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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 UNITED STATES OF AMERICA,  
12 Plaintiff,

13 v.

14 EDBEIDY BALDERAS-VALLE,  
15 Defendant.  
16  
17

Case No. 18MJ002498-CAB

Date: June 27, 2018  
Time: 9:00 A.M.

The Honorable Cathy Ann Bencivengo  
Courtroom 4C

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO SUPPRESS  
STATEMENTS**

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19 Defendant EDBEIDY BALDERAS-VALLE, by and through her attorney Daniel  
20 Casillas, respectfully submits the following memorandum of points and authorities in  
21 support of her motion to suppress statements.

22 **I.**

23 **STATEMENT OF THE CASE**

24 On May 15, 2018, a one-count complaint was filed charging defendant Edbeidy  
25 Balderas-Valle (hereinafter “Ms. Balderas”) with misdemeanor illegal entry, in violation  
26 of Title 8, United States Code, Section 1325. The offense was allegedly committed on  
27 or about May 14, 2018.

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1 On June 15, 2018, a status hearing re trial was held before the Honorable Cathy  
2 Ann Bencivengo, District Judge. A bench trial was set for Wednesday June 27, 2018,  
3 at 9:00 AM with the defense suppression motion to be heard prior to the bench trial.

## 4 II.

### 5 STATEMENT OF FACTS

6 According to the probable cause statement by Joseph E. Wolchiko filed with the  
7 complaint, on May 14, 2018, U.S. Border Patrol Agent A. Cundiff and Border Patrol  
8 Agent R. Frederick were performing assigned duties in the Boulevard Border Patrol  
9 Station's area of responsibility. At approximately 8:30 AM, Agent Frederick observed  
10 a group of five individuals walking north from an area known to Border Patrol agents  
11 as "Three Sisters." Agent Cundiff responded and observed the group run south. Agent  
12 Cundiff ran after the group and located three individuals hiding in some brush. Agent  
13 Cundiff identified himself as a United States Border Patrol agent and conducted an  
14 immigration inspection. All three individuals, including one later identified as the Ms.  
15 Balderas, reportedly admitted to being citizens of Mexico without any immigration  
16 documents that would allow them to legally enter or remain in the United States. At  
17 approximately 9: 15 AM, Agent Cundiff placed all three individuals, including Ms.  
18 Balderas, under arrest. This area is approximately 23 miles east of the Tecate, California  
19 Port of Entry and approximately four miles north of the United States/Mexico  
20 International Boundary. During administrative processing, Ms. Balderas reportedly  
21 stated that she entered the United States on May 14, 2018.

22 The probable cause statement infers that Agent Cundiff came into contact with  
23 three individuals and then immediately conducted an immigration inspection of the three  
24 individuals. But that is not what happened.

25 Agent Frederick observed five individuals walking at approximately 8:30 a.m.  
26 Shortly thereafter Agent Cundiff appeared and saw the group of five running south.  
27 Agent Cundiff was running southwest near that railroad track trying to cutoff the group  
28 of five people who were fleeing other agents from the north. Agent Cundiff saw the

1 group and yelled for them to stop. Ms. Balderas, her husband and a third person stopped.  
2 The two other individuals continued to run off. When Agent Cundiff approached the  
3 three stopped individuals, including Ms. Balderas, he told them all not to go anywhere  
4 and that they should cooperate and could not leave. Within one minute at least two other  
5 agents arrived and Agent Cundiff left the three individuals with the other agents without  
6 questioning them and ran south after the two people who were running back towards the  
7 border. Dispatch tapes indicate that the three individuals were stopped and in Border  
8 Patrol custody by 8:59 a.m. as one of the agents, Agent Ruck, radioed dispatch that he  
9 had three individuals in custody.

10 Meanwhile, Agent Cundiff was off searching for the other two individuals.  
11 Approximately twenty minutes later, at approximately 9:20 a.m., Agent Ruck radios  
12 dispatch that he was moving the three individuals to the transport vehicle. The three  
13 individuals, who had not yet been questioned, were moved to the transport vehicle and  
14 searched.

15 Between 9 a.m. and 10 a.m. Agent Cundiff was out searching for the two  
16 individuals who got away. At 9:59 am Agent Cundiff radioed dispatch that he was at the  
17 intersection of Jewell Valley Road (somewhere other than with the detainees). By then,  
18 Agent Cundiff, based on the radio transmissions, still had not yet reconnected with the  
19 three individuals at the transport vehicle. Agent Cundiff subsequently came into contact  
20 with the three individuals, after more than one hour, and conducted field interviews  
21 without admonishing the three individuals, including Ms. Balderas, of their *Miranda*  
22 rights.

