

The Honorable Jamal N. Whitehead

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,

v.

VICTOR VIVANCO-REYES,
Defendant.

NO. CR25-131-JNW

UNITED STATES' AMENDED TRIAL
BRIEF

I. INTRODUCTION

Defendant Victor Vivanco-Reyes is charged by Indictment with Assault of a Federal Officer, in violation of 18 U.S.C. § 111(a) and (b) (Counts 1-4). Trial is scheduled for January 5, 2026.

The Government anticipates calling eight witnesses, all of whom are current law enforcement agents or officers. The Government estimates that its case-in-chief will last two trial days.

II. BACKGROUND

A. Factual Summary

The Government expects that the evidence will prove the facts summarized below.

1 The Defendant’s Prior Flight from Law Enforcement

2 On May 22, 2025, Homeland Security Investigations (“HSI”) agents conducted
3 surveillance to attempt to locate an Infiniti G37 vehicle that was registered to Vivanco-
4 Reyes and execute a civil administrative warrant for his arrest for immigration violations.
5 That day, two agents in separate, unmarked SUVs observed the Infiniti G37 in front of
6 them in a residential area and attempted a traffic stop. The two agents—both of whom
7 were wearing outer body armor carriers identifying them as law enforcement—activated
8 their emergency lights and sirens. Several vehicles in-between the agents’ vehicles and
9 the Infiniti G37 immediately yielded to law enforcement by pulling over to the side of the
10 road. The driver of the Infiniti G37, however, did not immediately stop and instead
11 continued on before eventually stopping in front of a residential driveway. Both agents
12 positively identified Vivanco-Reyes as the driver of the Infiniti G37. After initially
13 stopping, Vivanco-Reyes then fled from the scene in his vehicle, driving away
14 dangerously and at a high rate of speed. The agents reactivated their sirens and attempted
15 pursuit, observing Vivanco-Reyes narrowly miss a crossing pedestrian and passing
16 vehicles, including a school bus. The agents terminated their pursuit due to the risk to
17 public safety.

18 The Charged Assaults

19 Following Vivanco-Reyes’s flight from law enforcement, agents continued to
20 investigate him and learned that he worked for a landscaping company that had a job site
21 in Camano Island. On June 6, 2025, law enforcement established surveillance around the
22 job site to locate Vivanco-Reyes and execute the immigration warrant. Air surveillance
23 showed two individuals entering a truck with attached trailer and departing southbound
24 from the job site. The driver of this truck was later identified as Vivanco-Reyes.

25 Multiple unmarked law enforcement vehicles drove northbound to intercept the
26 truck and trailer, including vehicles driven by: (1) Victim 1, with Victim 2 as the front
27 seat passenger; (2) an Immigration and Customs Enforcement (“ICE”) officer; and (3)

1 Victim 3, with Victim 4 as the front seat passenger. Victim 1, Victim 2, and Victim 3 are
2 HSI agents, and Victim 4 is a Customs and Border Protection (“CBP”) agent. The agents
3 and officer wore outer body armor carriers identifying them as law enforcement.

4 Based on the prior incident, the agents and officer anticipated that Vivanco-Reyes
5 might attempt to flee again. They were also familiar with his criminal history, including
6 multiple prior convictions for violent offenses.

7 As Victim 1’s vehicle approached the truck and trailer, he activated his emergency
8 lights and pulled into the southbound lane, directly in front of the truck’s path. The ICE
9 officer (in a separate vehicle) also activated his emergency lights and drove close to
10 Victim 1’s vehicle to block the northbound lane. Witnesses will testify that Vivanco-
11 Reyes initially appeared to slow the truck and Victim 2 partially exited the vehicle around
12 this time. Vivanco-Reyes then quickly accelerated and drove left, towards the corner of
13 Victim 1’s vehicle. Victim 2 jumped back inside the vehicle when he saw Vivanco-
14 Reyes about to hit Victim 1’s vehicle. The truck and then the attached trailer struck the
15 front passenger side of Victim 1’s vehicle, causing Victim 2’s open door to slam onto his
16 right shoulder, which was caught in the doorway. Following the impact, Victim 1
17 attempted to drive in-between the truck and trailer to stop the truck, but was unsuccessful.
18 Vivanco-Reyes was traveling at such a high rate of speed that the collision of the trailer
19 into Victim 1’s vehicle caused the trailer to fly up into the air. The truck and trailer
20 almost struck the ICE officer as he was attempting to exit his vehicle, but the officer’s
21 vehicle was not impacted.

