

1 BILAL A. ESSAYLI  
 First Assistant United States Attorney  
 2 ALEXANDER B. SCHWAB  
 Assistant United States Attorney  
 3 Acting Chief, Criminal Division  
 HAOXIAOHAN CAI (Cal. Bar No. 331131)  
 4 Assistant United States Attorney  
 Major Frauds Section  
 5 IRICEL E. PAYANO (Cal. Bar. No. 349141)  
 Assistant United States Attorney  
 6 General Crimes Section  
 1200 United States Courthouse  
 7 312 North Spring Street  
 Los Angeles, California 90012  
 8 Telephone: (213) 894-0762 / (213) 894-3899  
 Facsimile: (213) 894-0141  
 9 Email: Haoxiaohan.Cai@usdoj.gov  
 Iricel.Payano@usdoj.gov

10 Attorneys for Plaintiff  
 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 BOBBY NUNEZ,

18 Defendant.

No. 2:25-CR-779-FLA

GOVERNMENT’S TRIAL  
 MEMORANDUM

Trial Date: December 16, 2025  
 Trial Time: 8:30 a.m.  
 Location: Courtroom of the Hon.  
 Fernando L. Aenlle-  
 Rocha

19 Plaintiff United States of America, by and through its counsel of record, the First  
 20 Assistant United States Attorney for the Central District of California and Assistant  
 21 United States Attorneys Haoxiaohan Cai and Iricel E. Payano, hereby submits its Trial  
 22 Memorandum.

23 In compliance with the Court’s Standing Order, the government conferred with  
 24 defendant’s counsel to determine whether the parties agreed or disagreed on the factual  
 25 summary, statement of charges, time estimate of the government’s case-in-chief, and  
 26 legal and evidentiary issues laid out herein; defendant’s counsel informed the  
 27  
 28

1 government that defendant is agreeable to Part III of this Trial Memorandum, but not to  
2 Parts I, II, or IV.

3  
4 Dated: December 1, 2025

Respectfully submitted,  
5 BILAL A. ESSAYLI  
First Assistant United States Attorney

6 ALEXANDER B. SCHWAB  
7 Assistant United States Attorney  
Acting Chief, Criminal Division

8  
9 \_\_\_\_\_ /s/

10 HAOXIAOHAN CAI  
11 IRICEL E. PAYANO  
Assistant United States Attorneys

12 Attorneys for Plaintiff  
13 UNITED STATES OF AMERICA  
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**TRIAL MEMORANDUM**

**I. FACTUAL SUMMARY**

At around 8:00 a.m. on August 15, 2025, three federal law enforcement officers, HIS Special Agent R.E., ICE Deportation Officer J.A., and Deputy United States Marshal J.B. were at the Da Vinci apartment complex in Downtown Los Angeles to conduct an arrest of a third-party, T.M., for a violation of 8 U.S.C. § 1325, illegal entry by an alien. (Dkt. 1 (“Complaint”) at 4.) To arrest T.M., agents use two law enforcement SUVs, both of which had their emergency red and blue lights activated, to box in the Tesla that T.M. was driving at the entrance of the Da Vinci Apartments’ parking structure. (Id.)

While the officers were at the Tesla’s passenger side door attempting to arrest T.M., defendant approached the officers. (Dkt. 24 at 4). Witness testimony, as well as recordings taken at the scene, will show that defendant appeared to be recording the arrest, while yelling at the officers, and pushing the passenger door of the Tesla into the officers’ bodies multiple times. (Id.; see also, Dkt. 25, Exhibit (Ex.) A at 01:26 to 01:52.) In response, DUSM J.B. informed defendant that they were conducting a “federal investigation” and asked that he stop pushing the car door. (Id.; Dkt. 1 at 5.) Defendant continued yelling at the officers while gesturing back in the direction of the government vehicle and defendant’s tow truck, which was parked on the opposite side of Fremont Street. (Dkt. 24 at 4; Dkt. 25, Ex. A at 01:46 to 01:52). Then the defendant ran off toward his tow truck and proceeded to tow the government SUV, which still had its emergency lights on. (Dkt. 24 at 4.)

Witness M.F., who was on his morning commute, found his path down nearby Temple Street obstructed by a tow truck towing a police car which was blocking both lanes of traffic. After speaking with one of the officers,, Witness M.F., joined by witness W.L., recovered the government SUV and brought it back to the officer.

