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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12
13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 RUSSELL GOMEZ DZUL,
17 Defendant.

Case No. 2:25-CR-00503-BFM

**RUSSELL GOMEZ DZUL’S
OMNIBUS OPPOSITION TO THE
GOVERNMENTS MOTIONS *IN*
LIMINE TO EXCLUDE EVIDENCE
OF HIS ARREST AND
IMMIGRATION POLICY, ECF NOS.
68, 72.**

Hearing Date: January 6, 2026
Hearing Time: 1:00 PM

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21 Russell Gomez Dzul (“Mr. Gomez Dzul”) respectfully submits his Opposition to
22 the Government’s Motion *In Limine* to Exclude Evidence Challenging the Legality of
23 Mr. Gomez Dzul’s Detention and its Motion *In Limine* to Exclude Improper Evidence
24 Regarding Immigration Policy or the Reasons for Mr. Gomez Dzul’s Detention
25 (“Motions”), ECF Nos. 68, 72. Both Motions seek similar and overlapping relief and
26 raise many of the same evidentiary arguments. Accordingly, for ease of review, Mr.
27 Gomez Dzul responds to them together.

28 Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

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DATED: December 29, 2025

By /s/ Hannah A. Bogen

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1 **I.INTRODUCTION**

2 In its Motions, the government seeks to blindfold the jury and bar them from
3 knowing half of the story in this case. Of course it does - because the half of the story
4 the government wants to exclude shows that the government cannot prove Mr. Gomez
5 Dzul’s guilt beyond a reasonable doubt. If the Court grants the government’s Motions,
6 the jury will reach a verdict that is based on inaccurate and incomplete information, in
7 violation of Mr. Gomez Dzul’s Sixth Amendment rights.

8 The contested evidence includes footage of Mr. Gomez Dzul’s initial arrest (the
9 “Arrest Evidence”), which the Court found to be unlawful. (ECF 65 at 5-6.) Aside
10 from violating Mr. Gomez Dzul’s rights, the Arrest Evidence provides important
11 context for what happened in this case. Indeed, this is the relatively unusual case where
12 a crime is alleged to have occurred while someone was already in custody. The Arrest
13 Evidence includes video footage of the border agents chasing someone else, losing him,
14 then profiling and turning to Mr. Gomez Dzul as a target for no reason. It shows them
15 aggressively arresting him and driving to a new location without telling him why or
16 where they were going. It highlights how confusing and terrifying it was for Mr.
17 Gomez Dzul when, immediately after that, the vehicle abruptly stopped, doors flew
18 open, and all he heard and saw was chaos around him, leading to the alleged assault.

19 The government cannot shield the jury from half of the story. Without the Arrest
20 Evidence, the jury will quite naturally assume that Mr. Gomez Dzul did something
21 criminal to end up being arrested. That unfounded assumption would irreparably
22 prejudice the defense. Moreover, the Arrest Evidence supports the most important facts
23 in the case - that Mr. Gomez Dzul did not intentionally assault anyone, that O.I. was not
24 acting within his official duties, and that Mr. Gomez Dzul acted in reasonable self-
25 defense.

26 In addition to seeking to exclude the Arrest Evidence, the government moves to
27 exclude “evidence, argument, or questioning concerning immigration policy,
28 immigration enforcement, enforcement practices...[and] any video or evidence

1 predated Defendant’s detention absent a showing, outside the presence of the jury, that
2 such evidence is narrowly necessary to explain [Mr. Gomez Dzul’s] use of force
3 against the federal officer.” (the “Immigration Evidence”) (ECF 72.) For many of the
4 same reasons the Arrest Evidence is admissible, the Immigration Evidence is, too.

5 The government assumes that Mr. Gomez Dzul’s defense will be an attack on
6 immigration enforcement and immigration policy generally. (*See* Motions.) Not so. He
7 will use the Arrest and Immigration Evidence to cross examine the witnesses against
8 him, as permitted by the Sixth Amendment.

9 Mr. Gomez Dzul is entitled to present a complete defense. Cutting out half of his
10 arrest would confuse the jury and severely prejudice Mr. Gomez Dzul. The Arrest and
11 Immigration Evidence is relevant, admissible, much more probative than prejudicial,
12 and essential to Mr. Gomez Dzul’s defense. The Court should deny the government’s
13 Motions.

