

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	SA CR 03-232 AHS
	)	
	)	
	)	
Plaintiff,	)	
	)	OPINION AND ORDER DENYING
v.	)	DEFENDANT'S MOTION TO SUPPRESS
	)	
	)	
JOHN W. SELJAN,	)	
	)	
	)	
	)	
Defendant.	)	
	)	
	)	

---

I.

**INTRODUCTION**

International border search jurisprudence pertains to the lawfulness of searches conducted at, near, and distant from real borders. Defendant's motion draws into issue "exit" searches of items leaving the United States via aircraft, namely, whether Customs' searches of defendant's international Federal Express ("FedEx") document-sized packages which he sent from

1 California to the Phillipines violated Fourth Amendment  
2 principles. Under the border search exception to the Fourth  
3 Amendment, such a search does not require any warrant, probable  
4 cause, or reasonable suspicion. The Court concludes that each of  
5 the three searches took place at the functional equivalent of the  
6 international border.

7           Although each package was intercepted during currency  
8 interdiction operations by United States Bureau of Immigration  
9 and Customs Enforcement ("BICE" or "Customs") agents operating at  
10 the FedEx sorting facility based at the Oakland International  
11 Airport, these packages did not yield evidence of prohibited  
12 monetary transactions. Instead, inspectors found evidence of  
13 pedophilia-related offenses.

14           The evidence adduced at two suppression hearings  
15 identified the precise trans-Pacific route established by FedEx  
16 for these packages. While the packages did not depart the U.S.  
17 mainland from any real border nor directly from Oakland, under  
18 the applicable law, all three searches may be said to have taken  
19 place at the border or its functional equivalent. The evidence  
20 further shows that the defendant, in signing the air waybill,  
21 gave advance consent to the search of his packages prior to  
22 shipping them. Later searches of defendant's luggage as he  
23 attempted to depart for the Phillipines and of his residence,  
24 along with defendant's arrest and interview statements, led to  
25 and constitute admissible evidence for trial. These conclusions  
26 lead to denial of defendant's motion.

27 //

28 //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II.

**FINDINGS OF FACT**

The Court makes the following Findings of Fact in support of its denial of defendant's motion.

1. On Wednesday, November 20, 2002, John W. Seljan ("defendant" or "Seljan") sent an international FedEx package to the Phillippines. This package was detained by United States Customs agents and did not depart the country until November 22, 2002.

2. On Saturday, August 2, 2003, defendant sent an international FedEx package to the Phillippines.

3. On Friday, September 26, 2003, defendant sent an international FedEx package to the Phillippines.

4. Defendant personally sent each of the three FedEx packages.

5. Affixed to each of these packages was an international air waybill that defendant filled out and signed. In signing the waybill defendant agreed to the terms and conditions located on the back of the waybill.

6. One of the air waybill's terms provides: "Right to Inspect. Your shipment may, at our option or at the request of governmental authorities, be opened and inspected by us or such authorities at any time."

7. Defendant knowingly and voluntarily sent each of the three FedEx packages to the Phillippines. Defendant testified that he understood that his packages would be expected to "clear customs" before departing the United States.

8. International FedEx packages sent from Southern

1 California are routed through the company's hub at Oakland  
2 International Airport for sorting. Overnight document-sized  
3 packages are sorted into bags by country of destination. Upon  
4 completion of a "sort" for a particular country, such as the  
5 Phillippines, FedEx places all of the document-sized packages  
6 into a single container. Prior to departure from Oakland, each  
7 container is locked, weighed and given one consolidation number  
8 per container. An individual package in the container may be  
9 tracked based on its association with the consolidation number.

10 9. If a package is inspected by the U.S. Customs  
11 Service, its agents do so prior to the placement of the packages  
12 into the container. Once loaded into a container, a package is  
13 not removed until it arrives in the Phillippines.

14 10. Due to weight restrictions at the Oakland airport,  
15 some outbound containers are placed on a truck and transported to  
16 a smaller FedEx "ramp facility" at San Francisco International  
17 Airport. Other containers are loaded onto an airplane which  
18 departs from Oakland and lands immediately in San Francisco. The  
19 trucked-in containers are directly loaded onto the same aircraft.  
20 U.S. Customs agents do not conduct further investigations of the  
21 packages or containers in San Francisco.