On August 16, 2025, at approximately 2:20 p.m., HSI agents located a white Dodge Ram matching the description of the tow truck, parked in a residential space of

1 the Da Vinci Apartments’ parking structure. (Dkt. 1 at 7). The agents noted writing on  
2 the rear driver’s side panel of vehicle that read: “ITRA Towing, CA 612175  
3 DOT3909020.” (Id.)

4 HSI conducted a records check with the Department of Transportation and  
5 California Secretary of State for Insured Towing Roadside Assistance and Recovery,  
6 Inc., or ITRA. The incorporation paperwork showed that defendant was listed as the  
7 secretary of ITRA. (Dkt. 1 at 7). HSI located defendant’s profile on social media,  
8 including Facebook. (See, e.g., id. at 6-9). Defendant’s Facebook page contained photos  
9 of him, and videos of his truck, including a video that defendant posted with a white  
10 truck matching the description of tow truck that defendant had captioned, “new bitch.”

## 11 **II. STATEMENT OF THE CHARGE AND ELEMENTS**

12 Defendant is charged with theft of government property in excess of \$1,000, in  
13 violation of 18 U.S.C. § 641.

### 14 **A. Elements of the Offense**

15 To prevail in its case against defendant, the government must prove at trial: (1) the  
16 defendant knowingly stole property of value with the intention of depriving the owner of  
17 the use or benefit of the property; (2) the property belonged to the United States; and (3)  
18 the value of the property was more than \$1,000. Ninth Cir. Model Jury Instructions, No.  
19 23.1 (2022 ed.).

### 20 **B. “To Steal” Explained**

21 A defendant can be found to have stolen property so long as there was appreciable  
22 change of location and any deprivation of use, including temporary deprivation. See  
23 Fifth Cir. Model Jury Instruction, No. 2.27 (2024 ed.).

24 As outlined in the Joint Disputed Jury Instructions (Dkt. 1), while the Ninth  
25 Circuit has not included this clarification in its model instructions, multiple sister circuits  
26 have done so. Furthermore, numerous courts of appeals have confirmed that § 641  
27 applies to temporary deprivations. See, e.g., United States v. Baker, 928 F.3d 291, 297  
28 (3d Cir. 2019) (noting that the Supreme Court in Morrisette v. United States, 342 U.S.

1 246, 266 n.28 (1952) gave wide berth to the scope of § 641, and that “[a]ccordingly,  
2 courts have followed that guidance and concluded that intent to temporarily or  
3 permanently deprive the government of its money satisfies the intent element of § 641);  
4 see also United States v. Dowl, 619 F.3d 494, 500-01 (5th Cir. 2010) (collecting cases  
5 from the Fifth, Seventh, Eighth, and Eleventh Circuits interpreting § 641 to include  
6 temporary deprivations).

7 **C. Defendant’s Knowledge Regarding Government Property**

8 The government need only prove that defendant seized property that did not  
9 belong to him; not that defendant knew the property belonged to the government. Again,  
10 while this point is not included in the Ninth Circuit’s model instructions, such a  
11 clarification is consistent with the notes to the Ninth Circuit Model Jury Instructions for  
12 § 641. See Comment to Ninth Cir. Model Jury Instructions, No. 23.1 (2022 ed.)  
13 (“Knowledge that stolen property belong to the United States is not an element of the  
14 offense.”) (citing Baker v. United States, 429 F.2d 1278, 1279 (9th Cir. 1970)).  
15 Furthermore, as noted in the Joint Disputed Jury Instructions (Dkt. 1), such a  
16 modification is consistent with Supreme Court precedent as set forth in Morrisette, 342  
17 U.S. at 270-271.

18 **III. ESTIMATED LENGTH OF CASE-IN-CHIEF**

19 In total, the government estimates that its case-in-chief (with a reasonable  
20 allotment for cross-examination) will be approximately one to two days. The  
21 government intends to call the following witnesses<sup>1</sup> in its case-in chief, and anticipates  
22 the noted estimates for their testimony, including cross examination:

- 23 (1) Deputy U.S. Marshal J.B. (75 minutes)
- 24 (2) HSI Special Agent R.E. (60 minutes)
- 25 (3) Witness M.F. (40 minutes)
- 26 (4) Witness W.L. (35 minutes)

27 \_\_\_\_\_  
28 <sup>1</sup> The government reserves the right to call additional witnesses in either its case-  
in-chief or rebuttal case (if any).

