# The Sherman Minton Moot Court Advocacy Board Presents The 2024 Sherman Minton Moot Court Record



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# UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

Case No.	. 23-4795
MICHAELA DUTTON	Case No. 2:13-CR-8484
Defendant-Appellant,	
v.	Appeal from the United States District Court for the Northern District of
UNITED STATES OF AMERICA,	Arcadia
Plaintiff-Appellee	The Honorable <b>Nana Ama Owusu</b> , District Judge

# **Order Regarding Briefs and Arguments**

Parties to this litigation shall prepare only principal briefs, filed simultaneously on February 16, 2024. Neither party shall file a reply brief or any other additional briefs. Oral argument shall proceed pursuant to Fed. R. App. P. 34(c)–(d), with Appellant arguing first and Appellee arguing second. Appellant will be permitted an optional rebuttal.

SO ORDERED:

<u>/s/ Clark Nguyen</u> Clark Nguyen Clerk of Court

DATED: December 18, 2023

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# UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

Case No. 23-4795		
MICHAELA DUTTON	Case No. 2:13-CR-8484	
Defendant-Appellant,		
v.	Appeal from the United States District Court for the Northern District of	
UNITED STATES OF AMERICA,	Arcadia	
Plaintiff-Appellee	The Honorable <b>Nana Ama Owusu,</b> District Judge	

# **Docketing Notice**

Appellant Michaela Dutton having filed a Notice of Appeal on December 15, 2023, from the order of the United States District Court for the Northern District of Arcadia entered December 1, 2023, and the appropriate Docketing Fee having been paid and Docketing Statement filed, along with statements of representation by all parties; the Court hereby gives notice, pursuant to Circuit Rule 12, that this appeal has been docketed as of today's date.

#### SO ORDERED:

<u>/s/ Clark Nguyen</u>

Clark Nguyen Clerk of Court

DATED: December 18, 2023

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# UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ARCADIA

UNITED STATES OF AMERICA,	)
Plaintiff	) )
v.	) )
MICHAELA DUTTON,	)
Defendant	)

Case No. 2:13-CR-8484

### **NOTICE OF APPEAL**

Notice is hereby given that Defendant Michaela Dutton, by counsel Jeffrey Lane, appeals to the United States Court of Appeals for the Fourteenth Circuit from the Final Judgment, entered December 1, 2023.

Respectfully Submitted,

<u>Is/ Jeffrey Lane</u> Jeffrey Lane Attorney for Defendant

DATED: December 15, 2023

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# UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ARCADIA

UNITED STATES OF AMERICA,	)
Plaintiff	)
V.	)
MICHAELA DUTTON,	)
Defendant	)

Case No. 2:13-CR-8484

# FINAL JUDGMENT

OWUSU, District Judge:

On October 12, 2023, Defendant Michaela Dutton pleaded guilty to Count 1, illegal exotic animal trafficking under 18 U.S.C. § 42, and Count 3, money laundering under U.S.C. § 1956, of the Indictment. The Court hereby orders the Clerk to enter a **GUILTY** verdict against the Defendant and to enter a sentence of ten months.

SO ORDERED:

<u>/s/ Nana Ama Owusu</u> Nana Ama Owusu, U.S.D.J.

December 1, 2023

# UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ARCADIA

UNITED STATES OF AMERICA,	)
Plaintiff	)
V.	)
MICHAELA DUTTON,	)
Defendant	)

Case No. 2:13-CR-8484

# MEMORANDUM DECISION

JUDGE NANA AMA OWUSU, United States District Judge.

# **INTRODUCTION**

A grand jury indicted Defendant Michaela Dutton on charges of exotic animal trafficking (18 U.S.C. § 42), fraud (18 U.S.C. § 1341), racketeering (18 U.S.C. § 1957), money laundering (18 U.S.C. § 1956), and resisting arrest (18 U.S.C. § 1073). This Court previously denied Defendant's motion to suppress evidence on Fourth Amendment grounds. When that motion was denied, Defendant pleaded guilty to money laundering under 18 U.S.C. § 1956, and exotic animal trafficking under 18 U.S.C. § 42 (Amended Jan. 1, 2022, to include North African Ostriches as a protected species), which this opinion will address.

Dutton pleaded guilty to charges brought under 18 U.S.C. §§ 42 and 1956 in exchange for dismissal of the fraud, racketeering, and resisting arrest charges and contingent upon Dutton retaining the option to appeal the motion to suppress the decision.

The following decision is provided in conjunction with the Court's Final Judgment issued after the hearing on sentencing and restitution. This Court previously issued an order explaining its reasoning when it denied the defendant's motion to suppress on August 14, 2023. However, for the convenience of both parties,

the Court's factual finding and reasoning relevant to the motion to suppress is reproduced below in its entirety.

### FACTS

The facts relayed herein were proven by evidence submitted to this Court or stipulated by the parties.

#### A. Michaela Dutton

Defendant Michaela Dutton, born Michael Dutton, completed her name and gender marker change shortly after her eighteenth birthday. She is currently a rancher, drag performer, and transgender rights activist based out of the City of Aglovale in Arcadia. Aglovale is a large town of about 90,000 people; many residents either work in or profit from the ranching business that the town is built on. Aglovale is about a 45-minute drive from Arcadia City, the capital of Arcadia with about 1.2 million residents.

From 1999–2002, Dutton, under the alias Annee Oaklee, painted multiple unauthorized murals throughout the City of Aglovale and vandalized numerous billboards that had been promoting anti-LGBTQ+ and anti-transgender legislation. Dutton signed each of these works with her Annee Oaklee alias and signature pink pistol. During this period, Dutton was arrested and booked under the Annee Oaklee alias for several misdemeanors, including vandalism. No arrests or complaints have been made about the vigilante street artist since her last arrest in 2002. That was the last time Dutton was arrested under any name prior to the present case.

Dutton is also a popular drag performer at local drag shows. Her drag persona, Dolly Exotic, is well-known at venues throughout Northern Arcadia, and she is often sought out to host public events in Arcadia City. While Dolly Exotic loves the spotlight, Michaela Dutton is much more private. She works hard to maintain these separate identities, and only a few very close friends know that Michaela Dutton *is* Dolly Exotic. One of these friends is Bonnie Cassidy, Dutton's former roommate, who shared this information with law enforcement.

### **B.** Blue Smoke Criminal Network

Dutton's most recent arrest was the result of her involvement in the Blue Smoke criminal network. The Blue Smoke network spreads across the State of Arcadia, and members of the network have been convicted of many crimes, including theft, forgery, underground gambling, securities fraud, and exotic animal trafficking. It is estimated that the criminal network generates nearly \$10 million in revenue every year.

Blue Smoke's animal trafficking operation specializes in importing highdemand, exotic animals into Arcadia, and then distributing the animals throughout the Western United States via the Blue Smoke network. Most recently, Blue Smoke has specialized in importing North African ostriches, whose eggs have come into high demand due to the viral ostrich-egg jewelry trend popularized on TikTok. This trend has caused the global North African ostrich population to plummet, and in early 2022, the importation of North African ostriches into the United States was criminalized under 18 U.S.C. § 42. This only caused demand for ostrich eggs to skyrocket, and Blue Smoke is now the biggest importer and distributor of North African ostriches in North America.

Blue Smoke's animal trafficking network is one of its most lucrative operations, but the rapidly expanding network threatens its exposure. In their attempt to further conceal the criminal network, Blue Smoke, Inc. (a purportedly legitimate corporation created by the crime syndicate to shield their criminal activities) purchased the 9to5 Ranch on the outskirts of Aglovale to house the imported exotic animals and to serve as an otherwise legitimate business front through which to launder "dirty" money.

The 9to5 Ranch is a 2,000-acre property nestled in the Arcadia countryside, twenty-three miles outside Aglovale's city limits. In addition to extensive grazing pastures, the 9to5 Ranch has several structures that house Blue Smoke's animals. Buying the 9to5 Ranch allowed Blue Smoke to significantly expand its ostrich herd to almost 200. The 9to5 Ranch also houses a permanent farm stand that sells items such as organic produce, homemade jams, and specialty manure. The farm stand is a legitimate business, but it exclusively deals in cash, so it can be used to launder dirty money from Blue Smoke's exotic animal trafficking.