22 11. Following a set of procedures dubbed "system form"  
23 by FedEx, packages bound for the Phillippines depart on flights  
24 at approximately 4:00 a.m., Pacific time. The sorting of these  
25 packages begins the night before at the Oakland hub. On Tuesday,  
26 Wednesday and Thursday mornings, the flight departs San Francisco  
27 and proceeds directly to the FedEx facility at Narita  
28 International Airport in Japan. On Friday, Saturday and Sunday

1 mornings, due to increased freight, the flight stops in  
2 Anchorage, Alaska, for refueling before proceeding to Narita.  
3 There is no Monday morning flight.

4           12. The stop-over in Anchorage is characterized by  
5 FedEx as a "gas-and-go" because the flight lands solely to take  
6 on additional fuel. No packages or containers deplane in  
7 Anchorage. The U.S. Customs Service does not conduct inspections  
8 of FedEx flights which stop in Anchorage for refueling.

9           13. On November 21, 2002, Customs inspectors were  
10 conducting an outbound currency interdiction operation targeting  
11 packages bound for the Phillipines. Customs inspectors were  
12 searching packages to determine if the sender was exporting  
13 currency in violation of 31 U.S.C. § 5316.

14           14. On November 21, 2002, Customs Inspector Tom  
15 LeBlanc searched an international FedEx package sent by  
16 defendant. The package contained a letter, 500 pesos and \$100 in  
17 currency and return address labels with defendant's name and  
18 address.

19           15. In its opening paragraph, the letter states, "Yes,  
20 Honey [sic] I like little girls like you, but you did not send me  
21 a picture of yourself." The letter also discusses defendant's  
22 possible travel to the Phillipines in the coming months, "I do  
23 want to see you, so please send me a picture of your-self  
24 [sic]...For only 8 yrs [sic] old, you do have very nice  
25 handwritting [sic]. I know at your age that your "PEANUT" [sic]  
26 smells like "SWEET" Roses [sic]."

27           16. The contents of the package were photocopied by  
28 Customs inspectors before it was returned to FedEx custody for

1 shipment.

2 17. The package, before it was stopped for inspection,  
3 was outbound on the Thursday, November 21, 2002, FedEx flight.  
4 Packages departing on this flight from the Oakland sort facility  
5 were transported by truck to San Francisco International Airport  
6 and loaded onto a plane which departed immediately for Narita,  
7 Japan.

8 18. Due to the detention of the package by the Customs  
9 Service, it did not actually depart the United States until  
10 Friday, November 22, 2002. This flight departed San Francisco in  
11 the early morning hours but stopped in Anchorage to refuel before  
12 proceeding to Narita.

13 19. On Sunday, August 3, 2003, Customs inspectors were  
14 conducting an outbound currency operation called "Midnight Money"  
15 at the Oakland FedEx hub. The purpose of the operation was to  
16 interdict the illegal export of funds from the United States to  
17 the Phillipines pursuant to § 5316.

18 20. On that date, Customs inspectors detained and  
19 searched a FedEx package sent by defendant on the preceding day.  
20 The package was brought to the attention of Agent LeBlanc who  
21 recognized defendant's name from the November 21, 2002 package.

22 21. The August 3, 2003 package contained two letters  
23 and several pages of adult pornography. The first letter was  
24 addressed to the recipient of the November 21, 2002 FedEx  
25 package. The letter describes defendant's desire to engage in  
26 sex acts with the minor-recipient. The second letter, apparently  
27 addressed to the recipient's mother, states, "I'll be coming back  
28 sometime in September. I let you know [sic] the date later...I

1 know [redacted] b-Day is September 21th [sic] she'll be XXXX 9."

2           22. The contents of the August 3, 2003 package were  
3 photocopied, repackaged, and sent on to the Filipino address  
4 marked on the air waybill.

