11:23:44 22 THE CLERK: United States District Court for  
11:23:46 23 the Western District of New York is now in session. The  
11:23:48 24 Honorable Michael J. Roemer presiding. We're here on  
11:23:52 25 the matter of the United States versus Joseph

1 USA VS. J. BONGIOVANNI

11:24:07 2 Bongiovanni, case No. 19CR227 for an evidentiary  
11:24:11 3 hearing.

11:24:12 4 Counsel for the government, please state your name for  
11:24:14 5 the record.

11:24:14 6 MR. TRIPI: Joseph Tripi, Brendan Cullinane  
11:24:17 7 and Jordan Dickson for the United States.

11:24:31 8 Good morning, Judge.

11:24:32 9 THE CLERK: Thank you. Counsel for the  
11:24:34 10 defendant, please state your name for the record.

11:24:43 11 MR. HARRINGTON: Morning, Judge. James  
11:24:46 12 Harrington and Jesse Pyle for Mr. Bongiovanni, who is  
11:24:52 13 here.

11:24:53 14 THE CLERK: Thank you.

11:24:54 15 MAGISTRATE JUDGE ROEMER: Good morning,  
11:24:55 16 counsel. We're here for a hearing. Are we ready to go,  
11:24:58 17 Mr. Tripi?

11:24:59 18 MR. TRIPI: Yes, Judge. As you ordered, I  
11:25:02 19 believe, prior to today, the two issues that we were to  
11:25:05 20 cover today involve the border search cell phone on  
11:25:23 21 April 23rd, 2019, and the statements from June 6, 2019  
11:25:37 22 and the circumstances surrounding the statements. So  
11:25:41 23 the government is ready to proceed. I don't know if Mr.  
11:25:46 24 Harrington has anything to add.

11:25:48 25 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

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11:25:50 2 MR. HARRINGTON: Judge, after our  
11:25:51 3 preparation of this in receipt of the 3500 material, we  
11:25:58 4 decided we're going to withdraw the motion of the  
11:26:00 5 suppression of the statement at the time of the search  
11:26:12 6 warrant.

11:26:12 7 MAGISTRATE JUDGE ROEMER: Okay.

11:26:12 8 MR. HARRINGTON: We'll need some testimony  
11:26:14 9 regarding some of the circumstances of when that was  
11:26:17 10 taken because it relates back to the airplane or  
11:26:23 11 airport.

11:26:24 12 MAGISTRATE JUDGE ROEMER: The border search?

11:26:25 13 MR. HARRINGTON: Yes. It won't be very  
11:26:27 14 much.

11:26:27 15 MAGISTRATE JUDGE ROEMER: Okay.

11:26:29 16 MR. TRIPI: And just, I advised -- Judge,  
11:26:32 17 I'm going to proceed as I had planned just to create a  
11:26:36 18 fulsome record, but I understand what the issues are now  
11:26:39 19 a little more limited. Okay?

11:26:41 20 MAGISTRATE JUDGE ROEMER: Okay. Well, I  
11:26:43 21 would hope we're not going to have a bunch of testimony  
11:26:47 22 we don't need for me to decide anything, I guess.

11:26:50 23 MR. TRIPI: Well, I'm going to call  
11:26:52 24 witnesses regarding the surrounding circumstances,  
11:26:55 25 unless, as we get into it, the Court says it doesn't

1 USA VS. J. BONGIOVANNI

11:27:00 2 need it.

11:27:00 3 MAGISTRATE JUDGE ROEMER: Have you discussed  
11:27:01 4 this limitation with Mr. Harrington or did this just  
11:27:06 5 come up this morning?

11:27:07 6 MR. TRIPI: He tried to call me last night  
11:27:09 7 and I was dealing with family matters in the evening and  
11:27:13 8 so we didn't link up until this morning.

11:27:37 9 MAGISTRATE JUDGE ROEMER: All right. We'll  
11:27:38 10 start with the border search and maybe when we take a  
11:27:41 11 break, you two can discuss where the rest of it's going  
11:27:45 12 to go. Does that make sense, Mr. Harrington? I don't  
11:27:49 13 have a good handle in what regard we're talking about.  
11:27:52 14 Okay? Does that make sense? Want to call your first  
11:27:55 15 witness?

11:27:55 16 MR. TRIPI: One moment, Judge.

11:27:57 17 MAGISTRATE JUDGE ROEMER: Sure.

11:28:13 18 MR. TRIPI: All right. Judge, we're going  
11:28:16 19 to re-shift the order a little bit. Mr. Dickson will  
11:28:21 20 have the first witness.

11:28:24 21 MR. DICKSON: Good morning, your Honor, the  
11:28:28 22 United States will call Kiplin Carter.

11:29:10 23 THE CLERK: Officer, if you can step over  
11:29:13 24 here, please.

11:29:16 25 (K. CARTER WAS CALLED TO THE WITNESS STAND AND SWORN.)

1 K. CARTER - DX BY MR. TRIPI

11:29:19 2 THE CLERK: Thank you. Please have a seat.

11:29:21 3 And when seated, you may remove your mask. And this is

11:29:25 4 being recorded and so stay close to your microphone so

11:29:29 5 the recording will come through. And please state your

11:29:31 6 name and spell it for the record.

11:29:33 7 THE WITNESS: Yes, ma'am.

11:29:34 8 THE CLERK: Thank you.

11:29:35 9 THE WITNESS: My name is Kipplin Carter,

11:29:39 10 spelled K -- i-p-p-l-i-n, last name Carter, common

11:29:44 11 spelling.

11:29:45 12 THE CLERK: Thank you.

11:29:47 13 MR. DICKSON: May I proceed, Judge?

11:29:48 14 MAGISTRATE JUDGE ROEMER: Sure.

11:29:52 15 DIRECT EXAMINATION BY MR. DICKSON:

11:29:52 16 Q. Can you please tell the Court, what is your  
11:29:54 17 educational background?

11:29:55 18 A. I have a Bachelor's in Science in Psychology from  
11:30:12 19 Howard University. I've taken some Master's classes,  
11:30:15 20 but I never completed my Master's.

11:30:18 21 Q. Where do you work?

11:30:19 22 A. Work for U.S. Customs and Border Protection in  
11:30:25 23 Baltimore.

11:30:25 24 Q. And what is your title?

11:30:26 25 A. I am an 1895 CBPO, which is a Customs and Border

1 K. CARTER - DX BY MR. DICKSON

11:30:50 2 Protection Officer assigned to the TTRT unit. That  
11:30:54 3 stands for Tactical Terrorism Response Team.

11:30:59 4 Q. Let's break that down a little. So, you're an  
11:31:10 5 officer with Customs and Border Patrol, right?

11:31:13 6 A. Customs and Border Protection.

11:31:16 7 Q. And if I call Customs and Border Protection  
11:31:21 8 "CBP," will you know what I'm talking about?

11:31:23 9 A. I will.

11:31:24 10 Q. And do you have a particular duty station as a  
11:31:36 11 CBP Officer?

11:31:39 12 A. Yes, I am mostly assigned to the seaport of  
11:31:51 13 Baltimore, which includes the airport and seaport.

11:31:54 14 Q. Does that mean that you work at the airport  
11:31:57 15 sometimes?

11:31:58 16 A. Yes, sir.

11:31:58 17 Q. And within that duty station, do you have a  
11:32:01 18 particular unit that you're assigned to?

11:32:03 19 A. Yes, the Tactical Terrorism Response Team.

11:32:06 20 Q. What are the responsibilities of an officer in  
11:32:10 21 the Tactical Terrorism Response Team?

11:32:21 22 A. The Tactical Terrorism Response Team primarily  
11:32:24 23 handles higher-level investigations or inspections  
11:32:28 24 rather of individuals arriving into the United States  
11:32:30 25 dealing with terrorism, narcotics or other criminal

1 K. CARTER - DX BY MR. DICKSON

11:32:34 2 matters.

11:32:36 3 Q. How do the responsibilities of somebody, an  
11:32:39 4 officer on the Tactical Terrorism Response Team, differ  
11:32:42 5 from the responsibilities of an officer in another unit?

11:32:47 6 A. Well, we do perform targeting functions, but our  
11:32:51 7 targeting functions are usually set up with information  
11:32:54 8 from our national targeting center in Virginia. We do  
11:32:59 9 not work primarily inspections. We rove on our own. We  
11:33:04 10 work in between various areas within the port, and  
11:33:08 11 things of that nature. Sometimes we are even assigned  
11:33:11 12 off to other agencies to assist them.

11:33:15 13 Q. I just want to define a few of these terms that  
11:33:18 14 you said. You said that you do not do primary  
11:33:21 15 inspections. What does that mean?

11:33:23 16 A. I apologize. The primary inspections are where  
11:33:26 17 an individual arriving into the United States, be it a  
11:33:29 18 U.S. citizen or foreign national comes in for their  
11:33:33 19 initial inspection where they provide their passport and  
11:33:46 20 their information for identification purposes and to  
11:33:48 21 state the purpose of their trip abroad or coming into  
11:33:51 22 the United States.

11:33:52 23 Q. Do you perform a different kind of inspection in  
11:33:55 24 your role?

11:33:55 25 A. We normally perform secondary inspections.



1 K. CARTER - DX BY MR. DICKSON

11:34:01 2 Q. We'll talk about secondary inspections in a  
11:34:04 3 second. But you also said part of your responsibility  
11:34:07 4 is to rove. What did you mean when you said that?

11:34:10 5 A. Roving is walking the floor, checking people's  
11:34:14 6 patterns of behaviors for activities that may have been  
11:34:19 7 missed by primary. There is a gap between primary  
11:34:35 8 inspections and secondary inspections where there are no  
11:34:39 9 eyes watching individuals walking back and forth  
11:34:42 10 grabbing certain bags. So when we rove, we're looking  
11:34:45 11 for individuals that may have behaviors that are  
11:34:58 12 abnormal to the travel patterns that we're accustomed to  
11:35:02 13 in Baltimore.

11:35:03 14 Q. And you also said that you do secondary  
11:35:05 15 inspections. Can you tell the Judge what a secondary  
11:35:09 16 inspection is?

11:35:09 17 A. Yes. Secondary inspection is a more intensive  
11:35:12 18 inspection. In primary, you have about three minutes  
11:35:17 19 per traveler to figure out whether to refer or determine  
11:35:31 20 to let them go onto the rest of their travels. In  
11:35:37 21 secondary, you do have the amount of time needed to  
11:35:57 22 perform those inspections. They are a little bit more  
11:36:01 23 evasive, where you're inspecting luggage or maybe  
11:36:05 24 electronic media or just getting the full story all  
11:36:18 25 together.

1 K. CARTER - DX BY MR. DICKSON

11:36:18 2 Q. How many secondary inspections would you say that  
11:36:21 3 you've performed over your time with CBP?

11:36:24 4 A. Thousands.

11:36:26 5 Q. How many times have you searched somebody's cell  
11:36:29 6 phone as part of one of those secondary inspections?

11:36:32 7 A. Probably around 40 or 50 times.

11:36:38 8 Q. Have you received any training as an officer with  
11:36:42 9 CBP in terms of conducting searches of electronics?

11:36:47 10 A. Yes, all officers are trained in basic searches  
11:36:50 11 of electronic media, TTRT officers are tasked with  
11:36:57 12 advance searches, which are performed, we use equipment  
11:37:01 13 to extract information from the phones.

11:37:03 14 Q. Are there instances where you do not use  
11:37:06 15 equipment to get information off of a person's phone?

11:37:08 16 A. Yes, basic searches are manual searches where the  
11:37:12 17 phone is put into a certain airplane mode, which stops  
11:37:16 18 it from receiving any other outside information and  
11:37:19 19 we're just using our hands, we're not using any devices  
11:37:23 20 to pull that information out.

11:37:24 21 Q. I want to talk in just a second a little bit more  
11:37:28 22 about basic searches or searches that use equipment.

11:37:31 23 But making sure I understand, do you have a boss at CBP?

11:37:35 24 A. I do.

11:37:36 25 Q. Who is that?

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11:37:37 2 A. At that time or at this time?

11:37:39 3 Q. Looking for the title of the person, the person's  
11:37:41 4 title.

11:37:42 5 A. The title is normally a watch commander is who we  
11:37:45 6 report to as TTRT.

11:37:48 7 Q. Above your watch commander, is there a higher  
11:37:51 8 level boss?

11:37:51 9 A. There are several level higher level bosses. You  
11:37:54 10 have the assistant port director, the port director, all  
11:37:59 11 the way up to the director of the field office.

11:38:01 12 Q. If the watch commander or one of the other higher  
11:38:04 13 level bosses gave you an order to do something, what  
11:38:08 14 would you do?

11:38:08 15 A. If the order is lawful, we follow the order.

11:38:12 16 Q. I want to talk then, Officer Carter, a little bit  
11:38:16 17 more about the process that somebody has to go through  
11:38:18 18 when they come back into the United States. Who is the  
11:38:21 19 first CBP Officer that a person coming into the United  
11:38:26 20 States will interact with?

11:38:28 21 A. They will interact with primary inspection  
11:38:37 22 officer at the inspection lane and there are a bunch of  
11:38:41 23 booths and they are sent off to an officer, whichever  
11:38:44 24 officer is available.

11:38:45 25 Q. Is there circumstances where, after you speak to

1 K. CARTER - DX BY MR. DICKSON

11:38:58 2 the primary inspection officer, that person will have to  
11:39:00 3 speak to another CBP officer?

11:39:02 4 A. Yes. If a person is referred to secondary or the  
11:39:07 5 person is selected by a rover, they would be speaking to  
11:39:27 6 a second officer.

11:39:29 7 Q. When you say referred, who is it that does the  
11:39:33 8 referring?

11:39:33 9 A. A roving officer can do the referring or a  
11:39:38 10 primary inspection can refer.

11:39:40 11 Q. What kind of circumstances might lead a primary  
11:39:49 12 inspection or a rover to refer somebody to a secondary  
11:39:54 13 inspection?

11:39:54 14 A. When they inspect somebody at primary, they run  
11:39:58 15 their name and date of birth and sometimes also matching  
11:40:02 16 up images along with records within NCIC or other  
11:40:06 17 lookouts that have been put into a system. They can be  
11:40:10 18 referred back to secondary because they have an active  
11:40:15 19 warrant, they have a lookout for them, or they may have  
11:40:26 20 displayed behaviors on primary that indicate they need  
11:40:30 21 further questioning.

11:40:31 22 Q. Tell the Judge what you mean when you say  
11:40:35 23 "lookout."

11:40:35 24 A. Your Honor, look out is information that a law  
11:40:38 25 enforcement entity may have obtained or somebody has

1 K. CARTER - DX BY MR. DICKSON

11:40:41 2 obtained who works for the U.S. Government who has  
11:40:52 3 system access to TECS. They will drop that information  
11:40:56 4 in there and they will basically identify maybe a person  
11:41:01 5 is part of an active investigation or this person has  
11:41:05 6 been known to interact with a smuggling organization,  
11:41:16 7 things of that matter, in which CBP then uses that  
11:41:20 8 information to make a determination if they want to see  
11:41:22 9 somebody further, if there is any active crime going on  
11:41:27 10 right there at the port.

11:41:30 11 Q. Does CBP have discretion of whether to take  
11:41:34 12 somebody to a secondary inspection even if there is a  
11:41:54 13 lookout put out for them?

11:41:56 14 A. Yes. CBP has a discretion to send somebody to  
11:42:00 15 secondary if there is a lookout put on them.

11:42:03 16 Q. So, if a primary officer or rover refers somebody  
11:42:21 17 to a secondary inspection, where did that person go?

11:42:24 18 A. That person is then escorted over to secondary.  
11:42:37 19 The secondary area is an area, such as this, with a  
11:42:41 20 bunch of chairs. And when the next available officer is  
11:42:53 21 ready, they will take a passport out of a rack and  
11:42:57 22 they'll look up the information of why that person was  
11:43:00 23 referred back to secondary.

11:43:03 24 Q. And you mentioned earlier there are circumstances  
11:43:05 25 or sometimes you look at a person's phone during a

1 K. CARTER - DX BY MR. DICKSON

11:43:08 2 secondary search, can you tell us what some of those  
11:43:12 3 circumstances typically?

11:43:13 4 A. Circumstances such as that would be such as with  
11:43:26 5 foreign nationals, possible immigration violations.  
11:43:31 6 We're trying to see if they are working or overstaying  
11:43:36 7 their Visa status. U.S. citizens, it's usually child  
11:43:50 8 pornography or narcotics or terrorism as well. But it's  
11:43:54 9 any evidence of a crime in that phone at that time.

11:44:00 10 Q. Are there other circumstances where you might  
11:44:03 11 chose to look at a person's phone during a secondary  
11:44:06 12 inspection?

11:44:06 13 A. Yes. If we do have lookout information or if  
11:44:10 14 we've been approached by other ports within the agency,  
11:44:14 15 being that the agency is so big, they may reach out to  
11:44:17 16 us and say, hey, you have this person coming in, can you  
11:44:21 17 take a look at this information for us or just check  
11:44:24 18 their phone for us to verify what we think is going on.

11:44:28 19 Q. When you're going to conduct a search of a  
11:44:31 20 person's phone, do you give them any information about  
11:44:35 21 the authority that you have to search that phone?

11:44:37 22 A. Yes, sir. We explain it verbally and we also  
11:44:42 23 provide an electronic media tier sheet that explains our  
11:44:58 24 authority what they can expect during that instance.

11:45:01 25 Q. Would you recognize a copy of one of those tier

1 K. CARTER - DX BY MR. DICKSON

11:45:18 2 sheets if I showed it to you today?

11:45:19 3 A. I would.

11:45:20 4 MR. DICKSON: Your Honor, I am going to  
11:45:23 5 direct opposing counsel to or what has been marked as  
11:45:26 6 Government's Exhibit 33. We provided this to opposing  
11:45:30 7 counsel already. May I approach the witness, your  
11:45:32 8 Honor?

11:45:32 9 MAGISTRATE JUDGE ROEMER: Sure.

11:45:44 10 Q. Officer Carter, what did I just hand you?

11:45:47 11 A. You handed us the electronic or paper tier sheet  
11:45:52 12 that we hand people about inspection of electronic  
11:45:57 13 media.

11:45:57 14 Q. Is that a fair and accurate copy of a tear sheet  
11:46:07 15 that you would have given somebody back in April of  
11:46:10 16 2019?

11:46:10 17 A. Yes, it is.

11:46:11 18 Q. Anything been altered or changed about it?

11:46:14 19 A. No.

11:46:16 20 MR. DICKSON: Your Honor, the government  
11:46:17 21 moves Exhibit 33 into evidence.

11:46:19 22 MR. HARRINGTON: No objection.

11:46:19 23 MAGISTRATE JUDGE ROEMER: Government Exhibit  
11:46:21 24 33 shall be admitted into evidence.

11:46:29 25 MR. DICKSON: Judge, can you see that okay?

1 K. CARTER - DX BY MR. DICKSON

11:46:31 2 MAGISTRATE JUDGE ROEMER: Yes, plus I have a  
11:46:33 3 hard copy right here.

11:46:34 4 MR. DICKSON: Okay. Thank you, your Honor.

11:46:37 5 Q. Generally, Officer Carter, what is a tear sheet  
11:46:42 6 supposed to tell people after you give it to them?

11:46:44 7 A. It tells them what happens during electronic  
11:46:50 8 media searches and where we derive that authority from.  
11:46:53 9 That is pretty much all it really tells them.

11:46:56 10 Q. If you look at the bottom of the second page or  
11:47:00 11 the back where it says "routine uses," can you go ahead  
11:47:09 12 and read that for us?

11:47:10 13 A. "Routine uses. The subject information may be  
11:47:14 14 made available to other agencies for investigation  
11:47:17 15 and/or for obtaining assistance relating to  
11:47:21 16 jurisdictional or subject matter expertise, or for  
11:47:33 17 translation, description or other technical assistance.  
11:47:37 18 This information may also be made available to assist in  
11:47:40 19 border security and intelligence activities. Domestic  
11:47:54 20 law enforcement and the enforcement of other crimes of  
11:48:08 21 transnational nature and shared with elements of federal  
11:48:11 22 government responsible for analyzing terrorist threat  
11:48:15 23 information."

11:48:16 24 Q. Is every person who's phone is going to be  
11:48:21 25 searched by CBP given one of these tear sheets?



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11:48:24 2 A. Yes, sir, that is part of our policy.

11:48:26 3 Q. And did you -- do you give the person this tear  
11:48:29 4 sheet before or after you take their phone to search it?

11:48:32 5 A. It's to be before.

11:48:36 6 Q. You can set Exhibit 33 aside. Officer Carter, a  
11:48:43 7 few minutes ago, you were talking to us about different  
11:48:46 8 kinds of searches that you can conduct on a person's  
11:48:49 9 phone. Can you tell the Judge, what are different kinds  
11:48:52 10 of searches that you can do as a CBP Officer on a  
11:48:57 11 person's phone?

11:48:57 12 A. Your Honor, we have a basic search, which is the  
11:49:01 13 manual review of information in a phone. And then we  
11:49:13 14 have the advanced search. The advanced search, the  
11:49:17 15 phone is hooked up to an electronic device and that  
11:49:31 16 electronic device can extract hidden files or things not  
11:49:45 17 meant to be seen or that we're unable to manipulate  
11:49:49 18 manually on the phone.

11:49:51 19 Q. So let's just break that down a little bit. You  
11:49:54 20 said a basic search involves a manual look at the phone.  
11:49:58 21 What do you mean when you say a "manual search" of the  
11:50:01 22 phone?

11:50:01 23 A. When I say "manual," the phone is unlocked and  
11:50:05 24 placed in airplane mode and the officer doing the  
11:50:08 25 inspection will use their fingers to click on sections

1 K. CARTER - DX BY MR. DICKSON

11:50:12 2 of the phone to expand on whatever information would be  
11:50:15 3 in that section, such as, you may click "text" and it  
11:50:19 4 would open text messages, and you would look at the text  
11:50:22 5 messages.

11:50:23 6 Q. You said the phone is unlocked. If a person's  
11:50:26 7 phone has a password, how do you unlock it?

11:50:29 8 A. Preferably, if it's a basic search, the only way  
11:50:34 9 to unlock it is the actual traveler or the owner of the  
11:50:38 10 phone would have to unlock it.

11:50:39 11 Q. That's my question. In a basic search, would you  
11:50:43 12 be able to unlock it?

11:50:44 13 A. No.

11:50:45 14 Q. Who would unlock it?

11:50:46 15 A. The owner of the phone.

11:50:48 16 Q. How would they go about doing that?

11:50:51 17 A. I would hand them the phone and whatever password  
11:51:08 18 they've entered, whether it be numbers or a pin or a  
11:51:13 19 pattern, however they got their phone locked, they would  
11:51:16 20 unlock it.

11:51:18 21 Q. You said that during the basic search, officers  
11:51:22 22 will use their fingers to click on pieces of the phone.  
11:51:26 23 What pieces of the phone do you typically look at during  
11:51:29 24 a basic search?

11:51:31 25 A. Nearly all basic searches conducted by officers

1 K. CARTER - DX BY MR. DICKSON

11:51:35 2 would include contacts, text messages, photos. There is  
11:51:40 3 a preference among people to use WhatsApp and we'll  
11:51:44 4 click on WhatsApp if that is available.

11:51:46 5 Q. What is WhatsApp?

11:51:48 6 A. WhatsApp is a messages service that people use.  
11:51:52 7 It's an app that is not included with phones, but it's  
11:51:55 8 one that people download. It's commonly believed to be  
11:52:00 9 encrypted end to end so people tend to think they are  
11:52:04 10 hiding messages within WhatsApp.

11:52:07 11 Q. You also said during a basic search, you put the  
11:52:10 12 phone on airplane mode. What does that mean?

11:52:13 13 A. Airplane mode. Once you put a phone in airplane  
11:52:26 14 phone, it does not allow us to pull in information off  
11:52:37 15 of clouds or other servers that are not present. In a  
11:52:41 16 basic search, in all of our searches, we're just looking  
11:52:45 17 on what's actually on the phone. We don't want to bring  
11:52:49 18 in other information that could be stored elsewhere.

11:52:51 19 Q. For instance, if a person were to receive a text  
11:52:53 20 message while the phone is in airplane mode, would you  
11:52:57 21 be able to see that?

11:52:58 22 A. No.

11:53:00 23 Q. You talked to us a little bit, let me ask you  
11:53:06 24 this first. Is it your understanding that CBP has legal  
11:53:11 25 authority to do a basic search of a person's cell phone

1 K. CARTER - DX BY MR. DICKSON

11:53:23 2 at any time they come into the United States?

11:53:25 3 A. At any time they come into the United States and  
11:53:28 4 any time they leave the United States, yes.

11:53:31 5 Q. You told us a little bit about an advanced  
11:53:35 6 search, tell us what that is?

11:53:37 7 A. An advanced search requires the use of electronic  
11:53:42 8 equipment. You're hooking a cable between a phone and  
11:53:45 9 another computer device that speaks the phone's code and  
11:53:49 10 it pulls off the selected media that you want it to pull  
11:53:53 11 off. You can pull off just pictures or you can pull off  
11:53:56 12 100 percent of the data that is stored on that phone.

11:53:59 13 Q. To do that, do you have to use some kind of  
11:54:03 14 equipment?

11:54:03 15 A. You have to use a computer. And when we pull  
11:54:06 16 that information, that is not stored on that computer,  
11:54:18 17 that information is actually stored on a serial numbered  
11:54:23 18 flash drive, a USB drive that CBP issues out to each  
11:54:28 19 port for their use.

11:54:39 20 Q. So you have to connect the phone to some kind of  
11:54:42 21 external equipment?

11:54:44 22 A. Yes.

11:54:45 23 Q. Let's talk a little bit about some of the  
11:54:48 24 differences between basic searches and advanced searches  
11:54:52 25 that we haven't already gone over. How long does a

1 K. CARTER - DX BY MR. DICKSON

11:54:57 2 basic search a person's phone usually take?

11:55:00 3 A. Typically 15 to 30 minutes.

11:55:10 4 Q. How long does an advanced search of a person's  
11:55:14 5 phone usually take?

11:55:15 6 A. An advanced search can take several hours.

11:55:19 7 Q. During a basic search, is the person's phone  
11:55:22 8 connected to any equipment?

11:55:23 9 A. No.

11:55:24 10 Q. What about during an advanced search?

11:55:26 11 A. No. I'm sorry, I apologize, I misspoke. During  
11:55:30 12 an advanced search, yes, it is. It's connected to the  
11:55:34 13 actual machine that is extracting the information.

11:55:38 14 Q. During a basic search, how is information pulled  
11:55:41 15 off of a person's phone?

11:55:43 16 A. During the basic search, we are reviewing it  
11:55:46 17 manually. If there is stuff that we are taking from the  
11:55:50 18 phone, stuff we need to review later, we would use  
11:55:58 19 government phones to take pictures.

11:56:02 20 Q. During an advanced search, how is information  
11:56:06 21 pulled off of the phone?

11:56:07 22 A. It's pulled off by that machine and dropped onto  
11:56:10 23 that flash drive.

11:56:11 24 Q. Is there a difference in terms of the amount of  
11:56:14 25 information that a person can expect to get from a basic

1 K. CARTER - DX BY MR. DICKSON

11:56:17 2 search as opposed to an advanced search?

11:56:20 3 A. Yes.

11:56:22 4 Q. How so?

11:56:23 5 A. Advanced search is way -- is a lot more thorough.

11:56:28 6 It can replicate everything that is on that phone onto a

11:56:32 7 flash drive. A basic search, you're not replicating

11:56:36 8 everything that is on that phone at all, you just can't.

11:56:40 9 Q. For example, Officer Carter, can a basic search

11:56:45 10 find a hidden or encrypted files on a phone?

11:56:48 11 A. It may find the actual driver if you know what

11:56:52 12 you're looking for, but it can't -- I can't think of the

11:56:58 13 word, it can't exploit that. You can't just get into

11:57:02 14 that. You need whatever the subject is using as a

11:57:04 15 password or however they are getting into that file.

11:57:07 16 Q. I want to talk then about April 23 of 2019. Do

11:57:13 17 you remember if you were working as a CBP Officer that

11:57:16 18 day?

11:57:16 19 A. I was.

11:57:16 20 Q. Where were you working?

11:57:21 21 A. TTRT in the office at BWI.

11:57:24 22 Q. Just remind us of what is TTRT stand for?

11:57:28 23 A. That is the Tactical Terrorism Response Team.

11:57:39 24 Q. And you said you were working at BWI, is that

11:57:42 25 right?

1 K. CARTER - DX BY MR. DICKSON

11:57:42 2 A. Yes, Baltimore Washington International Airport.

11:57:45 3 Q. What time was your shift?

11:57:47 4 A. I work 12 to 8.

11:57:48 5 Q. P.m.?

11:57:49 6 A. Yes.

11:57:49 7 Q. On that day, do you remember if you conducted any  
11:57:53 8 secondary inspections?

11:57:54 9 A. We did.

11:57:55 10 Q. Do you remember how many?

11:57:56 11 A. I do not recall how many we did that day.

11:58:02 12 Q. Do you remember the name of any particular person  
11:58:05 13 who you did a secondary inspection on that day?

11:58:08 14 A. I remember the first name of an individual that  
11:58:11 15 we did an inspection on that day.

11:58:16 16 Q. As part of your responsibilities, are there  
11:58:21 17 reports that are generated describing the results of a  
11:58:25 18 secondary inspection?

11:58:26 19 A. Yes.

11:58:27 20 Q. Would seeing one of those reports help you  
11:58:30 21 remember the name of a person who you did a secondary  
11:58:34 22 inspection on?

11:58:34 23 A. Yes.

11:58:43 24 MR. DICKSON: Your Honor, I'm going to  
11:58:45 25 direct opposing counsel's attention to Government's

1 K. CARTER - DX BY MR. DICKSON

11:58:49 2 Exhibit 2, which they already have. May I approach the  
11:58:52 3 witness?

11:58:52 4 MAGISTRATE JUDGE ROEMER: Sure.

11:58:58 5 Q. Officer Carter, can you just look quickly at  
11:59:01 6 Government's Exhibit 2?

11:59:02 7 A. Yes.

11:59:03 8 Q. And what is this?

11:59:04 9 A. This is a secondary inspection report.

11:59:10 10 Q. Does that look like a secondary inspection report  
11:59:13 11 from April 23 of 2019?

11:59:16 12 A. It does.

11:59:19 13 Q. Does it look like a fair and accurate copy of a  
11:59:22 14 secondary inspection report?

11:59:24 15 A. It does.

11:59:25 16 Q. Anything appear to have been changed or altered  
11:59:28 17 in any way?

11:59:28 18 A. No, sir.

11:59:29 19 MR. DICKSON: Your Honor, the government  
11:59:31 20 moves Exhibit 2 into evidence.

11:59:35 21 MR. HARRINGTON: I have no objection.

11:59:37 22 MAGISTRATE JUDGE ROEMER: Okay.

11:59:38 23 Government's Exhibit 2 shall be admitted into evidence.

11:59:38 24 **(Whereupon, Government's Exhibit 2 was**  
11:59:41 25 **received into evidence.)**



1 K. CARTER - DX BY MR. DICKSON

11:59:41 2 Q. Officer Carter, looking at Exhibit 2. Is there a  
11:59:46 3 name of the person who you performed a secondary  
11:59:49 4 inspection on that day?

11:59:49 5 A. Yes.

11:59:51 6 Q. What is that name?

11:59:52 7 A. Joseph Samuel Bongiovanni.

11:59:58 8 Q. Do you remember this particular secondary  
12:00:01 9 inspection?

12:00:01 10 A. I remember it.

12:00:03 11 Q. Can you tell the Court how you learned that you  
12:00:06 12 needed to conduct a secondary inspection of Mr.  
12:00:09 13 Bongiovanni?

12:00:10 14 A. On that date, my watch commander came in and he  
12:00:13 15 informed myself and another officer that there is an  
12:00:16 16 individual coming in that we needed to perform a DOMEX  
12:00:22 17 on his phone.

12:00:23 18 Q. And remind us, is the watch commander, that's  
12:00:27 19 your boss?

12:00:27 20 A. Yes.

12:00:27 21 Q. And when you say your watch commander told you  
12:00:31 22 you needed to perform a DOMEX on that person's phone,  
12:00:35 23 what is a DOMEX?

12:00:36 24 A. DOMEX is CBP terminology for actual advanced  
12:00:42 25 search.

1 K. CARTER - DX BY MR. DICKSON

12:00:42 2 Q. What is your watch commander's last name?

12:00:45 3 A. Candela.

12:00:46 4 Q. So did Watch Commander Candela tell you anything  
12:00:51 5 else about the individual who was coming in who you  
12:00:54 6 needed to do this DOMEX search on?

12:00:57 7 A. He told us the DOMEX, because it requires  
12:01:00 8 approval of higher management, he told us the request  
12:01:04 9 was coming in from Buffalo, from CBP in Buffalo.

12:01:08 10 Q. Anything else?

12:01:09 11 A. No.

12:01:10 12 Q. Did Watch Commander Candela tell you why CBP  
12:01:15 13 Buffalo was ordering that you do this search?

12:01:18 14 A. He did say it involved a case, but he never  
12:01:21 15 relayed any case details to us.

12:01:23 16 Q. So he said it involved a case. Did he tell you  
12:01:26 17 anything about that case?

12:01:27 18 A. No.

12:01:28 19 Q. Did he tell you whether the person whose phone  
12:01:30 20 you were searching was the target or subject of that  
12:01:34 21 case?

12:01:35 22 A. No, he just said this person was involved in a  
12:01:39 23 case. I'm not sure if he was the subject of it or the  
12:01:42 24 target of it, it was just that he was involved in this  
12:01:46 25 case.

1 K. CARTER - DX BY MR. DICKSON

12:01:46 2 Q. Did Watch Commander Candela tell you what kind of  
12:01:51 3 evidence you should be looking for when you do this  
12:01:55 4 DOMEX search?

12:01:56 5 A. I don't know if he was making an assumption, but  
12:01:58 6 he was saying they are probably looking for contacts.

12:02:02 7 Q. And when you say "contacts," what do you mean?

12:02:05 8 A. He never got specific on any names or anything.  
12:02:08 9 He just said they are probably looking for contacts or  
12:02:12 10 anything that worked for this case, which I have no idea  
12:02:17 11 what the case was even about.

12:02:18 12 Q. Did Watch Commander Candela tell you anything  
12:02:22 13 about the allegation or any allegations related to the  
12:02:25 14 individual whose phone you were supposed to search?

12:02:27 15 A. No.

12:02:28 16 Q. Did Watch Commander Candela tell you anything  
12:02:32 17 about specific contacts to look for?

12:02:34 18 A. No.

12:02:34 19 Q. Did you know anything about the investigation or  
12:02:38 20 any investigation at the time that you searched this  
12:02:41 21 person?

12:02:41 22 A. No, I knew there was a case. The specifics of  
12:02:46 23 the investigation for that case, I did not know.

12:02:50 24 Q. After Watch Commander Candela tells you what that  
12:02:55 25 you need to do the secondary inspection, the DOMEX

1 K. CARTER - DX BY MR. DICKSON

12:03:00 2 search of the this person's phone, what did you do?

12:03:04 3 A. At that time, I wasn't DOMEK certified, so I went  
12:03:15 4 and got Officer Sadowski, who, at that time, was one of  
12:03:20 5 our DOMEK certified officers, and I informed him this  
12:03:23 6 was going to take place when this individual arrived.

12:03:26 7 Q. Did Mr. Bongiovanni ultimately arrive?

12:03:28 8 A. He did.

12:03:31 9 Q. When he -- did he ultimately come back to the  
12:03:35 10 secondary inspection spot?

12:03:36 11 A. He did.

12:03:37 12 Q. When Mr. Bongiovanni got to the secondary  
12:03:40 13 inspection spot, what did you do?

12:03:42 14 A. He was already being engaged by secondary  
12:03:46 15 officers at that time. I came out to assist Sadowski  
12:03:50 16 with the phone search, so my presence was there to try  
12:03:53 17 and acquire the phones from Mr. Bongiovanni, which, at  
12:03:56 18 that moment, I don't know if it was being explained to  
12:04:00 19 him or not, but that is what I was out there waiting  
12:04:03 20 for.

12:04:03 21 Q. So when you go up to Mr. Bongiovanni, what did  
12:04:06 22 you do?

12:04:06 23 A. Well, it took some time. He had be to comforted  
12:04:15 24 or explained to why we were taking the phones, under  
12:04:27 25 what authority, and, eventually, he came around to

1 K. CARTER - DX BY MR. DICKSON

12:04:29 2 giving us the phones unlocked to inspect.

12:04:34 3 Q. Did you give him one of those tear sheets that is  
12:04:37 4 in Government's Exhibit 33?

12:04:39 5 A. He was given a tear sheet.

12:04:42 6 Q. Did Mr. Bongiovanni ultimately give you his  
12:04:45 7 phone?

12:04:45 8 A. He did.

12:04:47 9 Q. Do you remember whether Mr. Bongiovanni's phone  
12:04:50 10 had a password?

12:04:51 11 A. Both of the phones we received, they were locked.  
12:04:57 12 He unlocked them or they unlocked them.

12:05:00 13 Q. When you say "they," who else are you referring  
12:05:02 14 to?

12:05:02 15 A. His traveling companion.

12:05:04 16 Q. Did you know who that person was?

12:05:06 17 A. No.

12:05:09 18 Q. You said they unlocked them. What do you mean?

12:05:11 19 A. I mean, we were not capable of unlocking them, so  
12:05:15 20 they did whatever they did to unlock their phones and  
12:05:18 21 gave them to us.

12:05:24 22 Q. Did Mr. Bongiovanni ever tell you, "I don't want  
12:05:27 23 to give you the password"?

12:05:28 24 MAGISTRATE JUDGE ROEMER: Mr. Dickson, you  
12:05:30 25 want to try clarifying again who "they" were?

1 K. CARTER - DX BY MR. DICKSON

12:05:34 2 MR. DICKSON: Sure, your Honor.

12:05:35 3 Q. So you said you took phones from them, so who was  
12:05:40 4 with Mr. Bongiovanni during that secondary inspection,  
12:05:43 5 if you know?

12:05:43 6 A. There was a female in his traveling party that  
12:05:46 7 was also at the inspection booth or the inspection  
12:05:50 8 table.

12:05:50 9 Q. Did you take both of the phones?

12:05:52 10 A. We took both of the phones.

12:05:54 11 Q. Did you find out any other information about who  
12:05:56 12 that second person was?

12:05:57 13 A. No.

12:06:01 14 MAGISTRATE JUDGE ROEMER: I think he  
12:06:02 15 testified they unlocked the phones, I guess that is what  
12:06:06 16 I was looking for clarification.

12:06:09 17 MR. DICKSON: Understood, your Honor.

12:06:11 18 Q. Did you see, Officer Carter, when you said "they  
12:06:14 19 unlocked the phones," was that Mr. Bongiovanni and his  
12:06:18 20 traveling partner or traveling companion or somebody  
12:06:21 21 else?

12:06:22 22 A. That was their traveling party. It wasn't  
12:06:26 23 someone employed by CBP who unlocked the phones.

12:06:29 24 Q. So nobody from CBP unlocked the phones?

12:06:33 25 A. Nobody from CBP, nobody from the airlines. It

1 K. CARTER - DX BY MR. DICKSON

12:06:36 2 was his traveling party.

12:06:37 3 Q. Would you have had any way or CBP had any way in  
12:06:42 4 BWI airport during a basic search to unlock their  
12:06:46 5 phones?

12:06:47 6 A. No, sir.

12:06:51 7 Q. Did the defendant -- excuse me.

12:06:54 8 Did Mr. Bongiovanni or anybody in his traveling  
12:06:57 9 party ever tell you that you couldn't have the -- or  
12:07:01 10 that they wouldn't unlock the phones for you?

12:07:03 11 A. That wasn't said to me.

12:07:06 12 Q. So after Mr. Bongiovanni and his traveling  
12:07:09 13 companion unlocked the phones, what did you do?

12:07:14 14 A. I took the phones back to Sadowski where the  
12:07:18 15 DOMEX machine was. The DOMEX is or the DOMEX is behind  
12:07:26 16 a secured location, so secondary is about 40 yards from  
12:07:39 17 that location, so I had to transfer the phones over  
12:07:41 18 there.

12:07:41 19 Q. So you had to walk the phones away from Mr.  
12:07:44 20 Bongiovanni 40 yards away to another room?

12:07:48 21 A. Yes, sir.

12:07:50 22 Q. What did you do when you got to that other room?

12:07:54 23 A. I handed the phones to Officer Sadowski.

12:07:57 24 Q. Were you still in the room when Officer Sadowski  
12:08:00 25 got the phones?

1 K. CARTER - DX BY MR. DICKSON

12:08:00 2 A. Yes.

12:08:01 3 Q. What did Officer Sadowski try to do then?

12:08:05 4 A. He attempted to perform an advanced search.

12:08:08 5 Q. Was the advanced search successful?