23 On May 14, 2018, at approximately 1:23 p.m., Border Patrol Agent Allen Botello  
24 advised Ms. Balderas in the Spanish language of her rights to speak to a consular official  
25 of her native country, in which she declined to exercise at this time. Agent Botello then  
26 read Ms. Balderas her *Miranda* Rights witnessed by Agent C. Rodriguez. Ms. Balderas  
27 stated that she understood her rights and was not willing to answer any questions without  
28 having an attorney present.

1 **ARGUMENT**

2 **III.**

3 **ANY STATEMENTS MADE BY MS. BALDERAS**  
4 **SHOULD BE SUPPRESSED**

5 **A. The Government Must Demonstrate Compliance with *Miranda*.**

6 In the Government reports, Agent Cundiff apprehended Ms. Balderas, her husband  
7 and another individual after he ordered them to stop and they submitted to his custody.  
8 Within one minute Agent Cundiff then handed over custody of the three to other Border  
9 Patrol agents, one of whom radioed dispatch at 8:59 a.m. that he had custody of the three,  
10 while Agent Cundiff went off to search for the other two individuals. None of three in  
11 custody had been interviewed yet or read their *Miranda* rights. At least more than one  
12 hour had elapsed before Agent Cundiff returned and reportedly conducted a field  
13 investigation of the three individuals without informing them of their *Miranda* rights.  
14 Ms. Balderas allegedly made incriminating statements. Ms. Balderas was not read her  
15 *Miranda* rights until approximately 1:23 p.m. that afternoon and declined to make a  
16 statement until an attorney was present.

17 **1. Miranda Warnings Must Precede Custodial Interrogation.**

18 The Fifth Amendment to the United States Constitution provides that “[n]o person  
19 . . . shall be compelled in any criminal case to be a witness against himself[.]” U.S.  
20 Const. amend. V. The Supreme Court of the United States has “recognized that custodial  
21 interrogations, by their very nature, generate ‘compelling pressures which work to  
22 undermine the individual’s will to resist and to compel him to speak where he would not  
23 otherwise do so freely.’” *Moran v. Burbine*, 475 U.S. 412, 420, 96 S.Ct. 1135, 1140, 89  
24 L.Ed.2d 410 (1986) (quoting *Miranda v. Arizona*, 384 U.S. 436, 467, 86 S.Ct. 1602,  
25 1624, 16 L.Ed.2d 694 (1966)). “To combat this inherent compulsion, and thereby protect  
26 the Fifth Amendment privilege against self-incrimination, *Miranda* imposed on the  
27 police an obligation to follow certain procedures in their dealings with the accused.”  
28 *Moran*, 475 U.S. at 420, 96 S.Ct. at 1140. Specifically, the Court has found the

1 Constitution requires “that a person questioned by law enforcement officers after being  
2 ‘taken into custody or otherwise deprived of his freedom of action in any significant  
3 way’ must first ‘be warned that he has a right to remain silent, that any statement he does  
4 make may be used as evidence against him, and that he has a right to the presence of an  
5 attorney, either retained or appointed.’” *Stansbury v. California*, 511 U.S. 318, 322  
6 (1994) (quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). “An officer’s obligation  
7 to administer Miranda warnings attaches . . . ‘only where there has been such a  
8 restriction on a person’s freedom as to render him “in custody.”’” *Stansbury*, 511 U.S.  
9 at 322 (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)).

10 “Custodial” means taken into custody or otherwise deprived of freedom of action  
11 in a significant way. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (“By custodial  
12 interrogation, we mean questioning initiated by law enforcement officers after a person  
13 has been taken into custody or deprived of his freedom of action in any significant  
14 way.”). “Two discrete inquiries are essential to the [“in custody”] determination: first,  
15 what were the circumstances surrounding the interrogation; and second, given those  
16 circumstances, would a reasonable person have felt he or she was not at liberty to  
17 terminate the interrogation and leave.” *Thompson v. Keohane*, 516 U.S. 99, 112, 116  
18 S.Ct. 457, 465, 133 L.Ed.2d 383 (1995). The Ninth Circuit Court of Appeals has further  
19 delineated that “[t]o determine whether an individual was in custody, a court must, after  
20 examining all of the circumstances surrounding the interrogation, decide ‘whether there  
21 [was] a formal arrest or restraint on freedom of movement of the degree associated with  
22 a formal arrest.’” *United States v. Kim*, 292 F.3d 969, 973 (9th Cir. 2002) (quoting  
23 *Stansbury v. California*, 511 U.S. 318, 322, 144 S.Ct. 1526, 128 L.Ed.2d 293 (1994)).