22 After Vivanco-Reyes struck Victim 1’s vehicle, Victim 3 drove his vehicle into
23 the roadway to block the truck’s exit. Victim 4 began exiting the vehicle driven by
24 Victim 3, holding onto the inside handle of the open door. Vivanco-Reyes then drove his
25 truck and trailer directly into the front of Victim 3’s vehicle, and the impact caused
26 Victim 4 to lose his balance and feel a sharp pain in his leg area. Vivanco-Reyes struck
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1 Victim 3’s vehicle with such force and caused such significant damage that the vehicle
2 was rendered inoperable.

3 Vivanco-Reyes then crashed into a telephone pole. He fled from the truck on
4 foot and was eventually arrested. As Vivanco-Reyes was being apprehended, Victim 3
5 and Victim 4 heard him state, “I fucked up, I fucked up.” Vivanco-Reyes’s driver’s
6 license and other cards in his name were inside of a wallet found on his person. The
7 passenger of the truck, Guadalupe Francisco Barragan, remained inside the vehicle
8 throughout this incident and was identified and then released.

9 Two of the victims reported injuries following the June 6, 2025 assaults.
10 Specifically: Victim 2 felt pain in his right rib cage area and right shoulder, as well as
11 numbness traveling down his arm into his fingers; Victim 4 felt pain in his leg and hip
12 area. All of the victims went to the hospital to be medically assessed that day.

13 **B. Procedural History**

14 On June 6, 2025, Vivanco-Reyes was charged by complaint with two counts of
15 Assault of a Federal Officer, in violation of 18 U.S.C. § 111(a) & (b). Dkt. 1. He
16 stipulated to detention. Dkt. 10. On June 18, 2025, the grand jury returned an indictment
17 charging four counts of the same offense. Dkt. 12.¹

18 **III. ELEMENTS OF THE OFFENSES**

19 Counts 1 to 4 charge Vivanco-Reyes with assaults of four federal officers—
20 Victim 1, Victim 2, Victim 3, and Victim 4, respectively—using a deadly or dangerous
21 weapon. Regarding Counts 2 and 4, the Government further alleges that those assaults
22 inflicted bodily injury. The elements of the offenses charged, as applied to each
23 individual victim, are:

24 *First*, the defendant forcibly assaulted a federal officer or employee;

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27 ¹ The complaint alleged assaults against the victims named as Victim 2 and Victim 4 in the subsequent indictment.

1 *Second*, the defendant did so while the federal officer or employee was engaged
2 in, or on account of, his official duties; and

3 *Third*, the defendant used a deadly or dangerous weapon (and/or, as to Counts 2
4 and 4 only, inflicted bodily injury).

5 Ninth Circuit Model Criminal Jury Instruction 8.2.

6 At trial, the Government will prove that Vivanco-Reyes committed the charged
7 assaults by intentionally driving a truck with attached trailer into two government
8 vehicles. The evidence will include testimony from law enforcement witnesses, aerial
9 surveillance footage, video taken by a witness, and photos from the scene of the incident.

10 **IV. ANTICIPATED LEGAL AND EVIDENTIARY ISSUES**

11 **A. Law Relevant to the Offense Elements**

12 Under the first element, a “forcible assault” may be shown by one of three ways:
13 “when one person [1] intentionally strikes another, or [2] willfully attempts to inflict
14 injury on another, or [3] intentionally threatens another coupled with an apparent ability
15 to inflict injury on another which causes a reasonable apprehension of immediate bodily
16 harm.” *Id.* Under the last scenario, the victim’s ‘reasonable apprehension of immediate
17 bodily harm’ is assessed from the subjective vantagepoint of a reasonable person in the
18 victim’s shoes (i.e., not from the perspective of a reasonable person “who is aware of all
19 the relevant circumstances”). *See United States v. Acosta-Sierra*, 690 F.3d 1111, 1121
20 (9th Cir. 2012).