Blue Smoke's criminal activities generate millions of dollars in revenue every year, which the criminal network must shield from the U.S. Internal Revenue Service (IRS). The revenue from Blue Smoke's criminal activities was not disclosed to the IRS, and if Blue Smoke or any of its agents spent the illicitly gained money, doing so might have alerted the government to the undeclared income and prompted an investigation into the money's origin. To avoid this kind of scrutiny, Blue Smoke's criminal enterprises funneled all their "dirty" money through several businesses, including the 9to5 Ranch. The 9to5 Ranch used their farm stand as a front, counting the "dirty" money in with the cash from farm stand customers and declaring all the money as "clean" profit the 9to5 Ranch could use without arousing suspicion. In this way, Blue Smoke's animal trafficking operation and 9to5 Ranch's true purposes were effectively concealed from law enforcement for over seven years.

Defendant Dutton joined the Blue Smoke criminal network as a low-level blackjack dealer. She quickly made a name for herself within Blue Smoke for her ability to cover up dirty money and for her easy way with wild animals. Less than two years after joining the network, she took over Blue Smoke's money laundering operations and exotic animal trafficking logistics, putting her in charge of all 9to5 Ranch operations, including organizing the animals, manufacturing the farm stand books, and shipping and receiving packages for the 9to5 Ranch. In this position, Dutton spent most of her time at the Ranch. She enjoyed the peaceful countryside, and the work took her back to her junior rodeo days. While Dutton would often spend 80+ hours per week at the 9to5 Ranch, she never lived there, and she never owned any part of the property. Occasionally, on days she worked late, Dutton received packages of groceries or personal items at the ranch that were addressed to Michaela Dutton.

#### C. The Investigation

On August 11, 2022, the United States Postal Service (USPS) flagged a package addressed to "Ms. Annee Oaklee c/o the 9to5 Ranch." The sender of the package was "Mr. Aotian Long" and from an out-of-state address, "404 Proud Dragon St." USPS employees in the Aglovale Branch noticed that, in transit, the package was ripped and partially opened. A USPS employee noticed that the contents of the package were falling out, and several \$100 dollar bills were sticking out the side. Curious, the USPS employee called Mr. Long via the phone number he provided on the package, but Mr. Long was never located. To avoid further delays, the USPS employee went ahead and checked the serial numbers of the exposed bills against an internal database and found that they had been flagged as stolen from Arcadia City Bank just three days prior. The USPS employee then opened the package and found it exclusively contained \$800,000 in cash bundles.

This discovery triggered an FBI investigation into "Annee Oaklee" and the 9to5 Ranch. During its investigation, the FBI discovered that Annee Oaklee was an alias of Michaela Dutton and began to flag and search for mail and packages addressed to Dutton, Annee Oaklee, and the 9to5 Ranch. Prior to this package, the 9to5 Ranch was not on any investigators' radar. The FBI intended to execute a controlled delivery of the package containing \$800,000 to confirm the alias belonged to Michaela Dutton.

However, two days later, before that controlled delivery could take place, investigators located another package being sent to the 9to5 Ranch. This time, the package was addressed to "Dolly Exotic c/o the 9to5 Ranch." At the time, investigators were unfamiliar with that name, although after Dutton's arrest, they learned she had used that name for drag performances.

USPS employees are trained to identify suspicious packages, and the employees at the USPS Arcadia branch noticed that this new package had a number of characteristics that typically indicate that the package contains drugs and other illicit items. The employees were unable to bring in drug-sniffing dogs at this point, but based on the suspicious address and the visual profile of the package, USPS employees opened the package. While they were expecting to find drugs, they instead found it contained two large eggs. These employees again notified the FBI agents leading the investigation, who seized the package. The FBI later learned that the package contained two North African Ostrich Eggs, a species whose importation into the United States is controlled under 18 U.S.C. § 42. FBI agents obtained a search warrant for the 9to5 Ranch based on the eggs and \$800,000 found in the two packages addressed to Dolly Exotic and Annee Oaklee.

#### **D.** The Chase

On August 17, 2022, the FBI approached the 9to5 Ranch to execute a search warrant. As the team of FBI agents entered the property, they heard a loud clanging noise and chirping sounds coming from behind the ranch house. A few agents circled the building to investigate the noise and saw three large, empty trailers and Dutton leading four North African Ostriches out of a fourth trailer. Dutton was leading the animals to a large pen that already held approximately twenty-five ostriches. The FBI agents announced themselves and their warrant and instructed Dutton to step away from the birds. Realizing she had been caught in the act of accepting a shipment of illegally imported ostriches, Dutton threw open the ostrich pen gate, hopped on her horse, and galloped off across the Arcadia prairie. All the commotion startled the ostriches, and the herd followed Dutton off the ranch property, eventually creating a stampede.

Ostriches are the largest birds in the world, growing between six and nine feet tall and up to 300 lbs. They are also capable of running long distances and can sprint up to 40 mph. The ostrich stampede effectively masked Dutton's exit—the stampeding birds obstructed the agents' view of Dutton and their exit from the Ranch. Dutton was able to steer her horse up the steep slope of Blue Ridge Hill. By the time the FBI agents managed to follow Dutton into Arcadia Canyon by vehicle, they were only able to catch a glimpse of her at the top of Blue Ridge Hill, riding off into the sunset.

The ostriches followed the curve of Arcadia Canyon for two miles until they barreled into Xiao Maomi Ranch. The stampede destroyed several dwellings, including the rancher's family home. Luckily, the family was able to get to safety, and no one was hurt in this stampede, but the ostriches destroyed the family's house along with a small shearing shed and the Ranch's only working water pump. Even with insurance, the rebuild will be very expensive, and it will take Xiao Maomi Ranch several months before they can resume normal business operations.

FBI agents were not able to apprehend Dutton on the day of the stampede, but they were still able to execute their warrant to search the 9to5 Ranch. In their search, the FBI found and detained three individuals actively participating in illegal activities. One of these individuals, Harlan Givens, is a ranch worker who was arrested on charges of money laundering. Givens agreed to testify against Michaela Dutton and leaders of the Blue Smoke network in exchange for an immunity deal.

Dutton was apprehended two days later when her passport was flagged at Arcadia International Airport while she was trying to board a flight to Buenos Aires.

#### **DISCUSSION**

After her indictment, Dutton filed a motion to suppress all evidence derived from the initial search of the two packages at the postal facility. In her motion, Dutton argued that law enforcement violated her Fourth Amendment rights when they conducted a warrantless search of both packages; she maintained that the warrant to search the 9to5 Ranch and all the evidence that followed was the fruit of that unconstitutional search and should therefore be suppressed. The Government opposed the motion, arguing that Dutton lacked standing to challenge the search of these packages because she was neither the sender nor addressee on either package.<sup>1</sup> This Court, for the reasons reproduced below, agreed with the Government, and denied the motion to suppress because Dutton has no legitimate expectation of privacy in packages where she is neither the listed sender nor addressee.

Following the denial of the motion to suppress, Dutton pleaded guilty to charges of money laundering and exotic animal trafficking, conditioned on her ability to appeal the denial of the pre-trial motion to suppress. At her sentencing hearing, this Court also considered whether restitution was appropriate pursuant to 18 U.S.C. § 3663 because of the damage to Xiao Maomi Ranch. Dutton objected to restitution for these damages because she argued that escape is not an element of her convicted crimes. For the reasons addressed in the following Memorandum Decision, this Court ordered \$393,000 of restitution.

### I. The Defendant's Fourth Amendment Standing

In her motion, Dutton argued that when USPS employees opened her packages at the postal facility, they did so without a warrant, which violated her Fourth Amendment rights. The Government opposed Dutton's motion and argued that the question of whether they violated Dutton's rights was irrelevant because she did not have standing to challenge the search. The Government contended that Dutton had no privacy expectation in the packages because she was not the listed sender or addressee on either of them.

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The question of the reasonableness of the search here turns not on law enforcement's conduct but on a preliminary question: whether

<sup>&</sup>lt;sup>1</sup> During the evidentiary hearing on the motion to suppress, the Government maintained that any argument about either the illegality of the search of the packages or about any later searches being the fruit of that poisonous tree were irrelevant because Dutton lacked the standing to challenge the search of either packages. This Court therefore limited its initial fact finding solely to the issue of standing and reserved any further fact finding on the search for if the Court determined she had standing. As this Court later found Dutton to not have standing, no fact finding on those issues took place.