14 II. MEMORANDUM OF POINTS AND AUTHORITIES

15 A. The Defense Will Not Make Policy Arguments About Immigration 16 Enforcement.

17 Contrary to the government’s arguments, Mr. Gomez Dzul will not make
18 arguments about immigration policy. (*See* Motions.) This case is not about whether or
19 not immigration enforcement generally, is constitutional. It is about whether or not the
20 border agents in *this case* are telling the truth, and whether or not the government can
21 prove beyond a reasonable doubt that Mr. Gomez Dzul committed a crime. To the
22 extent the government is concerned about the jurors’ opinions on immigration policy, it
23 should address that in its proposed voir dire.¹

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27 ¹ It is unclear from the government’s Motions, but Mr. Gomez Dzul defines the
28 Immigration Evidence to include the border agents’ *own* governing policies and
procedures at the time of the alleged offense. He maintains his right to ask them about
those policies and procedures at trial.

1 **B. The Arrest and Immigration Evidence is Relevant Because it**
2 **Demonstrates that the Border Agents Acted Outside of Their Official**
3 **Duties When They Arrested Him.**

4 To find Mr. Gomez Dzul guilty at trial, the jury must decide that he assaulted a
5 federal officer while the officer was “engaged in [his] official duties.” *United States v.*
6 *Ornelas*, 906 F.3d 1138, 1149 (9th Cir. 2018) (“the test” for determining whether
7 officer is “[e]ngaged in the performance of official duties” is “whether the officer is
8 acting within the scope of his employment, that is, whether the officer’s actions fall
9 within his agency’s overall mission, in contrast to engaging in a personal frolic of his
10 own”); *See Ninth Circuit Model Criminal Jury Instructions*, No. 8.1 (2022 ed.). There
11 is no bright-line test to define “performance of official duties.” *United States v.*
12 *Clemons*, 32 F.3d 1504, 1507 (11th Cir. 1994). It is a fact-specific inquiry. *Id.*

13 Here, the Arrest and Immigration Evidence is highly relevant to whether O.I.
14 acted within the scope of his official duties. Mr. Gomez Dzul has a Sixth Amendment
15 right to cross examine the government’s witnesses in this case about the unlawful
16 arrest, as it cuts against the government’s argument that O.I. acted within the scope of
17 his official duties at the time of the alleged offense. This line of questioning is also
18 probative of the border agents’ bias and lack of credibility, which is always important
19 for the jury to hear but especially as to a law enforcement officer who is alleged to have
20 been assaulted. *See United States v. Severeid*, 609 F. App’x 931, 933 (9th Cir. 2015)
21 (on appeal for conviction for assaulting a federal official, noting that prosecutor’s
22 vouching for alleged victim was particularly damaging because the “jury was tasked
23 with a close credibility contest” between the federal officer and the accused defendant).
24 Failure to permit this line of questioning or introduction of the Arrest and Immigration
25 Evidence would place this trial in a vacuum, present only the government’s side of the
26 story, and prevent Mr. Gomez Dzul from asserting a complete defense, in violation of
27 his Sixth Amendment rights.

1 At its core, the government seems to be asking the Court to remove an important
2 factual question from the province of the jury by holding, in effect, that the facts
3 surrounding an unlawful arrest can never, as a matter of law, make an officer's actions
4 fall outside the scope of his official duties. While an unlawful arrest might not
5 guarantee that an officer has stepped outside his official duties, neither can the
6 government credibly contend that the arrest has no bearing on that question. The Arrest
7 and Immigration Evidence should be admitted.

8 **C. The Arrest and Immigration Evidence Demonstrates That Mr. Gomez**
9 **Dzul Acted in Self-Defense.**

10 Mr. Gomez Dzul “acted in reasonable self-defense if he reasonably believed that
11 the force was necessary for the defense of himself against the immediate use of
12 excessive force...[and did not use] more force than appeared reasonably necessary
13 under the circumstances...[t]he government must prove beyond a reasonable
14 doubt...that Mr. Gomez Dzul did not act in reasonable self-defense.” *Ninth Circuit*
15 *Model Criminal Jury Instructions*, No. 5.10 [Self-Defense] (2022 ed.) [if applicable];
16 *United States v. Span*, 75 F.3d 1383, 1389 (9th Cir. 1996); *United States v. Mirabal*,
17 Case No. 18- CR-00335-MWF-2, Final Jury Instructions at 17, Dkt. No. 173 (June 17,
18 2022); *United States v. Lottie*, Case No. 20-CR-00115-MWF, Final Jury Instructions at
19 13, Dkt. No. 127 (July 15, 2021).