21 Moreover, to satisfy the first element, the Government is not required to prove any
22 specific intent because Section 111(b) is a general intent crime. *See United States v. Jim*,
23 865 F.2d 211, 215 (9th Cir. 1989).² “[A] general intent crime requires only that the act
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26 ² *See also United States v. Melhuish*, 6 F.4th 380, 394-95, 396 & n.7 (2d Cir. 2021) (holding Section 111
27 is a general intent crime, and collecting cases from the Fourth, Sixth, Seventh, Eighth, and Eleventh
Circuits holding the same).

1 was volitional (as opposed to accidental), and the defendant’s state of mind is not
 2 otherwise relevant.” *United States v. Lamott*, 831 F.3d 1153, 1156 (9th Cir. 2016) (citing
 3 *Jim*, 865 F.2d at 212-13); *see also United States v. Melhuish*, 6 F.4th 380, 394 (2d Cir.
 4 2021) (citation and internal quotation marks omitted) (“For a general intent crime, the
 5 Government ordinarily must prove that a defendant had at least an intention to make the
 6 bodily movement which constitutes the act which the crime requires.”). As the Supreme
 7 Court has explained, “merely the criminal intent to do the acts therein specified” is
 8 sufficient; thus, as applied to Section 111 offenses specifically, “[a]ll the statute requires
 9 is an intent to assault[.]” *United States v. Feola*, 420 U.S. 671, 684, 686 (1975).

10 Pursuant to this authority, to demonstrate the first element in this case, the
 11 Government need only prove that Vivanco-Reyes acted volitionally on June 6, 2025: that
 12 he meant to drive as he did and in a manner that meets at least one of the three options for
 13 ‘forcible assault.’ His state of mind is irrelevant: The defendant need not know that the
 14 victim was a federal officer, *id.* at 684, nor must the Government show any “intent to
 15 injure” the victim officers, *see United States v. Garcia-Camacho*, 122 F.3d 1265, 1269
 16 (9th Cir. 1997). As a result, the jury should not be instructed on any heightened *mens rea*
 17 standard. For instance, the defendant need not have acted ‘knowingly’ in connection
 18 with the charged offenses, and whether he may have acted ‘recklessly’ is immaterial and
 19 would not negate the intentionality of his actions.³ *Compare* Ninth Circuit Model
 20 Criminal Jury Instruction 4.8 (defining “knowingly”) *with id.* 8.2 (no specific intent listed
 21 in Section 111(b) offense elements)).

22 For purposes of the second element, an officer is engaged in performing “official
 23 duties” when he acts within the scope of his employment as opposed to “engaging in a
 24 personal frolic of his own.” *See United States v. Ornelas*, 906 F.3d 1138, 1149 (9th Cir.
 25 2018) (describing actions within the scope of employment as “fall[ing] within [the
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27 ³ *See* Dkt. 66 at 4-7 (Government motion *in limine* to exclude reference, evidence, and argument relating to “recklessness”).

1 officer's] agency's overall mission"). Here, the victims were undeniably working
2 together as part of their official duties to execute the immigration warrant.

3 The third offense element is met through proof that the defendant either (i) used a
4 deadly or dangerous weapon, or (ii) inflicted bodily injury. Under the first option, a
5 weapon is considered deadly or dangerous "if it is used in a way that is capable of
6 causing death or serious bodily injury." Ninth Circuit Model Criminal Jury Instruction
7 8.2. The law in this Circuit is clear that "a car, truck, automobile, or vehicle can
8 constitute a dangerous or deadly weapon under 18 U.S.C. § 111(b)" if it is used in this
9 manner. *United States v. Anchrum*, 590 F.3d 795, 801 (9th Cir. 2009) (collecting cases);
10 *cf. United States v. Arrington*, 309 F.3d 40, 45 (D.C. Cir. 2002) (a vehicle used "simply
11 as a mode of transportation" would not qualify as a deadly weapon).