12:08:10 6 A. No.

12:08:11 7 Q. When you say it wasn't successful, what do you  
12:08:17 8 mean?

12:08:17 9 A. The system that we used, the cables were not  
12:08:22 10 recognizing the phone, so it was hooked up to the phone.  
12:08:26 11 And once it hooks up to the phone, it initializes, but  
12:08:30 12 it never did that. It just acted like there was nothing  
12:08:33 13 hooked up to it.

12:08:34 14 Q. When you say it acted like there was nothing  
12:08:37 15 hooked up, what are you referring to as "it"?

12:08:40 16 A. I'm referring to our DOMEX machine in the port of  
12:08:44 17 Baltimore as it was.

12:08:46 18 Q. Was any information taken off those phones using  
12:08:52 19 that DOMEX machine?

12:08:53 20 A. No.

12:08:53 21 Q. Once you realized the DOMEX machine wasn't  
12:08:57 22 working, what did you do?

12:08:59 23 A. Informed Watch Commander Candela.

12:09:02 24 Q. Did Watch Commander Candela say anything to you?

12:09:05 25 A. Yes. He said we need to perform manual reviews



1 K. CARTER - DX BY MR. DICKSON

12:09:10 2 of the phone at that point.

12:09:12 3 Q. When you say a "manual review," is that a  
12:09:14 4 specific type of search that CBP usually does?

12:09:17 5 A. Yes, that would be a basic search.

12:09:19 6 Q. Did you ultimately perform a basic search on Mr.  
12:09:24 7 Bongiovanni's phone?

12:09:25 8 A. Yes, we did.

12:09:28 9 Q. Would you have been able to perform a basic  
12:09:30 10 search of Mr. Bongiovanni's phone if he hadn't unlocked  
12:09:34 11 it for you?

12:09:34 12 A. No.

12:09:38 13 Q. Did Officer Sadowski participate at all in the  
12:09:41 14 basic search of the phone?

12:09:43 15 A. He was present in the room, but I can't recall if  
12:09:50 16 he did anything else other than just be present in the  
12:09:53 17 room.

12:09:53 18 Q. Was there anybody else in the room with you?

12:09:56 19 A. Yes, Watch Commander Candela.

12:09:59 20 Q. Did Watch Commander Candela participate in the  
12:10:03 21 basic search?

12:10:04 22 A. Yes, he did.

12:10:05 23 Q. So, it was just you and Watch Commander Candela  
12:10:07 24 doing the basic search?

12:10:09 25 A. From my knowledge, yes.

1 K. CARTER - DX BY MR. DICKSON

12:10:11 2 Q. What, if anything, did you look at during your  
12:10:15 3 basic search of Mr. Bongiovanni's phone?

12:10:18 4 A. Contact, text messages.

12:10:22 5 Q. When you say you looked at contacts and text  
12:10:25 6 messages, how did you actually get into the contacts or  
12:10:28 7 the text messages?

12:10:29 8 A. There is just extremely random, we scrolled up,  
12:10:37 9 stopped at random, and hit the screen button and  
12:10:41 10 whatever was there, we hit it and took a picture of it.

12:10:44 11 Q. Sorry, Officer Carter. I'm asking how you  
12:10:48 12 actually started to see the contacts or the messages.  
12:10:50 13 Did you have to click on something to get into the  
12:10:52 14 messages or contacts?

12:10:54 15 A. Yes. We clicked on the native applications to  
12:11:06 16 the phone, the contacts list on the phone as it is and  
12:11:10 17 the text message list as it is on the phone.

12:11:15 18 Q. Does that mean you just had to click the app?

12:11:18 19 A. Yes, one button didn't have to unlock anything or  
12:11:23 20 do anything special.

12:11:24 21 Q. Did you have to connect the phone to any  
12:11:33 22 equipment to see the contacts or the messages?

12:11:36 23 A. No.

12:11:36 24 Q. Do you remember clicking on any other apps on Mr.  
12:11:43 25 Bongiovanni's phone?

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12:11:44 2 A. No.

12:11:45 3 Q. Do you know whether you accessed any password  
12:11:48 4 protected files?

12:11:49 5 A. The only thing that was password protected was  
12:11:54 6 the actual phone. No password protected files and the  
12:12:08 7 password for the phone was provided by him and it was  
12:12:13 8 never given to us either, he had it.

12:12:16 9 Q. As you were looking at the contacts and messages,  
12:12:21 10 did you do anything to document what you were seeing?

12:12:24 11 A. Yes, we took pictures.

12:12:27 12 Q. Would you recognize those pictures if I showed  
12:12:31 13 them to you?

12:12:31 14 A. I would.

12:12:35 15 MR. DICKSON: Your Honor, I'll direct  
12:12:36 16 opposing counsel's attention to Government's Exhibit 1,  
12:12:41 17 which they've already received a copy of. And may I  
12:12:44 18 approach the witness?

12:12:45 19 MAGISTRATE JUDGE ROEMER: Sure.

12:12:57 20 Q. Officer Carter, do you recognize what I just  
12:13:00 21 handed you?

12:13:00 22 A. Yes.

12:13:01 23 Q. What is it?

12:13:02 24 A. Pictures of a phone that we took of a basic  
12:13:05 25 search.

1 K. CARTER - DX BY MR. DICKSON

12:13:06 2 Q. Does this look like the photos that you took of  
12:13:09 3 Mr. Bongiovanni's phone on April 23, 2019?

12:13:13 4 A. Yes.

12:13:13 5 Q. Does it fairly and accurately depict those photos  
12:13:17 6 that you took?

12:13:18 7 A. Yes.

12:13:18 8 Q. Anything look like it's been altered or changed?

12:13:23 9 A. No.

12:13:25 10 MR. DICKSON: Your Honor, the government  
12:13:26 11 offers exhibit 1 into evidence.

12:13:29 12 MR. HARRINGTON: Judge, if he could just  
12:13:32 13 clarify which ones he took.

12:13:39 14 MAGISTRATE JUDGE ROEMER: Do you know who  
12:13:40 15 took what photos?

12:13:42 16 THE WITNESS: No. The government phone, I  
12:13:44 17 believe, was in Officer Candela's hand, and so we were  
12:13:48 18 together, so he was standing next to me as I was  
12:13:51 19 scrolling through the phone.

12:13:54 20 MAGISTRATE JUDGE ROEMER: So it sounds like  
12:13:57 21 you scrolled through the phone and the other officer  
12:14:00 22 took the pictures.

12:14:01 23 THE WITNESS: Yes, it was a joint effort.  
12:14:03 24 We normally do inspections in that manner.

12:14:05 25 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

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12:14:06 2 MR. HARRINGTON: No objection.

12:14:07 3 MAGISTRATE JUDGE ROEMER: Government's

12:14:08 4 Exhibit 1 shall be admitted into evidence.

12:14:10 5 MR. DICKSON: Thank you, your Honor.

12:14:10 6 **(Whereupon, Government's Exhibit 1 was**

12:14:11 7 **received into evidence.)**

12:14:11 8 Q. Officer Carter, you've told us a little bit about

12:14:15 9 this, but I want to understand how you decided which

12:14:18 10 contacts or messages to photograph. Let's start with

12:14:25 11 the contacts. When you opened up Mr. Bongiovanni's

12:14:28 12 contact app, how did you decide which contacts to

12:14:32 13 photograph?

12:14:32 14 A. Random, just luck, just going through and

12:14:37 15 stopping and clicking.

12:14:39 16 Q. Was there any rhyme or reason as to why you took

12:14:43 17 photos of certain contacts and didn't take photos of

12:14:47 18 others?

12:14:47 19 A. No.

12:14:48 20 Q. Did you have any idea what specific contacts

12:14:53 21 might be useful or helpful in that investigation out of

12:14:56 22 Buffalo?

12:14:56 23 A. No idea.

12:14:59 24 Q. What about the text messages? How did you decide

12:15:03 25 which messages to photograph?

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12:15:05 2 A. The same manner, and we looked at the stuff for  
12:15:09 3 anything in the text messages. If it was blatantly a  
12:15:12 4 criminal activity in a text message, we would have taken  
12:15:17 5 a picture. We didn't have that, so it was a random  
12:15:22 6 selection.

12:15:22 7 Q. When you say blatant criminal activity, is that  
12:15:33 8 what you typically look for when you do a basic search  
12:15:36 9 of a person's phone?

12:15:37 10 A. Yes, sir.

12:15:37 11 Q. But as you said, you didn't see any of that here?

12:15:40 12 A. No.

12:15:41 13 Q. So, when you took a photo of certain messages, it  
12:15:45 14 was just random?

12:15:46 15 A. Yes, sir.

12:15:53 16 Q. Just as an example, Officer Carter, if you can  
12:15:57 17 flip to the third page of Exhibit 1. If you look at the  
12:16:05 18 photo in the middle there, do you see where it has a  
12:16:09 19 couple of phone numbers that don't look like they have  
12:16:13 20 contact names associated with them?

12:16:14 21 A. I see that.

12:16:17 22 Q. Any particular reason why you took a photograph  
12:16:20 23 of these phone numbers and the messages that it appears  
12:16:25 24 were sent or received by those numbers?

12:16:29 25 A. No reason, just collecting what we could collect

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12:16:32 2 in that moment to send off.

12:16:37 3 Q. Officer Carter, were you given any search  
12:16:40 4 parameters from Watch Commander Candela or anybody else  
12:16:45 5 for what to look for during the basic search of Mr.  
12:16:49 6 Bongiovanni's phone?

12:16:50 7 A. No.

12:16:50 8 Q. Any direction about what messages or contacts you  
12:16:54 9 should be photographing?

12:16:55 10 A. No.

12:16:56 11 Q. Did you have any idea what evidence might be  
12:17:00 12 helpful or useful in any investigation as you were  
12:17:04 13 taking photos of Mr. Bongiovanni's contacts and  
12:17:08 14 messages?

12:17:08 15 A. No.

12:17:11 16 Q. I want to direct your attention back quickly to  
12:17:15 17 Government's Exhibit 2. Do you still have that in front  
12:17:17 18 of you?

12:17:18 19 A. Yes, sir.

12:17:22 20 Q. On the second page there, Officer Carter, if you  
12:17:26 21 can flip to that, looks like there is a narrative  
12:17:30 22 portion here. Can you just tell the Court quickly what  
12:17:34 23 does that narrative portion generally say on these types  
12:17:37 24 of reports?

12:17:39 25 A. The narrative portion is, in general, getting to

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12:17:43 2 negative or positive findings in an exam.

12:17:49 3 Q. Let's look at this narrative in particular. If  
12:17:54 4 you look here on Government's 2 in that narrative  
12:17:58 5 portion, it says, "entered by Whitfield, Christopher."

12:18:02 6 Do you see that there?

12:18:03 7 A. I do.

12:18:04 8 Q. Who is Christopher Whitfield?

12:18:06 9 A. Christopher Whitfield is the other individual who  
12:18:09 10 I work with that is on the Tactical Terrorist Response  
12:18:14 11 Team in the port of Baltimore.

12:18:15 12 Q. Did Officer Whitfield write this narrative?

12:18:19 13 A. He did.

12:18:19 14 Q. Did you give him information about the search of  
12:18:22 15 Mr. Bongiovanni's phone to help fill in this narrative?

12:18:25 16 A. We did; he was present.

12:18:28 17 Q. Is your name listed in that narrative section  
12:18:32 18 somewhere?

12:18:32 19 A. Yes, I see it in the last line there, the last  
12:18:47 20 sentence.

12:18:48 21 Q. Can you read that sentence?

12:18:49 22 A. "CBPOs Carter and Sadowski, as well as Watch  
12:18:56 23 Commander Candela conducted a basic search of the  
12:18:59 24 devices which yielded no derogatory information."

12:19:03 25 Q. I want to talk for a second about that phrase



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12:19:06 2 "derogatory information." Does that phrase have a  
12:19:09 3 particular meaning within CBP?

12:19:11 4 A. Yes, it does.

12:19:12 5 Q. Tell the Judge what that means?

12:19:14 6 A. Your Honor, in our agency, that means we had no  
12:19:18 7 findings of a criminal action in which we could take  
12:19:30 8 immediate action, which means an arrest or seizure.

12:19:33 9 Q. What is an example of something that would be  
12:19:37 10 considered derogatory information?

12:19:38 11 A. You could have somebody participating in the  
12:19:41 12 murder of somebody that they videotaped as terrorist  
12:19:45 13 activities. If we had people videotaping themselves  
12:19:51 14 selling drugs or habitually using drugs, if they are a  
12:20:18 15 foreign national, is a violation of Visa.

12:20:29 16 Q. So when you said a no derogatory information from  
12:20:33 17 the search of Mr. Bongiovanni's phone, what did you mean  
12:20:37 18 by that?

12:20:37 19 A. I meant we found nothing of a criminal nature  
12:20:41 20 that was actionable in that moment.

12:20:43 21 Q. Were you making an assessment of whether the  
12:20:47 22 photos that you had taken would be helpful in some other  
12:20:51 23 investigation involving Mr. Bongiovanni?

12:20:52 24 A. No.

12:20:53 25 Q. I want to talk now, quickly, Officer Carter,

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12:20:56 2 about the length of time that you had Mr. Bongiovanni's  
12:20:59 3 phone and that Mr. Bongiovanni was in the secondary  
12:21:04 4 inspection. So let's look at Government's Exhibit 2,  
12:21:08 5 which you still have. Based off of what it says on  
12:21:11 6 Government's Exhibit 2, can you tell us what time did  
12:21:14 7 the primary officer refer Mr. Bongiovanni for a  
12:21:18 8 secondary inspection?

12:21:19 9 A. The primary officer referred him at 2019, which  
12:21:27 10 would be 8:19.

12:21:29 11 Q. Can you tell us where on Government's Exhibit 2  
12:21:32 12 you see that information?

12:21:33 13 A. I see that at the bottom under "referral reason  
12:21:37 14 history."

12:21:37 15 Q. Does that say, "referred by Joseph Nnakwe"?

12:21:41 16 A. Yes, sir.

12:21:42 17 Q. Was Mr. Nnakwe, the primary officer that day?

12:21:45 18 A. Yes, he was.

12:21:49 19 Q. So you said that Mr. Nnakwe referred Mr.  
12:21:52 20 Bongiovanni to secondary inspection at 8:19 p.m. Did  
12:21:59 21 you take Mr. Bongiovanni's phone at 8:19 p.m.?

12:22:02 22 A. No, sir.

12:22:05 23 Q. Do you remember what time you took Mr.  
12:22:09 24 Bongiovanni's phone?

12:22:10 25 A. Mr. Bongiovanni's phone was in our possession for

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12:22:17 2 actual inspection around the time listed in the  
12:22:20 3 narrative, which is 2105.

12:22:22 4 Q. So 9:05 p.m.?

12:22:26 5 A. Yes.

12:22:27 6 Q. So at 9:05 p.m. you actually take Mr.  
12:22:31 7 Bongiovanni's phone to do the search?

12:22:47 8 A. For inspection, yes.

12:22:53 9 Q. Starting at 9:05 then, Officer Carter, do you  
12:22:58 10 remember how long you had Mr. Bongiovanni's phone in  
12:23:02 11 your possession to do the inspection?

12:23:04 12 A. We had his phone until 2120, pretty much, yes,  
12:23:12 13 about 2120.

12:23:14 14 Q. That is 9:20 p.m.?

12:23:16 15 A. Yes.

12:23:16 16 Q. So you had Mr. Bongiovanni's phone for inspection  
12:23:19 17 for 15 minutes?

12:23:20 18 A. Yes, I do recall the DOMEX failing immediately.

12:23:25 19 Q. Is that 15 minutes that you had Mr. Bongiovanni's  
12:23:28 20 phone in your possession, is that out of the ordinary in  
12:23:32 21 terms of the amount of time it typically takes to do a  
12:23:35 22 basic search of a person's phone?

12:23:37 23 A. No.

12:23:38 24 Q. What time was Mr. Bongiovanni allowed to leave  
12:23:46 25 the secondary inspection?

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12:23:48 2 A. When we returned his phones.

12:23:50 3 Q. So at 9:20 p.m.?

12:23:51 4 A. Yes.

12:23:54 5 Q. When Mr. Bongiovanni left the secondary  
12:23:57 6 inspection location, did you still have his phone?

12:24:00 7 A. No.

12:24:00 8 Q. Did anybody in CBP still have his phone?

12:24:04 9 A. No.

12:24:04 10 Q. Now, up at the top of the narrative here, next to  
12:24:11 11 where it says "Christopher Whitfield" on Government's  
12:24:15 12 Exhibit 2, you see where it says "created date/time"?

12:24:18 13 A. I do.

12:24:19 14 Q. What is the date and time that is listed there?

12:24:21 15 A. 4/23/2019, 2143 hours.

12:24:26 16 Q. So that is 9:43 p.m.?

12:24:28 17 A. Yes, sir.

12:24:29 18 Q. What is that time referring to?

12:24:30 19 A. That is the time that he actually entered into  
12:24:33 20 the secondary or the closeout findings.

12:24:36 21 Q. When you say he entered in, who are you referring  
12:24:38 22 to?

12:24:39 23 A. I'm referring to Christopher Whitfield.

12:24:42 24 Q. So Officer Whitfield entered in this narrative  
12:24:47 25 portion at 9:43 p.m.?

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12:24:49 2 A. Yes, sir.

12:24:50 3 Q. Does that mean you still had Mr. Bongiovanni's  
12:24:53 4 phone at 9:43 p.m.?

12:24:55 5 A. No, sir.

12:24:56 6 Q. Above that, you see where it says "created date  
12:24:59 7 and time"?

12:25:01 8 A. I do.

12:25:14 9 Q. What is the date and time there?

12:25:16 10 A. That is 4/24/20189, 1638 hours.

12:25:22 11 Q. Did you still have Mr. Bongiovanni's phone the  
12:25:25 12 next day at 4:38 p.m.?

12:25:28 13 A. No, sir.

12:25:31 14 Q. As far as you know, Officer Carter, was the  
12:25:35 15 inspection of Mr. Bongiovanni's phone, did it last any  
12:25:39 16 longer than that 15 minutes that you had it?

12:25:41 17 A. Of his phone, no.

12:25:46 18 Q. After you gave the defendant his phone back -- -  
12:25:49 19 excuse me -- Mr. Bongiovanni his phone back, after that  
12:25:53 20 15-minute basic search, did you have any idea whether  
12:25:58 21 Mr. Bongiovanni and his party had to catch another  
12:26:01 22 flight?

12:26:01 23 A. I did not.

12:26:02 24 Q. Does a person having to catch a flight factor  
12:26:07 25 into CBP's decision to do a secondary inspection or not?

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12:26:11 2 A. No, sir.

12:26:12 3 Q. Why not?

12:26:12 4 A. We're there, we're charged by the citizens of the  
12:26:17 5 United States and the U.S. Government to do full and  
12:26:19 6 complete thorough inspections. We don't handle flight  
12:26:23 7 connections or anything of that matter.

12:26:25 8 Q. Does a person having another flight factor into  
12:26:29 9 your decision about how long a basic search of a  
12:26:32 10 person's phone should take?

12:26:34 11 A. It does not.

12:26:35 12 Q. In BWI airport, where your phone or where your  
12:26:39 13 office is located, what part of that airport is it in?

12:26:42 14 A. We are in terminal E, downstairs, which would be  
12:26:48 15 arrivals.

12:26:49 16 Q. Are you familiar with where the A Gates are in  
12:26:54 17 BWI airport?

12:26:55 18 A. Yes, sir, I am.

12:26:56 19 Q. Based on your experience in that airport, Officer  
12:27:00 20 Carter, how long does it take to walk from your office  
12:27:03 21 to the A Gates of BWI airport?

12:27:07 22 A. Ten to 15 minutes, barring anybody having an  
12:27:10 23 injury or anything like that.

12:27:12 24 Q. Officer Carter, prior to April 23rd, 2019 when  
12:27:18 25 you conducted the basic search of Mr. Bongiovanni's

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12:27:21 2 phone, did you know Joseph Bongiovanni?

12:27:22 3 A. I did not.

12:27:24 4 Q. Had you ever heard his name before?

12:27:26 5 A. I have not.

12:27:26 6 Q. Did you know what his job was?

12:27:28 7 A. I did not.

12:27:29 8 Q. Did you know whether he was under any kind of  
12:27:32 9 investigation?

12:27:32 10 A. I knew there was a case when he arrived that day,  
12:27:35 11 that was it, that was the first time I ever heard of him  
12:27:38 12 at all.

12:27:39 13 Q. When you conducted the basic search of his phone,  
12:27:42 14 did you know anything about Mr. Bongiovanni's  
12:27:44 15 background?

12:27:45 16 A. I did not.

12:27:45 17 Q. Did you know anything about who his friends were?

12:27:48 18 A. I did not.

12:27:49 19 Q. Anything about who his associates were?

12:27:51 20 A. I did not.

12:27:53 21 MR. DICKSON: Just a moment, your Honor,  
12:27:55 22 please.

12:28:51 23 Q. Just a couple more questions for you, Officer  
12:28:54 24 Carter. Let's look at Government's Exhibit 2 again,  
12:28:57 25 quickly. Can you go ahead and read that narrative

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12:29:02 2 portion for us?

12:29:06 3 A. "The subject and his family were referred to  
12:32:43 4 secondary as a match to a one-day customs lookout.  
12:32:49 5 Subject is returning from a six-day trip to Punta Cana,  
12:33:03 6 Dominican Republic. He traveled with his wife, Lindsay"  
12:33:07 7 -- I don't want to miss pronounce this -- "Schuh DOB  
12:33:36 8 11/2/1984, USC, and her son" --

12:33:37 9 MR. HARRINGTON: Judge, I'll object to this.  
12:33:40 10 It's in evidence. I don't know why it has to be read.

12:33:42 11 MAGISTRATE JUDGE ROEMER: It's in evidence.  
12:33:43 12 He asked for him to read it. Overruled.

12:33:46 13 A. "And her son, Matthew Maglietto, date of birth  
12:33:46 14 6/27/2002 USC."

12:33:57 15 Q. Let me stop you there for a second, Officer  
12:33:59 16 Carter. I'll have you keep reading in a minute. There  
12:34:04 17 is that referring to the rest of Mr. Bongiovanni's  
12:34:09 18 travel companions?

12:34:11 19 A. Yes, sir.

12:34:12 20 Q. And earlier you told us there was Mr. Bongiovanni  
12:34:16 21 and his traveling companion unlocked their phones?

12:34:21 22 A. Yes.

12:34:21 23 Q. Was Mr. Bongiovanni's traveling companion a  
12:34:31 24 woman?

12:34:35 25 A. Yes, those were the only two we were interacting



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12:34:40 2 with.

12:34:50 3 Q. Go ahead and keep reading, please.

12:34:51 4 A. "They stayed at the Majestic Mirage resort. This  
12:35:04 5 is their first trip to the Dominican Republic. They are  
12:35:07 6 returning to their home in Buffalo, New York. Subjects  
12:35:10 7 had a total of six bags in their possession, which were  
12:35:14 8 searched with negative results. The subject and his  
12:35:26 9 wife had a Samsung cell phones, which were subjected to  
12:35:30 10 search in accordance with agency policy due to a one-day  
12:35:33 11 lookout. Subject had his Samsung, model SM-J337T IMEI  
12:35:40 12 354272090809267, phone number (716) 507-2784, and his  
12:36:02 13 wife had Samsung model SM-G960U, IMEI 354825091177901,  
12:36:27 14 phone number (716) 828 -- 6865. Both unlocked the  
12:36:43 15 devices without providing the passwords and each  
12:36:47 16 disabled wireless communications on their respective  
12:36:51 17 devices."

12:36:53 18 Q. I'll stop you there, Officer Carter. Thank you.  
12:36:56 19 Officer Carter, is it your understanding that had CBP  
12:37:00 20 wanted to, could it have kept Mr. Bongiovanni's phone if  
12:37:04 21 he had refused to open it for you?

12:37:06 22 A. It's my understanding, they could have.

12:37:09 23 Q. What is that based off of?

12:37:11 24 A. It's based off of the watch commander had already  
12:37:14 25 approved the advanced search of the phone and an

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12:37:20 2 unwillingness to provide an unlocked device would allow  
12:38:27 3 CBP to detain the phones for our people to do a forensic  
12:38:31 4 inspection and unlock the phones themselves.

12:38:34 5 Q. So had the watch commander -- because the watch  
12:38:36 6 commander had approved the advanced search, you would  
12:38:39 7 have had authority to keep Mr. Bongiovanni's phone?

12:38:41 8 A. Yes.

12:38:41 9 Q. Did you keep Mr. Bongiovanni's phone when they  
12:38:44 10 left that secondary inspection site?

12:38:47 11 A. No.

12:39:01 12 MR. DICKSON: Just a moment, your Honor.  
12:39:03 13 Your Honor, I have no further questions at  
12:39:05 14 this time.

12:39:06 15 MAGISTRATE JUDGE ROEMER: Thank you.

12:39:07 16 MR. DICKSON: Would you like me to keep the  
12:39:10 17 exhibits, your Honor?

12:39:13 18 MAGISTRATE JUDGE ROEMER: Is there any  
12:39:14 19 reason you want to leave those exhibits up there?

12:39:16 20 MR. HARRINGTON: We might.

12:39:17 21 MAGISTRATE JUDGE ROEMER: Okay.

12:39:17 22 CROSS EXAMINATION BY MR. HARRINGTON:

13:28:38 23 Q. Good morning, Mr. Carter.

13:28:40 24 A. Good morning, sir.

13:28:41 25 Q. My name is Jim Harrington and I represent Mr.

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13:28:45 2 Bongiovanni in this hearing.

13:28:47 3 A. Yes, sir.

13:28:48 4 Q. You gave some of your background with the Customs  
13:28:53 5 and Border Patrol. How long have you been with the  
13:29:01 6 Tactical Terrorism Response Team?

13:29:01 7 A. Since 2019, 2019.

13:29:05 8 Q. When in 2019 did you start with them?

13:29:08 9 A. February, March.

13:29:09 10 Q. So on the date that you met Mr. Bongiovanni, you  
13:29:12 11 would have been doing that particular task for about two  
13:29:16 12 months, correct?

13:29:16 13 A. Yes, sir.

13:29:17 14 Q. What did you do before that?

13:29:19 15 A. I was a Customs and Border Patrol Officer without  
13:29:24 16 the Tactical Terrorism Response Team.

13:29:25 17 Q. Did you work primary and secondary before?

13:29:29 18 A. Yes, I worked primary and secondary as well as a  
13:29:32 19 rover.

13:29:32 20 Q. Now, before coming to testify today, did you  
13:29:35 21 review any documents?

13:29:36 22 A. Yes.

13:29:36 23 Q. What did you review?

13:29:38 24 A. I reviewed all of the documents present.

13:29:41 25 Q. The ones that Mr. Dickson showed before?

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13:29:50 2 A. Yes, all of these exhibits.

13:29:52 3 Q. And you were not the author of those documents,  
13:29:55 4 were you?

13:29:56 5 A. No.

13:29:56 6 Q. And did those documents help to refresh your  
13:29:59 7 recollection of what happened that day?

13:30:00 8 A. Yes.

13:30:01 9 Q. Without those documents, would you have been able  
13:30:04 10 to testify in the detail that you did about what  
13:30:07 11 happened?

13:30:07 12 A. Only the pictures, the Exhibit 33, I'm  
13:30:11 13 knowledgeable about because we have it, but these  
13:30:17 14 Exhibit 2 I would have needed the refresher, yes.

13:30:19 15 Q. And did you speak with anybody before you  
13:30:22 16 testified today?

13:30:23 17 A. Yes.

13:30:24 18 Q. With whom did you speak?

13:30:26 19 A. I spoke with the gentleman that preceded you  
13:30:29 20 right there.

13:30:30 21 Q. And did you speak with any other Assistant U.S.  
13:30:33 22 Attorneys?

13:30:33 23 A. There was one other gentleman that was setting up  
13:30:37 24 the travel arrangements, that was it.

13:30:39 25 Q. And where did you come from, in Baltimore?

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13:30:43 2 A. Yes, sir.

13:30:43 3 Q. And did you travel with somebody else?

13:30:45 4 A. I did, sir.

13:30:46 5 Q. Who is that?

13:30:48 6 A. Steven Wachstein.

13:30:49 7 Q. And did you discuss this incident with Mr.

13:30:53 8 Wachstein?

13:30:54 9 A. Yes.

13:30:54 10 Q. And when did you do that?

13:30:55 11 A. We discussed it in the room when we were talking  
13:31:03 12 to the attorney before you. We no longer work together.

13:31:22 13 Q. Okay. Did you fly up here together?

13:31:24 14 A. We did fly up here together.

13:31:27 15 Q. You didn't talk about it in the plane?

13:31:29 16 A. We talked about it in a generality.

13:31:31 17 Q. What did you talk about?

13:31:32 18 A. We talked about, have you been to a case before  
13:31:35 19 or trial before.

13:31:36 20 Q. And what about the details of this case?

13:31:38 21 A. No details.

13:31:40 22 Q. Okay. And you said when you met with the  
13:31:43 23 gentlemen, Mr. Wachstein was with you, is that right?

13:31:48 24 So did you review your testimony with Mr. Wachstein?

13:31:51 25 A. Can you rephrase that? I missed something there.

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13:31:53 2 Q. You mentioned a minute ago that you talked to the  
13:31:56 3 gentleman, I assume you mean the Assistant U.S.  
13:32:01 4 Attorney?

13:32:01 5 A. Yes.

13:32:02 6 Q. And you mentioned Mr. Wachstein was there?

13:32:03 7 A. Yes.

13:32:04 8 Q. Did you talk to him while Mr. Wachstein was in  
13:32:06 9 the room with him?

13:32:07 10 A. Yes.

13:32:07 11 Q. And did Mr. Wachstein also answer questions for  
13:32:11 12 the U.S. Attorney while you were in the room?

13:32:13 13 A. Yes.

13:32:14 14 Q. Did he over the questions with you that he was  
13:32:17 15 going to ask you?

13:32:17 16 A. With Wachstein?

13:32:19 17 Q. No, with you, with you. Did he with you?

13:32:23 18 A. Just with me.

13:32:24 19 Q. Did you hear him ask the questions of Wachstein  
13:32:27 20 that he was going to ask him?

13:32:28 21 A. No, sir.

13:32:30 22 Q. When you discussed it with him, did you and  
13:32:32 23 Wachstein have to kind of piece things together of what  
13:32:36 24 you had recalled?

13:32:36 25 A. No.

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13:32:40 2 Q. Did you talk to the Watch Commander Candela  
13:32:45 3 before you came to testify?

13:32:46 4 A. I did.

13:32:46 5 Q. And when was that?

13:32:47 6 A. I spoke with him when he first was told that he  
13:32:52 7 had to come up here.

13:32:55 8 Q. And did he come up here with you?

13:32:57 9 A. No, sir.

13:32:59 10 Q. Did you talk about the incident itself with  
13:33:02 11 Candela?

13:33:02 12 A. No. Our conversation was about that, hey, expect  
13:33:05 13 the attorneys to call you, you have a case to go testify  
13:33:11 14 to in Baltimore.

13:33:12 15 Q. Is he still your watch commander now?

13:33:14 16 A. No.

13:33:14 17 Q. Now, when you met Mr. Bongiovanni on April the  
13:33:35 18 19th, the 23rd, I'm sorry, of 2019, you said that you  
13:33:40 19 had no knowledge of him before, correct?

13:33:42 20 A. No knowledge.

13:33:43 21 Q. And he had already passed through primary when  
13:33:47 22 you met him, is that right?

13:33:51 23 A. Yes, sir.

13:33:51 24 Q. And when were you told about the lookout for him?

13:33:54 25 A. Maybe a couple hours to a few minutes before, but

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13:34:00 2 the lookout, that is not what I was told about. I  
13:34:04 3 wasn't told about the lookout. I was told we had a  
13:34:08 4 DOMEX or advanced search to perform on his phone.

13:34:11 5 Q. So, before you saw him and talked to him about  
13:34:15 6 his request to do that DOMNEX or DOMEX?

13:34:23 7 A. DOMEX is the term.

13:34:24 8 Q. Before that, what exactly had you been told about  
13:34:28 9 him? You testified on direct examination that somebody  
13:34:33 10 had a case, is that right? Is that what you were told?

13:34:36 11 A. Yes.

13:34:36 12 Q. With no details about the case?

13:34:38 13 A. There was no details.

13:34:40 14 Q. And when you approached Mr. Bongiovanni, where  
13:34:51 15 was he?

13:34:51 16 A. He was in the secondary area.

13:34:53 17 Q. And that is an area off to the side with people  
13:34:56 18 to be taken care of?

13:34:57 19 A. Yes, sir.

13:34:58 20 Q. And you said he was with a companion?

13:35:01 21 A. Yes, sir.

13:35:02 22 Q. Did you learn it was his wife?

13:35:03 23 A. I learned it since I read the report, but the  
13:35:08 24 report had to jog my memory that that was his wife.

13:35:23 25 Q. Well, you read that report before you came to



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13:35:26 2 testify, didn't you?

13:35:26 3 A. I did.

13:35:27 4 Q. And didn't you notice in there it said it was his  
13:35:31 5 wife?

13:35:31 6 A. I did.

13:35:33 7 Q. Now, you mentioned earlier in your testimony also  
13:35:43 8 something about the TECS computer. Could you tell the  
13:35:46 9 Court what that is?

13:35:46 10 A. TECS is a law enforcement tool in which data is  
13:35:51 11 dropped in that allows law enforcement agencies, at  
13:35:57 12 least, mostly federal agencies, to let another agency be  
13:36:00 13 aware what is going on with an individual that may be  
13:36:05 14 traveling in their presence.

13:36:07 15 Q. And entries are made into TECS that stay in there  
13:36:11 16 for perpetuity. Isn't that right?

13:36:15 17 A. As far as I know.

13:36:16 18 Q. Unless somebody does something and miraculously  
13:36:20 19 gets an order from some court, information goes into  
13:36:25 20 TECS and just stays there, right?

13:36:26 21 A. I'm not an expert on that, but as far as I know,  
13:36:30 22 yes.

13:36:30 23 Q. And that can be information of not just  
13:36:34 24 somebody's criminal convictions or arrests, but it could  
13:36:52 25 be information about suspicions of somebody, correct?

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13:36:58 2 A. This is true.

13:36:59 3 Q. And it's meant to be an investigative aid for you  
13:37:08 4 and other officers doing your kind of work. Is that  
13:37:12 5 right?

13:37:12 6 A. Yes.

13:37:13 7 Q. You mentioned that you gave the tear sheet to --  
13:37:39 8 the tear sheet to Mr. Bongiovanni, is that right?

13:37:42 9 A. I didn't give it to him, but I was there when he  
13:37:44 10 was handed one.

13:37:45 11 Q. Who gave him one?

13:37:46 12 A. I can't recall who gave it to him, but I recall  
13:37:51 13 him reading it.

13:37:51 14 Q. Was one given to his wife, also, separate?

13:37:55 15 A. I don't recall that.

13:38:16 16 Q. Now, do you recall hearing or discussing with Mr.  
13:38:19 17 Bongiovanni any questions regarding the tear sheet,  
13:38:22 18 Exhibit 33?

13:38:23 19 A. I did not recall.

13:38:24 20 Q. Do you recall hearing or having any discussion  
13:38:28 21 with his wife about the tear sheet?

13:38:31 22 A. I do not recall.

13:38:34 23 Q. Do you recall having discussions with either of  
13:38:37 24 them about her son and Mr. Bongiovanni's stepson, who is  
13:38:43 25 mentioned in Exhibit 2, Matthew? Do you remember

1 K. CARTER - CX BY MR. HARRINGTON

13:38:46 2 discussing his phone?

13:38:47 3 A. I do not recall.

13:38:49 4 Q. Do you recall taking his phone?

13:38:54 5 MR. DICKSON: Objection, relevance.

13:38:56 6 MAGISTRATE JUDGE ROEMER: Overruled.

13:38:56 7 A. The stepson's phone?

13:38:59 8 Q. Yes.

13:38:59 9 A. I only recall the two phones that we had.

13:39:04 10 Q. Do you recall a discussion with them about the  
13:39:06 11 fact that his phone was dead, it had no charge in it, so  
13:39:11 12 you didn't take it? Do you remember that?

13:39:13 13 A. No. There were several other officers involved  
13:39:17 14 in discussing that with them, so it may have been  
13:39:20 15 somebody else.

13:39:20 16 Q. How many officers were involved?

13:39:22 17 A. Myself, Officer Whitfield, Officer Sadowski and  
13:39:27 18 Watch Commander Candela.

13:39:28 19 Q. And all at the time this form was given, this  
13:39:31 20 tear sheet was given?

13:39:32 21 A. They were all involved in the inspection.

13:39:34 22 Q. I know that. I'm talking now about this moment  
13:39:37 23 in time when you hand the tear sheet to them and I'm  
13:39:41 24 asking you questions about whether there was any  
13:39:42 25 discussions by them about your authority or anything

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13:39:45 2 else about your taking the phone?

13:39:47 3 A. I believe there was a discussion about the  
13:39:49 4 authority, which is why he was handed the tear sheet.  
13:39:52 5 There was a small objection at first, yes.

13:39:54 6 Q. What was the small objection?

13:39:56 7 A. "Why do you need our phones?"

13:39:59 8 Q. And then what was responded to them and by whom?

13:40:03 9 A. That was a conversation between them, Officer  
13:40:06 10 Whitfield and Watch Commander Candela.

13:40:09 11 Q. And you could hear this conversation, couldn't  
13:40:11 12 you?

13:40:11 13 A. I was probably within earshot of it, but I don't  
13:40:16 14 recall of that conversation.

13:40:17 15 Q. Do you remember anything else in conversation  
13:40:21 16 between Mr. Bongiovanni or his wife with those other  
13:40:26 17 agents that were working with you about the taking of  
13:40:31 18 the phone?

13:40:31 19 A. No, I just remember, after his objection, they  
13:42:20 20 were very compliant.

13:42:22 21 Q. Did you tell him or did any of them tell him, did  
13:42:25 22 you hear him tell them that you could seize their phones  
13:42:30 23 if they didn't give you the password or open the phone?

13:42:34 24 A. No, I didn't hear anybody say that.

13:42:36 25 Q. You could have done that, though, isn't that

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13:42:38 2 true?

13:42:39 3 A. That is true.

13:42:39 4 Q. So when they said, "why do you need our phones,"  
13:42:42 5 was there an explanation given to them for that?

13:42:45 6 A. Verbally, I don't recall the explanation, but I  
13:42:48 7 know they were given the tear sheet, which would be an  
13:42:51 8 explanation.

13:42:51 9 Q. And were they allowed to the read the tear sheet  
13:42:56 10 before they gave you the phone?

13:42:57 11 A. Yes.

13:42:58 12 Q. How long did that take?

13:42:59 13 A. I don't recall.

13:43:02 14 Q. And so, the four of you, the three of you,  
13:43:05 15 whatever the number of you just stood there while  
13:43:08 16 reading the tear sheet?

13:43:09 17 A. Yes. It's the way the inspection site was set  
13:43:13 18 up. We were in no rush. We have the amount of time we  
13:43:17 19 deem necessary to perform the inspection.

13:43:19 20 Q. And you can't recall after them reading the tear  
13:43:22 21 sheet them saying anything to you asking more questions?

13:43:25 22 A. If they were asked, they were not to me.

13:43:28 23 Q. And you didn't hear any?

13:43:29 24 A. No.

13:43:47 25 Q. Did you hear anyone else or did you say anything

1 K. CARTER - CX BY MR. HARRINGTON

13:43:51 2 else to the support what is in the tear sheet to amplify  
13:43:58 3 and explain anything else?

13:44:01 4 A. No.

13:44:02 5 Q. So what you're saying to me is no officer said,  
13:44:06 6 we have the authority to take this, if you don't give us  
13:44:09 7 your consent, we can take your phones and hold them to  
13:44:12 8 do our inspection?

13:44:13 9 A. That is not what I'm saying. I'm saying I did  
13:44:15 10 not, and I'm saying that I do not recall anybody else  
13:44:18 11 saying that.

13:44:19 12 Q. So you did not hear that, anything like that from  
13:44:22 13 anybody?

13:44:22 14 A. No.

13:44:22 15 Q. Explaining the situation. Okay. And while this  
13:44:28 16 tear sheet was given to them, how far away were you from  
13:44:31 17 the others that were there?

13:44:34 18 A. Seven to 15 feet. It's an inspection area. So,  
13:44:40 19 I'm walking back and forth between that booth, other  
13:44:43 20 booths, right there, but it's the entire inspection  
13:44:47 21 area. Maybe the size, the width of this courtroom,  
13:44:52 22 maybe a little bit longer than this courtroom.

13:44:54 23 Q. When the tear sheet was given, Exhibit 33, were  
13:44:58 24 they standing or sitting?

13:44:59 25 A. They were standing.

1 K. CARTER - CX BY MR. HARRINGTON

13:45:00 2 Q. And how long had they been waiting?