1 (5) HSI Special Agent C.L. (40 minutes)

2 (6) HSI Analyst S.L. (75 minutes)

3 (7) ICE Enforcement and Removal Operations Employee S.F. (50 minutes)

4 (8) HSI Special Agent F.J. (30 minutes)

5 **IV. RELEVANT LEGAL AND EVIDENTIARY ISSUES**

6 **A. Pending Motions**

7 The government filed one motion in limine, on November 26, 2026, to exclude  
8 irrelevant, prejudicial evidence, of a third-party arrest, and to exclude nullification  
9 evidence. (Dkt. 24.) Defense counsel has stated that they will object to this motion in  
10 substance and on timeliness grounds. (See id.). The motion remains pending before the  
11 Court and is scheduled to be heard at the Pretrial Conference on December 5, 2025.

12 **B. Photographs and Videos**

13 The government intends to introduce photographs and video footage at trial.  
14 Admitting a photograph or video into evidence requires that the proponent meet only a  
15 very low hurdle. “Under the Federal Rules, the witness identifying the item in a  
16 photograph need only establish that the photograph is an accurate portrayal of the item in  
17 question.” People of Territory of Guam v. Ojeda, 758 F.2d 403, 408 (9th Cir. 1985)  
18 (interpreting Fed. R. Evid. 901(b)(1)). The Ninth Circuit has held that “[p]hotographs  
19 are admissible as substantive as well as illustrative evidence.” United States v. May, 622  
20 F.2d 1000, 1007 (9th Cir. 1980).

21 Photographs and videos should be admitted so long as they fairly and accurately  
22 represent the event or object in question. See United States v. Oaxaca, 569 F.2d 518,  
23 525 (9th Cir. 1978). Notably, “the witness who lays the authentication foundation need  
24 not be the photographer, nor need the witness know anything of the time, conditions, or  
25 mechanisms of the taking of the picture.” 32 McCormick on Evid. § 215 (7th ed.). Rule  
26 901(a) simply requires that a proponent of evidence make a prima facie showing of  
27 authenticity so that a reasonable juror could find “that the item is what the proponent  
28 claims it is.” Fed. R. Evid. 901(a).

### 1 C. Defendant's Statements

2 Under the Federal Rules of Evidence, a defendant's statement is admissible only if  
3 offered against him; a defendant may not elicit his own prior statements. See Fed. R.  
4 Evid. 801(d)(2)(A); United States v. Fernandez, 839 F.2d 639, 640 (9th Cir. 1988) (per  
5 curiam). To permit otherwise would place a defendant's statements "before the jury  
6 without subjecting [herself] to cross-examination, precisely what the hearsay rule  
7 forbids." United States v. Ortega, 203 F.3d 675, 682 (9th Cir. 2000) (holding that the  
8 district court properly barred defendant from seeking to introduce his exculpatory post-  
9 arrest statements through cross-examination of government agent); United States v.  
10 Cunningham, 194 F.3d 1186, 1199 (11th Cir. 1999) ("[A] defendant cannot attempt to  
11 introduce an exculpatory statement made at the time of his arrest without subjecting  
12 himself to cross examination.").

13 When the government admits some of a defendant's prior statements, the door is  
14 not thereby opened to the defendant to put in all of his out-of-court statements. This is  
15 because, when offered by defendant, the statements are still inadmissible hearsay. See  
16 Fed. R. Evid. 801(d)(2); see also United States v. Burreson, 643 F.2d 1344, 1349 (9th  
17 Cir. 1981); United States v. Willis, 759 F.2d 1486, 1501 (11th Cir. 1985) (defendant's  
18 exculpatory statement inadmissible when offered by defense).

19 Similarly, a defendant's exculpatory statements are not admissible under Federal  
20 Rule of Evidence 106, the "rule of completeness." Evidence that is inadmissible is not  
21 made admissible by invocation of the "rule of completeness." See United States v.  
22 Collicott, 92 F.3d 973, 983 (9th Cir. 1996) (hearsay not admissible notwithstanding Rule  
23 106). As the Ninth Circuit noted in Ortega, a defendant's non-self-inculpatory  
24 statements are inadmissible hearsay even if they were made contemporaneously with  
25 other self-inculpatory statements. Ortega, 203 F.3d at 682 (citing Williamson v. United  
26 States, 512 U.S. 594, 599 (1994)). The "rule of completeness" may require that all of a  
27 defendant's prior statements be admitted only where it is necessary to explain an  
28 admitted statement, to place it in context, or to avoid misleading the trier of fact. See,

1 e.g., United States v. Marin, 669 F.2d 73, 84 (2d Cir. 1982). The doctrine does not,  
2 however, require introduction of portions of a statement that are neither explanatory of,  
3 nor relevant to, the admitted passages. See Ortega, 203 F.3d at 682-683; Marin, 669  
4 F.2d at 84. The burden is on the defendant to identify a basis for admitting additional  
5 portions of the defendant’s prior statement. United States v. Branch, 91 F.3d 699, 729  
6 (5th Cir. 1996).

