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United States District Court
Eastern District of Washington
Honorable Rebecca L. Pennell

United States,

Plaintiff,

v.

Martin Rafael Diaz-Amezcu,

Defendant.

No. 2:25-cr-00072-RLP-1

Trial Brief

1 Martin Diaz-Amezcuca submits the following trial brief.

2 **I. BACKGROUND**

3 Mr. Diaz-Amezcuca is charged in a one-count indictment with Assault on a
4 Federal Officer. The Indictment alleges that on April 29th, 2025, Mr. Diaz-Amezcuca
5 intentionally and forcibly assaulted, resisted, or interfered with Border Patrol Agent
6 Walter Sketch.

7 On April 29th, 2025, immigration officials attempted to arrest Mr. Diaz-
8 Amezcua in his front yard for an outstanding immigration order of removal. As Mr.
9 Diaz-Amezcuca gripped the gate of his home, multiple agents slammed into him,
10 attempting to pry him from his fence.

11 The first responding agent, Walter Sketch, is expected to testify that Mr. Diaz-
12 Amezcua elbowed him during this interaction which left him dazed for several seconds.
13 Two angles of surveillance footage capture most of the incident. These angles show
14 Mr. Diaz-Amezcuca tensing up and resisting officers' attempts to bring him to the
15 ground and handcuff him. While the footage shows resistance to arrest, it does not
16 capture any apparent elbow strike by Mr. Diaz-Amezcuca.

17 In addition to the lack of elbow strike on video, no witness but Agent Sketch will
18 testify that they saw an elbow strike. The other officers on scene, Special Agent John
19 Zappone and Agent Charles Wilson, did not witness any elbow strike as they ran
towards the arrest. On the other side of the incident, Mr. Diaz-Amezcuca's roommate

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1 Douglas Young had a full view of the incident as he investigated the commotion outside
2 the house's side door. Mr. Young will testify that he did not see any strike by Mr. Diaz-
3 Amezcua.

4 Following the incident, Agent Sketch developed an apparent black eye. Defense
5 expert forensic nurse Merriam Young is expected to testify to the physiology of black
6 eyes and that they can be formed from minor impacts or low force trauma. Ms. Young
7 intends to testify consistent with her previously disclosed report. Ms. Young will not
8 testify that Agent Sketch's eye injury is consistent with accidental trauma, per the
9 Court's order, but the Defense expects to advance this theory during closing argument.

10 The defense expects that the Government will attempt to prove Mr. Diaz-
11 Amezcua's lack of mistake through 404(b) evidence of his 2018 arrest by Border Patrol
12 on the Spokane County Superior Courthouse steps. Following the Court's approval of
13 this testimony, the defense raised concerns with the Government that Mr. Diaz-
14 Amezcua going into custody in 2018, and then being rearrested in 2025 would create
15 juror confusion with why he was back out on the streets, and whether he potentially
16 reentered the country without permission following his 2018 arrest.

17 To address these concerns, the Government has indicated that Agent Seth
18 Justesen will be able to speak in broad strokes about Mr. Diaz-Amezcua's immigration
19 history following the incident, and to quash any juror confusion over why he was

1 rearrested for the same immigration issue seven years later. Mr. Diaz-Amezcuca intends
2 to elicit this testimony briefly, without needlessly bogging down the proceedings with
3 immigration law or a deluge of immigration documents.

4 In sum, the defense expects a short trial, with 1-2 days of testimony that will
5 center around whether the Government can prove beyond a reasonable doubt that Mr.
6 Diaz-Amezcuca manifested an intent to injure Agent Sketch by way of an elbow strike
7 on the day of the incident.

8 **II. STIPULATIONS**

9 The Government and Defense have stipulated to the admissibility of
10 Government's Exhibits 1 & 2. *See* ECF No. 72.

11 **III. ELEMENTS**

12 The parties have no current stipulations to the offense elements. To prove it's
13 case against Mr. Diaz-Amezcuca, the United States must prove beyond a reasonable
14 doubt the following elements:

15 *First*, Mr. Diaz-Amezcuca forcibly assaulted Agent Walter Sketch; and

16 *Second*, Mr. Diaz-Amezcuca did so while Agent Walter Sketch was engaged in, or
17 on account of his official duties; and

18 *Third*, Mr. Diaz-Amezcuca inflicted bodily injury.
19

1 The 9th Circuit has made clear that a forcible assault requires an intentional
2 strike, and that merely tensing up and resisting arrest is not a forcible assault. *U.S. v.*
3 *Chapman*, 528 F.3d 1215, 1219-21 (9th Cir. 2008).

4 IV. ISSUES AT TRIAL

5 A. The 2018 Border Patrol Contact and Federal Rules of Evidence 403

6 Mr. Diaz-Amezcu moved under FRE 403 to exclude the Government's 404(b)
7 evidence of the 2018 contact. ECF No. 58 at 8. As the Court did not address Mr. Diaz-
8 Amezcua's FRE 403 concerns in its written order, the defense intends to object at the
9 outset of the Government's testimony on this matter for issue preservation purposes.

10 B. If a prima-facie case of self-defense appears in testimony, the defense intends to ask for an instruction.

11 As noted in previous motions, Mr. Diaz-Amezcu does not intend to use self-
12 defense as his main theory of the case. However, there are potential realities where
13 evidence comes in in a way that leads credence to this theory. In the event this occurs,
14 Mr. Diaz-Amezcu would have two potential avenues of self-defense.

15 ***First***, if Mr. Diaz-Amezcu was unaware that Agent Sketch was a law
16 enforcement officer, he would have an arguable affirmative defense. *United States v.*
17 *Feola*, 420 U.S. 671 (1975).

Second, if the evidence shows that Border Patrol used excessive force in their arrest, Mr. Diaz-Amezcuca would have an arguable affirmative defense. *United States v. Span*, 970 F.2d 573, 577 (9th Cir. 1992).

The defense has provided two potential jury instructions in this vein for the Court's consideration.

Dated: October 27, 2025.

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Service Certificate

I certify that on October 27, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will notify Assistant United States Attorneys: Michael J. Ellis.

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