24 “Not every question asked in a custodial setting constitutes ‘interrogation.’”  
25 *United States v. Mata-Abundiz*, 717 F.2d 1277, 1278 (9th Cir. 1983) (citing *United*  
26 *States v. Booth*, 669 F.2d 1231, 1237 (9th Cir. 1981)). “The test is whether ‘under all of  
27 the circumstances involved in a given case, the questions are “reasonably likely to elicit  
28 an incriminating response from the suspect.”’” *Mata-Abundiz*, 717 F.2d at 1278-79

1 (quoting *Booth*, 669 F.2d at 1237; *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct.  
2 1682, 1689, 64 L.Ed.2d 297 (1980)).

3 “‘[I]nterrogation’ under *Miranda* refers not only to express questioning, but also  
4 to any words or actions on the part of the police (other than those normally attendant to  
5 arrest and custody) that the police should know are reasonably likely to elicit an  
6 incriminating response from the suspect.” *Rhode Island v. Innis*, 446 U.S. 291, 301, 100  
7 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980). As such, “‘[i]nterrogation,’ as conceptualized  
8 in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that  
9 inherent in custody itself.” *Id.* at 300, 100 S.Ct. at 1689.

10 “Ordinarily, the routine gathering of background biographical data will not  
11 constitute interrogation.” *Booth*, 669 F.2d at 1238 (citations omitted). “If, however, the  
12 questions are reasonably likely to elicit an incriminating response in a particular  
13 situation, the exception does not apply.” *Mata-Abundiz*, 717 F.2d at 1280 (citing *Booth*,  
14 669 F.2d at 1238). As such, the Ninth Circuit Court of Appeals has held “that  
15 in-custody questioning by INS investigators must be preceded by *Miranda* warnings, if  
16 the questioning is reasonably likely to elicit an incriminating response.” *Id.*  
17 Subsequently, the Ninth Circuit Court of Appeals recognized that where “an INS agent’s  
18 purely administrative interview of the defendant was . . . for the ‘sole purpose’ of  
19 determining whether the defendant was subject to an administrative action for  
20 deportation[.]” *Miranda* warnings were not required. *United States v. Chen*, 439 F.3d  
21 1037 (9th Cir. 2006) (citing *United States v. Salgado*, 292 F.3d 1169 (9th Cir. 2002)).

22 Here, Ms. Balderas was in custody as she had stopped, as ordered by Agent  
23 Cundiff, and was told she was not free to leave. Agent Cundiff briefly remained with  
24 Ms. Balderas, her husband and another individual, without questioning them, until other  
25 agents arrived to take over the custody while Agent Cundiff ran off after the other two  
26 individuals.

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1           **2.     The Interrogation Was Not Conducted Pursuant to a Valid Terry Stop.**

2           “The Fourth Amendment prohibits ‘unreasonable searches and seizures’ by the  
3 Government, and its protections extend to brief investigatory stops of persons or vehicles  
4 that fall short of traditional arrest.” *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct.  
5 744, 750, 151 L.Ed.2d 740 (2002) (citing *Terry v. Ohio*, 392 U.S. 1, 9, 88 S.Ct. 1868, 20  
6 L.Ed.2d 889 (1968); *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 66  
7 L.Ed.2d 621 (1981)). For the police to conduct a valid stop, they must “have a  
8 reasonable suspicion supported by articulable facts that criminal activity may be afoot.”  
9 *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1 (1989)  
10 (internal quotes and citation omitted). “[T]he level of suspicion required for a *Terry*  
11 stop[, however,] is obviously less demanding than that for probable cause.” *Id.* at 8, 109  
12 S.Ct. at 1585 (internal citations omitted). “Officers on” roving border patrols . . . may  
13 conduct ‘brief investigatory stops’ without violating the Fourth Amendment ‘if the  
14 officer's action is supported by reasonable suspicion to believe that criminal activity may  
15 be afoot.’” *United States v. Valdes-Vega*, 738 F.3d 1074, 1078 (9th Cir. 2013) (*en banc*)  
16 (citations omitted).

17           “Reasonable suspicion is defined as ‘a particularized and objective basis for  
18 suspecting the particular person stopped of criminal activity.’” *Id.* (quoting *United*  
19 *States v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013) (*en banc*)). “The  
20 reasonable-suspicion standard is not a particularly high threshold to reach.” *Valdes-Vega*,  
21 738 F.3d at 1078. Furthermore, although “a mere hunch is insufficient to justify a stop,  
22 the likelihood of criminal activity need not rise to the level required for probable cause,  
23 and it falls considerably short of satisfying a preponderance of the evidence standard.”  
24 *Id.* (quoting *Arvizu*, 534 U.S. at 274, 122 S.Ct. 744) (citations and internal quotation  
25 marks omitted).

26           When making a reasonable-suspicion determination, the reviewing court “must  
27 look at the ‘totality of the circumstances’ of each case to see whether the detaining  
28 officer has a ‘particularized and objective basis’ for suspecting legal wrongdoing.”