12 As to the second option (which is not defined in the model instruction), the Ninth
13 Circuit has found that to "inflict" bodily injury under Section 111(b) is to engage in
14 conduct that "directly cause[s]" that injury. *See Garcia-Camacho*, 122 F.3d at 1269. In
15 the Seventh and Eleventh Circuits, a "bodily injury" is broadly defined as "any injury to
16 the body, no matter how temporary[,] . . . includ[ing] any cut, abrasion, bruise, burn, or
17 disfigurement; physical pain; illness; or impairment of the function of a bodily member,
18 organ, or mental faculty." Eleventh Circuit Criminal Pattern Jury Instruction O1.2
19 (2025); Seventh Circuit Criminal Pattern Jury Instruction § 111(b) (2023) (similar). The
20 Government proposes using the Eleventh Circuit's straightforward definition at trial
21 because it provides concrete examples for the jury to consider.⁴ The testimony at trial
22 will establish that the injuries suffered by Victim 2 and Victim 4 meet this definition.
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24 _____
25 ⁴ Other Circuit courts have explained a "bodily injury" with reference to the U.S. Sentencing Guidelines
26 definition, which states that it is "any significant injury; *e.g.*, an injury that is painful and obvious, or is of
27 a type for which medical attention ordinarily would be sought." *See* U.S.S.G. § 1B1.1, cmt. n.1(B); Fifth
Circuit Criminal Pattern Jury Instruction 2.07 (2024) (incorporating Guidelines definition); Tenth Circuit
Criminal Pattern Jury Instruction 2.09 (2025) (same).

1 The victims this case are officers or employees of the federal government and are
2 thus each a covered “person” as specified in Section 111(a) and (b). *See* 18 U.S.C.
3 § 1114 (a qualifying person is “any officer or employee of the United States or of any
4 agency in any branch of the United States Government (including any member of the
5 uniformed services”).

6 **B. Defendant’s Prior Flight from Law Enforcement**

7 The Court granted the Government’s motion *in limine* to admit evidence of
8 Vivanco-Reyes’s prior flight from law enforcement on May 22, 2025. Dkt. 69 at 4, 11.
9 The Government thus intends to offer brief testimony through one law enforcement
10 witness concerning the facts and circumstances of that prior flight.

11 **C. Defendant’s Statements**

12 The Government will offer the oral statements Vivanco-Reyes made to Victim 3
13 and Victim 4 upon his apprehension (“I fucked up, I fucked up”). Those statements are
14 admissible as non-hearsay admissions of a party opponent. Fed. R. Evid. 801(d)(2)(A).

15 To the extent the defense maintains Vivanco-Reyes made other statements at the
16 same time, the defendant may not offer them under this rule because they are not
17 statements of the proponent’s “party-opponent.” *See United States v. Ortega*, 203 F.3d
18 675, 682 (9th Cir. 2000) (defendant cannot offer his own statement as party admission).
19 Moreover, Federal Rule of Evidence 106, the rule of completeness, is not a means to
20 circumvent the hearsay rules. *See United States v. Collicott*, 92 F.3d 973, 983 (9th Cir.
21 1996), *as amended* (Oct. 21, 1996) (citation and internal quotation marks omitted) (“Rule
22 106 does not compel admission of otherwise inadmissible hearsay evidence.”); *see also*
23 Fed. R. Evid. 106 (advisory notes) (observing that “[t]he mere fact that a statement is
24 probative and contradicts a statement offered by the opponent is not enough to justify
25 completion under Rule 106”).

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1 **D. Photographs and Maps**

2 The Government expects to offer photos (including still frames from the aerial
3 surveillance video) from the scene of the June 6, 2025 incident. The Government will also
4 introduce maps of the May 22, 2025 and June 6, 2025 locations. The photos and maps are
5 admissible. *See United States v. Brannon*, 616 F.2d 413, 416 (9th Cir. 1980) (evidence
6 that photographs accurately depict scene provides a sufficient foundation for admission
7 under Federal Rule of Evidence 901(a)).

