

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’ MOTIONS IN LIMINE

NOTE ON MOTION CALENDAR:  
October 15, 2025

**I. INTRODUCTION**

Defendant Victor Vivanco-Reyes is charged with four counts of Assault of a Federal Officer, in violation of 18 U.S.C. § 111(a) and (b). Trial is scheduled for October 27, 2025. The parties have met and conferred but cannot reach agreement on all proposed motions in limine.

**II. FACTUAL BACKGROUND**

**A. The Defendant’s Prior Flight from Law Enforcement**

In the current case, Victor Vivanco-Reyes is charged with assaulting four federal officers on June 6, 2025, while they were attempting to execute a valid immigration warrant for his arrest. Prior to those assaults, on May 22, 2025, Homeland Security Investigations (“HSI”) agents conducted surveillance to attempt to locate an Infiniti G37

1 vehicle that was registered to Vivanco-Reyes and execute a civil administrative warrant  
2 for his arrest for immigration violations. That day, agents in two separate government  
3 vehicles observed the Infiniti G37 in front of them in a residential area and attempted a  
4 traffic stop. The agents—both of whom were wearing outer body armor carriers  
5 identifying them as law enforcement—activated their emergency lights and sirens. The  
6 driver of the Infiniti G37 did not immediately stop and continued on before eventually  
7 stopping in front of a residential driveway. Both agents positively identified Vivanco-  
8 Reyes as the driver of the Infiniti G37 before he fled from the scene in his vehicle,  
9 driving away dangerously and at a high rate of speed. The agents reactivated their  
10 emergency lights and sirens and attempted pursuit, observing Vivanco-Reyes narrowly  
11 miss a crossing pedestrian and passing vehicles, including a school bus, on the right side.  
12 The agents ultimately terminated their pursuit due to the risk to public safety.

### 13 **B. The Charged Assaults**

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

20 Multiple law enforcement vehicles drove northbound to stop the truck and trailer,  
21 including vehicles driven by: (1) Victim 1, with Victim 2 as the front seat passenger; (2)  
22 an Immigration and Customs Enforcement (“ICE”) Officer; and (3) Victim 3, with  
23 Victim 4 as the front seat passenger. Victim 1, Victim 2, and Victim 3 are HSI agents,  
24 and Victim 4 is a Customs and Border Protection agent. The agents and officer wore  
25 outer body armor carriers identifying them as law enforcement.

26 As Victim 1’s vehicle approached the truck and trailer, he activated his emergency  
27 lights and siren and pulled into the southbound lane, directly in front of the truck’s path.

1 The ICE officer then activated his emergency lights and drove close to Victim 1's vehicle  
2 to block the northbound lane. Vivanco-Reyes initially appeared to slow the truck, but  
3 then quickly accelerated and swerved to the left of Victim 1's vehicle, striking it on the  
4 front passenger side, first with the truck and then the attached trailer. Vivanco-Reyes was  
5 traveling at such a high rate of speed that the collision of the trailer into Victim 1's  
6 vehicle caused the trailer to fly up into the air.

7 After Vivanco-Reyes struck Victim 1's vehicle, Victim 3 drove his vehicle into  
8 the roadway to block the truck's exit. Vivanco-Reyes then drove the truck and trailer  
9 directly into the front of Victim 3's vehicle, striking it with such force and causing such  
10 significant damage that Victim 3's vehicle was rendered inoperable.

11 Vivanco-Reyes apparently lost control of the truck, which came to rest against a  
12 telephone pole. He fled from the vehicle on foot and was eventually apprehended.

13 Two of the victims reported injuries following the June 6, 2025 assaults.  
14 Specifically: Victim 2 felt pain in his right rib cage area and right shoulder, as well as  
15 numbness traveling down his arm into his fingers; Victim 4 felt pain in his hip area.

### 16 III. AGREED MOTIONS IN LIMINE

#### 17 A. Motion to exclude witnesses.

18 Both parties request that all potential witnesses, except as noted below, be  
19 excluded from the courtroom during all portions of the trial until they are called to testify.  
20 Fed. R. Evid. 615. The parties agree that the exclusion includes opening statements of  
21 both parties and all portions of the trial even after the completion of the witness's  
22 testimony, unless both parties agree that the witness will not be recalled for any reason.  
23 Each party shall be responsible for advising their respective witnesses not to discuss their  
24 testimony until the completion of the trial.

25 The parties further request that the Government's case agent, HSI Special Agent  
26 Jacob Black, and the defense's investigator, Charles Formosa, be permitted, however, to  
27 sit at counsel table throughout the trial. It is also the Government's understanding that

1 the defense may file a separate motion regarding the presence of their proffered expert  
2 throughout the trial.

3 **B. Motion to preclude references to the defendant’s substance use.**

4 Both parties agree that no evidence, questioning, or argument will be presented  
5 concerning the defendant’s substance use.