Dutton has "standing" to challenge the search at issue. By rd v. United States, 584 U.S. 395, 410–11 (2018).<sup>2</sup>

Standing for the purposes of the Fourth Amendment is distinct from Article III jurisdictional standing. See, e.g., id. at 410. The Fourth Amendment standing question asks whether a person "has had [her] own Fourth Amendment rights infringed by the search and seizure [they] seek[] to challenge." Id. at 403 (quoting Rakas v. Illinois, 439 U.S. 128, 133 (1978)). Since these are "personal rights that may not be vicariously asserted," just because the person is "aggrieved by an illegal search and seizure . . . through the introduction of damaging evidence" does not mean they can challenge that illegal search—they still must have had their personal Fourth Amendment rights infringed. Rakas, 439 U.S. at 133-34 (citing Alderman v. United States, 394 U.S. 165, 174 (1969)). A criminal defendant bears the burden of proving they have a legitimate expectation of privacy. Rawlings v. Kentucky, 448 U.S. 98, 104 (1980) (citing Rakas, 439 U.S. at 131 n.1). The standing question is often phrased as asking whether the challenger of the search had a "legitimate expectation of privacy" in the place searched or item seized. See, e.g., id. at 143 (citing Katz v. United States, 389 U.S. 347, 353 (1967)); see also Nicholas A. Kahn Fogel. Standing in the Shadows of the New Fourth Amendment Traditionalism, 74 Fla. L. Rev. 381, 384-95 (2022).

The Supreme Court has long understood sealed mail and packages to be firmly under the protection of the Fourth Amendment. *See United States v. Van Leeuwen*, 397 U.S. 249, 251 (1970); *see also Ex Parte Jackson*, 92 U.S. 727, 733 (1877). The public at large has a "legitimate expectation of privacy" in their mail, *United States v. Jacobsen*, 466 U.S. 109, 114 (1984), which therefore means a sender or addressee of sealed letters and packages generally has protection regarding the contents of their packages, even while they are in transit. *Van Leeuwen*, 397 U.S. at 251 (quoting *Ex Parte Jackson*, 92 U.S. at 733).

The question remains whether a person who is not the listed sender or addressee, but who claims they are the intended recipient, can carry the burden of demonstrating Fourth Amendment standing. While the Supreme Court has not answered this question, and this is an issue of first impression in the Fourteenth Circuit, many other circuit courts have considered it. *United States v. Stokes*, 829 F.3d 47 (1st Cir. 2016); *United States v. Rose*, 3 F.4th 722 (4th Cir. 2021); *United States v. Daniel*, 982 F.2d 146 (5th Cir. 1993); *United States v. Pitts*, 322 F.3d 449, 458 (7th Cir. 2003). *United States v. Lewis*, 738 F.2d 916 (8th Cir. 1984); *United* 

<sup>&</sup>lt;sup>2</sup> While the Supreme Court has stated that the standing question is "subsumed under substantive Fourth Amendment doctrine," *Rakas v. Illinois*, 439 U.S. 128, 139 (1978), wholly merging the two issues "oversimplifies—in several ways—the disparate inquiries necessary to assess a Fourth Amendment claim." Nicholas A. Kahn Fogel, *Standing in the Shadows of the New Fourth Amendment Traditionalism*, 74 Fla. L. Rev. 381, 398–400 (2022). Today, courts continue to consider the standing question as a separate (and often threshold) inquiry. *See, e.g., United States v. Stokes*, 829 F.2d 47, 51 n.7 (1st Cir. 2016).

*States v. Garcia-Bercovich*, 582 F.3d 1234, 1238 (11th Cir. 2009). The circuit courts that have reached this issue do not all agree on the framework for analyzing the standing question in this context. The question is especially contentious when the name on the package is the defendant's criminal alias. *Compare Daniel*, 982 F.2d at 149, *with Pitts*, 322 F.3d at 458.

On one side of the split, the First, Fourth, and Eighth Circuits have adopted an "other indicia" approach. This approach states that a person who is neither the listed sender nor addressee does not have "a legitimate expectation of privacy in [a] package absent other indicia of ownership, possession, or control existing at the time of the search." *Rose*, 3 F.4th at 728. The analysis requires an objective showing of the requisite "other indicia." *Id.* at 729–30. The source of this rule comes from broader Fourth Amendment doctrine in these circuits; it is used to answer the standing question for many types of property that are not in the possession of the defendant at the time of the search. *See id.* at 727–28; *Stokes*, 829 F.3d at 53. Courts applying the "other indicia" approach generally reject claims based solely on a defendant's status as the intended recipient. *United States v. Givens*, 733 F.2d 339, 342 (4th Cir. 1984); *Rose*, 3 F.4th at 728. Additionally, a relationship to the address alone will not create the requisite privacy expectation. *See, e.g.*, *Stokes*, 829 F.3d at 53.

This approach frames the standing question around whether a defendant had "ownership, possession, or control." Id. at 52–53; Rose, 3 F.4th 727–28. In Stokes, the First Circuit cited the factors relevant to the standing inquiry in general, which are "ownership, possession and/or control; historical use of the property searched or the thing seized; ability to regulate access; the totality of the surrounding circumstances; the existence or nonexistence of a subjective anticipation of privacy; and the objective reasonableness of such an expectancy under the facts of a given case." Stokes, 829 F.3d at 53 (quoting United States v. Aguirre, 839 F.2d 854, 856-57 (1st Cir. 1988)). The Stokes court said that the defendant's "bare bones assertion" of a connection to the mail and address touched on none of those listed factors. Id. The court specifically noted that, although the defendant claimed the mail in the P.O. Box involved his "personal addresses," there was no evidence as to whether anyone had "access to these locations, what the nature of the delivery receptacle was, or any other information that could shed light on the reasonableness of his privacy interest." Id. Accord United States v. James, No. 19-2057, 2020 WL 13598804, at \*3-4 (6th Cir. July 21, 2020).

In *Rose*, the Fourth Circuit similarly rejected the claim that the defendant had a legitimate expectation of privacy. 3 F.4th at 727. There, the court relied in part on the same factors used in *Stokes* to frame the question of requiring ownership, possession, or control. *Id.* at 727–28. The Eighth Circuit in *Lewis*, while not describing it as an "other indicia" approach, considered similar factors, including any connection to the mailbox, the contents of the mailbox, and the listed address. *Lewis*, 738 F.2d at 919 n.2. One focus in these cases is the name to which the package is addressed. Mail addressed to a person other than the defendant is unlikely to demonstrate any legitimate expectation of privacy on the defendant's part. *See, e.g., Givens*, 733 F.2d at 341; *Castellanos*, 716 F.3d at 848 (Davis, J. dissenting); *United States v. Johnson*, 584 F.3d 995, 1002 (10th Cir. 2009) ("[B]ecause of the potential harm to innocent third parties, there is a fundamental difference between merely using an alias to receive a package and using another's identity."). Simply using a false name and address may not establish the necessary expectation of privacy. *Lewis*, 738 F.2d at 919 n.2.

But if the name on the package purports to be an alias of the defendant, the defendant may be able to establish Fourth Amendment standing if they can prove that the "fictitious name is an *established* alias." *Rose*, 3 F.4th at 728 (citing *Castellanos*, 716 F.3d at 834) (emphasis added). In *Rose*, the defendant previously received packages using the same name of a deceased, third-party person; the Fourth Circuit rejected that this was an established alias because there was no evidence that the defendant was known to others by this name or that the name was regularly used by the defendant under different circumstances. *Id.* at 730.

Alternatively, other circuit courts take a broader approach, and they will grant a criminal defendant standing when the package is addressed to a pseudonym, alias, or alter ego of the defendant, without necessarily focusing on ownership, possession, or control. *See, e.g., United States v. Villareal,* 963 F.2d 770, 774 (5th Cir. 1992); *Garcia-Bercovich,* 582 F.3d at 1238; *cf. United States v. Morta,* No. 1:21-cr-00024, 2022 WL 1447021, at \*6 (D. Guam May 9, 2022) (describing this line of cases as finding that "a defendant using a pseudonym, alias, or fictitious name may nevertheless have a legitimate expectation of privacy").

