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fence separating Mexico from the United States. The "still watch" agent alerted field agents so they could apprehend the suspects. Among the field agents who responded to the call was Agent George Syer ("Agent Syer"). When Agent Syer arrived at the location of the suspects, nine of them were already in custody. Two of the suspects, one of whom was

watch" agency could not be

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trial setting as it does at other stages, . . . in the context of pretrial plea negotiations vindictiveness will not be presumed simply from the fact that a more severe charge followed on, or even resulted from, the



"Whether the district court correctly construed the hearsay rule is a question of law reviewed de novo. " United States v. Olafson, 213 F.3d 435, 441 (9th Cir. 2000). We review the admission of evidence under an exception to the hearsay rule





dant "for a split second," the agent was able to capture him.

The district court committed no error in the pre-trial, trial or sentencing phases of this case. Herrera's conviction and sentence are AFFIRMED.

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POGUE, Judge United States Court of International Trade,  
Dissenting:

I believe that this case is controlled by United States v. Pacheco-Medina, 212 F.3d 1162 (9th Cir. 2000). As the majority opinion notes, Herrera fled into an area from which there was no escape. See supra page 16826. He was undisputably "deprived of [his] liberty and prevented from going at