5           23. Subsequent to August 3, 2003, BICE Special Agent  
6 ("SA") Andrew Vincik commenced an investigation of defendant. SA  
7 Vincik interviewed the property manager of defendant's former  
8 residence, as well as one of defendant's former neighbors. Both  
9 stated that defendant spoke of traveling to the Phillipines to  
10 "have sex with kids," that he showed residents child pornography  
11 and that he had bragged about his video and scrapbook collection  
12 of similar materials.

13           24. SA Vincik's investigation revealed that defendant  
14 had traveled to the Phillipines 43 times since 1992.

15           25. On September 24, 2003, defendant purchased a  
16 ticket on Phillipines Air scheduled to depart from Los Angeles  
17 International Airport ("LAX") for Manila, Phillipines, on  
18 October 3, 2003.

19           26. On Saturday, September 27, 2003, Customs  
20 inspectors at the Oakland FedEx hub, conducting further  
21 "Operation Midnight Money" currency interdiction efforts,  
22 detained and searched a FedEx package sent the preceding day by  
23 defendant from California to the Phillipines. The package was  
24 referred to Agent LeBlanc who opened and inspected its contents.

25           27. The package contained nine photocopied letters,  
26 \$100 in U.S. currency, non-pornographic photographs of defendant  
27 with minors and adult pornographic materials. One of the  
28 addressees was the same as the addressee of the November 21, 2002

1 and August 3, 2003 FedEx packages. The letters discussed  
2 defendant's desire to engage in various sex acts with the minor-  
3 recipients as well as defendant's impending travel to the  
4 Phillippines.

5 28. The package's contents were copied by Customs  
6 inspectors but it was not returned to FedEx for shipment to the  
7 Phillippines.

8 29. On October 3, 2003, the magistrate judge issued an  
9 arrest warrant for defendant and a search warrant for defendant's  
10 residence. SA Vincik submitted an affidavit in support of the  
11 applications.

12 30. On the evening of October 3, defendant arrived at  
13 LAX and checked baggage on Phillippines Air Flight 103 bound for  
14 Manila. Customs inspectors searched this luggage outside of  
15 defendant's presence.

16 31. Prior to defendant's boarding of Flight 103,  
17 Customs agents stopped defendant and conducted a search of his  
18 carry-on luggage. Agents discovered adult pornographic  
19 magazines, a child pornographic book, photocopies of letters  
20 written by defendant and approximately 52 photographs of  
21 defendant engaged in sex acts with Filipino minors.

22 32. After signing a Miranda waiver, defendant made  
23 several inculpatory statements regarding his planned trip to the  
24 Phillippines.

25 33. On the same evening, federal agents executed a  
26 search warrant on defendant's residence. The agents seized adult  
27 pornography, a fiction book about pedophilia and incest, a  
28 typewriter and various business and travel documents.

1 **III.**

2 **DISCUSSION**

3 Defendant's motion seeks the suppression of: (1) the  
4 contents (or copies thereof) of the three FedEx packages searched  
5 on November 21, 2002, August 3, 2003, and September 27, 2003; (2)  
6 the observations of Customs agents on September 2, 2003,  
7 regarding defendant's mail found at the Costa Mesa Post Office;  
8 (3) the items seized at defendant's home pursuant to a search  
9 warrant on October 3, 2003; (4) the luggage and its contents  
10 seized at LAX on October 3, 2003; (5) defendant's carry-on  
11 luggage and its contents; and (6) all statements allegedly made  
12 by defendant to government agents at LAX on October 3, 2003.<sup>1</sup>

13 **A. Searches at the Functional Equivalent of the Border**

14 Defendant contends that the searches of the three FedEx  
15 packages were "extended border searches" conducted without  
16 reasonable suspicion and that all subsequent evidence is fruit of  
17 these impermissible searches and must be suppressed from the  
18 government's case-in-chief. United States v. Cardona, 769 F.2d  
19 625, 627 (9th Cir. 1985); see United States v. Davis, 332 F.3d  
20 1163, 1170 (9th Cir. 2003); Wong Sun v. United states, 371 U.S.  
21 471, 486, 83 S.Ct. 407, 416, 9 L. Ed. 2d 441 (1963). Defendant  
22 concedes that if the searches of the FedEx packages were proper,  
23

---

24 <sup>1</sup>On February 2, 2004, defendant filed this motion to  
25 suppress. On February 25, 2004, the government filed opposition  
26 thereto. On April 29, 2004, defendant filed a reply brief. On  
27 May 5, 2004, the government filed a supplemental brief. On May  
28 10, 2004, the Court held an evidentiary hearing on defendant's  
motion to suppress. On May 17, 2004, the parties filed  
additional briefing regarding the issues raised at the  
evidentiary hearing. On May 19, 2004, the Court took additional  
evidence on defendant's motion.