In Villareal, the Fifth Circuit examined this standing question for two defendants, who challenged the search of steel drums containing drugs that had been sent to a fictitious person, Roland Martin. 963 F.2d at 774. The court acknowledged it was unclear which defendant had the alter ego of Roland Martin but still found that both defendants had a legitimate expectation of privacy sufficient to challenge a search of the drums. *Id.* at 774–75. It cited one defendant possessing the receipt for the drums bearing the fictitious name, the other defendant having been identified to a third party as the fictitious name, and both defendants being the immediate recipients of the drums and "conspir[ing]" to receive and transport the drums. *Id.* The Fifth Circuit had previously found a defendant possessed standing to challenge the search of a mailbox in the name of a fictitious company "which, in effect, was [the defendant]." *United States v. Richards*, 638 F.2d 765, 770 (5th Cir. 1981). In *Richards*, it was not dispositive that the defendant had denied ownership of the package. *Id.* 

Going even further, the Seventh Circuit definitively stated that defendants have "a right to use false names in sending and receiving mail" and further declared

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that there exists a legitimate expectation of privacy for persons sending and receiving mail with an alias. *Pitts*, 322 F.3d at 459 (affirming denial of motion to suppress on other grounds). The Eleventh Circuit, relying on *Villareal*, found that a defendant had a privacy expectation in a package addressed only to his first name at a fictitious company. *Garcia-Bercovich*, 582 F.3d at 1238. Two years later, in *United States v. Campbell*, the Eleventh Circuit directly stated that a privacy expectation can exist when the defendant is not the sender or addressee "provided that [they] establish[] a connection between [themself] and the addressee." 434 F. App'x 805, 809 (11th Circ 2011).

It becomes even more difficult to decide whether an alias establishes a *legitimate* expectation of privacy when a package is addressed to an alias used for criminal activities. Some courts are especially reluctant to grant Fourth Amendment standing for an "alias [that] was obviously part of [a] criminal scheme." *Daniel*, 982 F.2d at 149 (citing *Lewis*, 738 F.2d at 919–20 n.2). Similarly, the Tenth Circuit distinguished the facts because the usage of a false name involved a stolen identification, which is itself criminal conduct. *Johnson*, 584 F.3d at 1002. There is some support for a categorical rule that a criminal alias cannot create a legitimate expectation of privacy. *United States v. Lozano*, 623 F.3d 1055, 1063 (9th Cir. 2010) (O'Scannlain, J. concurring).

However, others have refused to take a categorical approach. The *Pitts* court called rescinding the privacy expectation for criminal aliases "an after-the-fact justification" and firmly stated that "the legitimate expectation of privacy does not depend on the nature of the defendant's activities, whether innocent or criminal." 322 F.3d at 458–59. The dissenting judge in *Rose* argued that "[d]isregarding [the defendant's] reasonable privacy expectation because of his unlawful intentions undermines the privacy of many law-abiding citizens." 3 F.4th at 739 (Gregory, J. dissenting). In *Castellanos*, the dissent contended that excepting criminal aliases would weaken Fourth Amendment protections. 716 F.3d at 849 (quoting *Pitts*, 322 F.3d at 458).

In the present case, this Court is confronted with a defendant—Michaela Dutton—challenging the search of two different packages. The first package was addressed to Dolly Exotic, and the second to Annee Oaklee. Both packages were sent to the 9to5 Ranch. Because the analysis for each package involves distinct issues, they will be considered separately. This Court first must decide which approach will guide the analysis. While the "other indicia" approach has been criticized as too reliant on property-like concepts that are antithetical to modern Fourth Amendment doctrine, *see Rose*, 3 F.4th at 733–35 (Gregory, J. dissenting), this Court is persuaded by the clarity that approach provides. Moreover, a consideration of property interests is persuasive because it is founded in the roots of Fourth Amendment jurisprudence. *See, e.g., Carpenter v. United States*, 138 S. Ct. 2206, 2268–71 (2018) (Gorsuch, J. dissenting) (describing the traditional propertybased understanding of the Fourth Amendment and how it has not been abandoned, but just "lost in *Katz*'s shadow").

There is no evidence that Dutton exercised ownership, possession, or control over the package addressed to Dolly Exotic. The package was never delivered to Dutton or her home. The package was additionally never in Dutton's personal possession. While Dutton argues that "Dolly Exotic" is her alias, pointing to evidence of her usage of the name for many drag performances in Aglovale and throughout Northern Arcadia, that does not reach the threshold of the Fourth Circuit's "established alias" requirement as she does not show that she was known to others by that name. Dutton's challenge of the search is solely based on the evidentiary weight of the packages in the case against her, which cannot give rise to a legitimate expectation of privacy.

The case for Dutton to challenge the search of the package addressed to Annee Oaklee is very attenuated. Dutton offers no evidence that others knew her as Annee Oaklee or that she used the name publicly. Rather, the name seems to be one that Dutton developed solely for criminal activity. The only evidence that pointed to Dutton being known by the name Annee Oaklee is from her prior criminal convictions using it. This Court is persuaded by the arguments from the *Daniel* court and *Lozano* concurrence that a criminal alias cannot give rise to a legitimate expectation of privacy.

Dutton is unable to prove she had a legitimate expectation of privacy in either of the packages sufficient to challenge their search. Therefore, this Court sees no reason to address other issues raised in the motion to suppress, including the legality of searching those packages without a warrant or whether a subsequent search of the ranch with a warrant and the evidence seized was the fruit of that potentially illegal search. Moreover, this Court heard no evidence about the search beyond what is described in this Memorandum Decision and limited its factfinding to the standing issue alone. Dutton's motion to suppress the packages and all the evidence flowing from them is therefore denied.

### II. Restitution Owed by the Defendant

The Government asked this Court to order Dutton to pay restitution to Maomi Xiao, the owner of Xiao Maomi Ranch, for the properties stampeded and demolished by the ostriches. Dutton argued that no restitution should be ordered. Dutton contended that she only pled guilty to money laundering and exotic animal trafficking, but it was her release of the ostriches that caused property damage to Xiao Maomi Ranch. She claimed that because releasing the ostriches is not an element of her convicted offenses, Maomi Xiao should not be considered a victim of her crime. This Court agrees with the Government. When federal courts are sentencing a defendant convicted of certain offenses under Title 18 of the U.S. Code, the Victim and Witness Protection Act ("VWPA") allows federal courts to order the defendant to make restitution to any "victim" of that offense. 18 U.S.C. § 3663(a)(1)(A); *Hughey v. United States*, 495 U.S. 411, 412 (1990). "Victim" means "a person directly and proximately harmed as a result of the commission of an offense." 18 U.S.C. § 3663(a)(2). When determining whether to order restitution, the court shall consider the amount of the loss sustained by each victim because of the offense. *Id.* § 3663(a)(1)(B)(i)(I).

In *Hughey*, the Supreme Court held that restitution should be ordered "only for the loss caused by the specific conduct that is the basis of the offense of conviction." 495 U.S. at 413. However, circuit courts have disagreed on how to interpret *Hughey*'s holding.

Some circuit courts take a narrow approach that limits restitution orders. See, e.g., United States v. Davis, 714 F.3d 809, 814 (4th Cir. 2013); United States v. West, 646 F.3d 745 (10th Cir. 2011). For example, the Ninth Circuit interprets the Hughey holding to mean that "restitution may only be imposed for conduct that constitutes an element of the offense." United States v. Reed, 80 F.3d 1419, 1423 (9th Cir. 1996). In Reed, Reed was driving a stolen van and engaged in a chase with police officers. Id. at 1420. At the end of the chase, Reed crashed into several cars and came to a halt. Id. When the police officers finally caught and searched Reed, they found a loaded revolver in his pocket. Id. Reed pleaded guilty to "being a Felon in Possession of a Firearm." Id. The district court ordered restitution for the damages that occurred during the chase, but the Ninth Circuit reversed the restitution order because "fleeing the police is not part of the conduct underlying [Reed's] offense of conviction and thus cannot serve as the basis for a restitution order." Id. at 1421.

The Fifth Circuit similarly focuses on the elements of the convicted offense and limits restitution accordingly. In *United States v. Penn*, Penn engaged in a gunfight and then fled the scene from the halfway house where he was serving out the remainder of a federal sentence. 969 F.3d 450, 453–54 (5th Cir. 2020). When he noticed a police officer was chasing him, he sped up and turned into a neighborhood, eventually losing control of his car. *Id*. He "hit a curb, ran through a wrought-iron fence, and crashed into an apartment building." *Id*. Penn was convicted of escape from federal custody and possession of a firearm by a felon. The district court also ordered Penn to pay restitution to the owner of a car hit during the gunfight and the owner of the apartment building and wrought-iron fence. *Id*. But the Fifth Circuit concluded that *Hughey* would not permit a restitution award for damages incurred during the shootout or escape because neither the use of a firearm nor flight from police are elements of the felon-in-possession offense. *Id*. at 458.