8 The Government has also moved *in limine* to preclude the defense’s use of photos
9 documenting the defendant’s arrest following the charged assaults (including USA-48⁵),
10 and incorporates by reference its prior arguments to exclude that evidence. *See* Dkt. 66 at
11 2-3; *see also* Dkt. 35 at 9. To the extent the Court rules these photos are admissible, the
12 Government respectfully requests that the defense be barred from questioning or argument
13 concerning law enforcement’s motivation for taking them, which is additionally irrelevant.

14 **E. Demonstratives**

15 The Government may use demonstrative diagrams during its opening statement,
16 examination of witnesses, and/or closing argument. Those diagrams may include, for
17 example, the positioning of law enforcement vehicles in relation to the defendant’s
18 vehicle, as well as the vehicles’ subsequent movements, both on May 22, 2025 and June
19 6, 2025. The use of such diagrams is routinely permitted at the Court’s discretion. *See*,
20 *e.g., Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 773 n.9 (9th Cir. 1981) (“The admissibility
21 of demonstrative evidence in particular is largely within the discretion of the trial
22 judge.”).

23 **F. Defendant’s Criminal History**

24 Vivanco-Reyes has several prior criminal convictions, both as a juvenile and as an
25 adult, including violent criminal history. Dkt. 24 at 7-8. The evidence in this case also

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27 ⁵ Only two of the individuals depicted in USA-48 are Government witnesses: Victim 4 (at center) and
Victim 3 (at right).

1 includes photos of Vivanco-Reyes's tattoos, which show that he was gang-affiliated for at
2 least some period of time. Consistent with the Court's Order granting the defense's
3 motion *in limine* to exclude evidence on this topic, the Government does not intend to
4 offer evidence of the defendant's criminal history or gang affiliation in its case-in-chief,
5 or to impeach Vivanco-Reyes within the parameters of Federal Rule of Evidence
6 609(a)(1)(B), unless the defense opens the door to this topic. *See* Dkt. 69 at 10; Dkt. 27
7 at 4-8.

8 Vivanco-Reyes' criminal history—and, relatedly, the additional precautions taken
9 due to his increased threat to law enforcement—would become relevant at trial if, for
10 instance, the defense case calls into question: the validity of the immigration warrant
11 obtained (including by suggesting that Vivanco-Reyes was improperly or unfairly
12 targeted); the identity of the person named in that warrant; the type or volume of law
13 enforcement resources expended to apprehend Vivanco-Reyes (including by suggesting
14 that the show of force on June 6, 2025 was unwarranted or excessive); or law
15 enforcement's tactical decisions on how to effectuate the arrest (including by suggesting
16 that there were other or better ways to have conducted that arrest).⁶

17 In accordance with the above-referenced Order (Dkt. 69 at 10), the Government
18 will request a sidebar to discuss whether defense counsel opened the door to the
19 defendant's criminal history outside of the presence of the jury. If the Court concludes
20 the door has been opened, the Government would seek to introduce through one law
21 enforcement witness the necessary information about this topic (as appropriate to the
22 circumstances) to provide context or correct any misimpressions before the jury. For
23 example, if the defense pressed the point that law enforcement should have approached
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25 ⁶ The Government would additionally object to any defense cross-examination or argument regarding law
26 enforcement's tactical decisions on June 6, 2025 as irrelevant. This trial concerns the charged assaults
27 that unfolded that day; not the myriad possibilities of what law enforcement could have chosen to do
instead.

1 Vivanco-Reyes in another manner,⁷ the Government would elicit testimony that
 2 additional protective measures were taken because law enforcement was aware prior to
 3 executing the immigration warrant that the defendant may be gang-affiliated and had
 4 prior criminal history, including for violent offenses. Moreover, the Government would
 5 request that the Court issue a limiting instruction to ensure that the jury does not consider
 6 any criminal history information for inappropriate purposes, including propensity.

7 **G. Guadalupe Francisco Barragan’s Criminal History**

8 The defense listed Mr. Barragan, the passenger of the truck Vivanco-Reyes drove
 9 on June 6, 2025, as a potential witness in its case. If Mr. Barragan testifies, the
 10 Government has moved *in limine* to impeach Mr. Barragan through evidence of his prior
 11 felony conviction on November 6, 2020 for Assault-3. The conviction meets the
 12 requirements under Federal Rule of Evidence 609(a)(1)(A) and is important for the jury
 13 to consider as it assesses Mr. Barragan’s credibility.