13:45:03 3 A. They had been there for a while, but it's not  
13:45:06 4 something I would deem inordinate for an inspection.  
13:45:09 5 But they had been there for 40 minutes or so.

13:45:13 6 Q. Forty minutes from when?

13:45:15 7 A. From their arrival in secondary. And I wasn't  
13:45:18 8 the first officer to encounter them in secondary. But  
13:45:21 9 when I came out to secondary, they were already engaged  
13:45:24 10 in conversation with officers. So I don't know if it  
13:45:26 11 started as soon as they arrived or later.

13:45:29 12 Q. Did Mr. Bongiovanni appear to be upset?

13:45:31 13 A. If he did, if he was upset, it didn't come off  
13:45:37 14 that way to me.

13:45:38 15 Q. Did Ms. Schuh appear to be upset?

13:45:41 16 A. There was a tad bit of confusion, I would say.

13:45:44 17 Q. Why don't you explain what that means?

13:45:46 18 A. She didn't understand why we were taking the  
13:45:49 19 phones, and I saw her defer to his decision making when  
13:45:53 20 they were talking back and forth. But that was just a  
13:45:56 21 visual queue that I saw.

13:45:58 22 Q. Did she tell you or did you hear her say that "I  
13:46:03 23 don't use wifi on my phone, I don't have to disable it"?

13:46:07 24 A. No, I don't recall that at all.

13:46:09 25 Q. Were the phones on or were they disabled when

1 K. CARTER - CX BY MR. HARRINGTON

13:46:13 2 they handed them to you?

13:46:14 3 A. The phones were on. They had to unlock them, so  
13:46:20 4 the phones were on when they were handed to us.

13:46:23 5 Q. As far as you could tell, just what you could  
13:46:26 6 conclude. You came over there, they had their phones,  
13:46:29 7 it appeared that their phones were on, is that right,  
13:46:32 8 when they gave them to you?

13:46:33 9 A. By the time I saw it, yes.

13:46:45 10 Q. Now, if the attempt was made to use the DOMEX  
13:46:51 11 download, correct?

13:46:52 12 A. Yes, sir.

13:46:52 13 Q. So it was every intention by you and the others,  
13:46:58 14 Sadowski, to complete what you were directed to do. Is  
13:47:02 15 that right?

13:47:03 16 A. Yes, sir.

13:47:03 17 Q. And had the machine worked, you would have  
13:47:06 18 completed it. Is that right?

13:47:08 19 A. Yes, sir.

13:47:15 20 Q. Were either Mr. Bongiovanni or his wife, were  
13:48:04 21 either one of them told that this advance search was  
13:48:08 22 going to be done on their phone?

13:48:11 23 A. I believe their phones were told they would be  
13:48:30 24 searched. I can't commit to saying whether they were  
13:48:34 25 told it would be an advance search or a basic search.



1 K. CARTER - CX BY MR. HARRINGTON

13:50:00 2 Q. And the direction that you had, you testified,  
13:50:04 3 was that you were looking for contacts. Is that right?

13:50:07 4 A. During the DOMEK or can you clarify that?

13:50:12 5 Q. Yep. When you had -- you were told this was  
13:50:16 6 about a case, correct?

13:50:17 7 A. Yes.

13:50:18 8 Q. So were you given -- you were given no  
13:50:23 9 instruction about what kind of case it was?

13:50:25 10 A. I was not.

13:50:26 11 Q. And you testified earlier that your watch  
13:50:33 12 commander told you you were looking for contacts, is  
13:50:36 13 that right?

13:50:36 14 A. Watch commander told us that this was about a  
13:50:40 15 case and we need to do a DOMEK. When it went to  
13:50:45 16 contacts during the basic search, that is really -- that  
13:50:50 17 is all there that we can find.

13:50:52 18 Q. Were you told to look for contacts or not at any  
13:50:55 19 time?

13:50:55 20 A. I don't believe so.

13:50:59 21 Q. Were you told to look for any particular type of  
13:51:02 22 contacts?

13:51:03 23 A. No.

13:51:04 24 Q. No designation of any kind whatsoever?

13:51:08 25 A. None whatsoever.

1 K. CARTER - CX BY MR. HARRINGTON

13:51:13 2 Q. And when you conduct one of these searches and  
13:51:16 3 you're looking for contacts, you said there is some  
13:51:19 4 randomness in what you do. Is that right?

13:51:22 5 A. For this phone search, yes, just due to the  
13:51:25 6 nature, we were told there was a case, but no parameters  
13:51:30 7 of the case.

13:51:31 8 Q. And I take it in Exhibit 1, which has the  
13:51:34 9 photographs that were taken with you and Candela took  
13:51:39 10 the photographs, right?

13:51:40 11 A. Yes.

13:51:40 12 Q. And that was not the entirety of what was on Mr.  
13:51:44 13 Bongiovanni's phone, was it?

13:51:45 14 A. No.

13:51:46 15 Q. In terms of contacts?

13:51:47 16 A. It was not.

13:51:48 17 Q. And so, who was spinning through and stopping or  
13:51:52 18 moving the screen for the contacts, is that you or  
13:51:55 19 Candela?

13:51:56 20 A. We're standing next to each other holding the  
13:52:00 21 phone and kind of spinning and somebody would just take  
13:52:03 22 their finger and hit at random and you put your finger  
13:52:07 23 on it and it would stop and that would be that.

13:52:09 24 Q. Were you the person that hit it?

13:52:11 25 A. I did it a few times and I believe he did it a

1 K. CARTER - CX BY MR. HARRINGTON

13:52:15 2 few times.

13:52:15 3 Q. So whatever came up?

13:52:17 4 A. Whatever came up is what came up.

13:52:19 5 Q. Was it ever mentioned to you something about  
13:52:22 6 looking for Italians?

13:52:24 7 A. No, sir, not at all.

13:52:26 8 Q. So the names that came up on Exhibit 1 is just  
13:52:29 9 random, that they happen to be 95 percent Italian, just  
13:52:34 10 random?

13:52:35 11 A. It's my belief that your friends are your  
13:52:37 12 friends, so when we go through, like, Jamaican phones,  
13:52:41 13 there are a lot of names that seem to be Jamaican names.  
13:52:47 14 Your friends are your friends. I don't get to make that  
13:52:50 15 determination.

13:52:50 16 Q. You didn't think Mr. Bongiovanni was from Italy,  
13:52:55 17 did you?

13:52:56 18 A. I didn't think he was from Italy, no.

13:52:58 19 Q. And he was a U.S. citizen coming back from  
13:53:03 20 Dominican Republic?

13:53:03 21 A. Yes.

13:53:24 22 Q. You were asked some questions about Government's  
13:53:27 23 Exhibit 2. I believe you have a copy in front of you?

13:53:29 24 A. I do, sir.

13:53:52 25 Q. If I could direct your attention on Government's

1 K. CARTER - CX BY MR. HARRINGTON

13:53:55 2 Exhibit 2 to the portion where Mr. Wachstein's name  
13:54:03 3 appears on that?

13:54:03 4 A. I see that.

13:54:04 5 Q. And it indicates underneath his name that it says  
13:54:09 6 he started -- inspection started at April 23, 2019 at  
13:54:16 7 2142, correct?

13:54:18 8 A. I see that.

13:54:19 9 Q. And then it says that it ended on April 23, 2019  
13:54:25 10 at 2143, is that right?

13:54:28 11 A. I see that.

13:54:29 12 Q. And this is under the category of "baggage," is  
13:54:32 13 that right?

13:54:33 14 A. Yes, sir.

13:54:33 15 Q. Are you telling me that the baggage search for  
13:54:37 16 the Bongiovanni's, is that what this document indicates,  
13:54:40 17 took a minute?

13:54:40 18 A. No, that is an incorrect time, sir.

13:54:43 19 Q. Which is incorrect?

13:54:44 20 A. The starting time.

13:54:48 21 Q. Okay. You know what the correct time should be?

13:54:51 22 A. The correct time should be indicated by when  
13:54:54 23 Officer Nnakwe still, in part of exhibit 2 page two, his  
13:55:01 24 time states 2019, that was the actual time he was  
13:55:04 25 referred.

1 K. CARTER - CX BY MR. HARRINGTON

13:55:11 2 Q. So you're referring to the second page of Exhibit  
13:55:16 3 33, correct?

13:55:16 4 A. Yes, sir.

13:55:17 5 Q. And at the top, after his name, it says "created  
13:55:23 6 date and time 4/23/2019, 2143," right?

13:55:28 7 A. I see that -- I see the time, the correct time at  
13:55:34 8 the bottom, sir, next to Joseph Nnakwe's name.

13:55:41 9 MAGISTRATE JUDGE ROEMER: Mr. Harrington, I  
13:55:43 10 thought you referred to Exhibit 33. I'm confused.

13:55:47 11 MR. HARRINGTON: It's 2, I apologize.

13:55:49 12 MAGISTRATE JUDGE ROEMER: Okay.

13:55:51 13 MR. HARRINGTON: It's 2.

13:55:55 14 Q. All right. So at the bottom, this is the initial  
13:55:59 15 referral from primary, correct?

13:56:02 16 A. That's correct, sir.

13:56:03 17 Q. My question to you was about the baggage.

13:56:05 18 A. Yes, sir.

13:56:06 19 Q. Is there anything on this report that indicates  
13:56:09 20 when the baggage search was started and stopped other  
13:56:13 21 than on the first page?

13:56:13 22 A. I'm sorry continue. For U.S. Customs and Border  
13:56:17 23 Protection, the referred time starts, the secondary  
13:56:19 24 time, they actually keep a wait time report of that, so  
13:56:22 25 his secondary search begins whether he is being

1 K. CARTER - CX BY MR. HARRINGTON

13:56:25 2 inspected or not at 2019.

13:56:27 3 Q. Secondary search is what you did, right?

13:56:31 4 A. That I participated in.

13:56:32 5 Q. Is that a search of the baggage, also?

13:56:35 6 A. Yes, that includes the baggage.

13:56:37 7 Q. So, his baggage was not inspected until 2019, is  
13:56:43 8 that right?

13:56:43 9 A. I don't know the exact time his baggage was  
13:56:46 10 actually looked at physically. But once he hits  
13:56:50 11 secondary for U.S. Customs and Border Protection, we  
13:56:53 12 consider that to be your time in which you started your  
13:56:57 13 secondary inspection at that time period.

13:56:59 14 Q. Now, when you saw Mr. Bongiovanni and his wife  
13:57:03 15 waiting at secondary, did they have their baggage with  
13:57:07 16 them then?

13:57:07 17 A. The inspection had already started. I came out  
13:57:11 18 through the inspection late. They already started  
13:57:14 19 conversating. I had gone and got Sadowski to get him  
13:57:18 20 set up for the DOMEX and then I came outside and they  
13:57:23 21 had already begun.

13:57:23 22 Q. My question is: Did they have their bags with  
13:57:27 23 them then?

13:57:28 24 A. At some point, they got their bags.

13:57:31 25 Q. Did they get them before their phones were given

1 K. CARTER - CX BY MR. HARRINGTON

13:57:35 2 back to them?

13:57:36 3 A. I'm not following the line of questioning. I'm  
13:57:38 4 sorry.

13:57:38 5 Q. My question is about the bags and whether you  
13:58:02 6 know when they got their bags returned to them. Was it  
13:58:05 7 before you did the phone attempted extraction or was it  
13:58:09 8 during or was it after, if you know? If you don't know  
13:58:12 9 that's fine?

13:58:12 10 A. Okay. They retrieved their bags before  
13:58:15 11 inspection because we have to inspect the bags, then the  
13:58:18 12 bags are inspected in their presence, and then the bags  
13:58:21 13 are returned either when we're done with the bags or  
13:58:26 14 when we're done with the phones. But once we handed  
13:58:29 15 them back the phones, we've concluded the inspection.

13:58:33 16 Q. And who gave them the phones back?

13:58:35 17 A. I believe it was me.

13:58:36 18 Q. And did they have the bags when you gave the  
13:58:39 19 phones back?

13:58:40 20 A. I didn't look to see if they had their bags or  
13:58:44 21 not.

13:58:44 22 Q. Okay. You testified to referring to Exhibit 2,  
13:59:13 23 page two, about the inspection taking 20 minutes, 15  
13:59:19 24 minutes?

13:59:19 25 A. The phone inspection.

1 K. CARTER - CX BY MR. HARRINGTON

13:59:21 2 Q. Does that include the attempt to use the DOMEX?

13:59:24 3 A. Yes.

13:59:24 4 Q. So how long did that take?

13:59:27 5 A. The DOMEX?

13:59:29 6 Q. Attempt.

13:59:30 7 A. The DOMEX failed probably within two minutes, we  
13:59:34 8 were done with that.

13:59:34 9 Q. And I take it the machine either starts or it  
13:59:37 10 doesn't like it did?

13:59:39 11 A. It was kind of warmed up and prepped ahead of  
13:59:43 12 time. So it didn't work immediately. It didn't  
13:59:46 13 recognize it immediately.

13:59:48 14 Q. And who is it that kept track of the time for  
13:59:57 15 your search of the phone?

13:59:58 16 A. That would be Officer Whitfield. He is the one  
14:00:01 17 that entered in the special result.

14:00:02 18 Q. And what was his role in this inspection?

14:00:05 19 A. He was doing -- he was out there for the initial  
14:00:10 20 beginning of the inspection, like he was talking to  
14:00:12 21 them.

14:00:12 22 Q. And is he one of your unit or was he a different  
14:00:18 23 type of inspector?

14:00:19 24 A. No, he is part of my unit.

14:00:25 25 Q. Just for a point of clarification. On Exhibit 2,



1 K. CARTER - CX BY MR. HARRINGTON

14:00:38 2 it is has the initials up above and then down again in  
14:00:47 3 the middle of the document IOEM. What do those stand  
14:00:53 4 for?

14:00:53 5 A. Inspection of electronic media.

14:01:54 6 Q. After the inspection had been done, did you make  
14:01:57 7 any inquiries of what the case was, Mr. Bongiovanni's  
14:02:00 8 was?

14:02:00 9 A. No, sir.

14:02:01 10 Q. Didn't everyone say to Candela what was this  
14:02:05 11 about or anything?

14:02:05 12 A. No, we get a lot of these requests. This is not  
14:02:08 13 uncommon. So after a while, it's kind of  
14:02:12 14 run-of-the-mill, without making light of the situation.

14:02:15 15 Q. No, I understand.

14:03:04 16 In the normal course of your duties, when you're  
14:03:07 17 doing these kinds of inspections, do you often get told  
14:03:10 18 what type of case it is, such as drugs or it could be  
14:03:13 19 terrorism or could be anything else?

14:03:16 20 A. When it's terrorism, we get a lot more  
14:03:20 21 information. When it's anything else, we don't  
14:03:22 22 necessarily get a whole lot of information about what's  
14:03:25 23 going on, especially if it's something that is an open  
14:03:28 24 case.

14:03:38 25 Q. Other than this lookout and the fact that any

1 K. CARTER - RDX BY MR. DICKSON

14:03:45 2 primary inspector who has some suspicions about anything  
14:03:48 3 can refer somebody to secondary, was there anything else  
14:03:52 4 that stood out to you about Mr. Bongiovanni or his wife  
14:03:54 5 or their son that would have triggered some kind of  
14:03:58 6 secondary inspection by you?

14:03:59 7 A. No. Normal circumstances, no. They seemed like  
14:04:02 8 a normal family. No odd behaviors at all.

14:04:06 9 MR. HARRINGTON: All right. That's all I  
14:04:07 10 have, Judge. Thanks.

14:04:09 11 MAGISTRATE JUDGE ROEMER: Thank you, sir.  
14:04:12 12 Mr. Dickson?

14:04:14 13 MR. DICKSON: Yes, your Honor.

14:04:27 14 May I proceed?

14:04:28 15 MAGISTRATE JUDGE ROEMER: Sure.

14:04:29 16 REDIRECT EXAMINATION BY MR. DICKSON:

14:04:29 17 Q. Officer Carter, Mr. Harrington asked you some  
14:04:32 18 questions about Mr. Wachstein. Do you know Steve  
14:04:35 19 Wachstein?

14:04:36 20 A. I do.

14:04:36 21 Q. What is his position with CBP?

14:04:40 22 A. Right now, he is in the field office as a program  
14:04:46 23 manager. He is still an officer, but he has a program  
14:04:49 24 manager role.

14:04:50 25 Q. Back in 2019, was Mr. Wachstein a supervisor?

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14:04:53 2 A. He was a first line supervisor directly  
14:04:57 3 supervising the floor in Baltimore Washington  
14:05:02 4 International Airport.

14:05:02 5 Q. Did Mr. Wachstein participate in the search of  
14:05:05 6 Mr. Bongiovanni's phone?

14:05:07 7 A. No. He was just a supervisor present.

14:05:12 8 Q. Now, I'm going to ask you a couple of questions  
14:05:15 9 about the airport where this search happened. You told  
14:05:19 10 us you worked at BWI, right?

14:05:21 11 A. Yes, sir.

14:05:22 12 Q. Does BWI service international flights?

14:05:26 13 A. Yes, sir.

14:05:26 14 Q. And is a flight from the Dominican Republic  
14:05:29 15 considered an international flight?

14:05:31 16 A. Yes, sir.

14:05:31 17 Q. And does that mean that people on that flight  
14:05:34 18 from the Dominican Republic are coming into the U.S.  
14:05:37 19 border?

14:05:37 20 A. Yes, sir.

14:05:38 21 Q. Based off of that, would it be your understanding  
14:05:41 22 that CBP has authority to do a border search at BWI  
14:05:45 23 airport?

14:05:46 24 A. Yes, sir.

14:05:48 25 Q. If you look quickly at Government's Exhibit 2 and

1 K. CARTER - RDX BY MR. DICKSON

14:05:52 2 I'll ask you one question about that. Mr. Harrington  
14:05:55 3 asked you about a TECS report. Is that a T-E-C-S?

14:06:00 4 A. Yes, sir.

14:06:01 5 Q. Do you know what a TECS report is?

14:06:07 6 A. Yes.

14:06:08 7 Q. A TECS report is what is Government's Exhibit 2,  
14:06:12 8 right?

14:06:13 9 A. Yes.

14:06:13 10 Q. And Mr. Harrington also asked you some questions  
14:06:16 11 about the photos that you took of Mr. Bongiovanni's  
14:06:20 12 contacts. Do you remember that?

14:06:21 13 A. Yes.

14:06:22 14 Q. And do you remember Mr. Harrington asking you  
14:06:24 15 about whether you knew that the people in the photos  
14:06:30 16 were Italian?

14:06:32 17 A. I remember him asking that question.

14:06:33 18 Q. Officer Carter, when you searched Mr.  
14:06:37 19 Bongiovanni's phone, did you know what his ethnicity  
14:06:41 20 was?

14:06:41 21 A. Did I know for sure? He is an American, that is  
14:06:44 22 what I knew, that is all I knew.

14:06:46 23 Q. Did you know his ethnicity?

14:06:48 24 A. All I knew, he was American. I didn't know he  
14:06:50 25 was Italian or anything like that.

1 K. CARTER - RCX BY MR. HARRINGTON

14:06:52 2 Q. Did you look at any of the contacts and know  
14:06:55 3 whether any of those people were Italian?

14:06:57 4 A. The name doesn't necessarily mean that you're  
14:07:00 5 Italian or anything, so, I didn't know who I was taking  
14:07:05 6 a picture of in the phone contacts.

14:07:06 7 Q. Did you know any of the people who you took a  
14:07:12 8 photo of their contacts? Did you know any of those  
14:07:15 9 people?

14:07:15 10 A. None of the people or none of the phone numbers.

14:07:20 11 MR. DICKSON: Just a moment, your Honor.  
14:07:22 12 That's it, Judge. Thank you.

14:07:23 13 MAGISTRATE JUDGE ROEMER: Mr. Harrington?  
14:07:24 14 RE-CROSS EXAMINATION BY MR. HARRINGTON:

14:07:30 15 Q. Just a clarification. When the DOMEX did not  
14:07:34 16 work and you did the basic search, was it still plugged  
14:07:38 17 in the DOMEX or not?

14:07:39 18 A. No, that's not possible.

14:07:41 19 MR. HARRINGTON: Okay. That's all.

14:07:43 20 MAGISTRATE JUDGE ROEMER: Thank you, sir.  
14:07:44 21 I'm sorry.

14:07:45 22 Officer Carter, you can step down, sir.  
14:07:48 23 Thank you.

14:07:49 24 THE WITNESS: Yes, sir.

14:08:07 25 MAGISTRATE JUDGE ROEMER: We're going to

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14:08:08 2 take a 10-minute break. During that time, Mr. Tripi,  
14:08:11 3 can you talk to Mr. Harrington about the rest of the  
14:08:14 4 scope of this hearing so we can figure that out?

14:08:17 5 MR. TRIPI: We'll have to go on the record a  
14:08:19 6 little bit before the next witness.

14:08:21 7 MAGISTRATE JUDGE ROEMER: About that or  
14:08:22 8 something else?

14:08:22 9 MR. TRIPI: About that.

14:08:23 10 MAGISTRATE JUDGE ROEMER: All right.

14:08:23 11 (Whereupon, there was a break in the  
14:08:23 12 proceeding.)

14:08:30 13 THE COURT: Okay. We're back on the record.  
14:08:31 14 Mr. Tripi.

14:08:32 15 MR. TRIPI: Yes, Judge. I've spoken with  
14:08:34 16 Mr. Harrington and here is my understanding of what the  
14:08:38 17 scope of the hearing is. Obviously, the April 23rd,  
14:08:42 18 2019 border search of the phones, but as to the June  
14:08:47 19 6th, 2019 motion to suppress the statements of Mr.  
14:08:51 20 Bongiovanni on that date, the defense is withdrawing  
14:08:55 21 their motion with respect to any argument that Mr.  
14:08:59 22 Bongiovanni was in custody requiring Miranda or that the  
14:09:02 23 statement was otherwise involuntary that day, they are  
14:09:09 24 still persisting in their argument that the unlawful  
14:09:16 25 search of the cell phone at the border, that there were

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14:09:22 2 statements during the subsequent interview on June 6th,  
14:09:27 3 2019 that were the fruit of the poisonous tree. What I  
14:09:31 4 will say about that, if that is the only aspect of their  
14:09:34 5 motion that remains as to the statement, then it would  
14:09:38 6 only be statements during that interview that related to  
14:09:43 7 the contacts of the phone search at the border. In  
14:09:47 8 other words, there are other parts of the interview that  
14:09:49 9 had nothing to do with stuff that the special agent  
14:09:53 10 asked about the border search that would affect any of  
14:09:57 11 the other statements from that day. So I just want to  
14:10:00 12 make that clear before I call Special Agent Ryan so I  
14:10:03 13 know what I'm dealing with when I'm examining the  
14:10:07 14 witness.

14:10:07 15 MAGISTRATE JUDGE ROEMER: Mr. Harrington,  
14:10:10 16 you can stay there if you want, sir. It's up to you.

14:10:13 17 MR. HARRINGTON: Judge, that is an accurate  
14:10:16 18 statement of where we are without my concession  
14:10:19 19 necessarily that it obviates anything other than the  
14:10:23 20 call information. But that is a sub issue that you  
14:10:26 21 would have to --

14:10:27 22 MAGISTRATE JUDGE ROEMER: Everything except  
14:10:30 23 for what?

14:10:30 24 MR. HARRINGTON: Mr. Tripi just made a  
14:10:32 25 distinction that in the June 6th statement, if there is

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14:10:35 2 part of it is going to be suppressed because of the  
14:10:38 3 airport search.

14:10:39 4 MAGISTRATE JUDGE ROEMER: Right, right.

14:10:40 5 MR. HARRINGTON: It would only apply to the  
14:10:42 6 uses of names that were derived or whatever it is. And  
14:10:46 7 all I'm saying to the Court, we're not conceding that.  
14:10:49 8 We're not conceding that in terms of the whole  
14:10:52 9 statement. But that is, obviously, a conclusion the  
14:10:55 10 Court could reach and say.

14:10:56 11 MAGISTRATE JUDGE ROEMER: So you basically  
14:10:57 12 want to ask -- is it -- I guess, Agent Ryan, he did the  
14:11:09 13 questioning.

14:11:13 14 MR. TRIPI: On June 6th.

14:11:15 15 MAGISTRATE JUDGE ROEMER: You want Agent  
14:11:18 16 Ryan to testify and you want to ask him questions about  
14:11:20 17 what he asked him about with regard to this phone. Is  
14:11:23 18 that what you're saying?

14:11:25 19 MR. TRIPI: Right.

14:11:25 20 MAGISTRATE JUDGE ROEMER: And that is so you  
14:11:27 21 can link that to a poisonous tree argument going back  
14:11:30 22 to, and you're making that same argument, if I recall,  
14:11:33 23 for all subsequent search warrants or anything like that  
14:11:36 24 where any of this information gleaned from the phone was  
14:11:40 25 got.



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14:11:41 2 MR. TRIPI: Correct, yes.

14:11:42 3 MAGISTRATE JUDGE ROEMER: Are we straight on  
14:11:44 4 that then?

14:11:45 5 MR. TRIPI: I understand. I just think it  
14:11:48 6 might be helpful.

14:11:49 7 MAGISTRATE JUDGE ROEMER: We're not going to  
14:11:50 8 be talking about flash bang grenades and going in and  
14:11:54 9 all of that. That is done, right?

14:11:56 10 MR. TRIPI: That is my understanding. That  
14:11:57 11 is done and we don't anticipate calling those witnesses.  
14:12:01 12 We haven't released them, they are still here.

14:12:03 13 MAGISTRATE JUDGE ROEMER: And I guess we're  
14:12:06 14 not going to be covering whether or not his statements  
14:12:09 15 were voluntary or involuntary?

14:12:12 16 MR. HARRINGTON: Correct.

14:12:13 17 MAGISTRATE JUDGE ROEMER: You just want to  
14:12:15 18 know what questions were asked, at least in relationship  
14:12:18 19 to the seizure of this phone or search of this phone?

14:12:22 20 MR. HARRINGTON: Right, because there are  
14:12:23 21 representations by Ryan during the course of the  
14:12:26 22 conversation relating back to this. That is what  
14:12:28 23 triggers it.

14:12:29 24 MR. TRIPI: If I could just give a proffer  
14:12:31 25 before he testifies, it might be helpful to see what's

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14:12:34 2 coming.

14:12:35 3 MAGISTRATE JUDGE ROEMER: Sure.

14:12:35 4 MR. TRIPI: Judge, I anticipate, obviously,  
14:12:38 5 to address this issue, I still have to go through the  
14:12:40 6 interview that he did. He does a report, which,  
14:12:42 7 ultimately, I'll offer into evidence when he is  
14:12:45 8 testifying. But it's an eight-page report, and the  
14:12:47 9 first page is a cover sheet. But page two doesn't deal  
14:12:51 10 with anything from the border search phone. I  
14:12:54 11 anticipate the testimony will be that those statements  
14:12:57 12 about, for example, Peter Gerace and Pharaoh's, that was  
14:13:05 13 not anything from the phone, that was resulting from the  
14:13:09 14 border search. That continues onto page two, where  
14:13:13 15 there is the discussion of Michael Sinatra and  
14:13:19 16 Bongiovanni's DEA issued mobile phone, which when he  
14:13:23 17 turned it in, had nothing left on it. They talked about  
14:13:28 18 erasing the phone. That has nothing to do with the  
14:13:30 19 border search. They talked about the Pharaoh's golf  
14:13:34 20 tournament. That had nothing to do with the border  
14:13:36 21 search. There were comments about organized crime in  
14:13:40 22 Buffalo. That had nothing to do with the names found at  
14:13:43 23 the border search. Now we're up at the top of page  
14:13:47 24 four, more conversation about Peter Gerace. Again, he  
14:13:50 25 is not in the list of names that were seized at the

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14:13:54 2 border search, if you look at Exhibit 1. They ask about  
14:14:00 3 Bongiovanni and Gerace speaking about overdose, that is  
14:14:04 4 nothing from the border search of the phone. It's not  
14:14:07 5 until -- it's not until you get to the almost corner of  
14:14:15 6 page 4 where he documented about speaking about contacts  
14:14:19 7 in the phone in the border search. That goes on the  
14:14:29 8 next page, two, three, four, five, six, seven people  
14:14:33 9 that are asked about, nine, ten, eleven, twelve. Twelve  
14:14:41 10 people that get you to page six of this report. After  
14:14:45 11 that last name, then there are questions about party in  
14:14:51 12 Toronto. That is nothing that came from the border  
14:14:54 13 search phone and people there. You know, I have the  
14:14:58 14 photo that he is being questioned about, and I will put  
14:15:02 15 that into evidence. And then he asks about another  
14:15:05 16 party at a lake house on 4th of July. That is nothing  
14:15:08 17 from the border search of Mr. Bongiovanni's phone. And  
14:15:12 18 then there are questions about a file that they had  
14:15:14 19 recovered during the search of the residence. And then  
14:15:19 20 the rest of the conversation is about that. Other  
14:15:23 21 people that aren't related to the search of the border  
14:15:27 22 search phone, such as, obviously, a former police chief,  
14:15:33 23 Derinda, Peter Gerace, Rocco Dina, a state judge, a  
14:15:38 24 state trooper, none of that comes from the border search  
14:15:41 25 of the phone. And then they closed again the interview

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14:15:46 2 by asking about the file, the last part of page 7 going  
14:15:49 3 onto page 8, talk about, again, there were discussions  
14:15:55 4 about that investigation regarding the file that was  
14:15:57 5 recovered from Bongiovanni's residence. So, as I argued  
14:16:02 6 before when we were setting the hearings, a very small  
14:16:08 7 portion of the interview relates to names that came from  
14:16:11 8 the search of the phone. I just want the government's  
14:16:14 9 position to be very clear that any aspects of this  
14:16:17 10 suppression motion that remain live is the fruit of a  
14:16:20 11 poisonous tree should only relate to the names from the  
14:16:28 12 phone, if that is the only source. That is my position.  
14:16:31 13 If they have another position, I wanted to make that  
14:16:34 14 clear.

14:16:35 15 MAGISTRATE JUDGE ROEMER: Mr. Harrington,  
14:16:36 16 anything else?

14:16:37 17 MR. HARRINGTON: No, your Honor.

14:16:38 18 MAGISTRATE JUDGE ROEMER: Okay. Who is your  
14:16:40 19 next witness?

14:16:40 20 MR. TRIPI: I call Special Agent Ryan.

14:16:44 21 MAGISTRATE JUDGE ROEMER: Okay.

14:16:50 22 (C. RYAN WAS CALLED TO THE WITNESS STAND AND SWORN.)

14:16:50 23 THE CLERK: Please state your name and spell  
14:18:07 24 it for the record.

14:18:07 25 THE WITNESS: Curtis Ryan, C-u-r-t-i-s,

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14:18:15 2 R-y-a-n.

14:18:15 3 MR. TRIPI: May I proceed, your Honor?

14:18:16 4 MAGISTRATE JUDGE ROEMER: Sure.

14:18:17 5 DIRECT EXAMINATION BY MR. TRIPI:

14:18:17 6 Q. Good morning, Special Agent Curtis Ryan. By whom  
14:18:21 7 are you employed?

14:18:22 8 A. Homeland Security Investigations.

14:18:24 9 Q. In what capacity?

14:18:25 10 A. I'm a supervisory special agent.

14:18:28 11 Q. And how long have you been a supervisory special  
14:18:31 12 agent?

14:18:31 13 A. Since October of last year.

14:18:35 14 Q. What are your duties as a supervisory special  
14:18:38 15 agent?

14:18:38 16 A. I supervise a group of six HSI agents, that many  
14:18:46 17 task force officers. That ebbs and flows. Our  
14:22:03 18 programatic areas of responsibility are transnational  
14:22:06 19 organized crime and illegal exports.

14:22:10 20 Q. And that term "transnational organized crime,"  
14:22:13 21 what does that encompass? What does that entail?

14:22:17 22 A. Any organized group that is seeking to exploit,  
14:22:22 23 you know, the Customs or Immigration laws of the United  
14:22:25 24 States.

14:22:25 25 Q. Borders?

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14:22:26 2 A. Borders.

14:22:28 3 Q. And the domestic crimes that flow from the  
14:22:32 4 border?

14:22:32 5 A. Correct.

14:22:33 6 Q. How long have you been a Special Agent with  
14:22:35 7 Homeland Security?

14:22:36 8 A. Since early 2012, February.

14:22:38 9 Q. And what were your duties as a special agent?

14:22:40 10 A. The first group that I was assigned to did just  
14:22:47 11 the illegal exports of control technologies. So, items  
14:22:52 12 controlled by either the State Department or the  
14:22:54 13 commerce department that require a license for export,  
14:22:59 14 you know, we investigated people that attempted to  
14:23:02 15 smuggle those goods out of the country without the right  
14:23:06 16 license.

14:23:06 17 Q. What other positions did you have within HSI?

14:23:09 18 A. So, I was in that group for a few years and then  
14:23:12 19 in mid 2016, I was assigned to the border enforcement  
14:23:18 20 security task force. That is a task force that  
14:23:22 21 investigates primarily drug smuggling.

14:23:26 22 Q. And the acronym for that border enforcement  
14:23:35 23 security task force is BEST?

14:23:42 24 A. That's correct.

14:23:56 25 Q. And you were with BEST up until October of last

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14:23:59 2 year when you became supervisor of this other group?

14:24:02 3 A. Yes.

14:24:02 4 Q. And as a special agent in BEST, there are also  
14:24:09 5 task force officers that work with BEST?

14:24:11 6 A. Yes, there are Canadian law enforcement officers,  
14:24:15 7 CBP officers, border patrol agents, state and local law  
14:24:20 8 enforcement officers.

14:24:21 9 Q. And CBP is an acronym for Custom and Border  
14:24:26 10 Protection?

14:24:26 11 A. U.S. Customs and Border Protection.

14:24:29 12 Q. And you work with all those different agencies in  
14:24:32 13 the course of your work?

14:24:33 14 A. Yes.

14:24:33 15 Q. That being the agencies represented by the task  
14:24:48 16 force officers on the BEST team?

14:24:49 17 A. Yes, that's correct.

14:24:50 18 Q. And you began your job as a Homeland Security  
14:24:53 19 Special Agent in 2012, was that here in Buffalo?

14:24:56 20 A. Yes, it was. 2012 is when I began training, that  
14:25:02 21 is Intercoastal Georgia, so I was hired for the Buffalo  
14:25:04 22 office, reported to training in February, and reported  
14:25:07 23 to Buffalo in August.

14:25:10 24 Q. And can you describe that training that you  
14:25:12 25 received experience as an HSI Special Agent?

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14:25:15 2 A. Yes. So the training is, it's a two-part  
14:25:20 3 training at the fed law enforcement training center in  
14:25:25 4 Glenco, Georgia, which is called FLETC, that is the  
14:25:29 5 acronym.

14:25:29 6 Q. Just for the record, FLETC, what are the letters  
14:25:33 7 for that acronym?

14:25:35 8 A. F-L-E-T-C.

14:25:38 9 Q. And that stands for Federal Law Enforcement  
14:25:41 10 Training Center?

14:25:41 11 A. Centers plural, because there are more than one,  
14:25:45 12 but my training was at the one located in Glenco,  
14:25:50 13 Georgia.

14:25:50 14 Q. Please continue.

14:25:50 15 A. It's two-part training for HSI Special Agents.  
14:25:54 16 The first part is administered by FLETC, provided by  
14:25:59 17 FLETC, it's called criminal investigator training  
14:26:02 18 program or CITP for short. And it's a general criminal  
14:26:06 19 investigator training and it lasts 11-weeks.

14:26:10 20 Q. And generally what does that cover?

14:26:11 21 A. Interviews, interrogations, search, seizure,  
14:26:15 22 constitutional law. It's a mix of academic and  
14:26:18 23 practical exercise that covers the duties and  
14:26:21 24 responsibilities of a special agent.

14:26:22 25 Q. Is that the same type of training that agents



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14:26:25 2 from other federal agencies would attend?

14:26:27 3 A. Yes.

14:26:28 4 Q. Like what other federal agencies take that FLETC  
14:26:32 5 training?

14:26:33 6 A. ATF agents, specifically CITP, it's almost every  
14:26:38 7 other federal agency except for the FBI and DEA. Postal  
14:26:45 8 inspectors also run their own academy and they don't go  
14:26:49 9 there.

14:26:49 10 Q. What was the second part of the training you  
14:26:59 11 received?

14:26:59 12 A. It's HSI specific training. So, it's with the  
14:27:03 13 HSI Special Agent training program and it covers the  
14:27:06 14 same topics but the CITP, because it's used by different  
14:27:12 15 agencies, does not incorporate any agency policy in its  
14:27:16 16 training. And then the agencies that offer add-on  
14:27:20 17 trainings like HSI, do that training to incorporate the  
14:27:25 18 agency policy that you'll be working under.

14:27:27 19 Q. And in that training to become an HSI agent, are  
14:27:30 20 you trained in border search authority?

14:27:33 21 A. Yes.

14:27:33 22 Q. Just, generally, what does that training cover?

14:27:36 23 A. Again, it's a mix of academic and practical  
14:27:41 24 exercise that covers the governing statutes, the  
14:27:45 25 governing agency policies, the mechanics of how to

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14:27:49 2 execute a proper border search.

14:27:51 3 Q. The authority to do a border search?

14:27:53 4 A. Yes.

14:27:55 5 Q. Is that derived from Title 19 and other statutes?

14:27:59 6 A. Title 19, yes.

14:28:00 7 Q. And before I go further with your training and

14:28:05 8 experience, just overall, Homeland Security

14:28:12 9 investigations falls under the Department of Homeland

14:28:14 10 Security, is that correct?

14:28:15 11 A. Yes.

14:28:15 12 Q. And can you describe the components of the

14:28:18 13 Department of Homeland Security, the different agencies?

14:28:20 14 A. It's vast. So it's Immigration and Custom

14:28:26 15 Enforcement, which HSI is a part of, the other part of

14:28:30 16 Immigration and Custom Enforcement is enforcement and

14:28:45 17 removal operations. The Coast Guard, when not in time

14:28:49 18 of war, U.S. Customs and Border Protection, which is,

14:28:53 19 you know, the border patrol and CBP, U.S. Citizenship

14:28:58 20 and Immigration Service, DHS has an air and marine unit

14:29:06 21 that falls under that, FEMA falls under that, the

14:29:11 22 Federal Emergency Management Agency and many more.

14:29:13 23 Q. What is the mission and function of the

14:29:17 24 Department of Homeland Security Investigations?

14:29:20 25 A. Homeland Security Investigations, I'm sorry?

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14:29:24 2 Q. Your agency.

14:29:24 3 A. My agency?

14:29:25 4 Q. Yes.

14:29:26 5 A. Okay. I wanted to be clear. So Homeland  
14:29:31 6 Security Investigations uses, we conduct criminal  
14:29:33 7 investigations, it's generally of things that involve  
14:29:38 8 the illegal movement of people, money or some sort of  
14:29:42 9 contraband in international commerce over the U.S.  
14:29:46 10 border. And then there are several programatic areas,  
14:29:51 11 programatic areas that we created under those areas to  
14:29:55 12 address those responsibilities. So we conduct federal  
14:29:57 13 investigations of drug smuggling, other contraband  
14:30:02 14 smuggling, human rights violations, human trafficking,  
14:30:06 15 war crimes, smuggling of people, associated financial  
14:30:12 16 crimes that affect all of those, so whether it's a fraud  
14:30:16 17 crime or an after-the-fact money laundering, illegal  
14:30:20 18 importation of counterfeit goods, goods that are  
14:30:25 19 mismarked, the illegal export of controlled  
14:30:31 20 technologies, child pornography, it's very broad.

14:30:34 21 Q. And is part of the objective to investigate  
14:30:38 22 transnational organized crime groups such as the group  
14:30:51 23 that you're part of?

14:30:52 24 A. Yes transnational organized crime groups could  
14:30:57 25 effect almost any of those different programatic areas

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14:31:09 2 that we've created.

14:31:10 3 Q. To include drug trafficking and drug smuggling?

14:31:18 4 A. Yes.

14:31:19 5 Q. And what is your educational background?

14:31:21 6 A. I have a Bachelor of Arts degree from St.

14:31:33 7 Martin's University in Lacey, Washington in criminal

14:31:41 8 justice.

14:31:42 9 Q. When did you receive your degree?

14:31:44 10 A. 2003.

14:31:48 11 Q. Do you have military and other law enforcement

14:31:51 12 experience that predates your employment with Homeland

14:31:58 13 Security?

14:31:58 14 A. Yes, beginning in 1992.

14:31:59 15 Q. Can you describe your experience beginning back

14:32:03 16 in 1992?

14:32:04 17 A. In 1992, I joined the Army National Guard in

14:32:08 18 Pennsylvania where I grew up as an artillery man. I was

14:32:13 19 there until April of '95 in the National Guard, and then

14:32:26 20 I left and went on active duty in the Army and went to

14:32:29 21 Fort Campbell in Kentucky and continued as an artillery

14:32:34 22 man until 1997 as an unlisted member of the Army and

14:32:39 23 then I began the process to apply to become an Army CID

14:32:45 24 Special Agent.