In contrast, some circuits interpret *Hughey* more broadly. *See, e.g., United States v. Chalupnik*, 514 F.3d 753 (8th Cir. 2008); *United States v. Donaby*, 349 F.3d 1046 (7th Cir. 2003). For example, the Sixth Circuit focuses on whether the criminal conduct directly or proximately caused the harm in question. In *United States v. Ruiz-Lopez*, Ruiz-Lopez pulled his pistol and pointed it at a gas station employee. 53 F.4th 400, 402 (6th Cir. 2022), *cert. denied*, 143 S. Ct. 1008 (2023). When he lowered his gun to put it back in his pocket, Ruiz-Lopez hit the trigger, and the bullet ricocheted off the floor and struck the employee's leg. *Id.* Ruiz-Lopez pled guilty to possessing a firearm as an undocumented immigrant. *Id.* The district court ordered him to pay restitution to the gas station employee. *Id.* The Sixth Circuit affirmed the district court's restitution order because Ruiz-Lopez's "commission of" the possession defense" directly and proximately caused the gas station employee harm. *Id.* at 405. "But for Ruiz-Lopez's unlawful possession, the firearm would not have been in the gas station that day, and it would not have discharged, causing injury to [the gas station employee]." *Id.* at 404.

In the Sixth Circuit's view, *Hughey* only requires "a causal link between the offense of conviction and the harm for which restitution is ordered." *Ruiz-Lopez*, 53 F.4th 400, at 405 (quoting *United States v. Washington*, 434 F.3d 1265, 1269 (11th Cir. 2006)). *Hughey* contains no "element-only" language, and no such language appears in the VWPA. *Ruiz-Lopez*, 53 F.4th at 406. Instead, the VWPA entitles a person to restitution when they are "directly and proximately" harmed as a result of the commission of an offense. 18 U.S.C. § 3663(a)(2).

The Eleventh Circuit agrees. See, e.g., Washington, 434 F.3d at 1268. After the defendant in Washington robbed a bank and escaped in his car, he managed to slip under a security gate of a garage when it was closing. Id at 1266. The police officers who chased him did not clear the gate in time, and the crash damaged the police cars and the gate. Id. The defendant pled guilty to armed bank robbery and was ordered to pay restitution to the police department and the garage owner. Id. at 1267. The Eleventh Circuit affirmed the restitution order for damage caused during the escape, concluding that "[a]lthough flight is not an element of bank robbery, its harm may directly and proximately result from the robbery." Id. at 1268.

The narrow question of restitution before the Court here operates in the shadow of arguments about the broadening of restitution throughout the criminal justice system and whether modern restitution schemes post-*Hughey* have gone too far or not far enough. *Compare* Cortney E. Lollar, *What Is Criminal Restitution*? 100 Iowa L. Rev. 93, 97 (2014) (arguing that "criminal restitution has become unmoored" and "evolved from a primarily restorative mechanism to a primarily punitive one") with Nicholas C. Harbist & Dina L. Relles, *The Crime Victim's Rights Act: How to Make the New Victims' Rights Legislation with Teeth More than Just Food for Thought*, N.J. Law. Mag., June 2008 at 48, 49–51 (asserting that the Supreme Court's decision in *Hughey* "posed a significant challenge to victims seeking restitution"). While recognizing recent scholarly criticism of restitution, *Lollar, supra*, at 101–04, the Court is persuaded by an approach to justice that considers the whole of a defendant's conduct and its impact on the victim. If the

Record Page 17 of 41 statute permits restitution to be ordered in this case, this Court finds that it would be proper.

And the plain language of the statute does permit such an order. Dutton argued that the language of the VWPA statute is ambiguous, and therefore the rule of lenity would require an interpretation more favorable to the Defendant. But that rule applies only if, "after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute such that the Court must simply guess as to what Congress intended." *United States v. Pace*, 48 F.4th 741, 755 (7th Cir. 2022). In this case, there is no need to guess. The statute unambiguously contemplates a restitution award to any victim directly or proximately harmed by the commission of an offense, regardless of whether the injurious acts themselves were elements of that specific crime.

Dutton also argues that, even if restitution is allowed, it would be inappropriate in this case because the damage to the Xiao Maomi Ranch was not "directly and proximately harmed as a result of the commission of [her] offense." 18 U.S.C. § 3663(a)(2). That factual question is important. *See, e.g., United States v. Householder*, No. 1:20-cr-77, 2023 WL 3931536 (S.D. Ohio June 9, 2023). But in this case, the Defendant is incorrect. 18 U.S.C. § 42 provides that a person commits exotic animal trafficking if they import "any [species of wild animals that] the Secretary of the Interior may prescribe by regulation to be injurious to human beings, to the interest of agriculture, horticulture, forestry, or to wildlife or wildlife resources of the United States." Although releasing the ostriches is not an element of a violation of 18 U.S.C. § 42 or the Interior regulations applicable here, Dutton's commission of the animal trafficking offense directly and proximately caused damage to the Xiao Maomi Ranch. But for Dutton's illegal importation of the North African Ostriches into the United States, the ostriches would not have been present in Arcadia Canyon, and the ostriches would not have stampeded, causing harm to the neighboring ranch.

Further supporting a finding of proximate cause is the foreseeability of the resulting damage. Approximately one year ago, a storm startled the ostriches and caused a small stampede. The stampede resulted in property destruction on the 9to5 Ranch, and the incident prompted Dutton to take extra measures to ensure the ostriches were calm and contained. Dutton's personal knowledge of the potential for damage from ostrich stampedes, as well as the measures she took to prevent future stampedes, supports the finding that the damage was a foreseeable result of Dutton's illegal activity. Foreseeability, in conjunction with the traditional causation analysis, supports the Court's conclusion that Dutton's illegal importation of North African Ostriches directly and proximately caused damage to Xiao Maomi Ranch. *See, e.g. Donaby*, 349 F.3d at 1054. Thus, this Court orders Dutton to pay restitution to Maomi Xiao, the owner of Xiao Maomi Ranch, to cover the damage to the Ranch.

# **CONCLUSION**

For the reasons set forth above, this Court hereby denied Dutton's Motion to Suppress and ordered Dutton to pay a restitution of \$393,000 to Maomi Xiao.

SO ORDERED:

<u>/s/ Nana Ama Owusu</u> Nana Ama Owusu, U.S.D.J.

December 1, 2023

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1 2	United States District Court District of Arcadia		
	UNITED STATES OF AMERICA,		
	Plaintiff,		
	ν.	Docket No. 2:13-CR-8484	
	Michaela Dutton,	Thursday, November 16, 2023	
	Defendant.		
3 4	VOLUME I		
5 6 7	Honorable Na United States	ot In Front of the ana Ama Owusu District Judge	
8 9	Appearances:		
10 11 12 13 14 15 16		South Kent Street, 2nd Floor Arcadia City, Arcadia 71432 (222) 493-8732	
17 18 19 20 21 22	For the Defendant: Law	v Offices of Stevens and Scotty BY: JEFFREY LANE 1478 Roving Lane, Suite 300 Essex City, Arcadia 71432 (220)864-9723	
23 24 25 26 27 28 20	Court Reporter: 412 S	Elania Rodrigo District Court Clerk's Office South Kent Street, Courtroom 12 Arcadia City, Arcadia 71432 (222)916-7437	
29 30 31 32 33	Transcription Service:	Ballpoint Recording Services 211 W. Azul Avenue Essex City, Arcadia 70745 (222)577-1942	

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1 2 3	Proceedings recorded by electronic sound recording; Transcript produced by transcription service.
4	United States v. Dutton
5 6 7	Sentencing and Restitution Hearing Transcript, 1:15 p.m.
8	Testimony of Harlan Givens
9	Direct Examination by Henrietta Pearson, Assistant U.S. Attorney
10	PEARSON: Will you please state your name for the record?
11	GIVENS: My name is Harlan Givens.
12 13	PEARSON: Thank you, Mr. Givens. What do you currently do for a living?
14 15	GIVENS: I work in ranching, I'm a ranch hand. I love working with animals so that's always the kind of work I seek out.
16 17	PEARSON: How are you familiar with the defendant, Michaela Dutton?
18 19	GIVENS: I used to work at the 9to5 Ranch, I was actually working there the day everything happened to her.
20	PEARSON: How long did you work at the 9to5 Ranch?
21	GIVENS: Four or five years.
22	PEARSON: Are you still working there?
23 24	GIVENS: Well, no, obviously. Once the cops busted the whole business, everything was seized, and the ranch was shut down.
25	PEARSON: What kind of work did you do at the 9to5 Ranch?
26 27 28	GIVENS: I did a little bit of everything. Mostly it was helping care for the animals, keeping the stables and pens clean, and generally keeping everything up and running.
29	PEARSON: What animals did you work with?
30 31 32 33 34	GIVENS: Oh, all of them. I mean Michaela had a soft spot in her heart for those ostriches, but I helped her care for the ostriches, since there were so many of them. I also worked with the horses and chickens we had and really all the animals on the ranch.
35	PEARSON: How was it to care for the ostriches?