#### 7 **D. Scope of Cross-Examination of Defendant**

8 If the defendant testifies at trial, he waives his right against self-incrimination, and  
9 the government will cross-examine him on all matters reasonably related to the subject  
10 matter of his testimony. See, e.g., Fitzpatrick v. United States, 178 U.S. 304 (1971)  
11 (“The defendant cannot assert a self-incrimination privilege ‘on matters reasonably  
12 related to the subject matter of his cross-examination.’”); United States v. Black, 767  
13 F.2d 1334, 1341 (“What the defendant actually discusses on direct does not determine  
14 the extent of permissible cross-examination or his waiver. Rather, the inquiry is whether  
15 ‘the government’s questions are reasonably related’ to the subjects covered by the  
16 defendant’s testimony.”) (internal quotations and citation omitted).

17 The scope of cross-examination is within the discretion of the trial court. Fed. R.  
18 Evid. 611(b). The defendant has no right to avoid cross-examination on matters that call  
19 into question his claim of innocence. United States v. Mehrmanesh, 682 F.2d 1303,  
20 1310 (9th Cir. 1982); United States v. Miranda-Uriarte, 649 F.2d 1345, 1353-54 (9th Cir.  
21 1981). The government, however, may introduce evidence should defendant “open the  
22 door.” See United States v. Alexander, 48 F.3d 1477, 1488 (9th Cir. 1995), as amended  
23 on denial of reh'g (Apr. 11, 1995) (“When a defendant takes the stand and denies having  
24 committed the charged offense, he places his credibility directly at issue.”).

#### 25 **E. Photographs and Maps**

26 The government will seek to introduce video and photographs of defendant’s  
27 interaction with officers on August 15. Photographs are generally admissible as  
28 evidence. See United States v. Stearns, 550 F.2d 1167, 1170-71 (9th Cir. 1977).

1 Photographs should be admitted so long as they fairly and accurately represent the event  
2 or object in question. See United States v. Oaxaca, 569 F.2d 518, 525 (9th Cir. 1978).  
3 For example, photographs may be authenticated by a witness who “identif[ies] the scene  
4 itself [in the photograph] and its coordinates in time and place.” See Lucero v. Stewart,  
5 892 F.2d 52, 55 (9th Cir. 1989) (internal quotation marks omitted). Also, “[p]hotographs  
6 are admissible as substantive as well as illustrative evidence.” United States v. May, 622  
7 F.2d 1000, 1007 (9th Cir. 1980).

8 The government also may seek to display maps obtained from Google Earth and  
9 Google Maps as demonstratives to aid the jury in their understanding of where the  
10 towing occurred. The maps will be authenticated by an officer who was a percipient  
11 witness as to the area the maps depict. The admission of demonstrative evidence, such  
12 as maps, that assists the understanding of the trier of fact is a matter committed to the  
13 sound discretion of the trial court. United States v. Turner, 528 F.2d 143, 167-68 (9th  
14 Cir. 1975). The Court may properly admit maps from Google Earth because they are not  
15 hearsay, especially when a witness familiar with the area testifies about them. United  
16 States v. Lizarraga-Tirado, 789 F.3d 1107, 1109 (9th Cir. 2015). The Court may also  
17 take judicial notice of maps, including online maps and satellite images. See United  
18 States v. Perea-Rey, 680 F.3d. 1179, n.11 (9th Cir. 2012).

#### 19 F. Lay Law Enforcement Testimony

20 Federal Rule of Evidence 701 “permits a lay witness to give opinion testimony as  
21 long as the opinion is (a) rationally based on the perception of the witness and (b) helpful  
22 to a clear understanding of the witness’s testimony or the determination of a fact in  
23 issue.” United States v. Pino-Noriega, 189 F.3d 1089, 1097 (9th Cir. 1999) (cleaned up).  
24 Lay opinion testimony by law enforcement officers is admissible and is not necessarily  
25 expert testimony within the meaning of Rule 16(a)(1)(G). See United States v.  
26 Barragan, 871 F.3d 689, 703-04 (9th Cir. 2017) (agent’s interpretation of conversation  
27 based upon direct knowledge constitutes lay testimony).  
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1 “[A]n investigator who has accumulated months or even years of experience with  
2 the events, places, and individuals involved in an investigation necessarily draws on that  
3 knowledge when testifying; indeed, it is those out-of-court experiences that make the  
4 witness’s testimony helpful to the [trier of fact].” United States v. Gadson, 763 F.3d  
5 1189, 1209 (9th Cir. 2014). Rule 16 notice is not required for the opinions of lay  
6 witnesses. See Fed. R. Evid. 701; see also United States v. Moreno, 243 F.3d 551, 551  
7 (9th Cir. 2000). To the extent the United States offers lay opinions, they are admissible.