14:32:46 25 Q. Real quick, what is an Army CID Special Agent?

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14:32:49 2 A. So, there is a command within the U.S. Army  
14:32:52 3 called the U.S. Army criminal investigation command.  
14:33:28 4 Historically it was known as CID, which is criminal  
14:33:32 5 investigation division, Army CID, Special Agents, effect  
14:33:37 6 crimes that involve Army members and Army installations.

14:33:41 7 Q. And what are the range crimes that an Army CID  
14:33:51 8 Special Agent investigates?

14:33:52 9 A. Fraud crimes, crimes against persons, crimes  
14:33:55 10 against property, drug crimes.

14:33:58 11 Q. Okay. Please continue with your experience  
14:34:00 12 regarding Army CID?

14:34:02 13 A. So, because I was not already a member of the  
14:34:06 14 military police, the process that I had to follow to  
14:34:09 15 apply was to start with an internship at the CID office  
14:34:13 16 in Fort Campbell, I started that in 1997.

14:34:18 17 Q. That is Fort Campbell, Kentucky?

14:34:23 18 A. Yes.

14:34:24 19 Q. Okay, continue.

14:34:25 20 A. After six months, I applied to change my MOS to  
14:34:39 21 CID Special Agent. I was successful. I was accepted.  
14:34:43 22 And then I began Army CID special agent training in Fort  
14:34:49 23 McClellan in Alabama in 1998, or, excuse me, 1999.

14:34:54 24 Q. And what did that training cover?

14:34:56 25 A. Similar to the other training, I attended a mix

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14:35:01 2 of classroom and practical exercise training, covered  
14:35:15 3 search and seizure, interview and interrogation,  
14:35:19 4 evidence processing.

14:35:20 5 Q. And as an Army CID Special Agent, do you have  
14:35:26 6 some practical experience?

14:35:28 7 A. Yes.

14:35:28 8 Q. And does that include domestic and overseas  
14:35:32 9 deployments?

14:35:33 10 A. Yes.

14:35:33 11 Q. And please describe that.

14:35:35 12 A. I was assigned to three domestic CID offices  
14:35:38 13 between April -- August 1999, and when I left the Army  
14:35:43 14 in November of 2004. The first one was Fort Lewis,  
14:35:48 15 which is in Washington. And after that, I was in  
14:35:52 16 Carlisle barracks in Pennsylvania. And after that, I  
14:35:55 17 left Carlisle barracks and I was assigned to Fort Bragg,  
14:36:12 18 North Carolina was the last office I was in. And then  
14:36:16 19 from Fort Bragg, I went to Iraq in 2003.

14:36:22 20 Q. And how many overseas deployments to Iraq did you  
14:36:27 21 do?

14:36:28 22 A. One as an Army CID Special Agent on active duty.  
14:36:35 23 And after I left Army CID, I kind of fell into a  
14:36:40 24 two-track career for a while after that. So I continued  
14:36:51 25 in the military reserve in the Navy as an intelligence

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14:36:56 2 officer, and then I worked as a civilian special agent  
14:36:59 3 for the Army, and then a couple of other agencies before  
14:37:02 4 ultimately working for HSI, and then I went to Iraq one  
14:37:07 5 time as a Naval Intelligence Officer.

14:37:09 6 Q. At some point after your employment with the Army  
14:37:13 7 CID, did you become a Naval Criminal Investigative  
14:37:18 8 Services Investigator?

14:37:18 9 A. Yes.

14:37:19 10 Q. And when was that?

14:37:19 11 A. 2018 -- that is not right -- 2008, sorry.

14:37:24 12 Q. And what type of work did you do with -- that is  
15:38:16 13 commonly referred to as NCIS, correct?

15:38:20 14 A. Very similar to the work that I did at Army CID,  
15:38:24 15 I worked for a part of NCIS called Contingency Response  
15:38:39 16 Field Office. It was the heaviest period of overseas  
15:38:43 17 deployment for the Navy and NCIS, U.S. military in my  
15:38:50 18 career. We were stationed at the training center in  
15:38:56 19 Glenco, Georgia. We weren't trainers, we were there  
15:38:58 20 preparing for deployments to primarily the sentcom  
15:39:13 21 period of responsibility in support of the Navy and the  
15:39:15 22 Marine Corps, and then I deployed from there three times  
15:39:19 23 to Afghanistan.

15:39:21 24 Q. Have you also done time as a Department of  
15:39:24 25 Defense Investigator as well as a Department of Justice

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15:39:36 2 OIG Special Agent?

15:39:37 3 A. Yes, yes. In between Army CID and NCIS.

15:39:42 4 Q. What type of work did you do for the Department  
15:39:46 5 of Justice Office and the Inspector General?

15:39:48 6 A. I was in a squad that investigated fraud in DOJ  
15:39:57 7 grant programs.

15:39:58 8 Q. Are you retired from the military?

15:40:00 9 A. I am.

15:40:01 10 Q. And when did you retire from the military?

15:40:04 11 A. A couple years ago, August of 2019.

15:40:12 12 Q. Now, as an HSI Special Agent here in Buffalo,  
15:40:19 13 have you also been assigned to work with any other  
15:40:21 14 agencies local?

15:40:22 15 A. I worked in a DEA task force group for about two  
15:40:28 16 years.

15:40:28 17 Q. And that is here in Buffalo, New York?

15:40:30 18 A. In Buffalo.

15:40:31 19 Q. When did you begin as a DEA task force officer  
15:40:35 20 here in Buffalo?

15:40:36 21 A. Working close with them in late 2016 and every  
15:40:40 22 time in the office sometime in early 2017.

15:40:43 23 Q. And just so the record is clear, you're still an  
15:40:46 24 HSI Special Agent, but you're working there on cases  
15:40:50 25 with DEA on their task force?



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15:40:53 2 A. Yes.

15:40:53 3 Q. And you maintain all of your HSI obligations and  
15:40:57 4 duties as well?

15:40:58 5 A. Yes.

15:40:58 6 Q. And as a DEA TFO or task force officer, did you  
15:41:09 7 generally become familiar with DEA policies and  
15:41:18 8 procedures in the DEA office here in Buffalo?

15:41:21 9 A. Yes.

15:41:30 10 Q. And during that time when you were a DEA Task  
15:41:36 11 Force Officer, how long were you a task force officer?

15:41:38 12 A. About two years to early 2019, January.

15:41:42 13 Q. And did some of your time working as a task force  
15:41:45 14 officer overlap with the time that Joseph Bongiovanni  
15:41:48 15 was a DEA Special Agent in that office?

15:41:51 16 A. Yes.

15:41:52 17 Q. And do you see Mr. Bongiovanni in court?

15:41:54 18 A. Yes.

15:41:55 19 Q. And could you point to him and describe something  
15:41:57 20 he is wearing?

15:41:58 21 A. He is at the defense table, blue suit, white  
15:42:03 22 shirt and striped tie.

15:42:05 23 Q. And when you worked with him within DEA, were you  
15:42:08 24 in different groups?

15:42:09 25 A. We were in different groups, yes.

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15:42:11 2 Q. DEA has several groups that work cases?

15:42:14 3 A. Three groups in that office, I think.

15:42:16 4 Q. But everyone reports to the same, at the time,  
15:42:19 5 reported to the same location and the same floor?

15:42:21 6 A. Two floors, so the 4th and 5th floor of the  
15:42:27 7 Electric Tower, parts of the 4th floor.

15:42:31 8 Q. Now, we touched on it. Have you received  
15:42:34 9 training as it relates to border searches?

15:42:37 10 A. Yes.

15:42:37 11 Q. How many border searches have you been involved  
15:42:42 12 with as an HSI Special Agent?

15:42:44 13 A. Many, more than 50.

15:42:50 14 Q. Is utilizing and understanding border search  
15:42:55 15 authority an important part of your job?

15:42:58 16 A. Yes.

15:42:58 17 Q. How often as an HSI Special Agent do you deal  
15:43:03 18 with border search issues during the course of your  
15:43:14 19 duties?

15:43:14 20 A. At least once a month.

15:43:16 21 Q. Does Homeland Security Investigations work in  
15:43:21 22 conjunction with CBP on border enforcement issues?

15:43:25 23 A. Yes.

15:43:25 24 Q. CBP is the Customs and Border Protection,  
15:43:30 25 correct?

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15:43:30 2 A. Yes. So U.S. Customs and Border Protection is  
15:43:34 3 the agency that both the Border Patrol and the Office of  
15:43:39 4 Field Operations fall under.

15:43:42 5 Q. And CBP works at ports of entry?

15:43:49 6 A. Office of Field Operations officers work at the  
15:43:53 7 port of entries.

15:43:54 8 Q. What is a port of entry?

15:43:57 9 A. It's a place that has been designated as an area  
15:44:00 10 on the border where either people can apply for  
15:44:03 11 admission, goods can be imported, they are found in  
15:44:10 12 airports, Peace Bridge, land borders.

15:44:12 13 Q. So where people can enter from outside of the  
15:44:28 14 United States into the country?

15:44:30 15 A. Or goods.

15:44:30 16 Q. I'm sorry?

15:44:31 17 A. Or goods.

15:44:32 18 Q. Those are located at airports, bridges, train  
15:44:43 19 stations?

15:44:44 20 A. Sea ports, yes.

15:44:46 21 Q. Generally speaking, does HSI and CBP have access  
15:45:16 22 to similar information as does border enforcement?

15:45:19 23 A. Yes.

15:45:22 24 Q. And so would you have access to the same  
15:45:24 25 information CBP has?

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15:45:26 2 A. Yes.

15:45:27 3 Q. In terms of your ability to look up information?

15:45:29 4 A. Yes.

15:45:33 5 Q. Does HSI and CBP share information?

15:45:36 6 A. We share information. Some of the systems are  
15:45:39 7 shared even if they are administered by just one of the  
15:45:43 8 agencies.

15:45:44 9 Q. And both agencies are under the Department of  
15:45:48 10 Homeland Security?

15:45:48 11 A. Yes.

15:45:49 12 Q. Correct?

15:45:50 13 A. Yes, that's correct.

15:45:59 14 Q. Now, when you're conducting an investigation, are  
15:46:05 15 you able to obtain information during the regular course  
15:46:08 16 of your duties on individuals who are scheduled for  
15:46:11 17 international travel?

15:46:13 18 A. Yes.

15:46:16 19 Q. And do you do that or do you receive that  
15:46:20 20 information in situations where it's relevant to  
15:46:24 21 investigations that you are conducting?

15:46:27 22 A. Yes.

15:46:33 23 Q. And is that done as a matter of routine system  
15:46:38 24 notification to you?

15:46:39 25 A. Yes.

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15:46:44 2 Q. As of April of 2019, had you been involved in  
15:46:48 3 investing the activities of Joseph Bongiovanni?

15:46:51 4 A. Yes.

15:47:01 5 Q. A couple months prior to that, January 31, 2019  
15:47:09 6 or February 1st, 2019, was it your understanding that  
15:47:12 7 Mr. Bongiovanni retired?

15:47:13 8 A. Yes.

15:47:23 9 Q. Your investigation of him began before that  
15:47:30 10 retirement date, correct?

15:47:32 11 A. Yes, that's correct.

15:47:34 12 Q. In April of 2019, did you learn information  
15:47:37 13 indicating that Mr. Bongiovanni was traveling  
15:47:40 14 internationally?

15:47:40 15 A. Yes, to the Dominican Republic.

15:47:43 16 Q. And as to specifically what did you learn?

15:47:47 17 A. Mr. Bongiovanni had reservation on a flight to go  
15:47:50 18 to the Dominican Republic.

15:47:53 19 Q. Do you recall learning at that time when his  
15:47:57 20 anticipated return to the United States was going to be?

15:48:00 21 A. Yes, April 23rd.

15:48:01 22 Q. What year?

15:48:02 23 A. 2019.

15:48:03 24 Q. What location?

15:48:04 25 A. Baltimore Washington International Airport.

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15:48:07 2 Q. And is that also referred to as BWI airport?

15:48:10 3 A. Yes.

15:48:14 4 Q. Based upon that notification to you through your  
15:48:18 5 system, did you make efforts to flag Mr. Bongiovanni for  
15:48:27 6 a border search?

15:48:28 7 A. Yes.

15:48:30 8 Q. Is that done in the normal course of your duties?

15:48:34 9 A. Yes.

15:48:41 10 Q. What efforts did you make in that regard?

15:48:44 11 A. I asked the CBP task force officers that we  
15:48:49 12 worked with to coordinate a border search.

15:48:51 13 Q. So there are CBP officers here in Buffalo, New  
15:48:56 14 York, correct?

15:48:56 15 A. Yes.

15:48:56 16 Q. At the time you're working with him on the BEST  
15:49:02 17 task force, correct?

15:49:03 18 A. Yes.

15:49:03 19 Q. And you made arrangements for them to contact  
15:49:07 20 counter parts of theirs in Baltimore BWI airport?

15:49:11 21 A. Yes, that's correct.

15:49:18 22 Q. And what type of -- what type of notice was  
15:49:25 23 arranged as it related to Mr. Bongiovanni for his travel  
15:49:32 24 on April 23rd, 2019?

15:49:34 25 A. They used a one-day lookout.

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15:49:36 2 Q. What is a one-day lookout?

15:49:39 3 A. It's just a type of record in the systems that we  
15:49:43 4 share that alerts BWI that a person is expected to  
15:49:50 5 return. And if that person does show up, to send them  
15:49:53 6 to what's called secondary inspections for Customs.

15:49:57 7 Q. So there is a secondary inspection, but there is  
15:49:59 8 also a primary inspection?

15:50:00 9 A. Yes.

15:50:01 10 Q. Briefly can you describe what a primary  
15:50:04 11 inspection is?

15:50:04 12 A. Primary inspection is the first officer that you  
15:50:09 13 run into if you're coming back from Canada on the Peace  
15:50:13 14 Bridge or you're coming in on an international flight,  
15:50:16 15 you're asked to present your passport travel document,  
15:50:22 16 asked the purpose of your trip, why you're there. If  
15:50:25 17 your travel requires a Visa, they'll check to see that  
15:50:29 18 you have it.

15:50:29 19 Q. And is the person who does the primary  
15:50:34 20 inspection, do they have information available to them,  
15:50:38 21 for example, based upon a lookout that is in the system  
15:50:41 22 or information that flags somebody for the secondary  
15:50:45 23 inspection?

15:50:45 24 A. Yes.

15:50:47 25 Q. And so describe what a secondary inspection was?

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15:50:51 2 A. A secondary inspection takes a little bit longer  
15:51:00 3 to move the person out of the line, whether it's a line  
15:51:04 4 of people, line of cars, whatever, to somewhere else  
15:51:09 5 there and ask more questions about the purpose of the  
15:51:11 6 person's travel, where they went, where they stayed,  
15:51:16 7 they might search luggage they might search phones, it  
15:51:20 8 just depends.

15:51:21 9 Q. Other electronic devices?

15:51:24 10 A. Other electronic devices. It depends on the  
15:51:28 11 questions the officers ask, the answers they get, their  
15:51:32 12 evaluation of the person they are talking to at  
15:51:37 13 secondary.

15:51:38 14 Q. Now, did you provide the BWI CBP officers any  
15:51:58 15 specific details of your case or your investigation  
15:52:01 16 regarding Mr. Bongiovanni?

15:52:02 17 A. No.

15:52:05 18 Q. Did you provide any instructions or give any  
15:52:08 19 directives about how the search of Mr. Bongiovanni  
15:52:11 20 should be conducted?

15:52:12 21 A. No, I did not.

15:52:15 22 Q. If you had wanted to have that type of control  
15:52:18 23 over the search, would you have taken other steps?

15:52:25 24 A. Yes.

15:52:25 25 Q. What could you have done if you wanted that type



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15:52:29 2 of control?

15:52:30 3 A. I would have coordinated directly with HSI  
15:52:42 4 Special Agents at Baltimore Washington International  
15:52:45 5 Airport and put myself in a position to have more  
15:52:48 6 control over their actions.

15:52:50 7 Q. And but you didn't do that?

15:52:51 8 A. No.

15:52:53 9 Q. Do HSI Special Agents also have border search  
15:52:59 10 authority?

15:52:59 11 A. Yes.

15:52:59 12 Q. And can you explain briefly how CBP and HSI  
15:53:03 13 interact when there is someone who comes into the  
15:53:09 14 country and is subject to a primary or secondary search,  
15:53:14 15 where there is contraband immediately found in their  
15:53:18 16 possession, can you describe how the two agencies  
15:53:21 17 interact?

15:53:21 18 A. Yes. Well, at least here in Buffalo, every day  
15:53:25 19 there is an HSI Special Agent designated as the duty  
15:53:29 20 agent. In a situation like you have described where CBP  
15:53:34 21 Officer has done a primary or secondary inspection that  
15:53:37 22 results in the discovery of contraband, call the HSI  
15:58:42 23 duty agent and the duty agent responds to the port of  
15:58:54 24 entry where that person is located and assists CBP with  
15:59:01 25 completing anything that is supposed to be completed at

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15:59:04 2 the port and evaluates the situation to determine if a  
15:59:07 3 follow on investigation is required.

15:59:12 4 Q. Now, in this case. As it relates to the April  
15:59:17 5 23rd, 2019 border search, you didn't give any directives  
15:59:22 6 to the CBP officers involved; is that correct?

15:59:25 7 A. That's correct.

15:59:25 8 Q. Did you ever speak with the CBP officers who did  
15:59:30 9 the search prior to the search occurring?

15:59:32 10 A. No.

15:59:33 11 Q. Or during their search?

15:59:34 12 A. No.

15:59:35 13 Q. Did you know the names of the officers who  
15:59:37 14 conducted the search prior to them doing the search?

15:59:40 15 A. I was copied on an e-mail, but I wouldn't have  
15:59:45 16 everyone. No, I don't think I did. I wouldn't have  
15:59:48 17 bothered to find out it. Just depends on who is on  
15:59:52 18 shift. It's not, it's something that I probably would  
15:59:57 19 have even been able to find out had I chosen to.

16:00:00 20 Q. I'll ask it more directly. Did you ever speak  
16:00:03 21 with Kipplin Carter?

16:00:06 22 A. No.

16:00:06 23 Q. Did you know who that was prior to this hearing?

16:00:09 24 A. No. Well, I know that an Officer Carter did the  
16:00:13 25 search from the report, but his first name is not even

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16:00:17 2 mentioned in the report.

16:00:18 3 Q. You helped us identify a document which had a  
16:00:22 4 name on it?

16:00:22 5 A. Yes.

16:00:25 6 Q. And then travel was arranged through other means?

16:00:28 7 A. Correct.

16:00:29 8 Q. For Mr. Carter, correct?

16:00:31 9 A. Correct.

16:00:31 10 Q. You had no role in it?

16:00:33 11 A. None.

16:00:39 12 Q. While Mr. Carter has been in town, have you told  
16:00:43 13 him about your case?

16:00:44 14 A. No.

16:00:44 15 Q. Have you talked to him at all?

16:00:46 16 A. I said hello to him this morning and that's it.

16:01:22 17 Q. Did you receive something back subsequent to the  
16:01:28 18 April 23rd, 2019 border search regarding Mr.  
16:01:32 19 Bongiovanni?

16:01:32 20 A. Yes.

16:01:33 21 Q. What did you receive back from CBP?

16:01:35 22 A. A PDF electronic document with a series of  
16:01:39 23 photographs.

16:01:45 24 Q. I'm going to show you Government's Exhibit 1,  
16:01:47 25 which is already in evidence.

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16:01:49 2 MR. TRIPI: And I'll hand that up if that is  
16:01:50 3 okay, Judge?

16:01:51 4 MAGISTRATE JUDGE ROEMER: Yes.

16:02:22 5 Q. Do you recognize that?

16:02:23 6 A. Yes.

16:02:23 7 Q. What is that?

16:02:24 8 A. It's a printed copy of the PDF I just described.

16:02:28 9 Q. So that would be the PDF of the information you  
16:02:30 10 received back from the search of Mr. Bongiovanni's  
16:02:33 11 phone?

16:02:33 12 A. Yes.

16:02:36 13 Q. And that PDF consists of pictures of various  
16:02:42 14 screens of the phone?

16:02:43 15 A. Yes.

16:02:50 16 Q. Now, as it relates to phones, are you familiar  
16:02:53 17 with the term "basic search"?

16:02:55 18 A. Yes.

16:02:56 19 Q. Is that interchangeable in your mind with the  
16:03:00 20 phrase "manual search"?

16:03:01 21 A. Yes.

16:03:01 22 Q. What is a basic or manual search of a cell phone?

16:03:05 23 A. An officer or an agent, using your eyeballs and  
16:03:09 24 your finger, and just looking through the phone.

16:03:13 25 Q. And what you have there, Government's Exhibit 1,

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16:03:19 2 is that consistent in your experience with a manual  
16:03:22 3 search or a basic search of the cell phone?

16:03:25 4 A. Yes, it looks like photographs taken during a  
16:03:29 5 manual search.

16:03:31 6 Q. And, now, are you familiar with the phrase -- is  
16:03:37 7 the term "basic search" also used interchangeably with  
16:03:42 8 "cursory search"?

16:03:43 9 A. Yes.

16:03:44 10 Q. And are you familiar with the phrase "forensic  
16:03:49 11 search" or "logical examination"?

16:03:51 12 A. Yes.

16:03:51 13 Q. And what is a forensic search in the case of a  
16:03:55 14 cell phone or logical examination?

16:03:57 15 A. It's where you use an automated computerized tool  
16:04:14 16 that extracts the data that is saved on the phone and  
16:04:18 17 then it organizes it. It has an interface built into it  
16:04:22 18 and then you then use a computer after the fact to view  
16:04:25 19 the data.

16:04:26 20 Q. In your experience, does a forensic or a logical  
16:04:30 21 examination of a cell phone using that type of forensic  
16:04:37 22 tool that you described, does that typically result in  
16:04:55 23 more information than a manual or basic search?

16:04:57 24 A. Yes, it's exponentially greater.

16:05:00 25 Q. Much more?

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16:05:01 2 A. Much.

16:05:07 3 Q. If a logical or forensic search of a cell phone  
16:05:13 4 was conducted, would you expect more than 14 pages of  
16:05:17 5 photos, roughly?

16:05:18 6 A. Yes.

16:05:18 7 Q. Comprised in Exhibit 1?

16:05:20 8 A. Yes, I mean, it could be a terabyte of  
16:05:23 9 information, just depends on how much is saved on the  
16:05:26 10 phone.

16:05:32 11 Q. Okay. Now, as long as we're discussing this  
16:05:36 12 Exhibit 1, I'm going to ask you a couple of questions  
16:05:40 13 about it. Bear with me. So, looking at page one, there  
16:05:50 14 is some -- there is a phone number at the top and there  
16:05:53 15 is a couple of names that are visible, Gino, Laura, Mike  
16:05:58 16 Mecca. Is that correct?

16:05:59 17 A. Yes.

16:06:20 18 Q. So page two shows a series of three photographs  
16:06:36 19 and you could see an individual's hand as if taking a  
16:06:40 20 picture of the phone, correct?

16:06:41 21 A. Yes.

16:06:42 22 Q. Beginning with the top or the picture furthest to  
16:06:50 23 the left of the screen, there is a phone number  
16:06:59 24 17164323875, correct?

16:07:00 25 A. Yes.

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16:07:01 2 Q. And below that there is a number 58720?

16:07:15 3 A. Yes.

16:07:15 4 Q. And then there is underneath, that is a Mike  
16:07:20 5 Mecca?

16:07:20 6 A. Yes.

16:07:21 7 Q. And then under that is a Louie, and then another  
16:07:25 8 partial view of a number 17168 and then follows with a  
16:07:31 9 parenthetical (2), right?

16:07:33 10 A. Yes.

16:07:33 11 Q. And then below that, there is say name Palmieri,  
16:07:37 12 correct?

16:07:38 13 A. Yes.

16:07:38 14 Q. Those appear to be text messages on that screen?

16:07:42 15 A. Yes.

16:07:43 16 Q. Now, the screen depicted in the middle photo on  
16:07:47 17 page two has names, Tom Gerace, mom, below that 729,  
16:07:55 18 below that a phone number, 17168708083, and below that  
16:08:04 19 2957, is that correct?

16:08:06 20 A. Yes.

16:08:07 21 Q. And those all appear to be text messages as well?

16:08:10 22 A. Yes.

16:08:10 23 Q. And on this screen, so for these two pictures  
16:08:15 24 we've seen, the screens are not expanded to show the  
16:08:18 25 full text messages, are they?

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16:08:20 2 A. No.

16:08:21 3 Q. And, in fact, going back to the first picture to  
16:08:25 4 the far left where there is the second from the bottom,  
16:08:30 5 Louie, and then another phone number there with the  
16:08:33 6 parenthetical (2), and based on your knowledge and use  
16:08:36 7 of cell phones personally, does that appear to be a  
16:08:39 8 group text?

16:08:40 9 A. Yes.

16:08:40 10 Q. And we don't see the full group text there, do  
16:08:44 11 we?

16:08:44 12 A. No.

16:08:45 13 Q. And then going to the third picture on page two  
16:08:48 14 to the furthest right of the screen, there is a name Joe  
16:08:52 15 Massy, there is a name Hill, and then appears to be two  
16:08:56 16 more phone numbers, and then there is a name Victor,  
16:08:59 17 correct?

16:08:59 18 A. Yes.

16:09:00 19 Q. And on that screen, does it appear that the  
16:09:03 20 entirety of the texts are visible?

16:09:05 21 A. No, it's appears to just be a preview of the  
16:09:10 22 first few words in each text.

16:09:12 23 Q. In other words, you would have to click on each  
16:09:15 24 one to open up the full conversation?

16:09:17 25 A. Yes.



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16:09:18 2 Q. I'll move to page 3. Page 3 of Exhibit 1, do  
16:09:28 3 these appear to be more text conversations in all three  
16:09:32 4 photos?

16:09:32 5 A. Yes.

16:09:33 6 Q. Okay. By way of speeding this up just a little  
16:09:39 7 bit, do you see any references to Peter Gerace in any of  
16:09:45 8 those photos?

16:09:45 9 A. No.

16:09:48 10 Q. In fact, after reviewing Exhibit 1 in its  
16:09:52 11 entirety, Peter Gerace's name and number are not on  
16:09:55 12 these screens that were captured, is it?

16:10:00 13 A. No.

16:10:01 14 Q. How about Anthony Gerace?

16:10:05 15 A. No.

16:10:06 16 Q. And how about Michael Sinatra?

16:10:12 17 A. No.

16:10:25 18 Q. How about an individual named Ron Cerel?

16:10:28 19 A. No.

16:10:28 20 Q. Those were all people referenced during your  
16:10:31 21 later interview with Mr. Bongiovanni, June 6th, 2019,  
16:10:35 22 correct?

16:10:36 23 A. Yes.

16:10:37 24 Q. Did any of the questions that you posed in those  
16:10:40 25 areas on June 6th, 2019, have anything to do with the

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16:10:44 2 search of this phone?

16:10:45 3 A. No.

16:10:46 4 Q. And I'm going to continue with Exhibit 1.

19:08:17 5 Over to the left begins with Victor, the text

19:08:21 6 under that is 27589?

19:08:26 7 A. Yes.

19:08:26 8 Q. And under that appears to be a phone number with

19:08:30 9 an 815 area code?

19:08:32 10 A. Yes, correct.

19:08:33 11 Q. And below that with a 302 area code?

19:08:36 12 A. Correct.

19:08:37 13 Q. And below that with a 708 area code?

19:08:40 14 A. Yes.

19:08:41 15 Q. And the next picture to the right of that on the

19:08:44 16 screen at the top is a text to 708 area code, right?

19:08:48 17 A. Yes.

19:08:51 18 Q. Below that is the name "Linda" and then there is

19:08:56 19 a last name there, correct?

19:08:58 20 A. Yes.

19:08:58 21 Q. Under there there is a Gentile?

19:09:01 22 A. Yes.

19:09:01 23 Q. And you know that to be a DEA Special Agent?

19:09:05 24 A. I know a special agent to be Mark Gentile, yes.

19:09:10 25 Q. Sorry, withdrawn.

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19:09:12 2 Do you know a DEA Special Agent with the name  
19:09:34 3 Gentile?

19:09:36 4 A. Yes.

19:09:36 5 Q. And that is someone that Mr. Bongiovanni worked  
19:09:50 6 with previously at DEA?

19:09:52 7 A. They were in the same group during my time there,  
19:10:00 8 part of my time, I should say.

19:10:01 9 Q. Under that, there is a Laura?

19:10:03 10 A. Yes.

19:10:04 11 Q. And under that there is a Lisa?

19:10:05 12 A. Yes.

19:10:06 13 Q. And below that, there is the number 32858, but it  
19:10:13 14 appears to cut off?

19:10:15 15 A. Yes.

19:10:15 16 Q. And go to the next page of Exhibit 1, I believe  
19:10:18 17 we're up to page five, your Honor.

19:10:24 18 Fair to the say now these appear to be contact  
19:10:27 19 entries in the phone as opposed to text as we were  
19:10:32 20 looking at before, correct?

19:10:35 21 A. Yes.

19:10:35 22 Q. And there are three pictures of screens here.  
19:10:55 23 There is a Parisi, correct?

19:10:57 24 A. Correct.

19:10:58 25 Q. And that is at the far left. And there is a Nick

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19:11:01 2 with a last name listed there?

19:11:03 3 A. Yes.

19:11:03 4 Q. In the middle picture?

19:11:05 5 A. Yes.

19:11:05 6 Q. And the picture to the far right is a Tom with a  
19:11:08 7 last name, the last name there, correct?

19:11:13 8 A. Yes, that's correct.

19:11:20 9 Q. We'll go to page six of Exhibit 1. Again, does  
19:11:24 10 this show three pictures on this page?

19:11:28 11 A. Yes, there are three photos.

19:11:30 12 Q. And do those appear to be contact entries that  
19:11:33 13 were in the phone?

19:11:33 14 A. Yes.

19:11:34 15 Q. And there is a first one to the left is a Steve  
19:11:36 16 with a last name?

19:11:37 17 A. Correct.

19:11:38 18 Q. And middle entry, middle picture, Uncle Sam?

19:11:41 19 A. Correct.

19:11:42 20 Q. Far right, an individual named Ron with what  
19:11:45 21 appears to be a last name listed there?

19:11:47 22 A. Yes.

19:11:57 23 Q. Page 7, Exhibit 1. There are three more pictures  
19:12:00 24 of what appear to be contacts, is that correct?

19:12:03 25 A. Yes.

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19:12:03 2 Q. There is a Victor?

19:12:04 3 A. Correct, on the left.

19:12:05 4 Q. And in the middle, there is a Tommy Frankaforte,  
19:12:09 5 is that right?

19:12:10 6 A. Yes.

19:12:10 7 Q. And on the far right, there is a Roy?

19:12:13 8 A. Yes.

19:12:13 9 Q. And with the last name there, correct?

19:12:16 10 A. Yes.

19:12:20 11 Q. And moving onto page 8, that consists of three  
19:12:32 12 more photos of what appears to be contacts that were in  
19:12:53 13 the phone?

19:12:54 14 A. Yes.

19:12:54 15 Q. Far left, there is a name Promaglin?

19:12:57 16 A. Yes.

19:12:58 17 Q. And in the middle there is a name Romeo?

19:13:00 18 A. Yes.

19:13:00 19 Q. And in the far right, there is a name Philly  
19:13:05 20 Torre, is that correct?

19:13:05 21 A. Yes.

19:13:14 22 Q. If we go to page nine now. Three more photos of  
19:13:18 23 Exhibit 1?

19:13:19 24 A. Yes.

19:13:19 25 Q. Far left, there is a phone number there?

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19:13:22 2 A. Yes, (716) 870-8083.

19:13:27 3 Q. No contact name associated with?

19:13:29 4 A. No name.

19:13:30 5 Q. In the middle picture, there is a name Tom  
19:13:33 6 Gerace?

19:13:33 7 A. Correct.

19:13:34 8 Q. And the far right, there is another phone number,  
19:13:36 9 correct?

19:13:37 10 A. Yes, an 829 area code phone number.

19:13:58 11 Q. I think we're up to page 10. Three more photos  
19:14:02 12 of what appear to be contacts in the phone. Is that  
19:14:05 13 correct?

19:14:05 14 A. Yes.

19:14:05 15 Q. Picture to the far left is the name Lapenna?

19:14:09 16 A. Yes.

19:14:09 17 Q. And in the middle, there is a Lociano Cerasi  
19:14:15 18 FLEOA, and then all caps, F-l-e-o-a.

19:14:19 19 A. Yes.

19:14:19 20 Q. And then in the far right, there is a Joe Massy  
19:14:34 21 name, correct?

19:14:34 22 A. Yes.

19:14:51 23 Q. Turning to page 11 of Government's Exhibit 1.  
19:14:55 24 Three more photos of contacts. Is that correct?

19:14:57 25 A. Yes.

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19:14:58 2 Q. There is a Derrick, with what appears to be a  
19:15:02 3 last name that begins with an M in the far left?

19:15:05 4 A. Correct.

19:15:06 5 Q. And the middle page is the name Frank Todaro?

19:15:10 6 A. Yes.

19:15:11 7 Q. And the far one is a name that seems to appear to  
19:15:16 8 be cut off, but it looks like Ozzy?

19:15:19 9 A. Yes.

19:15:25 10 Q. Turning to page 12 of Exhibit 1. Are those three  
19:15:29 11 more pictures from the phone that appear to be from the  
19:15:32 12 contacts of Mr. Bongiovanni's phone?

19:15:34 13 A. Yes.

19:15:34 14 Q. Far left is a Joelle Moranto?

19:15:39 15 A. Yes.

19:15:40 16 Q. And in the middle picture, is a Lenny with a last  
19:15:45 17 name there?

19:15:45 18 A. Yes.

19:15:45 19 Q. And then the last page is a Philly with the last  
19:15:50 20 name, correct?

19:15:51 21 A. Yes.

19:15:58 22 Q. Page 13 of Exhibit 1. Three more pictures.

19:16:04 23 Nick, the far left, Parisi in the middle and Roy with  
19:16:09 24 the last name that is listed there to the far right?

19:16:12 25 A. Correct.

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19:16:19 2 Q. Last page is page 14 of Exhibit 1. Two names,  
19:16:24 3 two photos. Photo to the left is the name Ron, the last  
19:16:28 4 name is listed there, and one to the right, Tom, and the  
19:16:31 5 last name that appears to be the listed as well,  
19:16:35 6 correct?

19:16:35 7 A. Yes.

19:16:40 8 Q. And I'm going to hand the exhibit up to you one  
19:16:52 9 more time. Look through it and look through it where  
19:16:56 10 there are entries for what appear to be phone numbers  
19:16:59 11 with no name associated. Based on your knowledge of the  
19:17:04 12 investigation, do any of those appear to be phone  
19:17:06 13 numbers for Peter Gerace, Anthony Gerace or Michael  
19:17:10 14 Sinatra?

19:17:11 15 A. No, I don't think so. No, I don't see any.

19:23:01 16 Q. Would it be accurate to state that any questions  
19:23:04 17 that you later request asked Mr. Bongiovanni at his  
19:23:07 18 residence on June 6th, 2019 about Anthony Gerace, Peter  
19:23:13 19 Gerace or Michael Sinatra were questions independent of  
19:23:16 20 any information you received from the search or search  
19:25:06 21 of the phone?

19:25:07 22 A. Yes, that's correct.

19:25:08 23 Q. Would it be correct that any questions that you  
19:25:10 24 asked Mr. Bongiovanni with respect to the fact that his  
19:25:21 25 DEA issued cell phone was wiped when he returned it to



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19:25:25 2 DEA, is that independent of anything that you learned  
19:25:28 3 from the search of his personal cell phone at the border  
19:25:44 4 on April 23, 2019?

19:25:46 5 A. That is also correct.

19:25:47 6 Q. Would it be accurate to say that any questions  
19:25:50 7 that you asked Mr. Bongiovanni about a DEA file  
19:25:53 8 materials located in his house on the day of the search  
19:25:57 9 was wholly independent from anything that you learned at  
19:26:01 10 the border search of his phone on April 23, 2019?

19:26:06 11 A. Yes, also correct.

19:26:29 12 Q. And I'd like to briefly hand up Government's  
19:26:37 13 Exhibit 2 and let you briefly look at it, and then I'll  
19:26:41 14 ask you questions. Looking at Government's Exhibit 2,  
19:27:07 15 this front page and second page appear to have names of  
19:27:10 16 various CBP officers, correct?

19:27:13 17 A. Yes.

19:27:13 18 Q. Okay. I'm going to go through some. Joseph  
19:27:18 19 Nnakwe, N-n-a-k-w-e, do you see his name in the top left  
19:27:23 20 box for referred by?

19:27:24 21 A. Yes.

19:27:25 22 Q. Do you know Joseph Nnakwe?

19:27:29 23 A. No.

19:27:29 24 Q. Have you ever spoken to him, as far as you know?

19:27:32 25 A. No.

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19:27:32 2 Q. Did you provide him any instructions about how to  
19:27:35 3 do his job that day?

19:27:36 4 A. No.

19:27:39 5 Q. About the middle of the page, do you see a name  
19:27:44 6 Wachstein Stephen, secondary officer's name?

19:27:47 7 A. Yes.

19:27:48 8 Q. Do you know Steven Wachstein?

19:27:51 9 A. Only that I introduced myself to him today and I  
19:27:55 10 saw his name tag.

19:27:56 11 Q. Did you know him?

19:27:58 12 A. No.

19:27:58 13 Q. Did you tell Mr. Wachstein how to do his job at  
19:28:02 14 all on April 23rd, 2019?

19:28:04 15 A. No.

19:28:12 16 Q. Turning to page two. Do you see a name under  
19:28:19 17 "entered by Whitfield, Christopher"?

19:28:21 18 A. Yes.

19:28:22 19 Q. As far as you know, do you know Mr. Whitfield?

19:28:25 20 A. I do not know him.

19:28:27 21 Q. Did you ever meet him, as far as you know?

19:28:30 22 A. No.

19:28:30 23 Q. Did you provide him any instruction or tell him  
19:28:33 24 how to do his job on April 23, 2019?

19:28:36 25 A. I did not.

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19:28:37 2 Q. How about in the second to last sentence where it  
19:28:40 3 references CBPO Carter, did you ever meet him prior to  
19:28:44 4 his travels here and out in the hallway today?

19:28:48 5 A. No.

19:28:48 6 Q. Did you provide him any direction or instruct him  
19:28:52 7 how TO do his job on April 23, 2019?

19:28:56 8 A. I did not.

19:28:56 9 Q. How about CBPO Sadowski, do you know him or have  
19:29:01 10 you met him as far as you're aware?

19:29:03 11 A. I have not and I don't know him.

19:29:05 12 Q. Did you provide him any direction or instruction  
19:29:07 13 about how he should do his job on April 23, 2019?

19:29:11 14 A. No, I did not.

19:29:20 15 Q. I'm sorry I missed one name. There is a  
19:29:23 16 reference to W, I'm sorry, blurry. There is also a  
19:29:28 17 reference to a Candela. Did you provide him direction  
19:29:31 18 or instruction about how he should do his job on April  
19:29:34 19 23, 2019?

19:29:35 20 A. No.

19:29:36 21 Q. Have you ever personally met him as far as you're  
19:29:40 22 aware?

19:29:40 23 A. No.

19:29:53 24 Q. Now in terms of getting the PDF, as far as  
19:29:56 25 Exhibit 1, were you listed with several other CBP

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19:30:11 2 officers that received that e-mail with the PDFs?

19:30:14 3 A. Yes.

19:30:15 4 Q. And that came from Candela?

19:30:17 5 A. Yes.

19:30:34 6 Q. Was it a conscious decision by you not to provide  
19:30:38 7 any case details to the CBP people who would be  
19:30:43 8 conducting the investigation beyond a secondary search  
19:30:47 9 was being requested?

19:30:59 10 A. Yes.

19:30:59 11 Q. Why was it a conscious decision not to provide  
19:31:05 12 those specifics about your investigation into Mr.  
19:31:08 13 Bongiovanni?

19:31:08 14 A. It's a sensitive investigation.

19:31:10 15 Q. How so?

19:31:11 16 A. Because of the allegations of public corruption,  
19:31:15 17 we limited even, in our own office, who had knowledge  
19:31:19 18 about the case.

19:31:25 19 Q. Now, was the search -- let me direct you to  
19:31:39 20 Government's Exhibit 2. Based on your training and  
19:31:42 21 experience, was the search conducted by CBP within the  
19:31:49 22 scope of their authority?

19:31:51 23 A. Yes.

19:31:52 24 Q. Based on your training and experience, could they  
19:31:56 25 have gone further in the search?

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19:31:57 2 A. Yes.