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GIVENS: Well at first, they didn't really like me. One of them, 1 2 this big male one that Michaela called Sassafras kept biting me. 3 I don't know why, I'm a loveable guy. But they never bit 4 Michaela, they loved her. PEARSON: How was Michaela with the ostriches? 5 GIVENS: Michaela taught me a lot about them. She knew everything 6 about them, how to care for them, and what they liked and didn't 7 like. And eventually they warmed up to me, and I bonded with 8 9 some of them. Huckleberry was my favorite; she always ran up to say hello to me. 10 PEARSON: What did she tell you about the ostriches? 11 12 LANE: Objection, judge. That question calls for a hearsay 13 response. PEARSON: I'll rephrase, your honor. What did you learn about the 14 ostriches while working with them? 15 GIVENS: Well, they're very temperamental, and they spook easily. 16 17 And they do not bury their heads in the sand when they get spooked. They run. There was one time, maybe a year ago, when we 18 19 had a bad thunderstorm in the area, and it was really noisy. The storm came on suddenly, and we hadn't brought the ostriches into 20 one of the shelters yet. I guess lightning or something struck 21 22 the transformer powering our ranch, and it made this crazy loud 23 noise that spooked the ostriches. 24 PEARSON: What happened when they were spooked by the 25 thunderstorm? 26 GIVENS: They tried to start running away and it was like a 27 stampede of them. They burst through one side of the fencing of 28 the pen we kept them in and started running at full speed. You'd be surprised, but those ostriches can run like 30 or 40 miles an 29 hour, especially when they're startled. 30 31 PEARSON: How did you get them back in? GIVENS: Well, before Michaela and I could really do anything, 32 the ostriches went off running towards this old barn we had, and 33 they basically flattened it. They totally destroyed the whole 34 35 barn structure, and it collapsed. Thankfully, there were no people or animals in it at the time. I had no idea ostriches 36 could do that much damage, but Michaela said she wasn't really 37 38 surprised they could.

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PEARSON: How was the stampede resolved? 1 GIVENS: Oh man, it took us hours to track them down, once they'd 2 3 calmed down. Especially Sassafras, he was gone for almost five 4 hours. And he decided he hated me again and tried to bite me 5 when I brought him back. But it was a crazy day. Michaela was worried about something like that happening again, and the 6 7 ostriches getting out and damaging the main house or harming the 8 other animals. 9 PEARSON: That day, who was at the ranch? 10 GIVENS: It was just Michaela and I that day. She and I were always at the ranch, although others would come and help. 11 PEARSON: After that stampede, what steps, if any, did you and 12 Ms. Dutton take? 13 GIVENS: Like I said, she was worried about it happening again. 14 So, she got some stronger fencing and more secure latches to put 15 up. The whole goal with that new fencing and latches was to keep 16 the ostriches in the pen, if they were ever startled again. 17 PEARSON: Let's turn to the day of Ms. Dutton's arrest. Where 18 were you that day? 19 GIVENS: I was working inside the house, and Michaela had gone 20 outside because we were getting a delivery. 21 PEARSON: How did you learn that the FBI were there? 22 GIVENS: I heard all this noise and people were yelling. It was 23 24 hard to figure out what was going on. Eventually, I went outside to see what the ruckus was all about. I didn't realize it was 25 the FBI, or I probably would've gone out the back door instead. 26 PEARSON: Sure. Once you walked outside, what did you see? 27 GIVENS: I saw a bunch of FBI agents, and the ostriches were 28 everywhere. I guess something had startled them, or they got out 29 30 somehow. And then there was someone riding on a horse, and the 31 FBI agents were trying to chase after them, but the ostriches 32 got in the way. 33 PEARSON: Did you see how the ostriches got out? 34 GIVENS: No, but I think only Michaela was outside at the time. 35 PEARSON: What did you witness the ostriches doing?

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GIVENS: It was chaos. I could see the ostriches sprinting off, 1 2 and I spotted Sassafras leading the pack, which was not a 3 surprise. I know what he looks like because he'd started biting 4 me again, so I always wanted to steer clear. 5 PEARSON: How did what you saw that day compare to the stampede from the lightning strike? 6 GIVENS: It looked really similar. 7 8 PEARSON: Thank you, no further questions at this time. 9 Cross Examination by Jeffrey Lane, Attorney for the Defendant. 10 LANE: Earlier you mentioned a time that the ostriches stampeded 11 after a lightning strike - did they stampede often? 12 GIVENS: Definitely not. LANE: In fact, isn't it true that August 17th was the only other 13 time you saw them stampede? 14 15 GIVENS: Yes, that sounds right. LANE: Isn't it also true that the ostriches did not break out of 16 17 their pen any other time? 18 GIVENS: Not that I'm aware of. LANE: And you worked with the ostriches a lot? 19

GIVENS: Absolutely. I spent a lot of time with them, especially 20 21 Huckleberry. She'd follow me around all day if I'd let her.

22 LANE: Based on your experience with them, were the ostriches 23 violent or dangerous?

24 GIVENS: Except for Sassafras always biting me, no, they were 25 pretty calm. They're big creatures, and you need to care for 26 them well. But definitely not violent.

27 LANE: When you saw the ostriches were out of their pen, did you think they'd cause damage? 28

29 GIVENS: Not initially. But there was so much happening.

[...] 30

31 LANE: That day, after you went outside, you snuck back inside 32 the house, right?

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- 1 GIVENS: Yes.
- 2 LANE: And when FBI agents came upon you, they found you shoving 3 cash into a duffel bag, correct?
- 4 GIVENS: Yeah.
- 5 LANE: You just testified that you were working in the house that 6 day, while my client was accepting a delivery - were you 7 cooking?
- 8 GIVENS: Well, no.
- 9 LANE: Were you cleaning the house?
- 10 GIVENS: No.
- 11 LANE: Were you working on something for the animals at the 12 ranch?
- 13 GIVENS: Not at that point, no.
- 14 LANE: In fact, didn't you later tell the FBI that you were 15 sorting the cash and organizing the records to make sure no one 16 noticed anything suspicious in the farm stand's books?
- 17 GIVENS: Sure, that sounds right.
- 18 LANE: And you were arrested that day by the FBI, correct?
- 19 GIVENS: Yeah, but I haven't been charged with anything.
- 20 LANE: I'm glad you brought that up. Isn't it true that you took 21 an immunity deal with the FBI for your testimony against leaders 22 of the Blue Smoke network?
- 23 GIVENS: Well of course I did, the FBI kept threatening to charge 24 me with a whole bunch of things. I didn't want to go to prison.
- 25 LANE: And isn't it also true that your deal required you to 26 testify against Ms. Dutton?
- 27 GIVENS: Yeah, but I told the truth too.
- 28 LANE: I'm sure you did. No further questions, your honor.

1 2 3	United States District Court District of Arcadia	
5	UNITED STATES OF AMERICA,	
	Plaintiff,	
	ν.	Docket No. 2:13-CR-8484
	Michaela Dutton,	Thursday, November 16, 2023
	Defendant.	
4 5 6	VOLU	JME I
7 8 9 10	Honorable Na	ot In Front of the ana Ama Owusu District Judge
11 12 13 14 15 16 17 18		For the District of Arcadia BY: HENRIETTA PEARSON, AUSA 31 South Kent Street, 2nd Floor Arcadia City, Arcadia 71432 (222) 493-8732
19 20 21 22 23 24	For the Defendant: Law	7 Offices of Stevens and Scotty BY: JEFFREY LANE 1478 Roving Lane, Suite 300 Essex City, Arcadia 71432 (220)864-9723
25 26 27 28 29 30 31	Court Reporter: 412 S	Elania Rodrigo District Court Clerk's Office South Kent Street, Courtroom 12 Arcadia City, Arcadia 71432 (222)916-7437
32 33 34 35 36	Transcription Service:	Ballpoint Recording Services 211 W. Azul Avenue Essex City, Arcadia 70745 (222)577-1942

Record Page 28 of 41

1 2	Proceedings recorded by electronic sound recording; Transcript produced by transcription service.
3 4 5	United States v. Dutton
5 6 7	Sentencing and Restitution Hearing Transcript, 1:15 p.m.
7 8	Testimony of Maomi Xiao
9 10	Direct Examination by Henrietta Pearson, Assistant U.S. Attorney
10 11 12	PEARSON: Will you please state your name for the record?
12 13 14	XIAO: My name is Maomi Xiao.
15	PEARSON: And what is your profession, Ms. Xiao?
16 17	XIAO: I am the owner of Xiao Maomi Ranch.
18 19	PEARSON: For how long have you owned the ranch?
20 21 22	XIAO: Around 9 years. We've been a working ranch just about the whole time I've lived there.
23 24 25	PEARSON: What type of work do you do on your ranch?
25 26 27 28 29 30 31	XIAO: My wife and I raise our family on the ranch, and we raise cattle, sheep, and chickens. We only operate as a dairy and egg producer, and we sell our dairy products from the cattle and sheep at the farmers market, as well as the eggs from our chickens. We also shear the sheep for wool that we sell to another producer to turn it into clothing.
32 33	PEARSON: Can you tell us what happened on August 17, 2022?
34 35 36 37 38 39	XIAO: I was watching my daughter, Eliza, riding a pony that afternoon and suddenly saw ostriches running towards us. I was so shocked because I had not raised any ostriches, and those ostriches looked different.
40 41	PEARSON: How do they look different?
42 43 44	XIAO: Their necks are red and have less fur on their heads and necks. They are also bigger than the ostriches other farmers raised on their ranches.
45 46	PEARSON: What kinds of ostrich do local farmers usually keep?