8 Here, the government may seek to admit the lay testimony of HSI Analyst S.L.,  
9 who reviewed social media footage of defendant’s confrontation with the officers. HSI  
10 Analyst S.L. will testify, based on his repeated viewing of such video, as to hard-to-hear  
11 statements that defendant made to officers right before he got into his tow truck to tow  
12 the government SUV, including that defendant stated, “you can’t have your car right  
13 there,” while he gestured towards the government SUV, and “I’m gonna tow your shit,”  
14 and “ok, alright, play your games, bet,” as he walks away from the officers and in the  
15 direction of the government car.

16 The Ninth Circuit has repeatedly “held that an officer who has extensively  
17 reviewed a video may offer a narration, pointing out particulars that a casual observer  
18 might not see.” United States v. Torralba-Mendia, 784 F.2d 652, 659 (9th Cir. 2015)  
19 (affirming officer’s narration of video of people and cars visiting a human smuggling  
20 spot, based on the officer’s “repeated viewing of the recordings” as a proper lay  
21 opinion). In United States v. Begay, the Ninth Circuit affirmed an officer’s narration of  
22 a video tape, finding that the officer’s testimony, based on his extensive rewatching of  
23 the video, would be helpful to the jury because a jury “viewing a videotape of a  
24 demonstration involving over 200 people would likely not see certain details, given the  
25 tremendous array of events all occurring simultaneously.” 42 F.4d 486, 502-03 (9th Cir.  
26 1994) (holding this was proper lay opinion that did not invade the province of the jury).  
27 Here too, where the bystander video shows a flurry of activity and multiple raised  
28 voices, Analyst S.L.’s testimony highlighting defendant’s recorded statements “could

1 help the jury discern correctly and efficiently the events depicted in the video tape;” to  
2 have the jury itself conduct the same painstaking review would be “an extremely  
3 inefficient use of the jury’s and the court’s time.” Id.

4 **G. Affirmative Defenses and Reciprocal Discovery**

5 Defendant has not given notice of her intent to rely on any defense of entrapment,  
6 mental incapacity, alibi, self-defense, or any other affirmative defense, despite the  
7 government’s request for such notice of intent. Therefore, to the extent defendant may  
8 attempt to rely on such a defense, the government reserves the right to object and to  
9 move to preclude the defendant from asserting such a defense.

10 Rule 16 of the Federal Rules of Criminal Procedure creates certain reciprocal  
11 discovery obligations on the part of defendants to produce three categories of materials  
12 that they intend to introduce as evidence at trial: (1) documents and tangible objects;  
13 (2) reports of any examinations or tests; and (3) expert witness disclosure. Rule 16  
14 imposes on defendants a continuing duty to disclose these categories of materials. Fed.  
15 R. Crim. P. 16(b)(1)(A), (b)(1)(C), and (c). In those circumstances where a party fails to  
16 produce discovery as required by Rule 16, the rule empowers the district court to  
17 “prohibit that party from introducing the undisclosed evidence,” or it may “enter any  
18 other order that is just under the circumstances.” Fed. R. Crim. P. 16(d)(2)(C) and (D).  
19 To the extent defendant may attempt to introduce or use any evidence at trial that she has  
20 not produced to the government, such documents should be excluded. See Taylor v.  
21 Illinois, 484 U.S. 400, 415 (1988) (defendant’s failure to comply with, or object to,  
22 government’s discovery request before trial justified exclusion of unproduced evidence).

23 If defendant serves defense discovery on the government mid-trial, the  
24 government further seeks leave from the Court to have adequate time to review the  
25 provided discovery, run necessary criminal background checks, and request offers of  
26 proof from the defense as to any previously undisclosed witnesses.

27 To date, defendant has not produced any reciprocal discovery.  
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1           **H. Jury Nullification**

2           As detailed in the governments motion in limine (Dkt. 24), the government also  
3 objects to any evidence and/or argument introduced for the purpose of jury nullification,  
4 including concerning the unrelated arrest of third-party T.M. and national immigration  
5 policy and its effect on the community and/or individuals.

6           **V. CONCLUSION**

7           The government respectfully requests leave to supplement this Trial  
8 Memorandum, as appropriate.

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