19:31:57 3 Q. And in your experience, are sometimes phones  
19:32:01 4 detained for days or even longer while the search of a  
19:32:06 5 cellular phone is being conducted?

19:32:08 6 A. Yes.

19:32:09 7 Q. That didn't happen in this case, did it?

19:32:11 8 A. No.

19:32:12 9 Q. As far as you understand it, did Mr. Bongiovanni  
19:32:18 10 and his wife make their flights on time?

19:32:21 11 A. Yes, I think they did.

19:32:25 12 Q. Does CBP conduct searches of cell phones on their  
19:32:33 13 own without HSI?

19:32:34 14 A. All of the time.

19:32:36 15 Q. As an HSI agent, are you entitled to receive  
19:32:41 16 information from CBP officers about the searches they  
19:32:44 17 do?

19:32:44 18 A. Yes.

19:32:50 19 Q. I'm going to show you Exhibit 33 in evidence.  
19:32:56 20 It's captioned U.S. Customs and Border Protection  
19:33:00 21 Inspection of Electronic Devices. Is that correct?

19:33:04 22 A. Yes.

19:33:05 23 Q. And it appears to provide information, true?

19:33:07 24 A. It does.

19:33:08 25 Q. Just, can you just read the various headings

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19:33:12 2 about what this document is designed to inform people  
19:33:18 3 of?

19:33:18 4 A. So, the first heading is why you may be chosen  
19:33:21 5 for an inspection and it lists reasons. The second  
19:33:25 6 heading is "authority to search." And it lists those  
19:33:29 7 authorities below. And the third heading is what  
19:33:31 8 happens now. Describes the process. And then the  
19:33:36 9 fourth heading is return or seizure of detained  
19:33:40 10 electronic devices.

19:33:41 11 Q. And it continues on the back, correct?

19:33:44 12 A. Yes. The next heading on the back is privacy and  
19:33:49 13 civil liberties protection.

19:33:49 14 Q. Let's go back to the front page of Exhibit 33.  
19:33:54 15 I'm going to Zoom in. I ask you to read, "return or  
19:33:58 16 seizure of detained electronic devices"?

19:34:02 17 A. "CBP will contact you by telephone when the  
19:34:13 18 examination of the electronic device (s) is complete to  
19:34:20 19 notify. You may pick up the item or items during the  
19:34:24 20 regular business hours from the location where the items  
19:34:37 21 were detained" or -- excuse me -- "was detained. If it  
19:34:41 22 is impractical for you to pick up the device, CPB can  
19:34:48 23 make" --

19:34:50 24 Q. Continuing to the back.

19:35:02 25 A. -- "arrangements to ship the device to you at our

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19:35:11 2 expense. CBP may retain documents or information  
19:35:24 3 relating to immigration, customs and other enforcement  
19:35:28 4 matters only if such retention is consistent with the  
19:35:31 5 privacy and data protection standards of the system in  
19:35:47 6 which such information is retained. Otherwise if after  
19:35:50 7 reviewing the information there exists no probable cause  
19:35:53 8 to seize it, CBP will not retain any copies."

19:35:58 9 Q. Okay. Can you read the next paragraph?

19:36:02 10 A. "If CBP determines that the device is subject to  
19:36:15 11 seizure under law, for example, if the device contains  
19:36:19 12 evidence of a crime, contraband or other prohibited or  
19:36:23 13 restricted items or information, then you will be  
19:36:26 14 notified of the seizure as well as your options to  
19:36:29 15 contest it through the local CBP fines, penalties and  
19:36:34 16 forfeitures office."

19:36:36 17 Q. Now, I want to go down to "routine uses." If you  
19:36:40 18 could read that part?

19:36:41 19 A. "The subject information may be made available to  
19:36:44 20 other agencies for investigation and/or for obtaining  
19:36:47 21 assistance relating to jurisdictional or subject matter  
19:36:51 22 expertise or for translation encryption or other  
19:36:55 23 technical assistance. This information may also be made  
19:36:58 24 available to assist in border security and intelligence  
19:37:24 25 activities, domestic law enforcement and the enforcement

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19:37:27 2 of other crimes of a transnational nature and shared  
19:37:31 3 with elements of the federal government responsible for  
19:37:34 4 analyzing terrorist threat information."

19:37:40 5 Q. Is that consistent with your training and  
19:37:44 6 experience that you were permitted to receive the  
19:37:46 7 information from CBP?

19:37:48 8 A. Yes.

19:37:48 9 Q. And, in fact, CBP officers were on your BEST task  
19:37:53 10 force, is that correct?

19:37:54 11 A. Yes.

19:37:55 12 Q. Who were some of the CBP officers that were on  
19:37:58 13 the BEST task force with you?

19:38:44 14 A. Jack Gernatt, Joseph Spidone, Thomas Moss, being  
19:38:51 15 was a border patrol agent working with us.

19:39:13 16 Q. I'm going to go back to Exhibit 2. We've already  
19:39:22 17 read the whole paragraph, and I'm not going to ask you  
19:39:26 18 to do that. But, I'm going to ask you a couple of  
19:39:31 19 questions. In this paragraph subject is referred to as  
19:39:39 20 "Joseph Bongiovanni," is that correct?

19:39:40 21 A. Yes.

19:39:41 22 Q. And there is a sentence that says "subject had a  
19:39:43 23 Samsung model SM-J," and a long IME number and a phone  
19:39:51 24 number of 7165072784; is that correct?

19:40:06 25 A. Yes.



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19:40:09 2 Q. And then the second to last sentence reads "CBPO  
19:40:14 3 Carter," and said "along with Watch Commander Candela,  
19:40:20 4 conducted a basic search of the devices which yielded no  
19:40:34 5 derogatory information," is that correct?

19:40:36 6 A. Yes.

19:40:37 7 Q. What is your understanding of the meaning of that  
19:40:42 8 sentence when it says "yielded no derogatory  
19:40:46 9 information"?

19:40:46 10 A. There were no images in the phone of contraband  
19:40:49 11 that would have caused them to contact the HSI BWI duty  
19:40:54 12 agent.

19:40:57 13 Q. The term "no derogatory information," do you  
19:41:01 14 interpret that as an assessment of the case you were  
19:41:05 15 investigating?

19:41:05 16 A. No, it's their assessment of their secondary  
19:41:08 17 inspection.

19:41:09 18 Q. The details of what was relevant to your  
19:41:14 19 investigation were known to you and a close number of  
19:41:19 20 people you were working with. Is that correct?

19:41:21 21 A. Yes.

19:41:25 22 Q. And among the things that you were investigating,  
19:41:35 23 what were some of the offenses you were investigating  
19:41:38 24 just by generic term?

19:41:40 25 A. Drug trafficking, bribery, obstruction of

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19:41:43 2 justice, conspiracy.

19:41:45 3 Q. And for conspiracy investigations, are  
19:41:50 4 associations among people important for an  
19:41:52 5 investigation?

19:41:53 6 A. Yes, yes, they, are.

19:41:59 7 Q. I'm going to show you --

19:42:19 8 MR. TRIPI: Just a moment, your Honor.

19:42:21 9 MAGISTRATE JUDGE ROEMER: Mr. Tripi, how  
19:42:23 10 much longer do you think with this witness?

19:42:25 11 MR. TRIPI: Probably an hour on direct,  
19:42:29 12 Judge. If you want a lunch break, it might be a good  
19:42:31 13 time.

19:42:32 14 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

19:42:34 15 I don't know if I want to take a lunch  
19:42:36 16 break, but I need about 10 minutes. But I'll take 15  
19:42:40 17 minutes to twenty to 12.

19:42:42 18 MR. TRIPI: No problem, Judge.

19:42:45 19 MAGISTRATE JUDGE ROEMER: Or 1.

19:42:45 20 MR. TRIPI: I need a few minutes anyway.

19:42:49 21 MAGISTRATE JUDGE ROEMER: All right. Thank  
19:42:50 22 you.

19:42:51 23 (Whereupon, there was a break in the  
19:42:55 24 proceeding.)

19:42:55 25 Q. I'm going to skip forward that day, the day of

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19:42:59 2 the search, to your interview with Mr. Bongiovanni,  
19:43:01 3 okay? Just to orient you as to time and place.

19:43:04 4 A. Okay.

19:43:05 5 Q. Can you describe when you first approached Mr.  
19:43:40 6 Bongiovanni's residence and where he was. Start there.

19:43:42 7 A. So, I remember going through the front door on  
19:43:47 8 the level that has the kitchen and the dining room and  
19:43:49 9 family room and living room, and almost immediately upon  
19:43:54 10 entering the house, saw Mr. Bongiovanni.

19:44:02 11 Q. Can you describe sort of where he was situated  
19:44:05 12 when you first encountered him?

19:44:07 13 A. He was in the center of the level, there is an L,  
19:44:11 14 a sectional sofa, behind that is a dining room and to my  
19:44:35 15 right, as I'm looking in the house, the kitchen was to  
19:44:38 16 the left with an island. And in between the table, the  
19:44:41 17 island and the sofa.

19:44:44 18 Q. And what was he doing?

19:44:45 19 A. He was standing there and he was still handcuffed  
19:44:48 20 and he almost immediately started to speak to me.

19:44:51 21 Q. And what did he start to say to you?

19:44:53 22 A. He asked me if he was under arrest.

19:44:56 23 Q. And what did you say?

19:44:57 24 A. I told him that he was not. That our purpose for  
19:45:01 25 the day was to execute a search warrant. And he asked

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19:45:06 2 me one or two more times if he was under arrest. And I  
19:45:11 3 told him that he was not.

19:49:19 4 Q. I'd like to show you Government's Exhibit 5, 6,  
19:49:32 5 7, 8, 9. If you can take a look at those. Inaudible.  
19:50:02 6 Starting with exhibit No. 5. Do you recognize that?

19:50:05 7 A. I do.

19:50:07 8 Q. What is that?

19:50:08 9 A. That is a photograph of Mr. Bongiovanni's  
19:50:10 10 residence taken in the morning of June 6th, 2019.

19:50:14 11 Q. And that is a view from where?

19:50:16 12 A. The street Alder Place looking at the front of  
19:50:19 13 the residence.

19:50:20 14 Q. Does that fairly and accurately depict how the  
19:50:23 15 residence looked that day?

19:50:24 16 A. Yes.

19:50:24 17 Q. If you could turn to exhibit No. 6, please. Do  
19:50:28 18 you recognize that?

19:50:28 19 A. Yes. It's another photograph from that morning.  
19:50:31 20 It's taken from the entryway of the front door of the  
19:50:36 21 house, looking into the kitchen.

19:50:39 22 Q. Does that fairly and accurately depict the view  
19:50:43 23 from the front entryway looking into the kitchen?

19:50:45 24 A. Yes.

19:50:47 25 Q. Flip to exhibit No. 7, please. Do you recognize

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19:50:51 2 that?

19:50:51 3 A. Yes. It's a photograph of the dining room table  
19:50:54 4 in the dining room at 85 Alder Place taken the morning  
19:50:59 5 of June 6th, 2019.

19:51:00 6 Q. And does that fairly and accurately depict the  
19:51:04 7 dining room table that is adjacent to the kitchen area?

19:51:08 8 A. Yes.

19:51:09 9 Q. And next exhibit, exhibit 8, please. Is that  
19:51:12 10 correct?

19:51:12 11 A. Yes.

19:51:13 12 Q. Do you recognize exhibit 8?

19:51:15 13 A. Yes. It's a photograph of the kitchen at 85  
19:51:17 14 Alder Place taken the morning of June 6th, 2019.

19:51:21 15 Q. And does it fairly and accurately depict the  
19:51:24 16 kitchen as it appeared that day?

19:51:26 17 A. Yes.

19:51:26 18 Q. And if you look at exhibit 9, please. Do you  
19:51:32 19 recognize that?

19:51:32 20 A. Yes.

19:51:33 21 Q. What is that?

19:51:33 22 A. It's the view from the level I entered the house  
19:51:38 23 on looking down the stairs to the lower level, the  
19:51:42 24 garage level of the house.

19:51:43 25 Q. Does it fairly and accurately depict the house?

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19:51:48 2 A. Yes.

19:51:49 3 Q. And exhibit 10, please. Do you recognize what  
19:54:54 4 that is?

19:54:54 5 A. Yes.

19:54:55 6 Q. What is that?

19:54:56 7 A. That is a box that was found in the house that  
19:55:00 8 morning.

19:55:00 9 Q. And you were not present when the box was  
19:55:07 10 located, correct?

19:55:07 11 A. That's correct.

19:55:08 12 Q. It was brought to your attention later, brought  
19:55:10 13 to where you were in the house?

19:55:12 14 A. Yes.

19:55:14 15 Q. That is a photo from your official case file of  
19:55:19 16 the box that was seized that day in the house, though,  
19:55:22 17 correct?

19:55:22 18 A. Yes.

19:55:23 19 MR. TRIPI: I'll offer exhibits 5, 6, 7, 8,  
19:55:28 20 9, and 10.

19:55:30 21 MR. HARRINGTON: I have no objection to  
19:55:31 22 these coming in, but I'm not sure what the relevance of  
19:55:35 23 it is.

19:55:36 24 MAGISTRATE JUDGE ROEMER: I had the thought  
19:55:37 25 occur to me for what we're doing now.

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19:55:41 2 MR. TRIPI: Judge, there is some relevance.

19:55:43 3 Shows the area where the interview occurred and it shows

19:55:46 4 a picture of one of the things that was discussed during

19:55:50 5 the interview that we're going to talk about.

19:55:53 6 MAGISTRATE JUDGE ROEMER: Okay. All right.

19:55:54 7 MR. HARRINGTON: That is not an issue,

19:55:56 8 Judge. We're just talking about questions that he asked

19:56:00 9 and the source of the information. That is all we're

19:56:03 10 talking about.

19:56:06 11 MR. TRIPI: Relevance is a pretty low bar

19:56:10 12 and the ground has shifted under my feet a little bit

19:56:13 13 today, so I think, in fairness, it's not much to ask

19:56:17 14 that the photos come in.

19:56:19 15 MAGISTRATE JUDGE ROEMER: Okay. I'll

19:56:22 16 overrule the objection. I don't know that he made an

19:56:26 17 objection. If he did, it's overruled.

19:56:26 18 **(Whereupon, Government Exhibits 5, 6, 7, 8,**

19:56:33 19 **9 and 10 were received into evidence.)**

19:56:33 20 Q. I'm going to just publish, put on the monitor,

19:56:37 21 Exhibit No. 7. As it relates to your view of Mr.

19:56:42 22 Bongiovanni, can you describe what is depicted in

19:56:45 23 Exhibit 7?

19:56:45 24 A. The table where we sat and where we spoke.

19:56:50 25 Q. Okay. And now I believe that we're talking with

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19:56:53 2 a touchscreen here. So I'm going to hand you up a pen  
19:56:57 3 afterwards. Can you tell the Court where people were  
19:57:01 4 positioned around that table as the interview got  
19:57:05 5 underway?

19:57:05 6 A. Yes. So the chair that is the furthest to the  
19:57:09 7 right in the photograph is where Mr. Bongiovanni was  
19:57:11 8 sitting.

19:57:12 9 Q. Can you touch the screen? It should leave a  
19:57:15 10 mark.

19:57:15 11 A. It's not, it did not mark, no.

19:57:27 12 Q. It's okay. If I can point with my pen, that's  
19:57:33 13 all right. Are you pointing to this chair?

19:57:36 14 A. Yes, that is the chair I'm referring to.

19:57:38 15 Q. That is the chair on the far side of the table?

19:57:41 16 A. Yes.

19:57:41 17 Q. And then there is a middle chair there?

19:57:43 18 A. I sat there.

19:57:44 19 Q. And a middle chair on the far side of the table?

19:57:48 20 A. Correct.

19:57:48 21 Q. And then there is another chair on the far side  
19:57:51 22 of the table on the other end closest to the window that  
19:58:09 23 is in the picture, correct?

19:58:10 24 A. That chair was empty.

19:58:12 25 Q. Okay. Now, moving to the near side of the table,



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19:58:15 2 the farthest side of the table?

19:58:19 3 A. That chair was empty.

19:58:20 4 Q. And a middle chair on the near side of the table?

19:58:23 5 A. Special Agent David Carpenter sat there.

19:58:26 6 Q. And then an end chair on the near side of the  
19:58:29 7 table, which would be across from where Mr. Bongiovanni  
19:58:32 8 was sitting, who was sitting there?

19:58:34 9 A. Special Agent David Fusco, F-u-s-c-o.

19:58:46 10 Q. All right. Now, I asked you your initial  
19:58:49 11 interactions with Mr. Bongiovanni, can you continue from  
19:58:54 12 there? You left by saying he asked if he was under  
19:59:00 13 arrest and you responded to that several times. Can you  
19:59:14 14 pick it up from there?

19:59:15 15 A. Yes, we ultimately, very quickly, moved to the  
19:59:23 16 table. Mr. Bongiovanni was still in handcuffs and I  
19:59:33 17 asked him if I took his handcuffs off, was everything  
19:59:37 18 going to be okay, was he all right. He told me he was.  
19:59:41 19 I took his handcuffs off and we sat down at the table  
19:59:45 20 and I asked him if he would be willing to talk with us.  
19:59:48 21 He said he was willing to talk with us. I explained the  
19:59:52 22 warrant to him, so he understood why we were there.

19:59:55 23 Q. Describe how you explained the warrant to him to  
19:59:59 24 set the stage.

19:59:59 25 A. Sure. I showed him a copy of the warrant, so I

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20:00:32 2 showed him a copy and talked to him a little bit about  
20:00:38 3 some of the offenses that were listed on the front.

20:00:41 4 Q. What did you say?

20:00:42 5 A. Just what the offenses were, described them  
20:00:44 6 generally.

20:00:45 7 Q. What did you say?

20:00:46 8 A. Conspiracy, bribery, drug trafficking.

20:00:54 9 Q. Please continue?

20:00:55 10 A. And then I turned to the attachment B, the list  
20:01:02 11 of items that we were searching for or we were  
20:01:05 12 authorized to search for, types of items.

20:01:11 13 Q. And do you remember your discussion in that  
20:01:15 14 regard?

20:01:15 15 A. And, again, I didn't read this word for word, but  
20:01:18 16 I described each of these, generally, what types of  
20:01:21 17 evidence we were searching for.

20:01:33 18 Q. What did he say?

20:01:34 19 A. I asked him if he had any questions about what  
20:01:39 20 the warrant, what was on the warrant. He didn't that I  
20:01:43 21 recall. I asked him if he would be willing to speak  
20:01:48 22 with us. He said that he was. And he was asking both  
20:01:51 23 looking back and forth between Dave Carpenter and myself  
20:01:55 24 and asking us which of us was the case agent.

20:01:59 25 Q. And what agency was Dave Carpenter with?

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20:02:04 2 A. Department of Justice, Office of Inspector  
20:02:15 3 General.

20:02:15 4 Q. Can you describe taking off Mr. Bongiovanni's  
20:02:18 5 cuffs, please?

20:02:19 6 A. Just we were standing there by the chair that he  
20:02:22 7 ended up sitting in. And I took his handcuffs off and  
20:02:26 8 sat them with my things that were on the table in front  
20:02:30 9 of the empty chair on the side where we were sitting.

20:02:34 10 Q. And what, if any, statements or comments or  
20:02:40 11 questions did Mr. Bongiovanni pose to you about books  
20:02:43 12 and records?

20:02:44 13 A. So, in the exchange where he had asked me if he  
20:02:49 14 was under arrest, he didn't question me about books and  
20:02:53 15 records, but he did make a comment to Mrs. Bongiovanni  
20:02:56 16 that we were there for books and records, that it was a  
20:03:02 17 books and records warrant.

20:03:03 18 Q. What did he say?

20:03:04 19 A. He said "It's okay, it's a books and records  
20:03:08 20 warrant."

20:03:08 21 Q. What did you understand that to mean?

20:03:11 22 A. That he understood, one, that he was not under  
20:03:16 23 arrest; and, two, he had a general idea of the types of  
20:03:19 24 evidence that we were looking for.

20:03:25 25 Q. Now, as you spoke to Mr. Bongiovanni, describe

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20:03:29 2 his demeanor.

20:03:30 3 A. He was, of course, excited when I first spoke to  
20:03:37 4 him. He calmed down as we spoke. He struck me as  
20:03:43 5 generally open. It wasn't difficult to have a  
20:03:46 6 conversation. We spoke back and forth and stayed calm.

20:03:49 7 Q. What was your demeanor?

20:03:50 8 A. The same.

20:03:53 9 Q. How long did you end up speaking with him there?

20:03:56 10 A. We spoke for almost the entire duration of the  
20:04:00 11 search.

20:04:01 12 Q. Which was how long, roughly?

20:04:03 13 A. Two and a half hours.

20:04:10 14 Q. By that point, would it be fair to say you were  
20:04:16 15 the investigator who had the most case knowledge  
20:04:20 16 overall?

20:04:20 17 A. At that point in time, yes, that is a true  
20:04:27 18 statement.

20:04:27 19 Q. And were you the one taking notes?

20:04:29 20 A. Yes.

20:04:29 21 Q. And were you the one who was to generate a report  
20:04:35 22 of the interview?

20:04:36 23 A. Yes.

20:04:45 24 Q. I'm going to hand you up Exhibits 11 and 12. Do  
20:05:07 25 you recognize Government's Exhibit 11?

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20:05:08 2 A. Yes.

20:05:18 3 Q. What do you recognize that to be?

20:05:20 4 A. It's the report that I prepared documenting my  
20:05:25 5 interview of Mr. Bongiovanni with Special Agent  
20:05:39 6 Carpenter and Special Agent Fusco from June 6th.

20:05:45 7 Q. How did you prepare that report? What was it  
20:05:54 8 based upon?

20:05:55 9 A. The notes that I took that day, and my  
20:05:58 10 conversations with Special Agent Carpenter and Fusco.

20:06:01 11 Q. How about your discussion with Mr. Bongiovanni?

20:06:03 12 A. And about our discussion with Mr. Bongiovanni,  
20:06:05 13 yes.

20:06:06 14 Q. And did you take the notes as you were speaking  
20:06:09 15 with Mr. Bongiovanni?

20:06:10 16 A. Yes.

20:06:11 17 Q. And what was the purpose of your taking notes?

20:06:13 18 A. To give me a reference to use to put the report  
20:06:19 19 together, to document the things he was saying, document  
20:06:23 20 the things we talked about.

20:06:25 21 Q. Are the notes designed to jog your memory?

20:06:28 22 A. They are designed to jog my memory.

20:06:31 23 Q. Are you also relying on your memory when you talk  
20:06:34 24 about what Mr. Bongiovanni said and what you said to  
20:06:38 25 him?

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20:06:38 2 A. Yes.

20:06:39 3 MR. TRIPI: I would like to enter  
20:06:39 4 Government's Exhibit 11 and 12, the notes, Judge.

20:06:44 5 MR. HARRINGTON: No objection.

20:06:44 6 MAGISTRATE JUDGE ROEMER: Government's  
20:06:47 7 Exhibit 11 and 12 shall be admitted into evidence.

20:06:47 8 **(Whereupon, Government Exhibits 11 and 12**  
20:07:27 9 **were received into evidence.)**

20:07:27 10 Q. Now, looking at page one of Government's Exhibit  
20:07:31 11 11 in evidence. Is that essentially a cover sheet for  
20:07:36 12 your report?

20:07:36 13 A. Yes.

20:07:36 14 Q. And what does it say under the synopsis?

20:07:41 15 A. "On June 6th, 2019, HSI and DOJ OIG interviewed  
20:07:47 16 Joseph Bongiovanni during the execution of a search  
20:07:50 17 warrant at his residence."

20:08:00 18 Q. And moving onto page two. See paragraph one  
20:08:07 19 there?

20:08:08 20 A. Yes.

20:08:08 21 Q. Did any information in paragraph one that you  
20:08:13 22 wrote there on page two, was any of that derived from  
20:08:18 23 the search of Mr. Bongiovanni's phone at the border on  
20:08:22 24 April 23, 2019?

20:08:24 25 A. No.

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20:08:25 2 Q. Second paragraph, begins with the word "at first  
20:08:29 3 contact," correct?

20:08:30 4 A. Correct.

20:08:32 5 Q. Is anything that you wrote there in this report  
20:08:36 6 documenting the interview, was any of that derived from  
20:08:41 7 the border search of the phone April 23, 2019?

20:08:44 8 A. No, that is based on my observations and  
20:08:47 9 conversation with Mr. Bongiovanni when I walked into the  
20:08:50 10 house.

20:08:50 11 Q. Paragraph three on page two, begins "Bongiovanni  
20:08:53 12 denied he was in a close relationship with Peter Gerace"  
20:08:57 13 and then it continues from there, correct?

20:08:59 14 A. Correct.

20:09:00 15 Q. Is any of that information in that paragraph  
20:09:04 16 derived from the questions that you asked based upon the  
20:09:22 17 border search of the phone April 23, 2019?

20:09:28 18 A. No.

20:09:30 19 Q. The next page or next paragraph on page two  
20:09:35 20 begins "Bongiovanni had not spoken to Peter Gerace in  
20:09:39 21 over a year," and it continues from there. Were any of  
20:09:42 22 the questions that you asked derived from the border  
20:09:45 23 search that took place on April 23, 2019 that comprised  
20:09:57 24 the responses that Mr. Bongiovanni gave in that  
20:10:00 25 paragraph?

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20:10:00 2 A. No.

20:10:01 3 Q. The next paragraph, it's a one-sentence  
20:10:06 4 paragraph, reads "Bongiovanni and Peter Gerace did not  
20:10:10 5 celebrate birthdays together." Was your question or the  
20:10:14 6 response that Mr. Bongiovanni gave you that led to the  
20:10:19 7 documentation of that statement, was that, was your  
20:10:23 8 question at all derived from the border search of Mr.  
20:10:26 9 Bongiovanni's phone April 23, 2019?

20:10:28 10 A. No.

20:10:29 11 Q. The next paragraph reads, starts, "Bongiovanni  
20:10:32 12 said Peter Gerace is a pain in the ass," and then  
20:10:36 13 continues for another sentence. Was anything about your  
20:10:39 14 questioning or Mr. Bongiovanni's response based upon the  
20:10:42 15 border search of the phone, April 23, 2019?

20:10:45 16 A. No.

20:10:46 17 Q. The next sentence or the next paragraph down  
20:10:50 18 begins "Bongiovanni said you cannot penalize for growing  
20:10:54 19 up" and it continues from there. Do you see that?

20:10:56 20 A. Yes.

20:10:57 21 Q. Was anything you were asking about or anything  
20:11:01 22 Mr. Bongiovanni was responding based upon the border  
20:11:03 23 search of the phone April 23, 2019?

20:11:06 24 A. No.

20:11:06 25 Q. The next sentence begins "Peter Gerace's



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20:11:14 2 grandfather had something to do with the mafia" and it  
20:11:18 3 continues from there. Do you see that paragraph?

20:11:21 4 A. Yes.

20:11:21 5 Q. Those statements that Mr. Bongiovanni made, were  
20:11:25 6 any of your questions that led to those statements based  
20:12:54 7 upon the border search of Mr. Bongiovanni's phone on  
20:12:58 8 April 23, 2019?

20:12:59 9 A. No.

20:13:00 10 Q. And then there is an agent comment there. Is any  
20:13:03 11 of that based upon the border search of Mr.  
20:13:07 12 Bongiovanni's phone?

20:13:08 13 A. No.

20:13:08 14 Q. And then the next paragraph, the bottom paragraph  
20:13:11 15 of that page says "Bongiovanni described Pharaoh's  
20:13:18 16 Gentleman Club," and it continues from there, correct?

20:13:19 17 A. Correct.

20:13:20 18 Q. Were any of the questions that you asked about  
20:13:23 19 Pharaoh's Gentleman Club based on any answers Mr.  
20:13:37 20 Bongiovanni gave you based upon the border search of Mr.  
20:13:41 21 Bongiovanni's phone April 23, 2019?

20:13:43 22 A. No.

20:13:43 23 Q. Page 3 of exhibit 11. First paragraph begins,  
20:13:56 24 "Bongiovanni through Anthony Gerace, was arrested in the  
20:14:00 25 days before Bongiovanni retired," and it continues for a

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20:14:03 2 few more sentences, correct?

20:14:05 3 A. Yes.

20:14:05 4 Q. Were any questions that led to Mr. Bongiovanni's  
20:14:08 5 statements as documented in that paragraph derived from  
20:14:11 6 the search of the phone on April 23, 2019?

20:14:15 7 A. No.

20:14:15 8 Q. Were any questions that you asked Mr. Bongiovanni  
20:14:18 9 about Anthony Gerace on that day derived from the search  
20:15:49 10 of the phone April 23, 2019?

20:15:51 11 A. No.

20:15:52 12 Q. Were any questions about Peter Gerace derived  
20:15:55 13 from the border search of the phone?

20:15:58 14 A. No.

20:15:58 15 Q. Next paragraph down, "Bongiovanni stated he knew  
20:16:01 16 both Anthony and David Gerace. David is a drug user."  
20:16:06 17 Was any questioning or comments made by you or by Mr.  
20:16:11 18 Bongiovanni as documented in that paragraph derived from  
20:16:15 19 the border search of the phone?

20:16:17 20 A. No.

20:16:17 21 Q. Next paragraph down begins "Bongiovanni had  
20:16:22 22 talked to Anthony Gerace" and continues from there.  
20:16:25 23 Were any of those questions or answers as a result of  
20:16:29 24 the border search of the phone?

20:16:31 25 A. No.

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20:16:31 2 Q. Next sentence begins "Bongiovanni knew Michael  
20:16:35 3 Sinatra," and continues from there. Were any of those  
20:16:38 4 statements derived from the border search of Mr.  
20:16:44 5 Bongiovanni's phone April 23, 2019?

20:16:47 6 A. No.

20:16:47 7 Q. Were any of the questions that you asked about  
20:16:49 8 Michael Sinatra based upon the border search of Mr.  
20:16:54 9 Bongiovanni's phone?

20:16:54 10 A. No.

20:16:55 11 Q. Next paragraph reads, one sentence, "Michael  
20:17:06 12 Sinatra just became engaged in Carrie Serafin," were any  
20:17:12 13 questions or answers that Mr. Bongiovanni gave you as  
20:17:14 14 documented in that paragraph derived from your receipt  
20:17:19 15 of the border search information of Mr. Bongiovanni's  
20:17:25 16 phone?

20:17:25 17 A. No.

20:17:25 18 Q. Next paragraph down. One sentence, "Bongiovanni  
20:17:41 19 never socialized with Michael Sinatra and they never  
20:17:45 20 went on any trips together." He said that to you  
20:17:48 21 correct?

20:17:48 22 A. Yes.

20:17:49 23 Q. And was any information that you asked about  
20:17:51 24 Michael Sinatra that culminated in that statement  
20:17:55 25 derived from the border search of the phone?

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20:17:58 2 A. No.

20:17:58 3 Q. Sinatra used to date Lindsay's younger sister  
20:18:03 4 Christie. Were any information that Mr. Bongiovanni  
20:18:07 5 provided to you as documented in this report about that  
20:18:10 6 derived from the border search of the phone?

20:18:13 7 A. No.

20:18:13 8 Q. The next paragraph reads, "Sinatra called  
20:18:18 9 Bongiovanni earlier this year" and continues from there.  
20:18:22 10 Were any of Mr. Bongiovanni's statements in that  
20:18:24 11 paragraph as a result of questions based upon the border  
20:18:40 12 search of Mr. Bongiovanni's phone April 23, 2019?

20:18:44 13 A. No.

20:18:44 14 Q. The next paragraph begins "Sinatra number was in  
20:18:47 15 Bongiovanni's telephone because Sinatra had done  
20:18:53 16 Bongiovanni landscaping." Do you see that?

20:18:55 17 A. Yes.

20:18:56 18 Q. Were any questions you asked based upon the  
20:18:58 19 border search of Bongiovanni's phone had culminated in  
20:19:03 20 that answer?

20:19:04 21 A. No.

20:19:04 22 Q. And we looked at Government's Exhibit 1 earlier,  
20:19:10 23 the photos from CBP did not have Michael Sinatra's phone  
20:19:16 24 number, correct?

20:19:17 25 A. Correct.

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20:19:21 2 Q. The next paragraph reads "Bongiovanni used his  
20:19:24 3 DEA issued mobile phone for work and personal calls."  
20:19:29 4 Do you see that?

20:19:29 5 A. Yes.

20:19:30 6 Q. And it goes on to talk about the last sentence  
20:19:33 7 "Bongiovanni wanted to erase the work and personal  
20:19:36 8 photos in his last phone"?

20:19:38 9 A. Yes.

20:19:42 10 Q. Was that discussion based upon information that  
20:19:55 11 Bongiovanni had wiped the content of his DEA issued  
20:20:01 12 phone at or around the time of retirement?

20:20:03 13 A. Yes.

20:20:04 14 Q. Did anything, any questions about his DEA issued  
20:20:10 15 cell phone have anything to do with the border search  
20:20:13 16 April 23, 2019?

20:20:15 17 A. No.

20:20:15 18 Q. Next paragraph down reads "Bongiovanni attended  
20:20:20 19 one of Pharaoh's golf tournaments between 12 and 15  
20:20:24 20 years ago." Do you see that?

20:20:26 21 A. Yes.

20:20:26 22 Q. And then it continues for another sentence. Were  
20:20:31 23 any questions about that, Pharaoh's or golf tournaments  
20:20:37 24 or Gerace, made by you as a result of the border search  
20:20:41 25 of the phone April 23, 2019?

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20:20:43 2 A. No.

20:20:44 3 Q. There is a sentence -- withdrawn.

20:20:49 4 The next paragraph begins Bongiovanni stated  
20:20:54 5 "organized crime is dead in Buffalo, New York," and then  
20:21:06 6 it continues from there. Were any questions or any of  
20:21:10 7 Mr. Bongiovanni's answers regarding that topic of  
20:21:13 8 conversation as a result of the border search of the  
20:21:16 9 phone April 23, 2019?

20:21:18 10 A. No.

20:21:19 11 Q. Up to this point, we're through page 3, are all  
20:21:28 12 of these topics and discussion points things you would  
20:21:33 13 have discussed and were discussing with Mr. Bongiovanni  
20:21:36 14 regardless of where whether that border search ever  
20:21:39 15 happened on April 23, 2019?

20:21:41 16 A. Yes, that's correct.

20:22:38 17 Q. We're up to page 4 of exhibit 11. Generally, is  
20:22:42 18 your report generally written in chronological order in  
20:22:45 19 which the manner of the topics were discussed as you  
20:22:49 20 went through the interview?

20:22:50 21 A. Generally, yes.

20:22:51 22 Q. There may be times when you circled back to  
20:22:54 23 something earlier, but, for the most part, the logic,  
20:22:57 24 the sequence that you see in this report is consistent  
20:23:01 25 with the sequence of discussion?

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20:23:03 2 A. Yes, that's correct.

20:23:06 3 Q. Page four, top paragraph, begins "SA Ryan asked  
20:23:11 4 Bongiovanni why Peter Gerace associates with members of  
20:23:16 5 motorcycle gangs," and continues from there?

20:23:18 6 A. Yes.

20:23:18 7 Q. And was any of your questions or any of Mr.  
20:23:21 8 Bongiovanni's statements documented in that paragraph in  
20:23:25 9 response to any questions the result of the border  
20:23:29 10 search on April 23, 2019 of Mr. Bongiovanni's phone?

20:23:32 11 A. No.

20:23:33 12 Q. The next paragraph begins "The Cheektowaga Police  
20:23:36 13 Department watched Pharaoh's," and then continues for  
20:23:39 14 another sentence. Do you see that?

20:23:40 15 A. Yes.

20:23:41 16 Q. Were any of Mr. Bongiovanni's statements, as  
20:23:45 17 documented in that paragraph, were or any questions you  
20:23:49 18 asked based upon the information you had received from  
20:23:51 19 the border search of Mr. Bongiovanni's phone April 23,  
20:23:55 20 2019?

20:23:55 21 A. No.

20:23:56 22 Q. The next paragraph down, "Peter Gerace once tried  
20:24:01 23 to cooperate with DEA," and then continues from there  
20:24:07 24 third paragraph. Do you see that?

20:24:08 25 A. I do.

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20:24:10 2 Q. And a third paragraph down from the top. Were  
20:24:13 3 any questions or discussions that you had with Mr.  
20:24:16 4 Bongiovanni led to you documenting those statements, was  
20:24:18 5 any of that based upon information you received from the  
20:24:21 6 border search of Mr. Bongiovanni's phone April 23rd  
20:24:27 7 2019?

20:24:27 8 A. No.

20:24:27 9 Q. The next paragraph down begins "SA Ryan." That  
20:24:32 10 is you, correct?

20:24:33 11 A. Yes.

20:24:33 12 Q. "Asked Bongiovanni if Peter Gerace ever spoke  
20:24:38 13 about someone overdosing," and then it continues,  
20:24:42 14 correct?

20:24:42 15 A. Yes.

20:24:42 16 Q. Were any of your questions about that topic or  
20:24:45 17 Mr. Bongiovanni's statements that you documented in  
20:24:47 18 response in that paragraph the result of something you  
20:24:51 19 learned from the border search of the phone April 23,  
20:24:54 20 2019?

20:24:54 21 A. No.

20:24:57 22 Q. Next paragraph down. "While Bongiovanni was a  
20:25:00 23 DEA agent, he always told people," and the sentence  
20:25:04 24 continues. Was that paragraph or that sentence that Mr.  
20:25:09 25 Bongiovanni provided you, was that as a result of



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20:25:12 2 anything you were talking about related to the border  
20:25:15 3 search of the phone?

20:25:16 4 A. No.

20:25:16 5 Q. There is a name Paul Puglise and more information  
20:25:20 6 about that name. Was that a name that was brought up as  
20:25:25 7 a result of the border search of the phone April 23,  
20:25:28 8 2019?

20:25:28 9 A. No.

20:25:29 10 Q. Next paragraph begins "SA Ryan asked Bongiovanni  
20:25:38 11 about contacts found in his phone during a border search  
20:25:57 12 conducted on April 23, 2019, when Bongiovanni entered  
20:26:02 13 United States at Baltimore Washington International  
20:26:06 14 Airport, the contacts are listed below." Then you have  
20:26:10 15 a series of bold names that go from the bottom of the  
20:26:14 16 page four, beginning with the name Frank Parisi, and  
20:26:19 17 continues on page five and a little past the middle of  
20:26:43 18 page six with the name (inaudible.) Do you see that?

20:27:04 19 A. Yes.

20:27:05 20 Q. Those were names that you were asking about based  
20:27:08 21 upon a list of contacts that were in Government's  
20:27:11 22 Exhibit 1, is that correct?

20:27:12 23 A. Yes, a combination of Government's Exhibit 1 and  
20:27:15 24 a report that Officer Gernatt prepared after doing some  
20:27:19 25 analysis of Government's Exhibit 1.

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20:27:21 2 Q. Right. So would it be accurate to say that you  
20:27:23 3 did not have Government's Exhibit 1 with you, correct?

20:27:27 4 A. Correct.

20:27:28 5 Q. I'll show you Government's Exhibit 13. This has  
20:27:36 6 some redactions in it. But do you recognize  
20:27:42 7 Government's Exhibit 13?

20:27:44 8 A. Yes.

20:27:44 9 Q. What do you recognize that to be?

20:27:47 10 A. It's Officer Gernatt's report that he did after  
20:27:52 11 his analysis of Government's Exhibit 1.

20:27:55 12 Q. Okay. Thank you. And Officer Gernatt, at the  
20:28:01 13 time, he was a CBP Officer on the BEST task force,  
20:28:06 14 correct?

20:28:06 15 A. Yes.

20:28:06 16 Q. And how did -- as you understand it, how did CBP  
20:28:19 17 Officer Gernatt start to compile that report?

20:28:22 18 A. An analysis of the names and phone numbers from  
20:28:28 19 Government's Exhibit 1, queried them in various systems  
20:28:32 20 that he had access to try and identify the users of the  
20:28:37 21 unnamed numbers.

20:28:38 22 Q. And Government's Exhibit 13, that is a copy of  
20:28:42 23 that as of what date?

20:28:45 24 A. April 25, 2019.

20:28:49 25 Q. And is that a completed draft?

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20:28:53 2 A. No, it was still a working document at that  
20:28:59 3 point.

20:28:59 4 Q. Is this the version of the document that you had  
20:29:02 5 with you at the time of the interview with Mr.  
20:29:05 6 Bongiovanni?

20:29:05 7 A. Yes.

20:29:05 8 Q. And is it a fair and accurate copy, other than  
20:29:08 9 the redactions to certain information of the report, as  
20:29:11 10 it existed the day of your interview with Mr.  
20:29:18 11 Bongiovanni?

20:29:18 12 A. Yes.

20:29:19 13 MR. TRIPI: Government offers Exhibit 13,  
20:29:23 14 your Honor.

20:29:24 15 MR. HARRINGTON: No objection.

20:29:24 16 MAGISTRATE JUDGE ROEMER: Government's  
20:29:25 17 Exhibit 13 should be admitted into evidence.