1 no "fruit of the poisonous tree" issue remains.

2 Under the border search exception to the Fourth  
3 Amendment, "a search may be initiated without a warrant, probable  
4 cause, or even reasonable suspicion." Cardona, 769 F.2d at 628;  
5 United States v. Sutter, 340 F.3d 1022, 1025 (9th Cir. 2003).  
6 While initially governing only the search of persons or objects  
7 entering the United States, the border search exception now  
8 applies to persons or objects leaving the country ("exit  
9 searches"). United States v. Duncan, 693 F.2d 971, 977 (9th Cir.  
10 1982) cert. denied, 461 U.S. 961, 103 S.Ct. 2436, 77 L. Ed. 2d  
11 1321 (1983); United States v. Des Jardins, 747 F.2d 499, 503 (9th  
12 Cir. 1984). The United States Supreme Court has long held that a  
13 border search, for Fourth Amendment purposes, need not take place  
14 at the actual physical border, but may also occur at its  
15 "functional equivalent." Almeida-Sanchez v. United States, 413  
16 U.S. 266, 273, 93 S.Ct. 2535, 2539, 37 L. Ed. 2d 596 (1973);  
17 Duncan, 693 F.2d at 977.

18 The reported decisions analyze the spatial and temporal  
19 distance from the actual border to distinguish between a search  
20 at the border's "functional equivalent" and an "extended border  
21 search," which requires reasonable suspicion.<sup>2</sup> Cardona, 769 F.2d  
22

---

23 <sup>2</sup>The Court's considerable independent research has not  
24 uncovered a published opinion which is squarely on point. The  
25 Ninth Circuit, however, in an unpublished opinion from the  
26 Western District of Washington, filed in 2001, discussed a search  
27 and seizure at the Memphis International Airport FedEx hub, one  
28 of the international shipping facilities discussed in testimony  
in this matter. The Court found that the search of an  
international FedEx package "three to four hours" prior to  
departure took place at the border's functional equivalent. In  
another unpublished decision, appealed from a Central District of  
California ruling and filed in 1995, the Ninth Circuit recognized  
that a stopover in New York prior to an international departure,

1 at 628; cf. United States v. Gavira, 805 F.2d 1108, 1112 (2d Cir.  
2 1986) cert. denied, 481 U.S. 1031, 107 S.Ct. 1960, 95 L. Ed. 2d  
3 531 (1987) (upholding a warrantless border search where the goods  
4 entered the country in Miami but were not searched by agents  
5 until their arrival in New York). There must be a nexus between  
6 the goods searched and their impending departure from the United  
7 States to uphold a suspicionless search conducted at the  
8 equivalent of the international border. Cardona, 769 F.2d at  
9 628; United States v. Sierra-Garcia, 760 F. Supp. 252, 267  
10 (E.D.N.Y. 1991) quoting United States v. Ajlouny, 629 F.2d 830,  
11 834 (2d Cir. 1980). To qualify as a search at the functional  
12 equivalent of the border "it is enough that the passenger  
13 manifest a definite commitment to leave the United States and  
14 that the search occur in reasonable temporal and spatial  
15 proximity to departure." Duncan, 693 F.2d at 977.

16 Here, the search of all three FedEx packages took place  
17 at the functional equivalent of the border. Scott Speaker, the  
18 International Regulatory Manager for FedEx at the Oakland  
19 facility, testified that packages bound for the Phillippines are  
20 sorted and placed into a locked container. This container is  
21 then transported by truck or aircraft to the company's ramp  
22 facility at the San Francisco International Airport. Upon  
23 arrival in San Francisco, the trucked-in containers join the

24 \_\_\_\_\_  
25 where Customs agents did not have an opportunity to conduct  
26 further inspections, dictated that the "gate at LAX was the last  
27 opportunity for customs inspections before [defendant] would  
28 leave the United States; therefore, the Los Angeles to New York  
flight was the functional equivalent of an international  
departure...." Both of these cases, concerning failure to report  
monetary transactions, cannot be cited. Ninth Circuit Rule 36-3.