20 Here, although alleged to be continuous, the government now appears to argue
21 that there were two separate instances of assault, as follows: “...Defendant attempted to
22 escape from the vehicle by shifting his body out of the open door while yelling for the
23 crowd's help. Agent O.I. then placed his body in the threshold of the open door to
24 prevent Defendant from escaping—all while facing outward to ensure the crowd did
25 not interfere with his duties or endanger him or his fellow agents. Defendant **continued**
26 to push and kick O.I., at one point, placing his leg between O.I.'s legs and forcibly
27 kicking O.I. in the groin area. This caused O.I. to visibly react in pain.” (ECF 72 at 2.)
28

1 The Arrest and Immigration Evidence is highly relevant to Mr. Gomez Dzul's
2 self-defense argument based on the circumstances of his initial arrest, continuing
3 through the time of the alleged "continued" pushing and kicking. The government
4 notes that self-defense in this context is typically limited to claims of excessive force.
5 But it was the initial arrest that was the first instance of a pattern of excessive force,
6 commencing with the handcuffing of Mr. Gomez Dzul and placing him, restrained, in
7 the back of a CBP vehicle. As pictured in the relevant footage, O.I. placed his legs in
8 between Mr. Gomez Dzul's legs, pushed him backwards, and choked him, shoving his
9 elbow into the front of his neck. (Declaration of Hannah A. Bogen ("Bogen Decl.")
10 Ex. A.) Then, L.M. dragged him from behind as he turned bright red, screaming in
11 pain. (*Id.*) The Arrest and Immigration Evidence provides important context and
12 circumstantial evidence of Mr. Gomez Dzul's state of mind at the time he acted in self-
13 defense. This will help the jury in deciding if his self-defense was reasonable.

14 **D. Evidence of Mr. Gomez Dzul's Unlawful Arrest is Relevant and**
15 **Permitted by Several Federal Rules of Evidence.**

16 Evidence is relevant if it has any tendency to make a fact of consequence more or
17 less probable than it would be without the evidence. Fed. R. Evid. 401.

18 To prove the elements of the offense, the government must prove that the border
19 agents: 1) were federal officers engaged in official duties, and 2) that Mr. Gomez Dzul
20 assaulted them during those duties. *See* Ninth Circuit Model Criminal Jury Instructions,
21 No. 8.1 (2022 ed.) (Assault on a Federal Officer or Employee, 18 U.S.C. § 111(a)).
22 "There is a forcible assault when one person intentionally strikes another, or willfully
23 attempts to inflict injury on another, or intentionally threatens another coupled with an
24 apparent ability to inflict injury on another which causes a reasonable apprehension of
25 immediate bodily harm." *Id.*

26 Here, the Arrest and Immigration Evidence is highly relevant because it touches
27 on three facts of consequence - whether Mr. Gomez Dzul intentionally assaulted
28 anyone, whether O.I. was engaged in official duties, and whether Mr. Gomez Dzul

1 acted in reasonable self-defense. It demonstrates that Mr. Gomez Dzul did not
2 intentionally strike anyone, that the border agents acted outside of their official duties,
3 and that Mr. Gomez Dzul acted in reasonable self-defense. It provides necessary
4 context for what would otherwise be dropping Mr. Gomez Dzul into a random moment
5 in time that would undoubtedly confuse the jury and prejudice Mr. Gomez Dzul's case.

6 The Arrest and Immigration Evidence is also relevant to credibility. The fact that
7 the border agents arrested Mr. Gomez Dzul for no reason gives them incentive to lie,
8 including regarding whether Mr. Gomez Dzul assaulted a border agent, as they falsely
9 claim. The border agents have an interest in framing Mr. Gomez Dzul as the aggressor
10 because a finding unlawful conduct can subject them to workplace discipline, social
11 opprobrium, and liability. Because the border agents' words will form the basis of the
12 government's case, Mr. Gomez Dzul must be allowed to undermine their credibility,
13 including with evidence that they have a motive to lie to justify their unlawful actions.
14 *See* Fed. R. Evid. 608(b).