20:29:25 18 **(Whereupon, Government's Exhibit 13 was**  
20:29:25 19 **received into evidence.)**

20:29:29 20 Mr. Tripi, can I just ask a clarifying  
20:29:37 21 question?

20:29:38 22 MR. TRIPI: Sure.

20:29:40 23 MAGISTRATE JUDGE ROEMER: Agent Ryan, about  
20:29:51 24 three-quarters of the way down, and this is exhibit 11  
20:29:58 25 on page four.

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20:30:02 2 THE WITNESS: Yes, sir.

20:30:03 3 MAGISTRATE JUDGE ROEMER: You say or  
20:30:04 4 somebody wrote "Special Agent Ryan asked Bongiovanni  
20:30:07 5 about contacts found in his phone during the border  
20:30:10 6 search." Did you tell him that, "I'm going to ask you  
20:30:17 7 now about contacts from the phone" or is this just your  
20:30:21 8 note that is what you were doing? Do you understand my  
20:30:25 9 question?

20:30:25 10 THE WITNESS: We did talk at the time about  
20:30:27 11 the fact that his phone was border searched.

20:30:30 12 MAGISTRATE JUDGE ROEMER: And that you were  
20:30:31 13 asking him about these people because of what you found  
20:30:34 14 in the phone?

20:30:35 15 THE WITNESS: Yes.

20:30:36 16 MAGISTRATE JUDGE ROEMER: Okay, thank you.

20:30:38 17 MR. TRIPI: Thank you, Judge.

08:38:51 18 Q. Without getting into too much detail of your  
08:38:54 19 underlying investigation, I don't want to do that, would  
08:38:58 20 it be fair that some of the investigation is continuing?

08:39:01 21 A. Yes.

08:39:05 22 Q. At that time, are some of the names that were in  
08:39:09 23 the phone that are listed between pages four, five and  
08:39:14 24 six, are they names that you, at the time, may have  
08:39:20 25 asked Mr. Bongiovanni about regardless of the border

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08:39:23 2 search of the phones?

08:39:26 3 A. Yes.

08:39:55 4 Q. Okay. I'm going to switch to exhibit 13 in a  
08:39:59 5 moment. See that up on your screen?

08:40:01 6 A. Yes, I can.

08:40:02 7 Q. To the upper left is date of report, indicates  
08:40:08 8 April 25, 2019, so a couple of days after the border  
08:40:12 9 search, correct?

08:40:13 10 A. Yes.

08:40:14 11 Q. And then it has author, Officer Jack Gernatt. He  
08:40:20 12 is a CBP Officer in Buffalo, New York?

08:40:23 13 A. That's correct.

08:40:23 14 Q. And then it has some information up in the  
08:40:28 15 subject, "Mr. Bongiovanni" and then a gist synopsis  
08:40:33 16 paragraph, correct?

08:40:34 17 A. Yes.

08:40:34 18 Q. And it begins with, "On April 24th, 2019," now,  
08:43:47 19 that is incorrect, that's the incorrect date of the  
08:43:50 20 border search, correct?

08:43:52 21 A. That's correct.

08:43:52 22 Q. The border search was April 23rd of 2019?

08:43:57 23 A. Yes, that's correct.

08:43:58 24 Q. In any event, there is an identified paragraph  
08:44:06 25 for Mr. Bongiovanni, correct?

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08:44:07 2 A. Yes.

08:44:09 3 Q. Moving to page two, it lists Frank Parisi at the  
08:44:15 4 top, right?

08:44:17 5 A. Yes.

08:44:17 6 Q. And that is a name that you asked Mr. Bongiovanni  
08:44:20 7 about on, sorry, June 6th, 2019, correct?

08:44:24 8 A. Yes.

08:44:24 9 Q. Is that someone you would have independently  
08:44:27 10 asked him about regardless of the contact being in the  
08:44:30 11 phone?

08:44:30 12 A. Yes.

08:44:32 13 Q. And then there is a name Nicholas Puglise,  
08:44:38 14 correct?

08:44:39 15 A. Yes.

08:44:39 16 Q. And that is a name that you asked about during  
08:44:42 17 the interview, June 6th, 2019?

08:44:46 18 A. Yes.

08:44:47 19 Q. And then there is a name Tommy Francoforte  
08:44:53 20 (check) possibly Paul Frankaforte, right?

08:44:59 21 A. Yes.

08:45:00 22 Q. In your report, you documented statements  
08:45:03 23 regarding that Mr. Bongiovanni made about a Tommy  
08:45:06 24 Frankaforte, is that correct?

08:45:08 25 A. Yes.

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08:45:13 2 Q. At some point, he also told you that Tommy is the  
08:45:18 3 brother of Paul A/K/A Hotdog, correct?

08:45:22 4 A. Correct.

08:45:23 5 Q. And Paul Frankaforte A/K/A Hotdog was someone  
08:45:30 6 that you already knew about, correct?

08:45:31 7 A. That's true.

08:45:34 8 Q. And then there is an entry for a Frank Todaro?

08:45:39 9 A. Yes.

08:45:39 10 Q. And that is someone you talked about on June 6th,  
08:45:43 11 2019, correct?

08:45:45 12 A. That's true, correct.

08:45:47 13 Q. And then there is a Tom Gerace?

08:45:50 14 A. Yes.

08:45:50 15 Q. And is that someone that you talked about on June  
08:45:53 16 6th, 2019?

08:45:54 17 A. Yes.

08:45:57 18 Q. Now, on this report, there is a Maglietto,  
08:46:02 19 correct?

08:46:02 20 A. Yes.

08:46:03 21 Q. Now, Matthew is Mr. Bongiovanni's son or stepson?

08:46:09 22 A. Stepson.

08:46:09 23 Q. And he was one of the people at the house on the  
08:46:14 24 day of the search warrant?

08:46:16 25 A. Yes.

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08:46:17 2 Q. And so going off this report, you didn't ask  
08:46:25 3 about Matthew and put that in your report, did you?

08:46:28 4 A. No.

09:52:27 5 Q. For record purposes, about how old was Matthew on  
09:52:31 6 that date?

09:52:32 7 A. Junior high, high school.

09:52:36 8 Q. Next, in Exhibit 13, there is a name, it says  
09:52:45 9 Nick Puglise. You asked about a name Nicholas Puglise.

09:52:50 10 Is that the same name?

09:52:51 11 A. Yes.

09:52:52 12 Q. And then you documented Mr. Bongiovanni's  
09:52:54 13 statements about that?

09:52:55 14 A. Yes.

09:53:01 15 Q. On this report, there is a name Sam Catalano,  
09:53:06 16 right?

09:53:06 17 A. Yes.

09:53:06 18 Q. And you asked Mr. Bongiovanni about that name?

09:53:09 19 A. Yes.

09:53:09 20 Q. On this report there is a name Victor Sorrento?

09:53:15 21 A. Yes.

09:53:15 22 Q. And you asked Mr. Bongiovanni about that name and  
09:53:18 23 documented what he told you, right?

09:53:19 24 A. Yes.

09:53:20 25 Q. There is a name Kim Mecca, right?



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09:53:23 2 A. Yes.

09:53:24 3 Q. And you asked Mr. Bongiovanni about that name,  
09:53:27 4 correct?

09:53:27 5 A. Yes.

09:53:27 6 Q. And he made statements regarding Ms. Mecca and  
09:53:35 7 Louis Salva, correct?

09:53:35 8 A. Yes.

09:53:35 9 Q. Is Mr. Salva someone you would have asked Mr.  
09:53:40 10 Bongiovanni about regardless of the search of the phone?

09:53:42 11 A. Yes.

09:53:52 12 Q. This report has Jimmy Chebot's name on it from  
09:53:59 13 being one of the numbers on that phone, correct?

09:54:02 14 A. Yes.

09:54:02 15 Q. And you is asked him about that name, correct?

09:54:06 16 A. True.

09:54:06 17 Q. Is that a name you would have asked Mr.  
09:54:11 18 Bongiovanni about regardless of the search of the phone,  
09:54:13 19 if you know, at that time?

09:54:14 20 A. At that time, I can't say one way or the other.

09:54:17 21 Q. Next name here, David Lapenna. And you asked  
09:54:27 22 about that individual?

09:54:27 23 A. I did.

09:54:28 24 Q. And Mr. Bongiovanni told you about that  
09:54:30 25 individual and you documented those statements, true?

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09:54:32 2 A. True.

09:54:38 3 Q. Now, there is a Thomas Oswald in this report,  
09:54:43 4 right?

09:54:43 5 A. Yes.

09:54:43 6 Q. And there was a Thomas Oswald that you asked  
09:54:46 7 about Mr. Bongiovanni, correct?

09:54:47 8 A. Correct.

09:54:47 9 Q. And Mr. Bongiovanni told you about Mr. Oswald, a  
09:54:54 10 Tonawanda police detective, correct?

09:54:55 11 A. Correct.

09:54:55 12 Q. And, again, that is someone that you knew  
09:54:59 13 independent of Mr. Bongiovanni, true?

09:55:01 14 A. True.

09:55:10 15 Q. And there is another name, Kerry Doctor, correct?

09:55:14 16 A. Yes.

09:55:15 17 Q. On this report, Government's Exhibit 13, you  
09:55:18 18 asked about Kerry Doctor, Mr. Bongiovanni made  
09:55:21 19 statements and you documented those, right?

09:55:23 20 A. Yes.

09:55:25 21 Q. Is Tom Doctor someone that you understand to be  
09:55:29 22 related to Kerry Doctor?

09:55:31 23 A. Yes.

09:55:31 24 Q. Who is Tom Doctor as you understand it?

09:55:34 25 A. Retired Buffalo Police Department detective and a

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09:55:37 2 former DEA task force officer.

09:55:39 3 Q. And is that someone you would have asked Mr.  
09:55:42 4 Bongiovanni about?

09:55:42 5 A. Yes.

09:55:46 6 Q. And that is regardless of any search of the phone  
09:55:50 7 on April 23, 2019, correct?

09:55:52 8 A. Correct.

09:55:53 9 Q. Now, I know it's no longer the scope of this  
09:56:45 10 hearing, but I'm going to ask you this question, Agent  
09:56:49 11 Ryan. Did Mr. Bongiovanni decline to answer any of your  
09:56:52 12 questions during this investigation?

09:56:53 13 A. No.

09:56:54 14 Q. Had he declined to answer any questions, would  
09:56:57 15 that be okay?

09:56:58 16 A. Yes.

09:56:58 17 Q. And you explained to him that he was allowed to  
09:57:02 18 leave, correct?

09:57:03 19 A. Yes.

09:57:03 20 Q. And had he chose to leave, would you have allowed  
09:57:07 21 him to leave and not talk to him?

09:57:08 22 A. Yes.

09:57:09 23 Q. What did you explain in that regard?

09:57:13 24 MR. HARRINGTON: I'll object.

09:57:14 25 MAGISTRATE JUDGE ROEMER: Why are we going

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09:57:16 2 down this path?

09:57:17 3 MR. TRIPI: We're going down this path  
09:57:19 4 because initially it was relevant until I walked in this  
09:57:22 5 morning. And, second, it goes to the credibility of  
09:57:27 6 Special Agent Ryan. And they've consented, they've  
09:57:30 7 conceded that he wasn't in custody. I understand that.  
09:57:32 8 And he wasn't subject to Miranda. But I think some  
09:57:38 9 context of the interaction between the two of them is  
09:57:41 10 just relevant for the Court to hear and --

09:57:44 11 MAGISTRATE JUDGE ROEMER: But why?

09:57:45 12 MR. TRIPI: Well, you have credibility  
09:57:47 13 determinations to make. And how Special Agent Ryan was  
09:57:50 14 treating Mr. Bongiovanni, I think, is pertinent.  
09:57:53 15 Surrounding --

09:57:54 16 MAGISTRATE JUDGE ROEMER: To what issue is  
09:57:55 17 it pertinent?

09:57:56 18 MR. TRIPI: Well, you have credibility  
09:57:58 19 determinations to make here as well. So, some of that  
09:58:05 20 is pertinent, I don't think just because they walked in  
09:58:08 21 and stipulated to certain things prevents me from  
09:58:11 22 putting on certain proof.

09:58:14 23 MR. HARRINGTON: Judge --

09:58:15 24 MAGISTRATE JUDGE ROEMER: Yes, sir.

09:58:16 25 MR. HARRINGTON: I think if I attacked his

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09:58:18 2 credibility, and that is relevant, he can come back and  
09:58:21 3 redirect, but it's not relevant now.

09:58:23 4 MAGISTRATE JUDGE ROEMER: Okay. I'll  
09:58:24 5 sustain the objection.

09:59:39 6 Q. I'm going to continue with exhibit 11 in a  
09:59:43 7 moment. But I would like to stop there.

09:59:45 8 Now, you've read Mr. Bongiovanni's affidavit that  
09:59:50 9 he submitted in support of getting these hearings,  
09:59:53 10 correct?

09:59:53 11 A. Yes, I have.

09:59:54 12 Q. And in that affidavit, does he make certain  
10:00:01 13 allegations about you?

10:00:02 14 A. He does.

10:00:04 15 Q. Would you like to address some of those  
10:00:07 16 allegations?

10:00:07 17 MR. HARRINGTON: Objection.

10:00:08 18 MAGISTRATE JUDGE ROEMER: What are we doing?

10:00:10 19 MR. TRIPI: Judge, there is a sworn  
10:00:11 20 affidavit submitted to this Court alleging an animus on  
10:00:19 21 behalf of this agent. He should be able to testify  
10:00:22 22 about it now. They don't get to get out of it because  
10:00:25 23 now they have all this Jencks material and now they are  
10:00:29 24 scared about hearing the answers.

10:00:31 25 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

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10:00:33 2 MR. HARRINGTON: Judge --

10:00:34 3 MR. TRIPI: Unless they are going to  
10:00:36 4 withdraw this affidavit.

10:00:38 5 MAGISTRATE JUDGE ROEMER: Calm down, Mr.  
10:00:39 6 Tripi. Mr. Harrington?

10:00:40 7 MR. HARRINGTON: Judge, it has nothing to do  
10:00:43 8 with what the issues that we're talking about right now.

10:00:46 9 MAGISTRATE JUDGE ROEMER: My only thought,  
10:00:47 10 Mr. Harrington, is you brought up during the cross  
10:00:50 11 examination of the previous witness about statements  
10:00:54 12 about Italians and stuff like that. And what is the  
10:00:59 13 question, can I ask? I also don't like the form of the  
10:01:03 14 question. Is there anything you want to say about an  
10:01:05 15 affidavit.

10:01:06 16 MR. TRIPI: I understand. I was trying to  
10:01:08 17 get the issue before the Court. Maybe I did it poorly,  
10:01:11 18 but I'm operating on the fly here and trying to  
10:01:14 19 articulate for the Court why you should hear some things  
10:01:17 20 that are a little bit beyond where the defense has now  
10:01:20 21 walked in today and stipulated they want to go. I  
10:01:23 22 apologize for the form of that question, Judge. But  
10:01:26 23 there are paragraphs in there that, one, deal with the  
10:01:29 24 cell phone, so we're going to have to talk about those,  
10:01:33 25 and then there is -- there is a paragraph in here, if I

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10:01:38 2 could just find it.

10:01:43 3 MAGISTRATE JUDGE ROEMER: You said something  
10:01:44 4 about Italians, he doesn't like Italians or he is going  
10:01:50 5 after Italians or something like that.

10:01:53 6 MR. TRIPI: That's correct. I want to read  
10:01:54 7 it for the Court and get it right. This would be on  
11:32:39 8 page, the page I'm dealing with, docket 81, page 96.

11:32:44 9 MAGISTRATE JUDGE ROEMER: Is this affidavit  
11:32:46 10 an exhibit in the case?

11:32:47 11 MR. TRIPI: It's -- well, they've submitted  
11:32:50 12 it to you, so it's a judicial document.

11:32:52 13 MAGISTRATE JUDGE ROEMER: I'm just asking,  
11:32:53 14 is it an exhibit in this case.

11:32:55 15 MR. TRIPI: I marked it as an exhibit, I'm  
11:32:58 16 not offering it as an exhibit.

11:32:59 17 MAGISTRATE JUDGE ROEMER: I just want to  
11:33:00 18 look at it.

11:33:01 19 MR. TRIPI: Sorry, docket 32. Sorry, Judge.

11:33:08 20 Q. Specifically docket, Government's Exhibit 32,  
11:33:13 21 page 96, paragraph 23, addresses the cell phone.

11:33:22 22 Paragraph 24 addresses the cell phone. And then Mr.  
11:33:33 23 Bongiovanni, his affidavit reads, "He then asked me to  
11:33:38 24 'tell him all about the mafia.' I answered I didn't  
11:33:41 25 know what he was talking about?"

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11:33:42 2 MAGISTRATE JUDGE ROEMER: What paragraph?

11:33:43 3 MR. TRIPI: Paragraph 24.

11:33:46 4 "He began to read names from the contact  
11:34:10 5 directory of my phone. I noticed and commented at that  
11:34:13 6 time that the only individuals he asked me about were  
11:34:16 7 those with Italian last names." And then it goes on  
11:34:21 8 about not being free to leave. We're basically looking  
11:34:24 9 at paragraph 23 and 24.

11:34:26 10 MAGISTRATE JUDGE ROEMER: I overrule the  
11:34:27 11 objection. You can ask questions about those two  
11:34:30 12 paragraphs.

11:34:31 13 MR. TRIPI: Thank you, Judge.

11:34:34 14 Q. All right. Now, at some point during your  
11:34:47 15 discussion, did searching agents bring a cell phone to  
11:34:56 16 your attention?

11:34:56 17 A. Yes.

11:34:56 18 Q. Describe how that happened.

11:34:58 19 A. One of the agents, I don't remember which one,  
11:35:02 20 brought the phone to the table and said that they  
11:35:05 21 thought it was Mr. Bongiovanni's.

11:35:09 22 Q. At that point, just by looking at the cell phone,  
11:35:13 23 did you know one way or another whether it was Mr.  
11:35:17 24 Bongiovanni's?

11:35:17 25 A. No.



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11:35:17 2 Q. And at that point, by looking at the cell phone,  
11:35:22 3 did you know one way or another whether that cell phone  
11:35:26 4 was the phone that had been border searched April 23,  
11:35:30 5 2019?

11:35:30 6 A. No.

11:35:31 7 Q. So, I'm just going to ask you to describe what  
11:35:37 8 happened after the agent brought the phone to you and  
11:35:40 9 said they thought it was Mr. Bongiovanni?

11:35:43 10 A. I asked him if it was his phone. He said that it  
11:35:46 11 was. Talked about the fact that the phone was in the  
11:35:48 12 warrant. I asked him, so we would be taking it, I asked  
11:35:52 13 him if the phone had a security code or pass code and if  
11:35:56 14 he would be willing to share the code with me. He said  
11:35:58 15 it was not numbers, but dots, and described the code to  
11:36:03 16 me. I made the dot pattern in my notes and drew a line  
11:36:08 17 to show the swipe pattern to follow. And then I said  
11:36:12 18 "like this" and swiped on the phone to see if the code  
11:36:16 19 was correct, and that I had it right. It unlocked the  
11:36:20 20 phone. I hit the button on the side of the phone and  
11:36:23 21 locked the phone and then I set it on the table next to  
11:36:43 22 me.

11:36:43 23 Q. So, did you search the phone as you sat there  
11:36:46 24 next to Mr. Bongiovanni?

11:36:47 25 A. No.

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11:36:47 2 Q. Did you scroll through the contacts of the phone  
11:36:57 3 and sit and ask him about the contacts in the phone as  
11:37:01 4 you scrolled through it?

11:37:01 5 A. No.

11:37:02 6 Q. Is it your understanding that FBI Special Agent  
11:37:09 7 Brian Burns had been going around the house with Mr.  
11:37:12 8 Bongiovanni's wife and she was pointing out items to  
11:37:16 9 him?

11:37:16 10 A. Yes.

11:37:18 11 Q. And is it your understanding that when you were  
11:37:21 12 informed that this might be Mr. Bongiovanni's phone,  
11:37:26 13 that that belief was formed on the basis of what Special  
11:37:30 14 Agent Burns and Lindsay were doing?

11:37:31 15 A. In that moment, I don't know -- I wasn't paying  
11:37:38 16 that much attention to what was going on elsewhere in  
11:37:41 17 the house.

11:37:42 18 Q. Okay. I'm going to show you Government's Exhibit  
11:37:54 19 No. 12 in evidence.

11:37:58 20 MR. TRIPI: Judge, this is page 3 of 10 on  
11:38:00 21 the monitor. Just to show at the bottom, it says "3 of  
11:38:05 22 10" on the bottom left.

11:38:14 23 Q. There is a little bit of glare and I'll try and  
11:38:17 24 move. I'm looking at the upper-right-hand part of the  
11:38:20 25 screen. Do you see that?

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11:38:21 2 A. Yes.

11:38:21 3 Q. It looks to be a symbol drawn. Can you describe  
11:38:25 4 what is drawn there?

11:38:26 5 A. That is the nine dot front of the phone that had  
11:38:33 6 the swipe code, so Mr. Bongiovanni described it to me.  
11:38:38 7 It was dots. I drew the dots and then I made the line  
11:38:42 8 to show the code that the swipe pattern that unlocked  
11:38:45 9 the phone.

11:38:46 10 Q. And you drew the pattern in your notes?

11:38:48 11 A. Yes.

11:38:49 12 Q. And you wrote next to it, what did you write next  
11:38:52 13 to it?

11:38:53 14 A. "Phone code."

11:38:55 15 Q. Was that the extent of your dealing with the  
11:38:58 16 phone that -- the physical phone that day?

11:39:00 17 A. Yes.

11:39:23 18 Q. Reading from paragraph 24 of Mr. Bongiovanni's  
11:39:26 19 affidavit now and then I'll ask you some questions about  
11:39:29 20 it. Special Agent Ryan opened my phone, he began  
11:39:32 21 scrolling through its contents. Did you scroll through  
11:39:35 22 its contents?

11:39:36 23 A. No.

11:39:37 24 Q. I asked him if he had been responsible for the  
11:39:40 25 seizure of my phone and my family's phone at Baltimore

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11:39:44 2 Washington Airport. Did Mr. Bongiovanni ask you that?

11:39:47 3 A. We did discuss the border search as it related to  
11:39:51 4 the people I was going to ask him about.

11:39:54 5 Q. Did you say to him the words, "yes, that was me"?

11:39:57 6 A. I may have.

11:39:58 7 Q. He then asked me to "tell him all about the  
11:40:02 8 mafia." Did you ever say that during this interview?

11:40:05 9 A. No.

11:40:07 10 Q. Do you think that would be an effective  
11:40:09 11 interrogation technique to ask a question that way?

11:40:13 12 A. No.

11:40:13 13 Q. There is another sentence that follows that and  
11:40:35 14 then I'll read the next sentence reads, "He began to  
11:40:47 15 read numbers from the contact directory of my phone."  
11:40:52 16 Did you read the names from the contact directory of Mr.  
11:40:56 17 Bongiovanni's phone on June 6th, 2019?

11:40:58 18 A. No.

11:40:59 19 Q. "I noticed and commented at the time that the  
11:41:08 20 only individuals they asked me about were those with  
11:41:12 21 Italian last names." Did Mr. Bongiovanni make a  
11:41:15 22 statement to you to that effect?

11:41:16 23 A. He did.

11:41:17 24 Q. And did you respond?

11:41:18 25 A. I did.

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11:41:18 2 Q. And describe it.

11:41:19 3 A. I told him that we were asking him about the  
11:41:21 4 names that we learned from his phone from the border  
11:41:24 5 search and it was in this section of the interview where  
11:41:29 6 we were going through those names, the names in bold in  
11:41:33 7 my report.

11:41:34 8 Q. So the names were what the names were?

11:41:36 9 A. Yes.

11:41:38 10 Q. Do you have any animus towards Mr. Bongiovanni  
11:41:41 11 because he may be Italian?

11:41:43 12 A. None.

11:42:01 13 MR. TRIPI: One moment, please, Judge.

11:42:02 14 MAGISTRATE JUDGE ROEMER: Sure.

11:42:06 15 THE WITNESS: Judge, would it be all right  
11:42:08 16 if I stood up for a second?

11:42:09 17 MAGISTRATE JUDGE ROEMER: Sorry?

11:42:11 18 THE WITNESS: May I stand up for a second?

11:42:16 19 MAGISTRATE JUDGE ROEMER: Sure. He just  
11:42:19 20 asked to stand up.

11:42:34 21 Q. One more question, I guess, about the phone. If  
11:42:38 22 Mr. Bongiovanni chose to not give you the code to the  
11:42:41 23 phone when you asked him, would you have tried to verify  
11:42:46 24 or open the phone to verify the code?

11:42:49 25 A. No, I wouldn't have had anything to verify.

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11:42:53 2 Q. Did he object at all when you did that?

11:42:55 3 A. No.

11:42:57 4 Q. And as it relates to the phone, the very next  
11:43:02 5 day, what did you do?

11:43:03 6 A. We sought a search warrant for the device that we  
11:43:20 7 found in the house.

11:43:21 8 Q. And that phone was included in the warrant  
11:43:24 9 application?

11:43:24 10 A. Yes.

11:43:25 11 Q. And that was to a different magistrate, correct?

11:43:29 12 A. Yes.

11:43:30 13 Q. And that warrant was signed and authorized,  
11:43:33 14 correct?

11:43:33 15 A. It was.

11:43:34 16 Q. Okay. Let me pick back up on page six of  
11:43:49 17 Government's Exhibit 11. So after the last bolded name  
11:43:52 18 on page six, Terry Doctor, there is a paragraph under  
11:44:08 19 that that reads "SA Ryan asked Bongiovanni about a  
11:44:11 20 picture and several other males." Now, you had a  
11:44:20 21 picture with you, correct?

11:44:21 22 A. Yes.

11:44:23 23 Q. The picture that you showed Mr. Bongiovanni, did  
11:44:27 24 that come from the search of the phone April 23, 2019?

11:44:31 25 A. No, it did not.

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11:44:32 2 Q. Without naming anybody, how did you acquire the  
11:44:37 3 photo that you showed Mr. Bongiovanni?

11:44:39 4 A. From a witness.

11:44:44 5 Q. I'll show you Government's Exhibit 14. Do you  
11:44:52 6 recognize Government's Exhibit 14?

11:44:53 7 A. Yes.

11:44:54 8 Q. What do you recognize it to be?

11:44:56 9 A. It's the photograph that we're discussing that I  
11:45:00 10 showed Mr. Bongiovanni on June 6th, 2019.

11:45:03 11 Q. And does it fairly and accurately depict the  
11:45:06 12 photo that you acquired during the investigation and  
11:45:08 13 then had with you when you showed it to Mr. Bongiovanni  
11:45:11 14 at the point in the interview where it's reflected on  
11:45:14 15 page six of Government's Exhibit 11?

11:45:19 16 A. Yes.

11:45:19 17 Q. What did Mr. Bongiovanni say about that photo?

11:45:22 18 A. He said it was a photo from a birthday party,  
11:45:25 19 party in Toronto. And that was arranged by a friend of  
11:45:30 20 his.

11:45:32 21 Q. And you documented the specifics in your report  
11:45:35 22 there?

11:45:35 23 A. I did. I asked him who the people in the photo  
11:45:38 24 were and he gave me names and I documented them in the  
11:45:41 25 report.

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11:45:41 2 Q. And all of those names are listed in Government's  
11:45:43 3 Exhibit 11?

11:45:44 4 A. Yes.

11:45:44 5 Q. And the statements that Mr. Bongiovanni made  
11:45:46 6 about those people?

11:45:47 7 A. Yes.

11:46:03 8 Q. Does that photo --

11:46:04 9 MR. TRIPI: Did I offer it yet? If I  
11:46:07 10 didn't, I'm offering exhibit 14. I can't remember if I  
11:46:10 11 offered it.

11:46:12 12 MAGISTRATE JUDGE ROEMER: You did not.

11:46:13 13 MR. TRIPI: May I please offer it?

11:46:14 14 MR. HARRINGTON: I object on its relevance.

11:46:16 15 MAGISTRATE JUDGE ROEMER: Overruled.

11:46:18 16 Government's Exhibit 14 shall be admitted into evidence.

11:46:18 17 **(Whereupon, Government Exhibit 14 was**  
11:46:23 18 **received into evidence.)**

11:46:23 19 Q. Did you have another photo that you then asked  
11:46:26 20 Mr. Bongiovanni about?

11:46:27 21 A. I did.

11:46:28 22 Q. Was that other photo a photo that you obtained as  
11:46:33 23 a result of the border search on April 23, 2019 or by  
11:46:36 24 some other means?

11:46:37 25 A. Other means.



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11:46:38 2 Q. And I'm going to show you Government's Exhibit  
11:46:42 3 No. 15. Do you recognize Government's Exhibit 15?

11:46:56 4 A. I do.

11:46:58 5 Q. What do you recognize that to be as it relates to  
11:47:00 6 your interview of Mr. Bongiovanni, June 6, 2019?

11:47:05 7 A. The second photograph that I showed him, the one  
11:47:09 8 that I described as a picture that depicted him his wife  
11:47:20 9 and several other people.

11:47:21 10 Q. So, begins on the bottom paragraph of page six,  
11:47:26 11 Government's Exhibit 11?

11:47:27 12 A. Yes.

11:47:28 13 Q. And continues onto the next page?

11:47:29 14 A. Correct.

11:47:32 15 Q. And what did Mr. Bongiovanni say about that  
11:47:36 16 photograph?

11:47:36 17 A. He said that he remembered the day, he described  
11:47:40 18 the circumstances surrounding the photograph and  
11:47:42 19 identified some of the people in the photo.

11:47:44 20 Q. And who did he identify in the photo?

11:47:46 21 A. Tom Doctor, Peter Gerace, some of the other  
11:47:53 22 people in the photo, his wife.

11:48:03 23 Q. In the blue shirt, far right, is that Mr.  
11:48:06 24 Bongiovanni as depicted in the photo?

11:48:07 25 A. Yes.

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11:48:08 2 MR. TRIPI: Judge, I'm offering this  
11:48:10 3 exhibit, Exhibit 15. I should have done that before.

11:48:14 4 MR. HARRINGTON: I'll object to it.

11:48:16 5 MAGISTRATE JUDGE ROEMER: Overruled  
11:48:17 6 Government's Exhibit 15 shall be admitted into evidence.

11:48:17 7 **(Whereupon, Government Exhibit 15 was**  
11:48:26 8 **received into evidence.)**

11:48:26 9 Q. Far right in the blue shirt, is that Mr.  
11:48:30 10 Bongiovanni?

11:48:30 11 A. Yes, it is.

11:48:31 12 Q. The male next to him in the red shirt, is that  
11:48:35 13 Peter Gerace?

11:48:36 14 A. Yes.

11:48:37 15 Q. A co-defendant in this case?

11:48:38 16 A. Yes.

11:48:38 17 Q. Far left, maybe third from left, appearing to  
11:48:45 18 have no shirt, sunglasses, possibly drinking a beer, is  
11:48:49 19 that Tom Doctor?

11:48:49 20 A. Yes.

11:49:06 21 Q. So going back to your interview report page six  
11:49:15 22 under Kerry Doctor, where you noted Mr. Bongiovanni said  
11:49:18 23 Kerry is the wife of his old partner Tom Doctor. Tom  
11:49:24 24 Doctor was an agent with DEA. Tom Doctor is retired and  
11:49:43 25 lives in Florida.

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11:49:45 2 Independently, would you have asked about Mr.  
11:49:47 3 Doctor and the relationship with Mr. Bongiovanni based  
11:49:50 4 upon the photo that you had, separate and apart from the  
11:49:53 5 border search name Kerry Doctor?

11:49:55 6 A. Yes.

11:50:04 7 Q. Turning to page 7 of the report, Government's  
11:50:07 8 Exhibit 11. Top paragraph, does that continue the  
11:50:12 9 discussion about the photo that is in exhibit 15 that we  
11:50:17 10 just discussed?

11:50:18 11 A. Yes.

11:50:18 12 Q. Switch to Government's Exhibit 10 in evidence.  
11:50:37 13 This is a piece of evidence that was located during the  
11:50:40 14 search. Is that correct?

11:50:41 15 A. Yes.

11:50:42 16 Q. And where was it located?

11:50:43 17 A. On the lower level, the garage level of the  
11:50:47 18 house.

11:50:47 19 Q. And was that box brought up to you during your  
11:50:50 20 interview with Mr. Bongiovanni?

11:50:51 21 A. Yes.

11:50:52 22 Q. Did you ask him about it?

11:50:53 23 A. Specifically about the file inside.

11:50:57 24 Q. And what, in basic terms, is that the file that  
11:51:06 25 is referenced in the second superseding indictment in

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11:51:10 2 this case?

11:51:10 3 A. Yes.

11:51:13 4 Q. We see a C2 on the file. See that C2 and then  
11:51:19 5 it's covered by a book or something?

11:51:21 6 A. Yes.

11:51:21 7 Q. The rest of that number that was on that file,  
11:51:26 8 once that book is removed, is that the file number that  
11:51:29 9 is referenced specifically in the second superseding  
11:51:31 10 indictment?

11:51:31 11 A. Yes.

11:51:39 12 Q. I'll ask you one more question about that. And  
11:51:41 13 the names written on that file, those are names you  
11:51:47 14 would have asked Mr. Bongiovanni about during this  
11:51:52 15 interview?

11:51:52 16 A. Yes.

11:51:55 17 Q. And generally you asked him why he had this file?

11:51:58 18 A. Yes.

11:51:59 19 Q. And he provided you a series of answers, is that  
11:52:01 20 correct?

11:52:02 21 A. He did.

11:52:02 22 Q. And you documented those?

11:52:04 23 A. I did.

11:52:14 24 Q. Are those answers documented on page 7 somewhere?

11:52:25 25 A. Yes, towards --

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11:52:27 2 Q. Can we Zoom out?

11:52:28 3 A. The top of the screen, I can see it. So the  
11:52:33 4 first full paragraph.

11:52:36 5 Q. Where it begins "SA Ryan asked Bongiovanni why he  
11:52:39 6 had reports"?

11:52:39 7 A. Yes.

11:52:46 8 Q. Okay. And then after that, did you ask him about  
11:52:49 9 some bulletproof vests that were found in the house?

11:52:52 10 A. Yes.

11:52:54 11 Q. And that is the paragraph that is underneath the  
11:52:56 12 agent's comment?

11:52:58 13 A. That's correct.

11:53:03 14 Q. Did you ask Mr. Bongiovanni about text exchanges  
11:53:06 15 he had with Peter Gerace?

11:53:08 16 A. I did.

11:53:09 17 Q. Where did you get those texts from?

11:53:11 18 A. From a memorandum he submitted, two memoranda he  
11:53:15 19 submitted to DEA.

11:53:18 20 Q. So as a part of the investigation, you're aware  
11:53:22 21 that he submitted some internal DEA memos?

11:53:25 22 A. Yes.

11:53:26 23 Q. And he attached some text messages between  
11:53:28 24 himself and Peter Gerace?

11:53:30 25 A. Yes.

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11:53:30 2 Q. And some of those memos, the dates of those memos  
11:53:37 3 are the dates of some of the obstruction counts in the  
11:53:40 4 second superseding indictment, correct?

11:53:41 5 A. Yes.

11:53:48 6 Q. By the time you are having this conversation with  
11:53:51 7 Mr. Bongiovanni on June 6th, 2019, separately in the  
11:53:55 8 investigation, had Mr. Gerace's phone been seized during  
11:53:58 9 a separate border search?

11:54:00 10 A. Yes.

11:54:01 11 Q. On a different date?

11:54:02 12 A. Yes.

11:54:07 13 Q. And that phone in the Gerace border search phone,  
11:54:12 14 that is not part of this hearing, did you acquire some  
11:54:16 15 text exchanges between Mr. Gerace and Mr. Bongiovanni?

11:54:21 16 A. Yes.

11:54:21 17 Q. Did you acquire a voicemail that was left from  
11:54:24 18 Mr. Gerace to Mr. Bongiovanni?

11:54:25 19 A. There was a voicemail.

11:54:27 20 Q. And pictures?

11:54:28 21 A. And pictures.

11:54:32 22 Q. Was the picture in Government's Exhibit 15 one of  
11:54:36 23 the pictures in that Gerace phone?

11:54:37 24 A. Yes.

11:55:09 25 Q. Did you ask Mr. Bongiovanni questions about Dan

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11:55:13 2 Derinda?

11:55:13 3 A. Yes.

11:55:14 4 Q. How did the comment about Peter Gerace being good  
11:55:27 5 friends with Judge Michalski come up?

11:55:31 6 A. That was volunteered as it was a name I wasn't  
11:55:34 7 familiar with leading up to this. We were talking about  
11:55:41 8 people that Peter Gerace knew.

11:55:45 9 Q. And does that cover the next couple of lines as  
11:55:48 10 well, the name Joe Chirelli and Rocco Dina?

11:55:53 11 A. Yes. I'm asking him about law enforcement  
11:55:57 12 friends of Peter Gerace.

11:55:58 13 Q. Of Peter Gerace?

11:56:00 14 A. Yes.

11:56:02 15 Q. And then under, there is a paragraph that reads  
11:56:06 16 "Peter Gerace obsessively called." Do you see that?

11:56:11 17 A. Yes.

11:56:11 18 Q. Was that in response to a question or how did  
11:56:13 19 that come up?

11:56:14 20 A. It was Mr. Bongiovanni was describing Peter  
11:56:18 21 Gerace's behavior to me and that is the way he described  
11:56:22 22 it.

11:56:23 23 Q. How did the name Lou Salva come up?

11:56:27 24 A. When I asked him about Kim Mecca.

11:56:32 25 Q. But you knew who that was already?

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11:56:34 2 A. I did.

11:56:36 3 Q. And then the last paragraph on that page begins

11:56:39 4 "SA Ryan closed the interview by asking Bongiovanni," do  
11:56:46 5 you see that?

11:56:46 6 A. I do.

11:56:47 7 Q. And you documented his statements about that,  
11:56:49 8 correct?

11:56:49 9 A. Yes.

11:56:54 10 Q. And that, again, related to the file that is  
11:56:57 11 found that we just talked about depicted in Government's  
11:57:01 12 Exhibit 10, correct?

11:57:01 13 A. Correct.

11:57:07 14 Q. And was there unlabeled pill bottles that were  
11:57:12 15 found during the search that you became aware of before  
11:57:24 16 you ended the interview?

11:57:25 17 A. Yes.

11:57:25 18 Q. And did you ask him about that?

11:57:27 19 A. I did.

11:57:27 20 Q. And did you document his response on page 8  
11:57:30 21 there?

11:57:30 22 A. Yes.

11:58:02 23 Q. I'm going to show you now Government's Exhibit  
11:58:05 24 No. 16. Do you recognize Government's Exhibit 16?

11:58:40 25 A. I do.



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11:58:41 2 Q. What do you recognize that to be?

11:58:42 3 A. It's an application for a search warrant that I  
11:58:44 4 submitted to this Court for the search of 85 Alder Place  
11:58:49 5 Kenmore, in Kenmore, New York. And then a portion of  
11:58:53 6 the or an excerpt of the supporting affidavit that has  
11:58:56 7 been redacted.

11:58:57 8 Q. And it's a small excerpt and it contains  
11:59:02 9 redactions. Is that accurate?

11:59:03 10 A. Yes.

11:59:03 11 Q. And for the portions --

11:59:06 12 MAGISTRATE JUDGE ROEMER: Mr. Tripi, I need  
11:59:07 13 you to stand by the microphone.

11:59:11 14 Q. The portions of the application that are visible,  
11:59:16 15 so the first page, and then the paragraphs that are  
11:59:19 16 included in that excerpt, are those all accurate  
11:59:23 17 paragraphs in terms of what was in the affidavit?

11:59:56 18 A. Yes, they appear to be.

12:00:03 19 MR. TRIPI: Judge, for purposes of this  
12:00:04 20 hearing, I'm going to offer the excerpted redacted  
12:00:08 21 Government's Exhibit 16.

12:00:11 22 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

12:00:12 23 MR. HARRINGTON: No objection.

12:00:12 24 MAGISTRATE JUDGE ROEMER: Okay.

12:00:14 25 Government's Exhibit 16 shall be admitted into evidence

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12:00:21 2 (Whereupon, Government's Exhibit 16 was  
12:00:24 3 received into evidence.)

12:00:27 4 Q. Now, I'm going to show you a paragraph that is  
12:00:33 5 unredacted, which appears on page 20 of the affidavit.  
12:00:39 6 Says, "On April 24, 2019, Joseph Bongiovanni, his wife  
12:00:44 7 and stepson entered the United States at Baltimore  
12:00:47 8 Washington International Airport after returning to the"  
12:00:51 9 and continues onto the next page. I ask you about that  
12:00:54 10 date for a moment. That date is an error, correct?

12:00:57 11 A. It is. That is the date of the secondary report  
12:01:02 12 and when they actually entered on the 23rd.