1 containers flown over from Oakland on the same aircraft. After  
2 receiving those containers, the flight immediately departs from  
3 San Francisco for Narita, Japan, either directly or via  
4 Anchorage, Alaska.

5           The first package at issue was searched on November 21,  
6 2002, and was scheduled to depart on an early Thursday morning  
7 flight bound directly for Narita, Japan. This search occurred a  
8 few hours before the package's intended departure from the United  
9 States. Thus, a clear nexus exists between the search by Customs  
10 agents and the package's scheduled departure, supporting a  
11 finding that the search at the Oakland hub is tantamount to an  
12 inspection at the international border. Sierra-Garcia, 760 F.  
13 Supp. at 267; cf. Cardona, 769 F.2d at 628. The fact that the  
14 containers were placed on a truck and transported roughly 20  
15 miles across the Bay Bridge to San Francisco does not alter this  
16 result. The doctrine of functional equivalence does not require  
17 that the search take place just moments before the plane departs  
18 San Francisco. Duncan, 693 F.2d at 977-78. Here, defendant  
19 clearly intended to send the parcel overseas and the search at  
20 the larger Oakland hub is sufficiently connected in space and  
21 time to the international departure from San Francisco to  
22 constitute a search at the functional equivalent of the border.

23           The analysis is the same with respect to the second and  
24 third FedEx packages sent by defendant on August 2, 2003, and  
25 September 26, 2003, respectively. FedEx employee Speaker  
26 established that, based upon the day of departure, those packages  
27 would have been consolidated into a single container before  
28 transport by truck to San Francisco. However, due to additional

1 freight, instead of proceeding directly to Japan, the flights  
2 would have stopped for refueling in Anchorage, Alaska. Speaker's  
3 testimony established that the containers aboard such flights are  
4 not unloaded, opened, or inspected by Customs agents upon arrival  
5 in Anchorage. Thus, the last place for a "routine" customs  
6 search of the packages was the Oakland sorting facility.

7           Where, as here, a package is searched prior to  
8 placement on a flight with an international destination, "a  
9 border crossing is virtually certain even if intermediate stops  
10 in this country will be made first." United States v. Baren-  
11 Burgos, 739 F. Supp. 772, 778 (E.D.N.Y. 1990). Alaska's  
12 advantageous location as a stopover for trans-Pacific flights  
13 relegates Anchorage to the functional equivalent of a gas  
14 station, and the stopover does not, without more, convert the  
15 earlier inspections in Oakland into "extended border" searches.  
16 There are no established procedures for additional Customs  
17 inspections or for the transfer of the containers to a separate  
18 aircraft upon arrival in Anchorage. Nor does the aircraft remain  
19 on the ground for an extended period of time. The requirements  
20 of FedEx's "system form" demand that the aircraft travel as  
21 quickly as possible between San Francisco, Anchorage and Narita.  
22 Thus, despite the refueling stop on U.S. soil, the departure of  
23 the two packages at issue here was sufficiently imminent to  
24 support a suspicionless and warrantless search.

25           These facts distinguish this case from Cardona, relied  
26 on by defendant. Cardona, 769 F.2d at 628-29. In Cardona, the  
27 search occurred immediately after the package was picked up from  
28 the defendant and loaded on a FedEx truck. Id. at 628. The

1 Cardona court concluded that because the search occurred twenty-  
2 four hours before the scheduled border crossing and 3,000 miles  
3 from a border, the search did not take place at the functional  
4 equivalent of the border. Id. Here, the packages' departures  
5 were imminent when compared to that in Cardona because both were  
6 searched immediately prior to being loaded onto the aircraft  
7 scheduled to transport them out of the country. These packages  
8 were in the process of being routed to Japan even though the  
9 vessel in which they traveled required a refueling stop. The  
10 evidence shows that Customs agents in Anchorage, during the  
11 normal course of operations, do not search the cargo of refueling  
12 aircraft. Nor is there any indication that a search occurred in  
13 this case. The searches at issue here took place as part of a  
14 routine Customs operation, whereas the agents in Cardona  
15 specially stopped and boarded the FedEx truck immediately after  
16 it picked up two packages from the defendant's residence.  
17 Cardona, 769 F.2d at 627.