15 The core principle that a party may not mislead the jury at trial by providing
16 incomplete information about a potentially prejudicial topic—as the government seeks
17 to do here—is found throughout federal evidentiary rules and doctrines. For example,
18 under Federal Rule of Evidence 106, “[i]f a party introduces all or part of a statement,
19 an adverse party may require the introduction, at that time, of any other part – or any
20 other statement – that in fairness ought to be considered at the same time.” Under this
21 Rule, where one party misleads the jury by only telling part of the story, “the material
22 required for completeness is *ipso facto* relevant and therefore admissible under Rules
23 401 and 402.” *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 172 (1988). Similarly,
24 under the doctrine of curative admissibility, “the introduction of inadmissible evidence
25 by one party allows an opponent, in the court's discretion, to introduce evidence on the
26 same issue to rebut any false impression that might have resulted from the earlier
27 admission.” *Untied States v. Whitworth*, 856 F.2d 1268, 1285 (9th Cir. 1988). These
28 rules and doctrines underscore a simple yet fundamental truth: allowing a party to

1 introduce evidence without the context necessary to understand it is unfair and
2 improper. When that happens, evidence necessary to provide clarity is “relevant and
3 therefore admissible under Rules 401 and 402.” *See Rainey*, 488 U.S. at 172. Here, the
4 government’s introduction of a snapshot of Mr. Gomez Dzul’s unlawful arrest, cut off
5 in a way that exclusively benefits their case but severely prejudices his, necessarily
6 makes the Arrest and Immigration Evidence relevant, and the defense must be able to
7 provide the jury such context.

8 **E. The Arrest and Immigration Evidence is Not Character Evidence.**

9 Contrary to the government’s argument, Mr. Gomez Dzul will not use the Arrest
10 and Immigration Evidence to show that on the date of the offense, the border agents
11 acted in accordance with a character trait. (ECF 68 at 9.) Mr. Gomez Dzul intends to
12 use the Arrest and Immigration Evidence to paint a complete picture of what happened
13 that day and provide circumstantial evidence of his state of mind at the time of the
14 alleged incident. This is not character evidence and is admissible at trial.

15 The Arrest and Immigration Evidence will also be used to argue that the border
16 agents lack credibility, as explained above.

17 **F. The Arrest and Immigration Evidence Has Probative Value That**
18 **Outweighs Any Prejudicial Effect.**

19 The Court may exclude relevant evidence if its probative value is substantially
20 outweighed by a danger of one or more of the following: unfair prejudice, confusing
21 the issues, misleading the jury, undue delay, wasting time, or needlessly presenting
22 cumulative evidence. Fed. R. Evid. 403. Rule 403 has long been “characterized . . . as
23 an extraordinary remedy to be used sparingly because it permits the trial court to
24 exclude otherwise relevant evidence.” *United States v. Patterson*, 819 F.2d 1495, 1505
25 (9th Cir. 1987) (internal quotation marks omitted). The Rule “does not permit the court
26 to exclude [a party]’s evidence simply because it may hurt the [other].” *Old Chief v.*
27 *United States*, 519 U.S. 172, 193 (1997) (O’Connor, J., dissenting).

1 The Arrest and Immigration Evidence is not just probative, it is critical to Mr.
2 Gomez Dzul’s defense in this case because it speaks to both elements of the offense as
3 well as his affirmative defense. The Court will instruct the jury on what is and is not
4 evidence, and that it should apply the facts of the case to the law - not that it should
5 opine on immigration policy generally. Voir dire will also ensure that Mr. Gomez Dzul
6 is tried in front of a jury that is able to do that. To the extent that the government is
7 concerned about any prejudice resulting from a jury seeing footage of Mr. Gomez
8 Dzul’s arrest, it should propose voir dire questions to address that issue.

9 The standard for exclusion under Rule 403 is that the risk of unfair prejudice
10 *substantially* outweighs any probative value. Fed. R. Evid. 403. Here, the opposite is
11 true. The prejudicial effect, if any, is minimal. The probative value of the Arrest and
12 Immigration Evidence is exceedingly high given its bearing on both elements.
13 Contrary to the government’s argument, it is *exclusion* of Mr. Gomez Dzul’s arrest that
14 would be unfairly prejudicial. Given that this is a criminal offense that is alleged to
15 have occurred while Mr. Gomez Dzul was already in custody, the jury will naturally
16 assume that he had been arrested because he did something unlawful or criminal, when
17 quite the opposite is true.