12:01:05 13 Q. Did you transpose, essentially, the typographical  
12:01:09 14 error on Officer Gernatt's report using that date?

12:01:14 15 A. Yes.

12:01:14 16 Q. And make an error as to the date in that  
12:01:17 17 paragraph?

12:01:17 18 A. Yes, I did.

12:01:22 19 Q. That paragraph continues onto the next page. It  
12:01:27 20 says "United States from Dominican Republic. At that  
12:01:30 21 time U.S. Customs and Border Protection officers  
12:01:34 22 conducted a border search of Joseph Bongiovanni's  
12:01:37 23 telephone. Officers attempted a full forensic  
12:01:41 24 examination of the phone, but were unsuccessful,  
12:01:44 25 nonetheless significant results of the search are

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12:01:47 2 detailed below." And then there are three paragraphs,  
12:01:52 3 A, B, and C on this page and carries onto a D top of the  
12:01:57 4 next page. Do you see that?

12:01:58 5 A. Yes.

12:01:59 6 Q. Four of the names, did you include four of those  
12:02:04 7 names from that border search in paragraph 55 of the  
12:02:09 8 search warrant affidavit?

12:02:10 9 A. Yes.

12:02:12 10 Q. And what is blacked out is the actual name and,  
12:02:17 11 well, just characterize what is blacked out in each of  
12:02:20 12 these paragraphs, please?

12:02:21 13 A. The name of the person and then what I was able  
12:02:26 14 to learn about that person from various law enforcement  
12:02:28 15 reports.

12:02:29 16 Q. So the relevance of the person to your  
12:02:32 17 investigation provided, correct?

12:02:36 18 A. Correct.

12:02:37 19 Q. And that is relevance that you were able to glean  
12:02:40 20 after doing some looking at the names, correct?

12:02:44 21 A. Correct.

12:02:44 22 Q. Other than that, did the rest of the affidavit,  
12:02:54 23 did the rest of the, if you can characterize it did the  
12:02:58 24 rest of the affidavit rely upon anything that was  
12:03:04 25 stemmed from the border search on April 23, 2019?

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12:03:12 2 A. No.

12:13:19 3 Q. If paragraph 55 had been deleted and never put  
12:13:49 4 into this search warrant affidavit, would you have still  
12:13:54 5 submitted the search warrant for Judge Roemer's  
12:13:56 6 approval?

12:13:57 7 A. Yes.

12:14:04 8 MR. TRIPI: May I have just a few moments,  
12:14:09 9 Judge.

12:14:09 10 MAGISTRATE JUDGE ROEMER: Sure.

12:14:30 11 Q. I'd just like to circle back before I end here.  
12:14:34 12 Okay. At the time you worked with CBP Buffalo officers  
12:14:54 13 to work with their counterparts in Baltimore to put a  
12:14:59 14 lookout for Mr. Bongiovanni, did you believe, based on  
12:15:03 15 your training and experience, it was lawful to do a  
12:15:06 16 basic search of someone's cell phone at the border?

12:15:09 17 A. Yes.

12:15:09 18 Q. And was that belief based on your training and  
12:15:12 19 experience regarding the search and seizure of items and  
12:15:19 20 evidence at the border?

12:15:20 21 A. Yes.

12:15:21 22 Q. Based on your understanding of the Fourth  
12:15:23 23 Amendment in that area?

12:15:24 24 A. Yes.

12:15:29 25 Q. Did you believe you were following existing law?

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12:15:32 2 A. Yes.

12:15:37 3 Q. Did you act in good faith in doing that?

12:15:39 4 A. Yes.

12:15:47 5 MR. TRIPI: I don't have anything further,  
12:15:50 6 Judge, on direct. Thank you.

12:15:51 7 MAGISTRATE JUDGE ROEMER: Thank you. You  
12:16:11 8 ready, Mr. Harrington, or did you need a break?

12:16:14 9 MR. HARRINGTON: I may need five, ten  
12:16:16 10 minutes.

12:16:16 11 MAGISTRATE JUDGE ROEMER: Let's come back at  
12:16:18 12 ten after 2.

12:16:20 13 (Whereupon, there was a break in the  
12:16:20 14 proceeding.)

12:16:29 15 THE CLERK: We're all set.

12:16:30 16 MAGISTRATE JUDGE ROEMER: I'm glad I waited  
12:16:32 17 for a second. I didn't know Mr. Bongiovanni wasn't back  
12:16:34 18 in the room.

12:16:36 19 THE DEFENDANT: Sorry, sir.

12:16:37 20 MAGISTRATE JUDGE ROEMER: That's okay.

12:16:38 21 We're all back. Mr. Harrington.

12:16:40 22 MR. HARRINGTON: Judge, before we begin the  
12:16:42 23 questioning, Mr. Tripi went into questions with Mr. Ryan  
12:16:47 24 about the search warrant application for my client's  
12:16:49 25 home and it is severely redacted and he asked him for --

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12:16:56 2 asked him questions about other parts.

12:16:59 3 THE CLERK: Just a minute, Jim. I'm sorry.

12:17:14 4 Okay. Thank you.

12:17:17 5 MR. HARRINGTON: And since that was now an  
12:17:18 6 issue.

12:17:18 7 MAGISTRATE JUDGE ROEMER: Could you start  
12:17:19 8 over?

12:17:20 9 THE CLERK: Judge, I'm sorry. Just one  
12:17:22 10 second, please. I just need to, I think it's just been  
12:17:32 11 too long. Okay. I'm sorry.

12:17:34 12 MR. HARRINGTON: Start over?

12:17:36 13 THE CLERK: We're good. Yes, please.

12:17:39 14 MR. HARRINGTON: Judge, Mr. Tripi asked Mr.  
12:17:41 15 Ryan some questions about Government's Exhibit 16, which  
12:17:44 16 is a search warrant application for my client's home,  
12:17:47 17 which is redacted, significantly redacted, and there are  
12:17:51 18 parts of it that are supposed to relate to the telephone  
12:17:57 19 issue, but he asked him questions about the unredacted  
12:18:00 20 part, and I think we're entitled to see that. And I  
12:18:03 21 understand the Court has ruled on that before, but we're  
12:18:07 22 in a different posture with it right now. We're  
12:18:10 23 certainly willing to consent to a protective order if  
12:18:14 24 the Court wants to issue one with respect to the  
12:18:18 25 disclosure of it to our client. But I think we're

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12:18:21 2 entitled to see it. And to be able to determine whether  
12:18:26 3 there is further questioning that needs to be done of  
12:18:29 4 Mr. Ryan.

12:18:30 5 MAGISTRATE JUDGE ROEMER: Mr. Tripi?

12:18:32 6 MR. TRIPI: Judge, that's not accurate.

12:18:33 7 Under Rule 26.2, the Court is permitted to review the  
12:18:38 8 unredacted and redacted in camera. You certainly have  
12:18:42 9 reviewed this entire search warrant affidavit a number  
12:18:45 10 of times. You can see the redactions that I made.

12:18:48 11 MAGISTRATE JUDGE ROEMER: That is usually in  
12:18:49 12 the context of determining a probable cause or something  
12:18:52 13 like that. Now here, you asked him questions about it  
12:18:56 14 saying, okay, in the affidavit you talked about the  
12:19:00 15 different contacts that he received from the phone,  
12:19:08 16 right?

12:19:09 17 MR. TRIPI: Right.

12:19:09 18 MAGISTRATE JUDGE ROEMER: And then he  
12:19:11 19 testified, I collected this other information and I put  
12:19:13 20 it in there. And I believe that was in the context of  
12:19:16 21 was to show he didn't rely just on the phone contact, he  
12:19:19 22 had other information on there.

12:19:21 23 MR. TRIPI: Well, Judge, the rule, the rule  
12:19:24 24 talks about under 26, I believe 26.2, talks about --

12:19:31 25 MAGISTRATE JUDGE ROEMER: Let me pull out

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12:19:34 2 26.2.

12:19:35 3 MR. TRIPI: It's definitely point 2, I think  
12:19:38 4 it's 26.2, but, basically, it stands from the  
12:19:41 5 proposition that if there is Jencks Act material that  
12:19:47 6 needs to be redacted, the Court can look at what has  
12:19:51 7 been provided and what has been redacted and make that  
12:19:54 8 determination. Here we've unredacted, we've unredacted  
12:19:59 9 paragraph 55 and a couple of other paragraphs that  
12:20:03 10 relate to the hearing testimony today what we've left  
12:20:07 11 redacted, obviously, is the overwhelming majority of  
12:20:11 12 that search warrant affidavit, which has nothing to do  
12:20:14 13 with the border search as well as the agent's analysis  
12:20:21 14 of the names. That also has nothing to do with this  
12:20:25 15 hearing. The analysis of the names that were included  
12:20:30 16 in the affidavit is separate and apart from what is  
12:20:33 17 pertinent here. The only reason I got into it is  
12:20:38 18 because now we're in some sort of weird fruit of the  
12:20:41 19 poisonous tree hearing.

12:20:43 20 MAGISTRATE JUDGE ROEMER: We're definitely  
12:20:45 21 in an odd posture.

12:20:46 22 MR. TRIPI: And, again, defense counsel  
12:20:49 23 operated in good faith, I'm not saying otherwise, but,  
12:20:52 24 we have to address what came from the phone versus what  
12:20:56 25 the agent did. And if you read that paragraph in



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12:21:00 2 camera, and you compare it to Government's Exhibit 1,  
12:21:03 3 which is the raw data from the phone, you'll see that  
12:21:06 4 there is a lot more there. Now, if I'm wrong about  
12:21:09 5 that, you could, after you do that comparison, Judge, in  
12:21:13 6 camera, you can tell me I'm wrong and we can come back  
12:21:17 7 and address it.

12:21:18 8 MAGISTRATE JUDGE ROEMER: This is a good  
12:21:19 9 time to get into this. I've been thinking about it as  
12:21:23 10 we've gone through. We're a little bit of cart before  
12:21:25 11 the horse type deal here. We're talking about what will  
12:21:29 12 happen if or when I were to say that this should be the  
12:21:33 13 border search should be suppressed, right?

12:21:36 14 MR. TRIPI: Right.

12:21:36 15 MAGISTRATE JUDGE ROEMER: That is why it's  
12:21:39 16 in an odd posture, okay. Because, Mr. Harrington, I'm  
12:21:44 17 anticipating, that during your cross, you may ask,  
12:21:48 18 because Mr. Tripi went down and said, okay, you stated  
12:21:50 19 this or asked this question and did that have anything  
12:21:56 20 to do with what got on the phone and the agent said no,  
12:21:59 21 it didn't. So I anticipate your next question will be,  
12:22:03 22 well, where did you get that.

12:22:05 23 MR. TRIPI: And I'll be objecting to that.

12:22:07 24 MAGISTRATE JUDGE ROEMER: And I would assume  
12:22:08 25 that Mr. Tripi would object to that. And the posture

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12:22:11 2 that we're in, now we're almost in discovery type of

12:22:16 3 posture where you're asking questions that, so my

12:22:21 4 thought on that is to keep this hearing open with regard

12:22:25 5 to that. Have you ask today all of the questions that

12:22:29 6 you want to ask about suppressing the border search, we

12:22:34 7 brief it and decide the border search issue. If I

12:22:41 8 decide it shouldn't be suppressed, this is all

12:22:45 9 irrelevant. There is no fruit of the poisonous tree.

12:22:48 10 If it is, if I decide it should be suppressed, well

12:22:53 11 then, one, I think there is a whole other legal issue I

12:22:57 12 think. I think Mr. Tripi's from -- I take it from the

12:23:01 13 way he has asked his questions, that he thinks, well,

12:23:05 14 that would only get rid of stuff that was directly

12:23:09 15 relevant to the phone contact and that is what he has

12:23:12 16 done today, gone through and said this wasn't, this was.

12:23:17 17 I anticipate you'll take the legal position then it

12:23:20 18 doesn't matter, tainted the whole thing, right? Also,

12:23:26 19 another issue will be, okay, if it was unlawfully, an

12:23:34 20 unlawful search at the border and that was used in this

12:23:38 21 search warrant affidavit and that we're then to

12:23:44 22 determine that the search warrant affidavit was no good

12:23:47 23 that then brings up an issue of they shouldn't even have

12:23:51 24 been in the house to ask him these questions, I guess.

12:23:54 25 Right? So that is a whole other issue. You follow my

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12:23:58 2 train of thought?

12:23:58 3 MR. HARRINGTON: You're doing very well.

12:24:00 4 MAGISTRATE JUDGE ROEMER: All right. Thank  
12:24:01 5 you. So, I think what we're going to do is I'll let you  
12:24:06 6 ask whatever questions about the border search, I'll  
12:24:09 7 keep it open with regard to the fruit of the poisonous  
12:24:12 8 tree, and if we have to address that after I decide this  
12:24:15 9 border search, then we will. Because I'm not sure that  
12:24:19 10 at that point you wouldn't have a right to ask him about  
12:24:23 11 where did you get this information. You know, I can't  
12:24:28 12 say now you wouldn't have a right no matter what. You  
12:24:32 13 just have to take his answers, right? I didn't rely on  
12:24:35 14 the phone for that. Whatever. I think you would have a  
12:24:38 15 chance to test that, right, under cross examination. I  
12:24:42 16 just think it's premature at this point.

12:24:44 17 Your thoughts, Mr. Harrington.

12:24:46 18 MR. HARRINGTON: Judge, that is a logical  
12:24:49 19 way to do it. If you want to give me another five  
12:24:52 20 minutes, I can pare this down by questioning of Mr.  
12:24:56 21 Ryan, he is really not that instrumental about the  
12:24:59 22 search at the border.

12:25:01 23 MAGISTRATE JUDGE ROEMER: Right.

12:25:02 24 MR. HARRINGTON: If I could get a few  
12:25:03 25 minutes.

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12:25:03 2 MAGISTRATE JUDGE ROEMER: Mr. Tripi, your  
12:25:05 3 thoughts on that.

12:25:05 4 MR. TRIPI: I think you've laid out the  
12:25:07 5 issues, Judge. And where we would fall on that spectrum  
12:25:11 6 is probably accurate in terms of the positions the  
12:25:14 7 parties will take reserving my rights to modify it from  
12:25:18 8 how you characterized it.

12:25:20 9 MAGISTRATE JUDGE ROEMER: Sure. I just  
12:25:21 10 think I have to decide this border search. There is the  
12:25:25 11 search warrant affidavit is hinging on that. There are  
12:25:28 12 the statements that he made hinging on that. So trying,  
12:25:32 13 like I said, I think we're the cart before the horse.

12:25:34 14 MR. TRIPI: The only thing I would take  
12:25:36 15 issue is "hinging" on it. You know in terms of we think  
12:25:39 16 it doesn't hinge on the border search. We think, for  
12:25:43 17 example --

12:25:43 18 MAGISTRATE JUDGE ROEMER: That will be the  
12:25:44 19 argument you'll make is if you take that out of the  
12:25:47 20 search warrant, there was still enough information there  
12:25:50 21 to. I get all of that.

12:25:51 22 MR. TRIPI: We're on the same page, Judge.

12:25:53 23 MAGISTRATE JUDGE ROEMER: But I think,  
12:25:55 24 really, in fairness to the defendant, they have the  
12:25:57 25 right to know now or, you know, when I get it decided

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12:26:01 2 about the border search, okay? And same thing with the  
12:26:05 3 government. You know, like I say, I don't think at this  
12:26:08 4 point it would be appropriate for Mr. Harrington to  
12:26:13 5 start asking where did you get this information, this  
12:26:15 6 information, then it's just a discovery thing. Does  
12:26:18 7 that all make sense? Everybody is agreeable to that?

12:26:21 8 MR. TRIPI: It does, Judge.

12:26:22 9 MAGISTRATE JUDGE ROEMER: Mr. Harrington,  
12:26:23 10 I'll give you however long you want.

12:26:25 11 MR. HARRINGTON: Give me 10 minutes. I  
12:26:27 12 don't know if Mr. Tripi has another witness. We have a  
12:26:29 13 witness we could probably go ahead with after Mr. Ryan.

12:26:33 14 MAGISTRATE JUDGE ROEMER: Mr. Tripi.

12:26:35 15 MR. TRIPI: I don't think we're going to  
12:26:36 16 have any other direct witnesses. We may, depending on  
12:26:39 17 their witness, may have a rebuttal witness, but no one  
12:26:57 18 who is not on our list already.

12:26:58 19 MAGISTRATE JUDGE ROEMER: Who you going to  
12:27:00 20 call?

12:27:00 21 MR. HARRINGTON: My client's wife.

12:27:02 22 MAGISTRATE JUDGE ROEMER: Okay. So just to  
12:27:04 23 give Mr. Tripi a head's up as to what is going to  
12:27:08 24 happen. Okay. We'll come back in 10 minutes. I'll go  
12:27:12 25 back and finish the rest of my sandwich and I'll be back

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12:27:16 2 out.

12:27:16 3 MR. TRIPI: Do you have an extra sandwich,  
12:27:18 4 Judge. (Laughter)

12:27:18 5 (Whereupon, there was a break in the  
13:39:09 6 proceeding.)

13:39:09 7 MAGISTRATE JUDGE ROEMER: I'm sorry. Go  
13:39:11 8 ahead, Mr. Harrington.

13:39:14 9 CROSS EXAMINATION BY MR. HARRINGTON:

13:39:14 10 Q. Mr. Ryan, when did you first become involved in  
13:39:17 11 the investigation of Mr. Bongiovanni?

13:39:18 12 A. Mid 2018.

13:39:21 13 Q. Okay.

13:39:21 14 A. And it was because something that I was assigned  
13:39:25 15 to me when I was first assigned at BEST, I seemed to  
13:39:30 16 touch on parts of it.

13:39:32 17 Q. Were you still working with the DEA then?

13:39:34 18 A. In mid 2018?

13:39:36 19 Q. Yes.

13:39:36 20 A. I was.

13:39:37 21 Q. And so, you continued with this case certainly up  
13:39:42 22 until the time that Mr. Bongiovanni left, right, and  
13:39:45 23 through the events that we talked about today in June?

13:39:51 24 A. Yes.

13:39:51 25 Q. And when you sent the request for the search of

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13:40:00 2 his phone to the BWI airport or started the process for  
13:40:06 3 it, how did you know where he was and what he was doing?

13:40:11 4 A. Well, I relied on the CBP officers for the  
13:40:15 5 process, I guess. I'm not sure.

13:40:17 6 Q. How did you know where he was on vacation?

13:40:19 7 A. I received an alert from our system that he was  
13:40:23 8 manifested on a flight.

13:40:26 9 Q. On the original flight going down?

13:40:29 10 A. You get an alert for each manifest. So you get  
13:40:33 11 an outbound alert and an inbound alert.

13:40:36 12 Q. So his name was in some system that would alert  
13:40:39 13 you, that is what you're saying?

13:40:41 14 A. Yes.

13:40:41 15 Q. And is this the TECS system?

13:40:44 16 A. Yes.

13:40:45 17 Q. Okay.

13:40:46 18 MAGISTRATE JUDGE ROEMER: Well, you said it  
13:40:49 19 was an TECS system or something else, and he said,  
13:40:52 20 "yes." I don't know if it was TECS system or something  
13:40:55 21 else.

13:40:56 22 Q. Very bad question.

13:40:57 23 A. There are multiple systems that communicate. So  
13:41:01 24 those systems, TECS is one of them.

13:41:03 25 Q. But his name must have been in there and you must

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13:41:06 2 have been a recipient about alerts about him, correct?

13:41:11 3 A. Yes.

13:41:11 4 Q. Now, so you learn that he is coming back on April  
13:41:15 5 the 23rd, right?

13:41:16 6 A. Yes.

13:41:16 7 Q. And a one day lookout is sent, right, that is a  
13:41:20 8 something, customary that is done, right, when you know  
13:41:24 9 someone is coming on a particular day?

13:41:26 10 A. Yes.

13:41:26 11 Q. And what is the process that you go through to  
13:41:29 12 initiate this stopping of him and searching of his  
13:41:35 13 phone?

13:41:36 14 A. My only part of it was to ask the CBP officers  
13:41:39 15 that I was working with to coordinate it and then I  
13:41:42 16 relied on them.

13:41:43 17 Q. Isn't it true that you have to be a certain grade  
13:41:46 18 level in order to authorize these kinds of searches?

13:41:51 19 A. No.

13:41:52 20 Q. So it didn't matter whether you were a new  
13:41:55 21 special agent or you had been a supervisory special  
13:41:58 22 agent, you could still request it. Is that what you're  
13:42:01 23 saying?

13:42:01 24 A. Yes.

13:42:02 25 Q. And do you know the process within CBP, how they



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13:42:06 2 receive it? Do they just do that upon the request of  
13:42:09 3 anyone, any law enforcement officer?

13:42:11 4 A. I don't know.

13:42:11 5 Q. Had you done these before April 23rd, gave this  
13:42:18 6 kind of request?

13:42:18 7 A. I had done them, yes.

13:42:20 8 Q. And all you do is contact somebody locally,  
13:42:23 9 right, and you don't have to give them any information  
13:42:25 10 whatsoever?

13:42:27 11 A. I contacted the CBP officers that work with me  
13:42:30 12 that understood the case, and I asked them to coordinate  
13:42:33 13 that search at BWI.

13:42:35 14 Q. Great who were they?

13:42:37 15 A. Jack Gernatt, Joe Spidone and Thomas Moss.

13:42:41 16 Q. And do they have to fill out some form to  
13:42:45 17 initiate this?

13:42:46 18 A. Maybe an online entry for that one day lookout,  
13:42:55 19 but not a paper form.

13:43:01 20 MR. HARRINGTON: Judge, I ask that they  
13:43:02 21 disclose whatever forms or online application, whatever  
13:43:20 22 it is that was used, that was used to initiate this stop  
13:43:23 23 at the border.

13:43:24 24 MAGISTRATE JUDGE ROEMER: Mr. Tripi?

13:43:25 25 MR. TRIPI: On what basis? They have a

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13:43:27 2 witness on the stand and they have his Jencks material.  
13:43:30 3 I don't see the basis for that kind of request.

13:43:35 4 MR. HARRINGTON: Well then, Judge, I'll have  
13:43:36 5 to subpoena, I guess, another witness, so just prolong  
13:43:40 6 this. If he could just give it to us, we could deal  
13:43:43 7 with it.

13:43:44 8 MAGISTRATE JUDGE ROEMER: Do you have it  
13:43:45 9 now?

13:43:46 10 MR. TRIPI: No, I don't know what -- no.

13:43:48 11 MAGISTRATE JUDGE ROEMER: Provide it to him  
13:43:49 12 as soon as you can.

13:43:52 13 MR. TRIPI: Provide, I need to be clear what  
13:43:55 14 I am to provide.

13:43:56 15 MAGISTRATE JUDGE ROEMER: If there was any  
13:44:05 16 written document of him requesting this lookout.

13:44:09 17 MR. HARRINGTON: Or electronic.

13:44:10 18 MR. TRIPI: There is no entry of him. I  
13:44:15 19 would have made sure, he said earlier.

13:44:18 20 MAGISTRATE JUDGE ROEMER: He said the CBP  
13:44:20 21 that he works with did it.

13:44:22 22 MR. TRIPI: He said earlier he was on an  
13:44:24 23 e-mail, but that e-mail thread was not initiated by him  
13:44:28 24 and those witnesses, those people are not witnesses in  
13:44:31 25 this hearing. So, their Jencks material is not

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13:44:36 2 discoverable if they are not a witness in the hearing.  
13:44:40 3 Right? It's not Rule 16.

13:44:43 4 MAGISTRATE JUDGE ROEMER: You asked the CBP  
13:44:46 5 guys to make this request. Do you know if they filled  
13:44:49 6 out a form or not?

13:44:51 7 THE WITNESS: I do not. And there are  
13:44:53 8 multiple ways to do it, and I'm not sure which way they  
13:44:57 9 used.

13:44:58 10 MAGISTRATE JUDGE ROEMER: Go ahead, Mr.  
13:45:00 11 Harrington.

13:45:00 12 MR. HARRINGTON: Pardon me?

13:45:01 13 MAGISTRATE JUDGE ROEMER: Go ahead.

13:45:02 14 MR. HARRINGTON: What is the answer?

13:45:03 15 MAGISTRATE JUDGE ROEMER: He doesn't know  
13:45:04 16 what form it is.

13:45:05 17 MR. HARRINGTON: I understand that, but this  
13:45:07 18 witness brought out something in terms of the procedure  
13:45:11 19 and there is no way I would be aware and now he brought  
13:45:14 20 it out and it is what leads to the search of my client  
13:45:27 21 and we're entitled to have it. And if I have to  
13:45:30 22 subpoena another witness. Mr. Gernatt was listed as a  
13:45:33 23 witness today, but he hasn't been called. Maybe he can  
13:45:36 24 answer the question.

13:45:37 25 MR. TRIPI: I have don't believe -- he was

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13:45:38 2 not listed as a witness.

13:45:39 3 MR. HARRINGTON: He wasn't?

13:45:40 4 MR. TRIPI: He was not, no.

13:45:42 5 MAGISTRATE JUDGE ROEMER: I deny your  
13:45:43 6 request. Go onto your next question.

13:45:46 7 MR. HARRINGTON: I'm reserving my right to  
13:45:48 8 call another witness, Judge.

13:45:50 9 MAGISTRATE JUDGE ROEMER: Okay. Well, I  
13:45:51 10 deny that request, too, okay? So go ahead.

13:45:57 11 CONTINUING CROSS EXAMINATION BY MR. HARRINGTON:

13:45:57 12 Q. So you don't know what was written to the agents  
13:46:00 13 down in Baltimore at BWI, do you?

13:46:04 14 A. No.

13:46:04 15 Q. And you don't know whether any information was  
13:46:06 16 provided about Mr. Bongiovanni, is that right?

13:46:09 17 A. No.

13:46:10 18 Q. I'm right?

13:46:11 19 A. No. I mean, I don't know what information was  
13:46:14 20 provided.

13:46:14 21 Q. And, the request is for a forensic examination of  
13:46:21 22 his phone, correct?

13:46:22 23 A. No. It was for a secondary inspection.

13:46:26 24 Q. Secondary inspection, which is beyond the basic?

13:46:28 25 A. No, it was secondary inspection encompasses more

1 C. RYAN - CX BY MR. HARRINGTON

13:46:32 2 than his phone. That is why I drew that distinction.

13:46:35 3 It's a search of baggage, an interview about your

13:46:39 4 travel, it's much more than the phone.

13:46:41 5 Q. But what you were really interested in was his

13:46:45 6 phone, was it not?

13:46:46 7 A. No, not just his phone.

13:46:47 8 Q. What else were you interested in? Whether he was

13:46:51 9 carrying dope back from the Dominican Republic?

13:46:54 10 A. Who knows. It's possible. I'm not saying that

13:46:57 11 is what I'm interested in. That is not what I'm saying.

13:47:12 12 He could have flown to the Dominican Republic and flown

13:47:15 13 somewhere else and had documents related to that in his

13:47:21 14 baggage. He could have had a foreign bank statement in

13:47:36 15 his baggage. He could have had a document or something

13:47:38 16 that identified somebody that he met with in the

13:47:41 17 Dominican Republic. Those were the types of things I

13:47:44 18 was interested in.

13:47:45 19 Q. But is a secondary inspection always involve

13:47:50 20 searching somebody's phone, if you know?

13:47:56 21 A. I don't know.

13:47:57 22 Q. If I come through landing at BWI coming from the

13:48:01 23 Dominican Republic, you're not investigating me and

13:48:03 24 nobody is, and the guy at the primary says, "I don't

13:48:07 25 like the way you look, go to secondary," right, do they

1 C. RYAN - CX BY MR. HARRINGTON

13:48:11 2 inspect my phone?

13:48:12 3 A. They likely will.

13:48:13 4 Q. Do they do a forensic exam of my phone in those  
13:48:19 5 situations?

13:48:19 6 A. If their policy allows it.

13:48:22 7 Q. Okay. You're not familiar with a regulation that  
13:48:25 8 says you have to be a certain grade of law enforcement  
13:48:28 9 officer to authorize these searches?

13:48:30 10 A. There is no HSI policy that requires that, no.

13:48:35 11 Q. And you're not familiar with Customs and Border  
13:48:38 12 Patrol, what their policy is, either?

13:48:40 13 A. No, not in regards to that.

13:48:43 14 Q. Okay. When you received the information from the  
13:49:19 15 border patrol inspection, you talked about the pictures  
13:49:30 16 of the phone in Exhibit 1. I'll just put one up here.  
13:49:35 17 Right?

13:49:36 18 A. Yes.

13:49:37 19 Q. And showing you page 2 of Exhibit 1, which are  
13:49:45 20 some other entries there, do you know what the blue dots  
13:49:49 21 mean?

13:49:49 22 A. No, that was not in focus, either.

13:49:55 23 MAGISTRATE JUDGE ROEMER: It had never  
13:49:56 24 gotten to focus.

13:49:58 25 A. To which blue dot are you referring?

1 C. RYAN - CX BY MR. HARRINGTON

13:50:01 2 Q. There are blue dots next to some of the numbers  
13:50:04 3 or names?

13:50:04 4 A. I don't know.

13:50:34 5 Q. Was in the request that was sent to CBP by you  
13:50:39 6 for the stopping of Mr. Bongiovanni, was his wife  
13:50:42 7 included in that or not?

13:50:45 8 A. I don't recall.

13:50:50 9 Q. Were you investigating her at the time?

13:50:53 10 A. No.

13:50:58 11 Q. You identified Government's Exhibit 13, which I  
13:51:08 12 believe you said was a draft report that was done by  
13:51:22 13 Agent Gernatt, is that right?

13:51:22 14 A. Yes.

13:51:23 15 Q. And this is dated April the 25th of 2019,  
13:51:29 16 correct?

13:51:29 17 A. Yes.

13:51:29 18 Q. That is two days after the stop has happened,  
13:51:33 19 right?

13:51:33 20 A. Yes.

13:51:33 21 Q. And I believe you said you had this with you when  
13:51:36 22 you went to Mr. Bongiovanni's house?

13:51:37 23 A. I did, a copy of it, yes.

13:51:39 24 Q. Was this not updated in the six weeks before you  
13:51:43 25 went?

1 C. RYAN - CX BY MR. HARRINGTON

13:51:44 2 A. No, it hadn't been updated yet.

13:51:49 3 Q. And who was doing that, Gernatt?

13:51:52 4 A. Yes.

13:51:57 5 Q. Did you ask him why it hadn't been?

13:52:00 6 A. No.

13:52:01 7 Q. You used that, though, for the basis for asking  
13:52:04 8 Mr. Bongiovanni questions, right?

13:52:06 9 A. I did.

13:52:06 10 Q. And names that were listed in there?

13:52:09 11 A. I did.

13:52:10 12 Q. Do you know if Mr. Gernatt did any sort of search  
13:52:14 13 on Exhibit 1 for the entries that just had phone  
13:52:17 14 numbers?

13:52:20 15 A. He did, yes.

13:52:22 16 Q. And did he give you a report about those before  
13:52:24 17 you went?

13:52:25 18 A. That is that report.

13:52:28 19 Q. Government's Exhibit 13 is the report?

13:52:30 20 A. He used the photos that are Government's Exhibit  
13:52:35 21 1 and performed his analysis and produced Government's  
13:52:38 22 Exhibit 13, and I relied on that report.

13:52:41 23 Q. I understand that. But his report on 13 only  
13:52:47 24 includes entries for people's names, right?

13:52:52 25 A. I don't understand your question.



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13:52:54 2 Q. Well, for example, what I just put on the screen,  
13:52:57 3 which is the second page of exhibit 13, the top says  
13:53:04 4 Frank Parisi, correct?

13:53:07 5 A. Yes.

13:53:07 6 Q. And the next is Nick Puglise, correct, the next  
13:53:19 7 entry?

13:53:19 8 A. Yes, I can see it.

13:53:21 9 Q. All I'm saying to yo, is, there are no entries  
13:53:24 10 here for phone numbers that appeared in Government's  
13:53:29 11 Exhibit 1 that didn't have names next to them, right?

13:53:35 12 A. There is some process of analysis that he used  
13:53:44 13 starting here, I don't know what intermediary steps he  
13:53:48 14 took, what other things he added to it to produce that  
13:53:52 15 report.

13:53:53 16 Q. But did you ask him or was he directed to check  
13:53:57 17 on every number that was in Mr. Bongiovanni's phone and  
13:54:01 18 determine who that number was subscribed to?

13:54:05 19 A. We didn't -- we had only what was in the  
13:54:08 20 photographs and he tried to learn what he could about  
13:54:11 21 those numbers.

13:54:14 22 Q. And he didn't give you any information about the  
13:54:16 23 numbers, though, is that right?

13:54:18 24 A. He gave me the report, his report.

13:54:39 25 Q. Now, when Mr. Tripi went through individually the

1 C. RYAN - CX BY MR. HARRINGTON

13:54:43 2 names on the phone numbers for Exhibit 1, some he used  
13:54:50 3 last names, some he didn't. I'm not going to go through  
13:54:54 4 them all. But you mentioned Tom Gerace, is that right?

13:55:00 5 A. Yes.

13:55:00 6 Q. Do you know Tom Gerace?

13:55:02 7 A. I don't.

13:55:03 8 Q. You didn't know he was a DEA agent?

13:55:06 9 A. I knew there was a Tom Gerace who was an Amherst  
13:55:11 10 Detective who had been a task force officer. I don't  
13:55:14 11 know him personally.

13:55:15 12 Q. And how about Phil Torre?

13:55:17 13 A. I don't know that person.

13:55:19 14 Q. You didn't know he was a DEA agent, either?

13:55:22 15 A. No.

13:55:38 16 MR. HARRINGTON: Just one second, Judge.

13:55:40 17 MAGISTRATE JUDGE ROEMER: Sure.

13:56:19 18 MR. HARRINGTON: Judge, the next of the  
13:56:21 19 questions I have all go to the second prong.

13:56:23 20 MAGISTRATE JUDGE ROEMER: I've been sitting  
13:56:25 21 here cogitating about your request. Mr. Tripi, I think  
13:56:30 22 he has a right to either have that witness on the stand,  
13:56:33 23 I didn't realize there was this intermediary between  
13:56:36 24 this agent and the CBP agent down in Maryland. Now the  
13:56:44 25 guy from Maryland said he wasn't told anything about the

1 C. RYAN - CX BY MR. HARRINGTON

13:56:47 2 details. But I think Mr. Harrington has the right to  
13:56:53 3 find out that information as to was there not or was  
13:56:56 4 there not any information given.

13:56:58 5 MR. TRIPI: Before we end this witness, I  
13:57:00 6 was going to say what I have is an e-mail thread, Agent  
13:57:05 7 Ryan explained he was on an e-mail thread, copied that  
13:57:08 8 e-mail thread is from Watch Commander Candela and Thomas  
13:57:13 9 Moss, and there are several other people copied on it.  
13:57:16 10 None of the content was written by Special Agent Ryan.  
13:57:19 11 He is CC'd on an e-mail thread, so that is what we have.  
13:57:23 12 You could see it if you want. That is the only other  
13:57:26 13 document we have about that.

13:57:29 14 MAGISTRATE JUDGE ROEMER: I don't know if --  
13:57:30 15 did you do a search? Do you know for sure CBP didn't  
13:57:34 16 send any type of written document down to Baltimore?  
13:57:37 17 You know that for certain? You've already searched all  
13:57:41 18 of the records for it?

13:57:43 19 MR. TRIPI: No. What I have is an e-mail  
13:57:45 20 thread that has the information regarding the port  
13:57:49 21 arrival, the scheduled port arrival, with a phone number  
13:58:00 22 that says the point of contact is Special Agent Ryan.  
13:58:06 23 That is what we have. I could send it up for you, if  
13:58:12 24 you want to.

13:58:14 25 MAGISTRATE JUDGE ROEMER: Mr. Harrington,

1 C. RYAN - CX BY MR. HARRINGTON

13:58:15 2 you take a look at it first, okay.

13:58:18 3 MR. TRIPI: And I believe that is the e-mail  
13:58:19 4 thread with which the PDF was returned to Special Agent  
13:58:27 5 Ryan, which is Exhibit 1. There are two Buffalo CBP  
13:58:41 6 officers on there, that is Durnat and Moss, who he  
13:59:10 7 mentioned in his testimony.

13:59:12 8 THE COURT: But does that include any  
13:59:13 9 communication between the CBP officers he was working  
13:59:16 10 with here in Buffalo and the people in Maryland?

13:59:22 11 MR. TRIPI: I wouldn't know.

13:59:23 12 MAGISTRATE JUDGE ROEMER: Somehow, somebody  
13:59:25 13 communicated to the people in Maryland, we want this guy  
13:59:30 14 stopped.

13:59:31 15 MR. TRIPI: It's in an e-mail thread.

13:59:33 16 MAGISTRATE JUDGE ROEMER: And that is it,  
13:59:35 17 that is all there is?

13:59:36 18 MR. TRIPI: I wouldn't know the answer to  
13:59:37 19 that as I sit here today. What I'm required to do is  
13:59:40 20 produce Jencks for the witnesses I'm calling. That is  
13:59:43 21 what I've done.

13:59:44 22 MAGISTRATE JUDGE ROEMER: Okay. Well,  
13:59:45 23 you're going to bring in whoever the guy is that he  
13:59:49 24 communicated with to get the information to and bring  
13:59:54 25 him in as a witness.

1 C. RYAN - CX BY MR. HARRINGTON

13:59:55 2 MR. TRIPI: In fairness, he has had Jack  
14:00:00 3 Gernatt's report. I'm just saying, Mr. Harrington has  
14:00:25 4 had Jack Gernatt's stuff.

14:00:28 5 MAGISTRATE JUDGE ROEMER: He had what you  
14:00:29 6 just gave him?

14:00:30 7 MR. TRIPI: He didn't have the e-mail  
14:00:31 8 thread. Mr. Gernatt is not on the stand, he had exhibit  
14:00:43 9 13, the intel report prepared by author Jack Gernatt.

14:00:48 10 MR. HARRINGTON: But, Judge, this is all  
14:00:50 11 after the fact. I'm not saying I didn't have it. I'm  
14:00:53 12 saying, until today, we didn't learn what the process  
14:00:55 13 was.

14:00:57 14 MAGISTRATE JUDGE ROEMER: And there was no  
14:00:58 15 phone call down to Maryland?

14:01:00 16 MR. TRIPI: Judge, I don't know.

14:01:01 17 MAGISTRATE JUDGE ROEMER: You don't know.

14:01:02 18 MR. TRIPI: I don't know.

14:01:02 19 MAGISTRATE JUDGE ROEMER: Well, we're going  
14:01:03 20 to continue the hearing and you're going to have whoever  
14:01:06 21 he talked to who communicated this to Maryland as a  
14:01:10 22 witness, okay, from the CBP?

14:01:12 23 MR. TRIPI: I will identify that person and  
14:01:14 24 he can call them as a witness.

14:01:15 25 MAGISTRATE JUDGE ROEMER: You identify him

1 C. RYAN - CX BY MR. HARRINGTON

14:01:17 2 and I'll open up the hearing.

14:01:19 3 MR. TRIPI: We'll get him arranged, no  
14:01:21 4 problem. But, Judge, I have my obligations.

14:01:24 5 MAGISTRATE JUDGE ROEMER: Mr. Tripi, I don't  
14:01:26 6 care about that.

14:01:26 7 MR. TRIPI: I can't do it in a vacuum.

14:01:29 8 MAGISTRATE JUDGE ROEMER: I'm just saying,  
14:01:30 9 logically, I thought, and I think Mr. Harrington thought  
14:01:32 10 that Agent Ryan was the guy who communicated with the  
14:01:37 11 people down in Maryland. We found out today, it wasn't,  
14:01:40 12 it was somebody in CBP.

14:01:42 13 MR. TRIPI: Fellow officer, that happens all  
14:02:00 14 of the time.

14:02:00 15 THE COURT: A guy from the CBP. Excuse me,  
14:02:04 16 sir. A guy from the CBP down in Maryland says, "I  
14:02:09 17 wasn't given any details." I think he has the right to  
14:02:23 18 explore if that was true, if no details were given or  
14:02:26 19 not. We have to have that guy testify.

14:02:29 20 MR. TRIPI: And he can certainly subpoena  
14:02:31 21 them or just tell us and we'll get him here. I can't  
14:02:34 22 guess for him who he needs to talk to.

14:02:37 23 MAGISTRATE JUDGE ROEMER: Mr. Tripi, I'm not  
14:02:39 24 faulting you. I want to make sure that is what is done.

14:02:42 25 MR. TRIPI: No problem.

1 C. RYAN - CX BY MR. HARRINGTON

14:02:42 2 MAGISTRATE JUDGE ROEMER: I'm not giving you  
14:02:43 3 a hard time about why you did it or didn't do it, I just  
14:02:47 4 want you to do it.

14:02:48 5 MR. TRIPI: I misunderstood. Thank you,  
14:02:50 6 Judge.