14 **H. Records of Regularly-Conducted Activity and Rule 902(11)**
 15 **Certifications**

16 The Government will offer Victim 2 and Victim 4’s medical records into evidence
 17 as records of regularly-conducted activities of a business. These records are admissible
 18 pursuant to Federal Rule of Evidence 803(6), which allows for admission of a record if it
 19 is made at or near the time of the events set forth therein, by a person with knowledge,
 20 and is kept in the course of regularly conducted activity of a business or other
 21 organization, if it is the regular practice of the organization (here, a hospital) to make the
 22 record. *See* Fed. R. Evid. 803(6); *see also United States v. Hall*, 419 F.3d 980, 987 (9th
 23 Cir. 2005) (“[M]edical records from [victim]’s hospital visit . . . [ar]e records kept in the
 24 ordinary course of business, classic exceptions to the hearsay rule”).

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 27 ⁷ *See* Dkt. 26 at 4 & n.1 (noting that “agents did not attempt to approach Vivanco-Reyes before he started driving” on June 6, 2025, and that agents also “did not [immediately] go to the job sites” identified by the defendant’s employer and instead “waited three additional days”).

1 The Government intends to authenticate these business records by offering Rule
2 902(11) certifications rather than live testimony. Rule 902(11) provides that a party may
3 authenticate a business record through a signed certification of a records custodian if the
4 proponent of the evidence gives the adverse party adequate notice of its intent to offer the
5 records. *See* Fed. R. Evid. 902(11); *see also* Fed. R. Evid. 803(6), Advisory Committee
6 Notes to the 2000 Amendment (“[T]he foundation requirements of Rule 803(6) can be
7 satisfied under certain circumstances without the expense and inconvenience of
8 producing time-consuming foundation witnesses.”). Thus, a business record is
9 admissible under a 902(11) certificate—without authenticating testimony—unless the
10 opponent to admission “show[s] that the source of information or the method or
11 circumstances of preparation indicate a lack of trustworthiness.” *See* Fed. R. Evid.
12 803(6).

13 In addition to the hearsay exception under Rule 803(6) detailed above, the medical
14 records are also admissible because any statements by the victims to their respective
15 medical providers, as reflected in these records, satisfy the hearsay exception for
16 statements made for medical diagnosis or treatment under Federal Rule of Evidence
17 803(4). *See* Fed. R. Evid. 803(4); *see also United States v. Kootswatewa*, 893 F.3d 1127,
18 1132-33 (9th Cir. 2018) (observing that “[a] statement covered by Rule 803(4) is
19 admissible as substantive evidence, regardless of whether the declarant is available to
20 testify”). Statements by the victims describing, for instance, how an injury occurred and
21 their resulting symptoms fall within this established exception. *See Kootswatewa*, 893
22 F.3d at 1133 (quoting 30 Wright & Miller, *Federal Practice and Procedure* § 6844
23 (2017)) (“[S]tatements made by most people in the context of an injury-related visit to a
24 medical professional can be presumed to be made for the purpose of medical
25 treatment.”).

26 The Government has produced the 902(11) certificates to the defense and has
27 informed the defense of its intent to admit these records on the basis of those

1 certifications. The defense has confirmed it has no objections to the authenticity of these
2 records but is reserving its ability to make hearsay objections.

3 **I. Jury Instructions: Lesser-Included Offense**

4 It is the Government's understanding that the defense may request a jury
5 instruction for the lesser-included offense of simple assault, a misdemeanor. *See* 18
6 U.S.C. § 111(a). Such an instruction is warranted where: "1) the elements of the lesser
7 offense are a subset of the elements of the charged offense, and 2) the evidence would
8 permit a jury rationally to find [the defendant] guilty of the lesser offense and acquit
9 [him] of the greater." *United States v. Rivera-Alonzo*, 584 F.3d 829, 833 (9th Cir. 2009)
10 (citation omitted) (second brackets in original).