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XIAO: People here usually raise common ostriches, the ones with 1 2 more fur on their necks, so their necks look greyish. 3 4 PEARSON: How fast were those ostriches when they rushed into 5 your ranch? 6 XIAO: Very fast. It's hard to guess the speed of something when 7 it's coming right at you, but they have such long legs. They had 8 9 to be traveling ten feet with every stride. In five to ten 10 minutes, my ranch was completely destroyed. 11 12 PEARSON: And how many were there? 13 14 XIAO: Dozens. I would say probably 20 to 30. There might have 15 been more. 16 17 PEARSON: What did you do after you saw those ostriches? 18 19 XIAO: I immediately grabbed Eliza and took her to a safe place. She was terrified. 20 21 22 PEARSON: What did you do to drive away those ostriches? 23 XIAO: I had no experience with ostriches, and there was no time 24 25 for me to Google, so I tried the methods I used to herd my cows, but they did not work. Those ostriches were too giant and 26 strong, and they were really agitated. Thankfully, the cops were 27 already at the 9to5 Ranch and had seen the ostriches come 28 running towards my ranch, because they got some type of wildlife 29 30 control out quickly to help capture the ostriches. 31 32 PEARSON: What damage did those ostriches cause to your ranch? 33 XIAO: They destroyed the house my family and I live in, plus 34 several other buildings, like where we keep the calves. The 35 36 stampede destroyed our shearing shed for the sheep and our only 37 water pump, which is crucial in our ranch's day-to-day 38 operations. It was terrible. 39 40 PEARSON: How did it make you feel? 41 42 XIAO: Terrible. I am a first-generation immigrant, and it took my wife and me everything to build this ranch. Watching these 43 44 animals destroy our livelihood and not be able to stop it was one of the worst feelings imaginable. One of the ostriches 45 swallowed one of my earrings. That pair of earrings was from my 46 47 mom. She gave them to me before I left my home country to come

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here. It is a family heirloom, and I always wanted to pass it on 1 2 to my daughter. 3 4 PEARSON: How much did it cost you to rebuild your ranch so it 5 can function as usual again? 6 7 XIAO: It cost me around \$350,000 to fix all the damage, and we couldn't operate the ranch or make money while the repairs were 8 9 happening. The insurance does not cover all the damage, not to 10 mention that I have to take my daughter to see a therapist. She is so young, and the experience really traumatized her. She is 11 12 afraid of going out again. 13 14 PEARSON: Do you know where those ostriches might have come from? 15 16 XIAO: Yes, they came from the 9to5 Ranch. 17 18 PEARSON: Do you know about that ranch? 19 20 XIAO: Yes, of course. There are only two ranches near the canyon: them and us. I have met a couple of their employees, but 21 22 they usually keep to themselves. One of their employees, 23 Michaela Dutton, and I used to sell at the same farmer's markets, but I think now they sell most of their produce from 24 25 their own farm stand. 26 27 PEARSON: What does the area between your ranch and the 9to5 28 Ranch look like? 29 30 XIAO: We're the only two ranches in Arcadia Canyon. I am on the 31 northern side, and they are on the southern side. There's not a 32 lot between us either. It's hard to build things when the canyon wall and Blue Ridge Hill are on either side. They're so steep 33 34 and rocky. 35 36 PEARSON: Thank you, Ms. Xiao. No further questions. 37 38 39 Cross Examination by Jeffrey Lane, Attorney for the Defendant. 40 LANE: Thank you for being here today, Ms. Xiao, and I'm sorry 41 for what you and your family have been through. 42 43 44 XIAO: Thank you. 45 LANE: Your ranch and the 9to5 Ranch are several miles apart, 46 47 right?

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1 2 XIAO: Yes, around 2 miles. 3 4 LANE: In fact, so far apart that before the destruction, you didn't have any idea they even kept ostriches there, right? 5 6 7 XIAO: Yeah, I had no idea. A lot of people around Aglovale keep ostriches, but not these. I had never seen these kinds of 8 9 ostriches before, and I don't know much about them. 10 LANE: Would you expect these ostriches to be able to cause that 11 kind of destruction? 12 13 14 PEARSON: Objection, your honor. Mr. Lane is asking the witness 15 to speculate. She just testified that she had never seen these kinds of ostriches before. 16 17 JUDGE: The objection is sustained. 18 19 20 LANE: I'll rephrase. From what you personally know about ostriches, are they destructive or dangerous creatures? 21 22 23 XIAO: I guess not. But they were that day. 24 25 LANE: No further questions, your honor.





1 2 3	United States District Court District of Arcadia	
5	UNITED STATES OF AMERICA,	
	Plaintiff,	
	ν.	Docket No. 2:13-CR-8484
	Michaela Dutton,	Friday, August 11, 2023
	Defendant.	
4 5 6	VOLU	.i JME I
6 7 8 9	Hearing Transcript In Front of the Honorable Nana Ama Owusu United States District Judge Appearances:	
10 11 12 13 14 15 16 17		Assistant United States Attorney For the District of Arcadia BY: HENRIETTA PEARSON, AUSA 431 South Kent Street, 2nd Floor Arcadia City, Arcadia 71432 (222) 493-8732
17 18 19 20 21 22 23	For the Defendant: La	aw Offices of Stevens and Scotty BY: JEFFREY LANE 1478 Roving Lane, Suite 300 Essex City, Arcadia 71432 (220)864-9723
23 24 25 26 27 28 29 30	Court Reporter: 412	Elania Rodrigo District Court Clerk's Office South Kent Street, Courtroom 12 Arcadia City, Arcadia 71432 (222)916-7437
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Proceedings recorded by electronic sound recording; 1 2 Transcript produced by transcription service. 3 4 United States v. Dutton 5 6 Pre-Trial Hearing Transcript, 9:00 a.m. 7 8 Testimony of Aubrey Epps 9 Direct Examination by Henrietta Pearson, Assistant U.S. Attorney 10 PEARSON: Can you please state your name and occupation for the record? 11 EPPS: My name is Aubrey Epps, E-P-P-S, and I am a Special Agent 12 for the Federal Bureau of Investigation 13 14 PEARSON: And what are your duties in this role? EPPS: I'm based out of Arcadia City, and I investigate 15 violations of federal criminal law arising in Northern Arcadia, 16 which includes Aglovale. I work in the branch's violent crime 17 division. 18 19 PEARSON: Is that how you became involved in the case at hand? 20 EPPS: Yes. Part of our work in violent crime is investigating bank robberies. We were already investigating the Arcadia City 21 22 Bank heist when the U.S. Postal Inspection Service alerted us to the stolen money they found being shipped through Aglovale's 23 post office. 24 25 PEARSON: Is that normal? Stolen money being shipped by mail? 26 EPPS: People shipping contraband-stolen money and drugs and weapons and whatnot-it's more common than you think. USPS 27 28 investigators are trained to look for certain things and 29 characteristics on packages that may indicate the package 30 contains contraband. From there, USPS brings in dogs to check for drugs and money, and if the dogs find something, USPS can 31 32 get a warrant to open the package. 33 PEARSON: What kind of indicators do the postal inspectors look for? 34 EPPS: I'm afraid I don't know the answer to that. USPS keeps 35