18 Even assuming that, due to the refueling stop in  
19 Anchorage, the August 3, 2003 and September 27, 2003 searches are  
20 classified as "extended border searches," the agents had  
21 reasonable cause to legally search the packages without a  
22 warrant. Id. With respect to the August 3 package, the evidence  
23 uncovered from the November 21, 2002 search provided the  
24 requisite reasonable suspicion. Reasonable suspicion is "a  
25 considerably milder standard than probable cause." United States  
26 v. Dubrofsky, 581 F.2d 208, 211 (9th Cir. 1978); United States v.  
27 Lopez-Soto, 205 F.3d 1101, 1105 (9th Cir. 2003). In the November  
28 21 package, agents found a letter in which defendant wrote, "Yes,

1 Honey [sic] I like little girls like you, but you did not send me  
2 a picture of yourself." Defendant also professed an intent to  
3 travel to the Phillippines in the near future. "I do want to see  
4 you, so please send me a picture of your-self [sic]...For only 8  
5 yrs [sic] old, you do have very nice handwriting [sic]. I know  
6 at your age that your 'PEANUT' [sic] smells like 'SWEET' Roses  
7 [sic]." Based upon these statements, agents had reasonable cause  
8 to suspect that the August 3, 2003 package, which was also  
9 addressed to the Phillippines, contained evidence of a violation  
10 of 18 U.S.C. § 2422(b) (use of interstate facility to entice a  
11 minor).

12 Customs inspectors had reasonable cause to suspect that  
13 the September 27, 2003 package contained communications in  
14 violation of § 2422(b) based upon the investigation of SA Vincik  
15 in addition to the evidence discovered in the November 21, 2002  
16 package. SA Vincik interviewed defendant's former neighbors and  
17 learned that he spoke openly of his trips to the Phillippines,  
18 where he had sex with minors. These individuals reported that  
19 defendant possessed images of child pornography. On September  
20 24, 2003, SA Vincik learned that defendant had purchased a ticket  
21 on an Air Phillippines flight bound for Manila. This evidence  
22 provided the requisite suspicion for the search of the September  
23 27, 2003 package.<sup>3</sup>

---

24  
25 <sup>3</sup>If the searches of the first two packages were held to be  
26 invalid, the third package and the information uncovered by SA  
27 Vincik are nonetheless admissible under to the "independent  
28 independent sources." Hoonsilapa v. INS, 575 F.2d 735, 738 (9th  
Cir. 1978) modified 586 F.2d 755; United States v. Cella, 568

1 Defendant argues that the three searches are invalid  
2 because the agents involved were operating under the mistaken  
3 belief that their activities were authorized by 19 U.S.C. § 1583  
4 (authorizing warrantless searches by Customs agents of outbound  
5 international mail shipped by the United States Postal Service).  
6 However, the subjective beliefs of government agents in such  
7 circumstances are irrelevant for purposes of evaluating the  
8 validity of a search under the Fourth Amendment. Whren v. United  
9 States, 517 U.S. 806, 813, 116 S.Ct. 1769, 1774, 135 L. Ed. 2d  
10 (1996); Lopez-Soto, 205 F.3d at 1105. The agents had the  
11 objective authority to conduct a search pursuant to the border  
12 search exception which has been codified at 19 U.S.C. §§ 1581 and  
13 1582; Sutter, 340 F.3d at 1025-26.