14:02:50 7 MAGISTRATE JUDGE ROEMER: Does that satisfy  
14:02:51 8 you, Mr. Harrington, for what you want?

14:02:53 9 MR. HARRINGTON: And one of these e-mails  
14:02:55 10 has some of that here that Mr. Tripi just gave me.

14:02:59 11 MAGISTRATE JUDGE ROEMER: You still want the  
14:03:00 12 witness?

14:03:00 13 MR. HARRINGTON: What?

14:03:01 14 MAGISTRATE JUDGE ROEMER: You still want the  
14:03:02 15 witness?

14:03:02 16 MR. HARRINGTON: I want whatever other  
14:03:04 17 documents there are, and I'll let Mr. Tripi know if I  
14:03:09 18 want a witness. We may stipulate to put the document in  
14:03:13 19 evidence. I don't know. Once I see the document, then  
14:03:16 20 I can make a determination. Mr. Ryan can't testify as  
14:03:21 21 to these documents. I don't know, he isn't copied.

14:03:24 22 MR. TRIPI: He is copied.

14:03:25 23 MR. HARRINGTON: Maybe I can.

14:03:26 24 MAGISTRATE JUDGE ROEMER: You want to ask  
14:03:27 25 him questions about that?

1 C. RYAN - CX BY MR. HARRINGTON

14:03:28 2 MR. TRIPI: I think we'll need to mark that,  
14:03:30 3 Jim. It's a three-page thread.

14:03:35 4 THE CLERK: Government or defendant.

14:03:36 5 MR. TRIPI: We can mark it as a Government  
14:03:38 6 Exhibit, that is fine.

14:03:39 7 MAGISTRATE JUDGE ROEMER: Maybe Government  
14:03:43 8 Exhibit.

14:03:43 9 THE CLERK: 34.

14:03:48 10 MAGISTRATE JUDGE ROEMER: 34.

14:03:48 11 CONTINUING CROSS EXAMINATION BY MR. HARRINGTON:

14:04:07 12 Q. Mr. Ryan, let me show you a three-page document  
14:04:10 13 that is marked. I'm showing you a document marked  
14:04:14 14 Government's Exhibit 34 and ask you to read through  
14:04:17 15 those e-mails yourself.

14:04:54 16 Have you had a chance to look at those?

14:04:56 17 A. Yes.

14:04:56 18 Q. It appears that the e-mail on the second page,  
14:04:59 19 you were copied on that e-mail, is that right?

14:05:02 20 A. Are you talking about the e-mail addressed to Mr.  
14:05:05 21 Mileck here?

14:05:06 22 Q. Yes.

14:05:07 23 A. Yes.

14:05:07 24 Q. Do you recall getting that at that time?

14:05:14 25 A. Yes.



1 C. RYAN - CX BY MR. HARRINGTON

14:05:17 2 MR. HARRINGTON: And, Judge, I would like to  
14:05:19 3 offer this into evidence, if I could.

14:05:21 4 MR. TRIPI: No objection.

14:05:22 5 MAGISTRATE JUDGE ROEMER: Government's  
14:05:24 6 Exhibit 34 is going to be admitted into evidence.

14:05:24 7 **(Whereupon, Government Exhibit 34 was**  
14:05:26 8 **received into evidence.)**

14:05:26 9 Q. Could you read what the substance of the e-mail?

14:05:31 10 A. Mr. Mileck authored by Thomas Moss. Mr. Mileck,  
14:05:38 11 I'm contacting you per CBPO Jack Gernatt's instructions  
14:06:04 12 the following subject is part of an HSI Buffalo  
14:06:08 13 investigation case VU13ZA16EU0023 involving  
14:06:38 14 transnational organized crime. We're requesting  
14:06:51 15 discretionary dissemination of the request for a DOMEX  
14:06:56 16 extraction of the passenger's cell phone. The subject  
14:06:58 17 is recently retired from federal law enforcement. I  
14:07:02 18 entered a one day lookout for referral and then there is  
14:07:05 19 a number for the lookout and then Mr. Bongiovanni's  
14:07:08 20 biographical information and passport number and it says  
14:07:11 21 he is coming from Punta Cana in the Dominican Republic  
14:07:15 22 and identifies the flight.

14:07:31 23 Q. So, the request, either you said before you just  
14:07:33 24 asked for a secondary inspection, right?

14:07:36 25 A. Yes.

1 C. RYAN - CX BY MR. HARRINGTON

14:07:36 2 Q. This e-mail says they are asking for a phone  
14:07:39 3 extraction, right?

14:07:40 4 A. It appears they are requesting approval from his  
14:07:44 5 supervisor for the phone extraction.

14:07:54 6 Q. Who is Melick?

14:07:59 7 A. I think he is Thomas' supervisor at the border  
14:08:03 8 patrol; he may be a CBP Officer.

14:08:05 9 Q. So it appears from this that somebody does have  
14:08:08 10 to approve this at some level?

14:08:10 11 A. You asked me if somebody in HSI has to approve it  
14:08:14 12 and that answer is no. And CBP has a different policy.  
14:08:33 13 I rely on them to follow their policy.

14:08:36 14 Q. I understand you answered with respect to your  
14:08:39 15 agency and you said with respect to their agency, you  
14:08:41 16 didn't know, right?

14:08:42 17 A. Yes.

14:08:43 18 Q. And now we have some other information about that  
14:09:00 19 now. You don't know whether this was ever approved by  
14:09:04 20 Mileck?

14:09:04 21 A. I don't know what the outcome from that was. If  
14:09:08 22 I could look at it.

14:09:21 23 Q. So the e-mail above in the string is between Mr.  
14:09:26 24 Mileck and Watch Commander Candela or, excuse me, it's  
14:09:30 25 about Watch Commander Candela?

1 C. RYAN - RDX BY MR. TRIPI

14:09:33 2 That follows the one that you read?

14:09:34 3 A. Yes.

14:09:36 4 Q. What does that say?

14:09:38 5 A. It says Thomas, Curtis, Watch Commander

14:09:49 6 Christopher Candela copied here will be managing the

14:10:12 7 encounter at BWI. Is there any specific ask aside from

14:10:16 8 the advance search of any electronic devices, any line

14:10:20 9 of questions or any questions to steer away from.

14:10:23 10 Thanks, Mike. And then his phone number.

14:10:25 11 Q. So that would appear that that was -- let me get

14:10:29 12 back here. That would appear that this was approved,

14:10:33 13 right?

14:10:33 14 A. Yes.

14:10:34 15 Q. And that they were asking whether anything

14:10:36 16 further was needed, is that right?

14:10:38 17 A. Yes.

14:10:51 18 MR. HARRINGTON: All right. That's all I

14:10:52 19 have.

14:10:52 20 MAGISTRATE JUDGE ROEMER: Thank you, sir.

14:10:53 21 Mr. Tripi.

14:10:55 22 MR. TRIPI: Just a moment, Judge.

14:10:56 23 MAGISTRATE JUDGE ROEMER: Sure.

14:11:35 24 REDIRECT EXAMINATION BY MR. TRIPI:

14:11:35 25 Q. I'm on exhibit 34, which is the e-mail page.

1 C. RYAN - RDX BY MR. TRIPI

14:11:41 2 It's an e-mail authored by Christopher Candela. And as  
14:11:46 3 you understand it, that was the watch commander in  
14:11:48 4 Baltimore, correct?

14:11:49 5 A. Yes.

14:11:50 6 Q. And it's back to Thomas, correct?

14:11:52 7 A. Yes.

14:11:53 8 Q. And it's copied, you're copied, Joseph Spidone  
14:11:57 9 and Jack Gernatt, who are the CBP officers on the BEST  
14:12:03 10 task force at the time?

14:12:04 11 A. Yes.

14:12:04 12 Q. And Curtis Mileck and yourself, correct?

14:12:07 13 A. Michael Mileck.

14:12:09 14 Q. I'm sorry, Michael Mileck?

14:12:11 15 A. Yep, and myself.

14:12:13 16 Q. And this Bongiovanni PDF, that was the PDF of the  
14:12:20 17 Government Exhibit 1 that you just testified about  
14:12:22 18 earlier that you received a PDF of the pictures of the  
14:12:25 19 phone?

14:12:26 20 A. That's correct.

14:12:27 21 Q. So that is how that is sent back to you on the  
14:12:32 22 e-mail thread, the PDF, correct?

14:12:34 23 A. Yes.

14:12:35 24 Q. And then Watch Commander Candela writes a  
14:12:41 25 summary, looks like about six paragraphs, some of those

1 C. RYAN - RDX BY MR. TRIPI

14:12:47 2 paragraphs are one sentence long, correct?

14:12:49 3 A. That's correct.

14:12:50 4 Q. And that summary that he e-mailed showing you now  
14:12:57 5 Exhibit 2, Exhibit 2, page two in evidence, the summary  
14:13:09 6 contained some, but not all information that is in page  
14:13:14 7 two of Exhibit 2. Is that fair to say?

14:13:16 8 A. Yes.

14:13:16 9 Q. In other words, Exhibit 2 of page two is a more  
14:13:19 10 fulsome summary of what transpired?

14:13:22 11 A. Yes.

14:13:27 12 Q. But even though you've testified earlier you  
14:13:32 13 received the e-mail and this information, does all your  
14:13:35 14 prior testimony about your participation stand  
14:13:38 15 unchanged?

14:13:38 16 A. It does.

14:13:52 17 MR. TRIPI: I have nothing further.

14:13:53 18 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

14:13:54 19 MR. HARRINGTON: Nothing further.

14:13:55 20 MAGISTRATE JUDGE ROEMER: What do we want to  
14:13:56 21 do about the extra witness? You want to talk to Mr.  
14:14:02 22 Tripi about this?

14:14:03 23 MR. HARRINGTON: Let me do it, Judge. Can  
14:14:05 24 we do it after or you want me to do it right now?

14:14:09 25 MAGISTRATE JUDGE ROEMER: You want to do it

1 C. RYAN - RDX BY MR. TRIPI

14:14:10 2 after?

14:14:10 3 MR. HARRINGTON: After we finish the day.

14:14:12 4 MAGISTRATE JUDGE ROEMER: All right. We'll  
14:14:13 5 do it then.

14:14:14 6 MR. HARRINGTON: We'll let the Court know.

14:14:16 7 MAGISTRATE JUDGE ROEMER: Mr. Tripi?

14:14:17 8 MR. TRIPI: Your Honor --

14:14:20 9 MAGISTRATE JUDGE ROEMER: Agent Ryan, you  
14:14:23 10 can step down.

14:14:24 11 MR. TRIPI: I have nothing further of the  
14:14:26 12 witness. For hearing purposes today, we don't have any  
14:14:28 13 other witnesses.

14:14:29 14 MAGISTRATE JUDGE ROEMER: Okay. Thank you,  
14:14:30 15 sir.

14:14:31 16 Mr. Harrington.

14:14:32 17 MR. HARRINGTON: Ms. Bongiovanni.

14:15:23 18 (L. BONGIOVANNI WAS CALLED TO THE WITNESS STAND AND  
17:08:37 19 SWORN.)

17:08:37 20 THE CLERK: Please have a seat. When  
17:08:39 21 seated, please state your name and spell it for the  
17:08:41 22 record. Please speak into the microphone since this is  
17:08:44 23 being recorded. You may take your mask off.

17:08:46 24 THE WITNESS: Sure.

17:08:48 25 THE CLERK: Thank you.

1 L. BONGIOVANNI - DX BY MR. HARRINGTON

17:08:48 2 THE WITNESS: First name Lindsay,

17:08:53 3 L-i-n-d-s-a-y, last name Bongiovanni,

17:08:53 4 B-o-n-g-i-o-v-a-n-n-i.

17:09:03 5 DIRECT EXAMINATION BY MR. HARRINGTON:

17:09:04 6 Q. Lindsay, who is your husband?

17:09:06 7 A. Joseph Bongiovanni.

17:09:07 8 Q. And he is here in the courtroom, right?

17:09:08 9 A. Yes.

17:09:09 10 Q. And you know why you're here, do you not?

17:09:11 11 A. I do.

17:09:12 12 Q. And did you travel in April of 2019 to the  
17:09:16 13 Dominican Republic?

17:09:17 14 A. I did.

17:09:18 15 Q. And who went with you?

17:09:20 16 A. Joe, my husband, and my son, Matthew.

17:09:23 17 Q. What is Matthew's last name?

17:09:25 18 A. Maglietto.

17:09:26 19 Q. Spell it.

17:09:27 20 A. M-a-g-l-i-e-t-t-o.

17:09:31 21 Q. And how long were you in the Dominican Republic?

17:09:34 22 A. From April 18th, 2019 through April 23rd, 2019.

17:09:41 23 Q. And on the 23rd, when you came back, I take it  
17:09:46 24 you flew, is that right?

17:09:48 25 A. That's right.

1 L. BONGIOVANNI - DX BY MR. HARRINGTON

17:09:49 2 Q. And what airline did you take, do you remember?

17:09:53 3 A. Southwest.

17:09:55 4 Q. And where did it land in the United States?

17:09:59 5 A. Baltimore.

17:10:00 6 Q. And after it landed in Baltimore, what happened

17:10:05 7 then? What did you do then?

17:10:06 8 A. Well, we got off the plane and we went to

17:10:12 9 Customs.

17:10:12 10 Q. And what happened when you initially went to

17:10:16 11 Customs?

17:10:16 12 A. We were pulled aside and told that we had to go

17:10:20 13 to a different area.

17:10:21 14 Q. Had you already picked up your bags at that

17:10:25 15 point?

17:10:25 16 A. Yes, we had bags with us.

17:10:27 17 Q. And do you remember where you were taken and

17:10:35 18 where you were sent to?

17:10:36 19 A. Yes. We were brought to a separate area where

17:10:39 20 there were kind of conveyor belts where the luggage

17:10:44 21 would go through an x-ray machine, just like when you

17:10:47 22 first get to the airport here in Buffalo.

17:10:50 23 Q. And then what happened?

17:10:52 24 A. Our bags went through and then after they went

17:10:55 25 through, they were gone through physically by somebody.



1 L. BONGIOVANNI - DX BY MR. HARRINGTON

17:10:58 2 I think TSA. And after that, our phones were taken.

17:11:03 3 Q. Tell us the circumstances of how your phones were  
17:11:06 4 taken?

17:11:06 5 A. So, we were asked, all of us were asked if our  
17:11:11 6 phones were on. My son's was the only one that was not  
17:11:15 7 on because it was dead.

17:11:16 8 Q. Back up a little bit.

17:11:17 9 A. I'm sorry.

17:11:18 10 Q. There you go. There you go.

17:11:21 11 A. So all of our phones were taken. My son's phone  
17:11:26 12 was off, but we were asked if all of our phones were  
17:11:29 13 already powered on, which they were except for my son's.  
17:11:33 14 His phone was dead, and they took our phones and they  
17:11:37 15 said, you know, they would be back with them. And they  
17:11:43 16 were gone for a while with our phones.

17:11:46 17 Q. When you say "they," who are you talking about?

17:11:48 18 A. People that worked at the airport.

17:11:50 19 Q. Was this done at the same place where they  
17:11:53 20 inspected your bags or a different place?

17:11:56 21 A. Yes, same place.

17:11:57 22 Q. And when your phones were taken, did you ask any  
17:12:03 23 questions or your husband ask any questions about the  
17:12:06 24 taking of the phone?

17:12:07 25 A. No, we didn't. We just thought it was kind of

1 L. BONGIOVANNI - DX BY MR. HARRINGTON

17:12:10 2 routine. We thought they were going to be taken and  
17:12:13 3 given right back. But it kind of got a little weird  
17:12:17 4 when they were taken out of the proximity where we could  
17:12:20 5 see them.

17:12:21 6 Q. Okay. And neither you nor your husband said why  
17:12:24 7 are you doing this?

17:12:25 8 A. No, they said it was just random.

17:12:27 9 Q. Okay. Did they make any other representations to  
17:12:31 10 you about the phone, how long they were going to be,  
17:12:34 11 anything like that?

17:12:34 12 A. No. They said it wouldn't be long.

17:12:37 13 Q. And you keep saying "they." Was there more than  
17:12:40 14 one person talking to you?

17:12:41 15 A. There was a gentleman that stood with us the  
17:12:44 16 whole time when they took our phones. And then there  
17:12:48 17 were two people, one person had took the phone and  
17:12:52 18 another person that had came back with the phone that  
17:12:54 19 was different from the one that initially took the  
17:12:57 20 phone.

17:12:58 21 Q. All right. And what were you doing while they  
17:13:03 22 had your phones?

17:13:03 23 A. Just standing there wondering if we were going to  
17:13:06 24 miss our flight.

17:13:07 25 Q. What time was your flight scheduled to leave?

1 L. BONGIOVANNI - DX BY MR. HARRINGTON

17:13:10 2 A. I think it was around twenty after 10 at night  
17:13:13 3 with a bored time of right after 10, like five after 10,  
17:13:17 4 I believe.

17:13:18 5 Q. And can you tell me what time was it that you had  
17:13:23 6 landed in Baltimore, if you remember?

17:13:25 7 A. I think it was sometime after 8, like 8:20,  
17:13:29 8 around there.

17:13:31 9 Q. And do you recall what time it was that you had  
17:13:40 10 this conversation and they took your phones?

17:13:42 11 A. Possibly around 8:45, maybe 9.

17:13:55 12 Q. And do you know how long they had your phone?

17:13:57 13 A. About 45 minutes.

17:13:59 14 Q. And you said you were able to make your plane,  
17:14:02 15 though, right?

17:14:02 16 A. Yes, it was very close. They started asking  
17:14:05 17 people to stand in position shortly after we got to our  
17:14:10 18 gate.

17:14:10 19 Q. And this is Southwest where you line up by a  
17:14:14 20 position?

17:14:14 21 A. There are boarding positions, A, B and C, and  
17:14:17 22 they go through.

17:14:18 23 Q. When did you get your luggage back?

17:14:20 24 A. They never took our luggage from us. That was in  
17:14:23 25 our sight the whole time.

1 L. BONGIOVANNI - DX BY MR. HARRINGTON

17:14:25 2 Q. So while you were waiting, while they had the  
17:14:27 3 phones, you had your luggage with you?

17:14:30 4 A. Mm-hmm.

17:14:30 5 Q. And it had already been inspected?

17:14:33 6 A. Yes.

17:14:33 7 Q. And how is it that you got your phones back?

17:14:36 8 Tell us what happened.

17:14:38 9 A. Well, they gave them back to us, eventually, but  
17:14:43 10 we had to ask quite a few times, like, how many times,  
17:14:46 11 how long it was going to be before we would get them  
17:14:50 12 back. The gentleman that was standing with us the whole  
17:14:53 13 time that worked for the airport, had made a few trips  
17:14:58 14 back to find out what the status was because it was  
17:15:01 15 taking quite a while.

17:15:02 16 Q. Do you know his name?

17:15:03 17 A. I do not.

17:15:04 18 Q. And so, eventually, someone brings your phones  
17:15:11 19 back to you?

17:15:11 20 A. That's right.

17:15:13 21 Q. Was this one of the people you talked to before?

17:15:16 22 A. I believe so.

17:15:17 23 Q. And what condition were the phones in when you  
17:15:20 24 got them back?

17:15:20 25 A. They were returned to the home screen just like

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:15:24 2 we gave it to them.

17:15:25 3 Q. They are still on, though?

17:15:27 4 A. Yes.

17:15:29 5 MR. HARRINGTON: All right. That's all I  
17:15:31 6 have, Judge.

17:15:32 7 MR. TRIPI: Just a moment, Judge. I will  
17:15:35 8 have some questions.

17:15:51 9 MAGISTRATE JUDGE ROEMER: Ma'am, if you need  
17:15:52 10 a drink of water, there is water there for your use.  
17:15:55 11 Okay?

17:15:56 12 THE WITNESS: Thanks.

17:16:44 13 CROSS EXAMINATION BY MR. TRIPI:

17:16:44 14 Q. Good afternoon. Let me start with a couple of  
17:17:38 15 questions, things we might be able to agree on. So you  
17:17:42 16 traveled to the Dominican Republic with Mr. Bongiovanni  
17:17:45 17 and your son, correct?

17:17:46 18 A. Correct.

17:17:47 19 Q. And you traveled back to Buffalo through BWI  
17:17:52 20 airport, is that correct?

17:17:53 21 A. Correct.

17:17:54 22 Q. And you made all of your flights as scheduled, is  
17:17:57 23 that true?

17:17:57 24 A. Correct.

17:17:59 25 Q. You didn't miss any flight?

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:18:02 2 A. No.

17:18:12 3 Q. Now, when you were told to go to a secondary  
17:18:25 4 location, a secondary search area, your baggage was in  
17:18:28 5 your sight the whole time, correct?

17:18:29 6 A. Yes.

17:18:29 7 Q. And as far as you were aware, it was just a  
17:18:33 8 routine random search?

17:18:35 9 A. Yes.

17:18:35 10 Q. Did the agents or the officers you were dealing  
17:18:39 11 with seem professional?

17:18:40 12 A. Yes.

17:18:42 13 Q. No one physically restrained you or Mr.  
17:18:48 14 Bongiovanni or your son, correct?

17:18:50 15 A. No.

17:18:51 16 Q. Nobody threatened you, your husband or your son,  
17:18:54 17 correct?

17:18:54 18 A. No.

17:18:57 19 Q. At that point, it seemed as annoying as any other  
17:19:02 20 trip through the airport, is that fair to say?

17:19:04 21 A. Well, given the fact that we were coming from a  
17:19:07 22 different country, it felt like just a random, a random  
17:19:12 23 -- like we were pulled out of line just selectively, you  
17:19:15 24 know, just as part of, like, a random, I figured so many  
17:19:20 25 people maybe get pulled out and randomly searched the

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:19:24 2 way we did. It didn't feel off at first.

17:19:27 3 Q. That is what I was asking. You've traveled  
17:19:31 4 internationally before?

17:19:32 5 A. I have.

17:19:32 6 Q. I assume you've flown internationally before?

17:19:35 7 A. I have.

17:19:36 8 Q. You've driven over a border internationally  
17:19:39 9 before?

17:19:39 10 A. I have.

17:19:40 11 Q. And so you have an expectation that when you're  
17:19:44 12 going through a border, you're going to be asked  
17:19:47 13 questions, people might search you, things like that?

17:19:50 14 A. Yes.

17:19:57 15 Q. And when you're going through the airport such as  
17:20:00 16 BWI, there are signs telling you that your items are  
17:20:04 17 subject to search, correct?

17:20:05 18 A. I'm not sure that I've ever seen one of those  
17:20:08 19 signs, but, okay, sure.

17:20:10 20 Q. Well, that is what you do when you go through the  
17:20:14 21 conveyor belts at the Buffalo Airport and they are  
17:20:17 22 examining your items and they are going through an x-ray  
17:20:21 23 machine and you're going through an x-ray machine,  
17:20:24 24 you're familiar with that process, correct?

17:20:27 25 A. Yes.

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:20:27 2 Q. And by virtue of travel through airports, you're  
17:20:31 3 consenting to using those airports through those  
17:20:35 4 searches, correct?

17:20:36 5 A. That's right.

17:20:36 6 Q. And when traveling internationally, there is  
17:20:40 7 another layer to that because now you understand you're  
17:20:55 8 coming through an international border, right?

17:20:58 9 A. Yes, that's correct.

17:20:59 10 MR. HARRINGTON: Judge, I'll object. She  
17:21:01 11 may have an understanding, but whether it's accurate or  
17:21:04 12 not, what difference does it make?

17:21:06 13 MAGISTRATE JUDGE ROEMER: Overruled.

17:21:11 14 Q. The point is, this wasn't your first  
17:21:13 15 international travel, right?

17:21:15 16 A. No, it wasn't.

17:21:16 17 Q. And you had had an international travel when you,  
17:21:20 18 for example, when you were married in Mexico, correct?

17:21:23 19 A. Yes, that's correct.

17:21:24 20 Q. And that was in about 2015?

17:21:26 21 A. Yes, that's correct.

17:21:35 22 Q. I apologize. Just a moment. When you were first  
17:21:41 23 asked to give over your phones?

17:21:44 24 A. Mm-hmm.

17:21:45 25 Q. You and Mr. Bongiovanni provided the phones, you



1 L. BONGIOVANNI - CX BY MR. TRIPI

17:21:48 2 unlocked them, correct?

17:21:49 3 A. No, we did not unlock them.

17:21:52 4 Q. Is it your testimony that you provided the pass  
17:21:55 5 codes to the CBP officers?

17:21:57 6 A. No, I did not. We just handed our phones over  
17:22:01 7 the way they were, which would have been locked.

17:22:04 8 Q. Were they already unlocked, is that your claim?

17:22:06 9 A. No, they were not unlocked.

17:22:09 10 Q. So, you would dispute the notion that you  
17:22:14 11 unlocked your phone voluntarily, is that what you're  
17:22:17 12 testifying about?

17:22:17 13 A. Yes, that is correct.

17:22:31 14 Q. Your phone number, at the time, was 7168286865  
17:22:37 15 and you had a Samsung, is that correct?

17:22:39 16 A. Yes.

17:22:40 17 Q. And Mr. Bongiovanni's was 7165072784, and he also  
17:22:47 18 had a Samsung, different model, correct?

17:22:49 19 A. Yes.

17:22:55 20 Q. You were coming back from a six-day trip to Punta  
17:23:00 21 Cana, correct?

17:23:01 22 A. Yes.

17:23:01 23 Q. You stayed at the Majestic Mirage resort?

17:23:10 24 A. Yes.

17:23:13 25 Q. It was your and Mr. Bongiovanni's first trip to

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:23:17 2 the Dominican Republic?

17:23:18 3 A. Yes.

17:23:19 4 Q. You were returning home to Buffalo, New York from  
17:23:24 5 there, that is why you were traveling through BWI,  
17:23:27 6 correct?

17:23:27 7 A. Yes.

17:23:29 8 Q. You had a total of six bags in your possession?

17:23:32 9 A. I believe so.

17:23:45 10 Q. Did they search your bags in front of you?

17:23:49 11 A. They did.

17:23:51 12 Q. Were you -- you were asked to disable the  
17:23:56 13 wireless connection on your phone?

17:23:57 14 A. No.

17:24:34 15 MR. TRIPI: May I have two exhibit stickers,  
17:24:37 16 please?

17:24:38 17 THE CLERK: Sure.

17:25:21 18 Q. Were you standing there taking written,  
17:25:26 19 handwritten notes about what was transpiring around you?

17:25:30 20 A. No, but I have a very good memory.

17:25:32 21 Q. My question was, were you taking contemporaneous  
17:25:36 22 notes. So the answer to that question is no?

17:25:38 23 A. No.

17:25:40 24 Q. I'm going to show you Government's Exhibit 35.

17:25:44 25 MAGISTRATE JUDGE ROEMER: Mr. Tripi, why

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:25:45 2 don't you show those to Mr. Harrington?

17:25:48 3 MR. TRIPI: They were actually provided to  
17:25:50 4 me by Mr. Harrington.

17:25:52 5 MAGISTRATE JUDGE ROEMER: You've seen these,  
17:25:53 6 Mr. Harrington?

17:25:54 7 MR. HARRINGTON: Yes.

17:25:55 8 MAGISTRATE JUDGE ROEMER: Okay.

17:25:58 9 Q. Is that a photocopy of your boarding pass for the  
17:26:01 10 flight we're talking about back to Buffalo?

17:26:03 11 A. Yes.

17:26:06 12 Q. And I assume you provided that to Mr. Harrington  
17:26:10 13 and he provided it to me, that looks like a photocopy?

17:26:13 14 A. Yes.

17:26:14 15 MR. TRIPI: Judge, I'm going to offer  
17:26:16 16 exhibit 35.

17:26:17 17 MR. HARRINGTON: No objection.

17:26:17 18 MAGISTRATE JUDGE ROEMER: Government's  
17:26:18 19 Exhibit 35 shall be admitted into evidence.

17:26:18 20 **(Whereupon, Government Exhibit 35 was**  
17:26:29 21 **received into evidence.)**

17:26:29 22 Q. So, it's up on the screen there. Do you see it?

17:26:32 23 A. Yes.

17:26:32 24 Q. So, it has your name on the upper left-hand  
17:26:35 25 corner, the flight number and the date, April 23rd, the

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:26:40 2 gate appears to be A-6, right? Is that all correct?

17:26:45 3 A. Yes, I see that, mm-hmm.

17:26:46 4 Q. And then it says, time of the flight, 10:35 p.m.

17:26:50 5 That is the time you were flying back, correct?

17:26:52 6 A. Correct.

17:26:53 7 Q. And the boarding time is 10:05 p.m., correct?

17:26:56 8 A. Correct.

17:26:56 9 Q. And you were at Southwest, as you indicated, so

17:27:00 10 you were in boarding group A. Is that the first group

17:27:04 11 that boarded?

17:27:04 12 A. No.

17:27:05 13 Q. How does that work?

17:27:06 14 A. So, it's usually like seats 1 through 15 board

17:27:10 15 first, position A, and then so on and so forth.

17:27:13 16 Q. So you were boarding group A, but position 38?

17:27:19 17 A. Yes. So we were probably called up the third

17:27:22 18 group to be called.

17:27:24 19 Q. So you made your group and you made your flight

17:27:27 20 and you flew home, correct?

17:27:28 21 A. Yes.

17:27:53 22 Q. So earlier in your testimony, you said in terms

17:27:56 23 of them taking your phone, it felt like 45 minutes. Do

17:28:01 24 you remember saying that?

17:28:02 25 A. Yes, I do.

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:28:02 2 Q. And so you know that you have a flight and they  
17:28:05 3 have your phones and you're waiting on that, basically,  
17:28:08 4 that is the position you were in at secondary, correct?

17:28:24 5 A. That's correct.

17:28:24 6 Q. I'd imagine it was a little irritating, right?

17:28:28 7 A. It was.

17:28:28 8 Q. But, even though it might have felt like 45  
17:28:35 9 minutes, you weren't looking at your watch and writing  
17:28:37 10 down the times, is that fair to say?

17:28:40 11 A. Yes.

17:28:41 12 Q. It wasn't your job to be doing that that day,  
17:28:44 13 correct?

17:28:44 14 A. That wasn't my job, no.

17:28:46 15 Q. So as far as you knew, it was a normal search  
17:28:49 16 that occurs when you get back into the country and you  
17:28:51 17 had no reason at that time to be jotting it down. You  
17:28:55 18 didn't anticipate being in this position today talking  
17:28:58 19 about this, is that fair?

17:29:00 20 A. Yes.

17:29:34 21 Q. Would you agree that that is probably unlike the  
17:29:37 22 agents and the officers who were involved whose job it  
17:29:40 23 is to make time live reports. Is that fair to say?

17:29:43 24 A. I'm sorry. Repeat the question, I'm not  
17:29:46 25 understanding.

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:29:46 2 Q. Like it wasn't your job to document everything as  
17:29:50 3 it was happening?

17:29:51 4 A. Right.

17:29:53 5 Q. That is different?

17:29:54 6 A. But somebody else, I would imagine, that works  
17:29:57 7 for the airport, should have been doing that.

17:30:01 8 Q. Okay. On the screen, I'm going to show you  
17:30:16 9 Government's Exhibit 36.

17:30:17 10 A. I recognize it.

17:30:18 11 Q. That was handed to you or Mr. Bongiovanni?

17:30:20 12 A. Yes.

17:30:20 13 Q. Do you know which?

17:30:23 14 A. I believe my husband got one of those, yes.

17:30:27 15 Q. And between the two of you, do you still have  
17:30:31 16 your copy?

17:30:31 17 A. Yes, we do.

17:30:32 18 Q. And while you were standing sort of waiting for  
17:30:35 19 your phone, you had an opportunity to review this, this  
17:30:38 20 document?

17:30:38 21 A. The gentleman that stood with us the whole time  
17:30:42 22 while our phones were out of our sight, when he -- he  
17:30:46 23 had given this to us and he said if we had any  
17:30:49 24 questions, there was a phone number at the bottom. So,  
17:30:52 25 no, we didn't really look at that, no, not until we got

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:30:56 2 home.

17:30:56 3 Q. But it was handed to your husband?

17:30:57 4 A. Yes.

17:30:59 5 Q. And it was certainly available for you to read at  
17:31:07 6 that time?

17:31:12 7 A. Yes.

17:31:13 8 Q. Did you guys, when he told you, when the officer  
17:31:16 9 who is standing there with you said, "If you have  
17:31:20 10 questions, you can call, did you ever call the number on  
17:31:23 11 the back or anything like that?

17:31:24 12 A. No.

17:31:40 13 Q. Was the person who handed you back your phones  
17:31:45 14 courteous, professional and polite?

17:31:48 15 A. Yes.

17:32:00 16 Q. Now, you've known Mr. Bongiovanni since 2009?

17:32:03 17 A. That's right.

17:32:06 18 Q. You married in 2015, is that correct?

17:32:09 19 A. That's correct.

17:32:11 20 Q. You were a tenant originally in his apartments at  
17:32:15 21 221 Livery?

17:32:17 22 A. That's right.

17:32:18 23 MR. HARRINGTON: Objection, I don't know  
17:32:19 24 what is the relevance.

17:32:22 25 MAGISTRATE JUDGE ROEMER: Mr. Tripi.

1 L. BONGIOVANNI - CX BY MR. TRIPI

17:32:24 2 MR. TRIPI: Bias and interest, some  
17:32:26 3 background.

17:32:27 4 MAGISTRATE JUDGE ROEMER: Sustained. Next  
17:32:28 5 question.

17:32:43 6 Q. Obviously, he is your husband, you're not happy  
17:32:46 7 to be here. Is that fair to say?

17:32:48 8 A. Happy to be where?

17:32:49 9 Q. Happy to be here in this situation. Is that fair  
17:32:54 10 to say?

17:32:54 11 A. Yes. I wish the circumstances were different.

17:33:03 12 Q. You blame the government for the circumstances  
17:33:08 13 today?

17:33:08 14 MR. HARRINGTON: Objection.

17:33:09 15 MAGISTRATE JUDGE ROEMER: Overruled.

17:33:10 16 A. Do I blame the government?

17:33:11 17 MAGISTRATE JUDGE ROEMER: Hold on, ma'am.  
17:33:12 18 Overruled.

17:33:13 19 Q. Do you blame the government for the circumstances  
17:33:22 20 today, yes or no?

17:33:22 21 A. Yes, actually I do.

17:33:23 22 Q. Okay. So you would say, if you have a rooting  
17:33:28 23 interest?

17:33:28 24 A. I think what is happening to my husband is not  
17:33:31 25 right.



1 L. BONGIOVANNI - RDX BY MR. HARRINGTON

17:33:32 2 MAGISTRATE JUDGE ROEMER: Hang on. Let him  
17:33:33 3 complete the question.

17:33:35 4 Q. If you have a rooting interest in the results of  
17:33:54 5 this hearing, it's clearly on the side of your husband,  
17:33:56 6 correct?

17:33:57 7 MR. HARRINGTON: Objection, Judge.

17:33:58 8 MAGISTRATE JUDGE ROEMER: Overruled.

17:33:58 9 A. I'm here to tell the truth and I'm telling you  
17:34:01 10 the truth.

17:34:02 11 Q. Is that a yes or no?

17:34:03 12 A. And if that happens to help my husband, then,  
17:34:06 13 yes.

17:34:06 14 Q. So your answer to my question is yes. Thank you.

17:34:09 15 A. Yes.

17:34:11 16 MAGISTRATE JUDGE ROEMER: Mr. Tripi?

17:34:15 17 MR. TRIPI: Thank you very much.

17:34:18 18 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

17:34:20 19 MR. HARRINGTON: I have a couple of  
17:34:22 20 questions.

17:34:22 21 MAGISTRATE JUDGE ROEMER: I thought you said  
17:34:23 22 you had no other questions, maybe it was Mr. Tripi.

17:34:27 23 MR. HARRINGTON: Just a couple of questions.

17:34:27 24 REDIRECT EXAMINATION BY MR. HARRINGTON:

17:34:29 25 Q. When your phones were handed over, did

1 L. BONGIOVANNI - RDX BY MR. HARRINGTON

17:34:45 2 somebody -- did one -- did the agent who took your  
17:34:49 3 phones, did he talk about disabling the wireless  
17:34:52 4 connection?

17:34:53 5 A. No.

17:34:53 6 Q. Did you use wireless?

17:34:55 7 A. I never use wireless because I have had an  
17:34:59 8 unlimited plan for quite a while. The only time I  
17:35:02 9 connect to wifi is when I connect to a hospital where I  
17:35:06 10 work. So I wouldn't have needed to disable my wifi and  
17:35:09 11 I wasn't asked to.

17:35:10 12 Q. To be clear, when you handed your phone over and  
17:35:13 13 your husband handed his phone over, were those phones,  
17:35:17 14 they were on?

17:35:18 15 A. They were on with passwords that were not  
17:35:21 16 unlocked.

17:35:21 17 MR. HARRINGTON: Okay. Thank you. That's  
17:35:23 18 all.

17:35:23 19 MAGISTRATE JUDGE ROEMER: Mr. Tripi.

17:35:24 20 MR. TRIPI: I have nothing further.

17:35:25 21 MAGISTRATE JUDGE ROEMER: Now I can safely  
17:35:27 22 say you can step down.

17:35:30 23 THE WITNESS: Thank you.

17:35:33 24 MAGISTRATE JUDGE ROEMER: Mr. Harrington?

17:35:34 25 MR. HARRINGTON: I have no further

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17:35:35 2 witnesses.

17:35:36 3 MAGISTRATE JUDGE ROEMER: Mr. Tripi.

17:35:36 4 MR. TRIPI: We have no further witnesses.

17:35:39 5 MR. HARRINGTON: Subject to our discussion  
17:35:40 6 about the other.

17:35:40 7 MAGISTRATE JUDGE ROEMER: You want to have  
17:35:41 8 that now while I'm waiting here?

17:35:50 9 Why don't you go out in the hallway?

17:35:52 10 MR. TRIPI: We'll get a conference room and  
17:35:55 11 walk outside.

17:35:55 12 MAGISTRATE JUDGE ROEMER: I'll be here  
17:35:56 13 waiting.

17:35:57 14 MR. TRIPI: Thank you.

17:35:43 15 (Whereupon, there was a pause in the  
17:35:49 16 proceeding.)

17:36:36 17 MAGISTRATE JUDGE ROEMER: I note we're all  
17:36:37 18 back in the courtroom. Mr. Tripi.

17:36:39 19 MR. TRIPI: Yes, Judge, I've spoken briefly  
17:36:42 20 with Mr. Harrington and Mr. Pyle, and I'm going to look  
17:36:45 21 in to see if there are any other communications  
17:36:48 22 surrounding that issue that we discussed. I will get  
17:36:51 23 back to Mr. Harrington and back to the Court. Give me a  
17:36:54 24 week or two to get this ironed out and figure out if  
17:36:57 25 there is anything else we need to do. Mr. Harrington

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17:37:00 2 may or may not call a witness based upon what I find.

17:37:04 3 MAGISTRATE JUDGE ROEMER: Okay. That just

17:37:05 4 leaves us hanging, and I would like to get the thing

17:37:08 5 going and the briefing started and that sort of thing.

17:37:13 6 MR. TRIPI: Could I just get on a timeline?

17:37:16 7 MAGISTRATE JUDGE ROEMER: Sure.

17:37:30 8 MR. TRIPI: Judge, I would like just at

17:37:32 9 least a couple of days to verify if this is it or there

17:37:36 10 is any other communication.

17:37:37 11 MAGISTRATE JUDGE ROEMER: Let me know what

17:37:38 12 is the day after the Thanksgiving time, Rosalie.

17:37:41 13 THE CLERK: The Friday after Thanksgiving?

17:37:45 14 MAGISTRATE JUDGE ROEMER: The Monday.

17:37:46 15 THE CLERK: The 29th.

17:37:48 16 MAGISTRATE JUDGE ROEMER: Let me know by the

17:37:50 17 29th.

17:37:51 18 MR. TRIPI: That's totally fine.

17:37:53 19 MAGISTRATE JUDGE ROEMER: And, Mr.

17:37:53 20 Harrington, if we're not going to do anything else, I'll

17:37:56 21 issue a scheduling order for the briefing on the

17:37:58 22 suppression of the border search. Okay?

17:38:01 23 MR. TRIPI: Thank you, Judge.

17:38:02 24 MAGISTRATE JUDGE ROEMER: Does that make

17:38:03 25 sense?

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MR. HARRINGTON: And if he can get it  
sooner, Judge, I'll let you know right away.

MR. TRIPI: Thank you.

MAGISTRATE JUDGE ROEMER: Anything else then  
today?

MR. TRIPI: That's it for the government.

MAGISTRATE JUDGE ROEMER: Okay. Mr.  
Harrington?

MR. HARRINGTON: That's it, Judge.

MAGISTRATE JUDGE ROEMER: Have a good day.

MR. TRIPI: Thank you, Judge.

\* \* \*

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
of the record to the best of my ability of proceedings  
transcribed from the audio in the above-entitled matter.

S/ Karen J. Clark, RPR  
Official Court Reporter