that information very confidential, for security reasons. But I

can tell you that a significant majority of the packages 1 2 postal workers flag are found to contain contraband material. 3 PEARSON: On August 11, 2022, the USPS branch in Aglovale, 4 Arcadia received a package addressed to "Annee Oaklee" at the 5 9to5 Ranch. Was there anything suspicious about that package? 6 EPPS: Yes. The package hadn't been sealed well and part of the box came off in transport. When the box got to the USPS, 7 employees could see a couple hundred-dollar bills sticking out 8 9 of the opening, and that seemed a bit off to them. PEARSON: And did the USPS employees do anything to investigate 10 the "off" package? 11 EPPS: The employees were able to see some of the serial numbers 12 13 for the bills through the hole in the package. They ran the 14 serial numbers through the federal database and found out the bills had been stolen in a big bank heist. Once they knew 15 that, those same USPS employees opened the package. 16 17 PEARSON: And what was in the box once they opened it? 18 EPPS: A whole lot of cash. About \$800,000 worth. That's when 19 USPIS called us in. 20 PEARSON: "Us" being the FBI? 21 EPPS: That's right. 22 PEARSON: Why was the FBI called in? EPPS: Much of the cash in the package addressed to Annee Oaklee 23 matched serial numbers from the money stolen from Arcadia City 24 Bank three days earlier. The FBI had already started 25 investigating that robbery, and I was working on the case. Given 26 what the USPS employees learned, we took the package into the 27 28 FBI's possession. 29 PEARSON: Does the FBI have any suspects in this bank robbery? 30 EPPS: Well, I can't comment too much on an ongoing 31 investigation, but-32 LANE: Objection, your honor. Any answer Agent Epps could give 33 here would be speculative and prejudicial to my client. Ms. 34 Dutton has not been arrested in connection with this crime.

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JUDGE OWUSU: The objection is overruled. Agent Epps, you may 1 2 answer.

3 EPPS: Like I said, I can't comment too much on the 4 investigation, because we haven't made any arrests yet, but this 5 robbery shares many similarities with a few other bank robberies around the country that have been affirmatively attributed to 6 7 the Blue Smoke crime syndicate.

PEARSON: Can you share what kind of similarities? 8

EPPS: I'm sorry, I'm not at liberty to say. 9

PEARSON: That's alright. Let's go back to the "Annee Oaklee" 10 package-you were called in to investigate. Where did you start? 11

12 EPPS: Well, first we ran the name "Annee Oaklee." I mean, that's clearly not someone's given name, but we ran the name through 13 the FBI's National Name Check Program and Criminal Records 14 Database and found some arrest records from, oh, around ten 15 years ago. Further investigation found that Annee Oaklee was a 16 criminal alias used by Michaela Dutton. Apparently, Ms. Dutton 17 had committed some misdemeanor crimes using the Annee Oaklee 18 19 name years ago, so we were able to connect her to the suspicious 20 package.

21 PEARSON: So where did the FBI's investigation proceed from 22 there?

EPPS: From there, we started looking a bit closer at Michaela 23 24 Dutton. After connecting her to the Annee Oaklee alias, we found 25 out that she had been associated with the Blue Smoke network. I quess she used to be a blackjack dealer at one of their casinos. 26 27 We knew that because she'd filed taxes a couple of times with 28 Blue Smoke-connected casinos listed as her employer.

29 PEARSON: What steps did the FBI take at this point?

30 EPPS: Well, we wanted to build our case, so initially we just 31 flagged in the USPS scanning system the names Annee Oaklee and Michaela Dutton, as well as the 9to5 Ranch. That was the 32 33 location the package was being delivered to.

PEARSON: At that point, what did you know about the 9to5 Ranch? 34

EPPS: It had not raised any flags for us before in connection to 35 Blue Smoke or anything else that was criminal. A lot of folks in 36 37 the area have ranches and make their living in ranching.

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PEARSON: Once you flagged those names, how did the FBI's 1 2 investigation proceed?

3 EPPS: As often happens with investigations relating to the mail, 4 we wanted to do a controlled delivery of the Annee Oaklee 5 package. Essentially this is where a federal agent pretends to be a mail carrier delivering the package, with the goal of 6 7 confirming the recipient and potentially effecting an arrest.

- PEARSON: Did that controlled delivery take place? 8
- EPPS: No. 9
- 10 PEARSON: Why not?

EPPS: Before we actually could get the plan together to do a 11 controlled delivery, USPS found another package being sent to 12 the 9to5 Ranch. But this time it was being sent to Dolly Exotic. 13

PEARSON: Who is Dolly Exotic? 14

EPPS: At the time, we had no idea. There were a lot of moving 15 pieces and the investigation into the Ranch was coming together 16 17 quickly. We just assumed it was some other fake person. But USPS workers seized the package for our investigation since it was 18 19 addressed to the suspicious address. And then I asked them to 20 investigate the package further before I got out to the branch 21 to do so myself.

- PEARSON: What did those USPS workers find when they opened the 22 23 package?
- 24 EPPS: There were two large animal eggs inside. We had to contact 25 other agencies to figure out what they were because I honestly 26 had no clue. Animals are not my specialty.
- PEARSON: What were the eggs? 27
- 28 EPPS: They were both North African Ostrich Eggs, which I later learned are illegal for people to import into the United States. 29
- 30 PEARSON: Once you had the two packages, addressed to Dolly 31 Exotic and Annee Oaklee, what did the FBI do?

32 EPPS: At that point, we felt that we had enough that we needed 33 to search the 9to5 Ranch. Based on the two packages and the 34 contents we found within them, a judge issued a warrant for the 35 FBI to search the 9to5 Ranch.

36 PEARSON: Nothing further at this time, your honor.

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Cross Examination by Jeffrey Lane, Attorney for the Defendant. 1 LANE: When the packages were seized as part of an FBI 2 3 investigation, who made the choice for that to happen? EPPS: I did, after talking with some of the other agents leading 4 5 the FBI's investigation team. 6 LANE: And it's true that when you ordered the package addressed 7 to Annee Oaklee be seized, you did not have a warrant? 8 EPPS: That's correct. 9 LANE: And when you later seized the package addressed to Dolly 10 Exotic, you did not have a warrant, is that right? 11 EPPS: Yeah, we didn't have a warrant. But we didn't need one. 12 LANE: But you could have gotten a warrant before searching and 13 seizing those two packages, right? 14 EPPS: Sure. 15 LANE: But you just chose not to, right? 16 EPPS: Well, I guess. LANE: In fact, you later did get a warrant, right? 17 EPPS: Yes, to search the 9to5 Ranch. 18 19 [...] LANE: After Ms. Dutton was arrested, what did you learn about 20 the name Dolly Exotic? 21 22 EPPS: So, we learned that the Defendant had used the name 23 Dolly Exotic as a drag performer at venues throughout Northern Arcadia and sometimes hosting public events in Arcadia City as 24 25 Dolly Exotic as well. I guess Dolly Exotic is pretty popular 26 in the area since we found social media posts that her 30 to 27 50-person shows regularly sold out. 28 LANE: How did you learn that Michaela Dutton performed using 29 that name? 30 EPPS: So, it actually took some work to figure that out. While 31 the drag performer persona had become really popular in the 32 last year, no one knew who the performer actually was. But we 33 happened upon that information during our investigation of

34 Michaela Dutton.

Record Page 40 of 41 1 LANE: In what way?

2 EPPS: We were talking to one of her former roommates, Bonnie 3 Cassidy, who gave us that information. Ms. Cassidy said that the 4 Defendant began performing as Dolly Exotic about 8 years ago, 5 but from the beginning she wanted to be totally out of the 6 spotlight outside of her events and performances.

7 LANE: In fact, Ms. Cassidy also told you that Ms. Dutton chose 8 that name to protect her privacy, correct?

9 EPPS: Yeah, she said the Defendant wanted to maintain a 10 distinct identity and that she really valued the privacy and 11 separation it provided.

- 12 LANE: Is it illegal to use a false name to send mail?
- 13 EPPS: Not inherently, no. But there are some crimes where it is 14 illegal.
- 15 LANE: But Ms. Dutton hasn't been charged with one of those 16 crimes, right?
- 17 EPPS: That's true.
- 18 LANE: And isn't it also true that Ms. Dutton had used the name 19 Dolly Exotic prior to the packages at issue here?
- 20 EPPS: Yes, that's correct.
- 21 LANE: It was to send books to herself at the 9to5 Ranch, right?
- 22 EPPS: Yeah, that's what the receipt we found inside the ranch 23 said.
- 24 LANE: But that wasn't illegal, was it?
- 25 EPPS: No, it was not.

26 LANE: No further questions.