11 The Ninth Circuit has held that simple assault is a subset of the felony provisions
12 of Section 111, so the first part of this test is met. *Id.* at 833-34. The circumstances of
13 Vivanco-Reyes's case, however, fail the second part of the test and thus a lesser-included
14 instruction is inapplicable here. In *Rivera-Alonzo*, a Section 111(b) case, the Ninth
15 Circuit "adhere[d] to the common law understanding of simple assault as assault that
16 does *not* involve physical contact." *Id.* at 834-35 (citation and alterations omitted)
17 (emphasis added). As a result, a jury could not rationally convict the defendant of simple
18 assault because the crimes charged necessarily involved physical contact. *See id.*
19 (affirming district court's refusal to give a lesser-included-offense instruction in a Section
20 111(b) case due to the "undisputed evidence of physical contact"). The defendant's
21 deliberate collisions into vehicles the victims occupied and/or were adjacent to fall
22 outside of the ambit of simple assault; indeed, even much less forceful physical contact
23 such as the defendant's spitting onto a federal officer's face qualifies as felony assault
24 under Section 111. *See United States v. Stoddard*, 407 F. App'x 231, 234 (9th Cir. 2011).
25 Moreover, the jury could not find Vivanco-Reyes guilty of a misdemeanor offense in this
26 case because the defendant used a deadly or dangerous weapon (a truck with attached
27 trailer) to commit the assaults as alleged. *See* 18 U.S.C. § 111(b).

- 1 4. HSI SA Gurman Powar (Victim 3)
- 2 5. CBP Border Patrol Agent Parminder Singh (Victim 4)
- 3 6. ICE Officer Justin Berg
- 4 7. CBP Air and Marine Agent Morgan Buitron
- 5 8. ICE Officer David Kasko

6 At this time, the Government does not intend to offer any expert testimony.⁹

7 **B. Defense Expert Testimony**

8 The Government filed a motion *in limine* to exclude testimony from defense
9 expert Dr. Yurivia Cervantes-Manzo on Vivanco-Reyes’s claimed diagnosis of PTSD
10 and its effects on his decision-making abilities because it would be irrelevant, unreliable,
11 and misleading. The Court granted this motion, agreeing that “diminished capacity is not
12 a defense to the charged offenses here.” Dkt. 69 at 7 (citations and internal quotation
13 marks omitted). The defense’s motion *in limine* to admit similar expert testimony from
14 Andrew Gill, which the Government opposes, remains pending before the Court. *See*
15 Dkt. 68 at 2-7.

16 **VI. POSSIBLE DEFENSES**

17 Vivanco-Reyes has not noticed any defense for which the Federal Rules of
18 Criminal Procedure require notice. As a result, the Government would move to bar any
19 such defense if it were raised at trial.

20 **VII. RECIPROCAL DISCOVERY**

21 To date, the Government has provided thousands of pages of documents and
22 photographs as well as video and audio recordings in discovery. The physical evidence
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25 ⁹ The Government noticed expert witness Claudia A’Zar, a Spanish translator, as a possible ninth witness
26 to the extent the defense disputes the accuracy of Ms. A’Zar’s Spanish language translations and/or her
27 transcription of an audio call. The Government does not intend to offer any of Ms. A’Zar’s Spanish
translations into evidence and reserves its ability to call Ms. A’Zar as a witness if needed at trial.

1 was available for review upon request and the defense reviewed the government vehicles
2 damaged in person.

3 The Government requested reciprocal discovery on June 20, 2025. To date, the
4 Government has received limited defense discovery, almost all of which pertains to the
5 defense's expert disclosures for Dr. Cervantes-Manzo, who the Court has excluded as a
6 witness. The Government reserves the right to seek to exclude any evidence offered
7 during the course of trial that should have been provided previously under Federal Rule
8 of Criminal Procedure 16.

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VIII. CONCLUSION

This trial brief has been prepared to acquaint the Court with the factual and legal issues that may arise at trial. The Government is not aware of other legal issues that are likely to arise during the course of this trial. If other issues do arise, the Government requests the opportunity to address them through supplemental briefing.

DATED this 23rd day of December, 2025.

Respectfully submitted,

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