18 **G. The Government’s Requested Relief Should Be Denied.**

19 The government outlines its requested relief in its Motions. (ECF 68 at 11-12;
20 ECF 72 at 6.) For ease of review, Mr. Gomez Dzul responds to each ask and states why
21 the Court should deny it.

22 “The defense shall not:

- 23 • Argue, suggest, or imply that Defendant’s detention or arrest was unlawful,
24 unconstitutional, or lacked legal authority;”
- 25 ○ Response: The Court ruled that Mr. Gomez Dzul’s arrest was unlawful.
26 (ECF 65 at 5-6.) The jury is allowed to know about how he ended up in a
27 car with a group of border agents before the alleged offense occurred.
28 This evidence is relevant and admissible, and its exclusion would deprive

1 the jury of important context and violate Mr. Gomez Dzul's rights under
2 the Sixth Amendment.

3 • "Argue or suggest that alleged illegality of the detention removed the officers
4 from the performance of official duties within the meaning of 18 U.S.C. § 111;"

5 ○ Response: Mr. Gomez Dzul is entitled to a defense. The jury is who gets to
6 decide if O.I. acted outside of his official duties.

7 • "Invite the jury to reconsider or pass judgment on the legality of the detention,
8 arrest, immigration enforcement authority, or constitutional compliance already
9 resolved by the Court;"

10 ○ Response: Mr. Gomez Dzul does not seek to ask the jury to decide, a
11 second time, if his initial arrest was lawful. It is their right, however, to
12 assess credibility of the border agents accusing Mr. Gomez Dzul of
13 committing a crime, in part based on their actions leading up to the alleged
14 offense.

15 • "Introduce evidence or argument concerning immigration enforcement policy,
16 Border Patrol practices, or alleged institutional misconduct unrelated to Defendant's
17 charged conduct;"

18 ○ Response: It is unclear what exactly the government seeks to exclude here,
19 but Mr. Gomez Dzul agrees that his trial is about a federal assault charge,
20 not immigration policy. That being said, his initial immigration-focused
21 arrest is relevant and admissible.

22 • "Present stop-legality or constitutional arguments under the guise of 'context,'
23 'background,' or 'official duties.'"

24 ○ Response: For the reasons already stated, the Arrest and Immigration
25 Evidence is a necessary portion of the story of this case that the jury
26 should know about.

27 • The Court should preclude the defense from introducing evidence, argument, or
28 questioning concerning immigration policy, immigration enforcement, enforcement

1 practices, or the reason for Defendant's detention. The Court should further exclude any
2 video or evidence predating Defendant's detention absent a showing, outside the
3 presence of the jury, that such evidence is narrowly necessary to explain Defendant's
4 use of force against the federal officer.

- 5 ○ Response: The defense does not seek to introduce evidence of immigration
6 policy generally. It does, however, seek to acknowledge how Mr. Gomez
7 Dzul ended up in the back of a border patrol vehicle with the border agents
8 in this case. Failure to include this necessary context would unnecessarily
9 confuse the jury, severely prejudice Mr. Gomez Dzul, and prevent him
10 from presenting a complete defense, in violation of his Sixth Amendment
11 rights.

12 The government's proposed requests for relief are overbroad, unnecessary, and
13 without basis in the law. The Court should deny the government's Motions.

14 **H. If the Court Grants the Government's Motions, it Should Provide a**
15 **Curative Instruction to the Jury Confirming That Mr. Gomez Dzul's**
16 **Arrest Was Unlawful.**

17 If the Court excludes the Arrest and Immigration Evidence, it should instruct the
18 jury confirming that the initial arrest was unlawful. Failure to acknowledge the initial
19 arrest in any way will prevent Mr. Gomez Dzul from presenting a complete defense in
20 violation of his Sixth Amendment rights. Even with an instruction, he maintains his
21 request to cross examine the government's witnesses about the arrest and present the
22 Arrest and Immigration Evidence for purposes of impeachment.

23 **III. CONCLUSION**

24 Mr. Gomez Dzul has a Sixth Amendment right to present a complete defense,
25 and his use of the Arrest and Immigration Evidence is well-supported by the Federal
26 Rules of Evidence. The Court should deny the government's Motions.

27 Respectfully submitted,

28 CUAUHTEMOC ORTEGA
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DATED: December 29, 2025

By /s/ Hannah A. Bogen

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