14 In addition, because the Customs inspectors were acting  
15 to interdict the export of money in violation of 31 U.S.C. §  
16 5316, they had the authority to search defendant's packages  
17 pursuant to 31 U.S.C. § 5317(b). United States v. Nates, 831  
18 F.2d 860, 862 (9th Cir. 1987); see, e.g., United States v.  
19 Whiting, 781 F.2d 692, 696 (9th Cir. 1986) (discussing the  
20 Customs Service's general authority to conduct warrantless border  
21 searches); United States v. Soto-Soto, 598 F.2d 545, 549 (9th  
22 Cir. 1979). Section 5317(b) provides that, "for purposes of

23 \_\_\_\_\_  
24 F.2d 1266, 1285 (9th Cir. 1977); United States v. Friedland, 441  
25 F.2d 855 (2nd Cir. 1971); United States v. Watson, 950 F.2d 505  
26 (8th Cir. 1991); WAYNE R. LAFAVE, SEARCH AND SEIZURE § 11.4(a) (3d ed.  
27 1996). The information from defendant's former neighbors, the  
28 postal employee, and defendant's ticket purchase were all  
acquired from sources not discussed in the letters uncovered in  
the November 2002 and August 2003 searches. This information  
would have provided reasonable cause to suspect that the contents  
of the September 27, 2003 package were contraband.

1 ensuring compliance with the requirements of section 5316 a  
2 [C]ustoms officer may stop and search, at the border and without  
3 a search warrant...any envelope or other container...departing  
4 from the United States." Thus, while the agents' conduct is  
5 evaluated by the objective test of the Fourth Amendment, the  
6 Customs inspectors had clear statutory authority to conduct all  
7 three searches. See Duncan, 693 F.2d at 976 n.7.

8 **B. Consent to the Searches**

9 The evidence supports the conclusion that defendant  
10 gave advance consent to the searches of the three FedEx packages.  
11 "A warrantless search is valid if conducted pursuant to the  
12 knowing and voluntary consent of the person subject to the  
13 search." Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S.Ct.  
14 2041, 2043, 36 L. Ed. 2d 854 (1973). Both the Eighth and Fifth  
15 Circuits have held that a defendant may validly consent to a  
16 search via his agreement to the terms of a contract. United  
17 States v. Brown, 763 F.2d 984, 987-88 (8th Cir. 1985); United  
18 States v. Griffin, 555 F.2d 1323, 1325 (5th Cir. 1977).

19 Defendant testified that he signed the three international air  
20 waybills affixed to the respective packages. Each of the air  
21 waybills provides that the sender agrees to allow the shipment to  
22 be opened and inspected by FedEx employees or governmental  
23 authorities. Defendant also testified that he was aware that the  
24 packages would have to "clear customs" before departing the  
25 United States and that he had voluntarily mailed the packages.  
26 Based upon defendant's signature on the air waybill, Customs  
27 agents were not required to obtain a warrant to search the  
28 packages.

1 **C. Reasonableness of the Searches**

2 The searches of defendant's three FedEx packages, under  
3 the circumstances already discussed, were reasonable. "The  
4 Fourth Amendment requires that a valid exit border search be  
5 conducted in a 'reasonable' manner." Cardona, 769 F.2d at 629.  
6 "The scope of the intrusion, the manner of its conduct, and the  
7 justification for its initiation must all be considered in  
8 determining whether a search comports with reasonableness."  
9 Duncan, 693 F.2d at 977. The three searches at issue in this  
10 motion were reasonable in their scope and conduct. In carrying  
11 out these "border" searches, BICE agents reasonably examined the  
12 packages' contents to determine if they were seizable. Cardona,  
13 769 F.2d at 629-30. Photocopying the packages' contents was  
14 permissible because it was done in furtherance of a proper  
15 governmental purpose, preserving evidence. See United States v.  
16 Fortna, 796 F.2d 724, 738-39 (5th Cir. 1986).

17 **IV.**

18 **CONCLUSION**

19 Accordingly, and for the foregoing reasons, defendant's  
20 motion to suppress evidence is denied. This Opinion and Order  
21 supersedes the Court's original Order Denying Defendant's Motion  
22 to Suppress filed on May 28, 2004.

23 IT IS SO ORDERED.

24 IT IS FURTHER ORDERED that the Clerk shall serve a copy  
25 of this Order on counsel for all parties in this action.

26 DATED: July 30, 2004.

27 \_\_\_\_\_  
ALICEMARIE H. STOTLER  
28 UNITED STATES DISTRICT JUDGE