1 *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 750, 151 L.Ed.2d 740 (2002)  
2 (citations omitted); *see also United States v. Alvarez*, 899 F.2d 833, 836 (9th Cir. 1990).  
3 In so doing, officers are allowed “to draw on their own experience and specialized  
4 training to make inferences from and deductions about the cumulative information  
5 available to them that ‘might well elude an untrained person.’” *Id.* at 273, 122 S.Ct. at  
6 750-51. (citations omitted); *see also Valdes-Vega*, 738 F.3d at 1078. Moreover, what  
7 may seem to be innocuous conduct when viewed in isolation may be appropriately  
8 considered when considering the totality of the circumstances; thus, it is inappropriate  
9 to view factors in isolation and to give no weight to factors which may have an innocent  
10 explanation. *Arvizu*, 534 U.S. at 273-75, 122 S.Ct. at 750-51; *see also Cotterman*, 709  
11 F.3d at 970 (“It is not our province to nitpick the factors in isolation but instead to view  
12 them in the totality of the circumstances.”). Furthermore, “[a] determination that  
13 reasonable suspicion exists . . . need not rule out the possibility of innocent conduct.”  
14 *Valdes-Vega*, 738 F.3d at 1078-79 (*citing Arvizu*, 534 at 277, 122 S.Ct. 744) (alterations  
15 in original).

16 “In the context of border patrol stops, the totality of the circumstances may include  
17 characteristics of the area, proximity to the border, usual patterns of traffic and time of  
18 day, previous alien or drug smuggling in the area, behavior of the driver, appearance or  
19 behavior of passengers, and the model and appearance of the vehicle.” *Valdes-Vega*, 738  
20 F.3d at 1079 (*citing United States v. Brignoni-Ponce*, 422 U.S. 873, 884-85, 95 S.Ct.  
21 2574, 45 L.Ed.2d 607 (1975)). “Not all of these factors must be present or highly  
22 probative in every case to justify reasonable suspicion[,] . . . [a]nd the facts must be  
23 filtered through the lens of the agents' training and experience.” *Valdes-Vega*, 738 F.3d  
24 at 1079 (citations omitted).

25 Furthermore, in executing a *Terry* stop, an officer may ask questions “reasonably  
26 related in scope to the justification for their initiation.” *Terry*, 392 U.S. at 29, 88 S.Ct.  
27 1868. “An ‘officer may question [individuals reasonably detained near the border] about  
28 their citizenship and immigration status, and he may ask them to explain suspicious



1 circumstances, but any further detention or search must be based on consent or probable  
2 cause.” *United States v. Cervantes-Flores*, 421 F.3d 825, 830 (9th Cir. 2005)  
3 (alterations in original) (quoting *Brignoni-Ponce*, 422 U.S. at 881-82, 95 S.Ct. 2574),  
4 *overruled in part on other grounds by Melendez-Diaz v. Massachusetts*, 557 U.S. 305,  
5 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009)).

6 Here, Ms. Balderas was not subject to a brief *Terry* stop but was not free to leave  
7 for more than an hour before Agent Cundiff returned.

### 8 **3. Ms. Balderas’ Statements Must Be Suppressed.**

9 The Supreme Court has held that the prosecution may not use statements, whether  
10 exculpatory or inculpatory, stemming from a custodial interrogation of the defendant  
11 unless it demonstrates the use of procedural safeguards effective to secure the privilege  
12 against self-incrimination. *See Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The law  
13 imposes no substantive duty upon the defendant to make any showing other than that the  
14 statement was taken from the defendant during custodial interrogation. *Id.* at 476.  
15 Custodial interrogation is questioning initiated by law enforcement officers after a  
16 person has been taken into custody or otherwise deprived of his freedom of action in any  
17 significant way. *Id.* at 477; *see Orozco v. Texas*, 394 U.S. 324, 327 (1969).

18 Here, Ms. Balderas was in border patrol custody by 8:59 a.m. on May 14, 2018,  
19 but was not interviewed until at least one hour later, where she allegedly made  
20 incriminating statements, and not read her *Miranda* rights until 1:23 p.m. that afternoon.

21 Accordingly, this Court should find that Ms. Balderas’ statements were taken in  
22 violation of *Miranda* and the Fifth Amendment to the U.S. Constitution, and should  
23 suppress her statements.

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**IV.**  
**CONCLUSION**

For the foregoing reasons, defendant EDBEIDY BALDERAS-VALLE, by and through her attorney Daniel Casillas, respectfully requests that this Court grant her motion to suppress statements obtained in violation of *Miranda*.

Dated: June 19, 2018

Respectfully submitted,

*s/Daniel Casillas*  
\_\_\_\_\_  
DANIEL CASILLAS  
Attorney for Defendant  
Edbeidy Balderas-Valle