6 **IV. DISPUTED MOTIONS IN LIMINE**

7 **A. Motion to exclude evidence, argument, or any mention of potential**  
8 **penalties or collateral consequences if Vivanco-Reyes were found**  
9 **guilty.**

10 The Government moves to exclude any references to potential penalties for or  
11 collateral consequences of the crimes charged, including potential deportation.

12 The jury’s function “is to find the facts and to decide whether, on those facts, the  
13 defendant is guilty of the crime charged”; by contrast, sentencing is the province of the  
14 judge following a conviction. *Shannon v. United States*, 512 U.S. 673, 579 (1994).  
15 “Information regarding the consequences of a verdict is therefore irrelevant to the jury’s  
16 task.” *Id.*; see also Ninth Circuit Model Criminal Jury Instruction 6.22 (cautioning  
17 against the consideration of punishment during jury deliberations). This reasoning  
18 extends to references to potential immigration consequences. See, e.g., *United States v.*  
19 *Mercado*, No. 18-CR-00549-LHK-3, 2020 WL 496069, at \*3 (N.D. Cal. Jan. 30, 2020)  
20 (holding that because the defendant’s immigration status was irrelevant to the drug  
21 offenses charged, the parties were prohibited from referring to his immigration status  
22 during trial).

23 The applicable penalties and consequences are not probative of Vivanco-Reyes’s  
24 guilt or innocence and their presentation—in any form—risks compromising the  
25 impartiality of the jury’s verdict. As the Supreme Court has observed, “providing jurors  
26 sentencing information invites them to ponder matters that are not within their province,  
27 distracts them from their factfinding responsibilities, and creates a strong possibility of

1 confusion.” *Shannon*, 512 U.S. at 579. Any discussion of penalties would only serve to  
 2 encourage jury nullification in this case. The Government therefore moves the Court to  
 3 exclude any mention of possible penalties or collateral consequences, including any  
 4 immigration consequences that Vivanco-Reyes may face following his conviction.

5 **B. Motion to admit evidence of the defendant’s prior flight from law**  
 6 **enforcement.**

7 The Government moves to admit evidence of Vivanco-Reyes’s flight from law  
 8 enforcement on May 22, 2025 under one of two theories. First, that evidence is  
 9 “inextricably intertwined” with the assaults charged because it provides necessary context  
 10 for those crimes and is thus not subject to Rule 404(b) analysis. Second, in the  
 11 alternative, the evidence meets the criteria required for admission under Rule 404(b) to  
 12 demonstrate the defendant’s intent, absence of mistake, and/or lack of accident. Under  
 13 either theory, the probative value of the evidence at issue is not substantially outweighed  
 14 by the dangers specified in Rule 403.

15 **1. The evidence is “inextricably intertwined” with the offenses**  
 16 **charged.**

17 As relevant here, “other acts” evidence is considered “inextricably intertwined”  
 18 with the crime charged when its admission is “necessary . . . in order to permit the  
 19 prosecutor to offer a coherent and comprehensible story regarding the commission of the  
 20 crime; it is obviously necessary in certain cases for the government to explain . . . the  
 21 events surrounding the commission of the crime.” *United States v. Vizcarra-Martinez*, 66  
 22 F.3d 1006, 1012-13 (9th Cir. 1995)<sup>1</sup>; *see also id.* at 1013 (citation omitted) (observing the  
 23 jury “cannot be expected to make its decision in a void—without knowledge of the time,  
 24 place, and circumstances of the acts which form the basis of the charge”). Evidence that  
 25 is so inextricably intertwined is not treated as other crimes, wrongs, or acts under Rule

26 <sup>1</sup> Evidence is also admissible as “inextricably intertwined” where “it constitutes a part of the transaction  
 27 that serves as the basis for the criminal charge.” *Vizcarra-Martinez*, 66 F.3d at 1012. The Government  
 does not advance that theory here.

1 404(b) and therefore does not need to meet the requirements of that rule. *See, e.g.,*  
2 *United States v. Loftis*, 843 F.3d 1173, 1177-78 (9th Cir. 2016).

3       The attempted traffic stop and Vivanco-Reyes’s refusal to yield to the HSI agents,  
4 including his dangerous flight from the scene, is essential background evidence to the  
5 Government’s case for two reasons. First, the evidence supports Vivanco-Reyes’s  
6 “forcible assault” of the federal officers (that is, his intention to commit the assaults),  
7 which is the first element of the crimes charged. *See* Ninth Circuit Model Criminal Jury  
8 Instruction 8.2 (emphasis added) (explaining the first element is met where the defendant:  
9 (i) “*intentionally* strikes another”; (ii) “*willfully* attempts to inflict injury on another”; or  
10 (iii) *intentionally* threatens another coupled with an apparent ability to inflict injury on  
11 another which causes a reasonable apprehension of immediate bodily harm”). Vivanco-  
12 Reyes’s prior flight is relevant to his subsequent intentions because that incident put him  
13 on notice that he was being sought by law enforcement. The events on May 22, 2025  
14 further explain his escalated and violent response when confronted by agents just weeks  
15 later, when he realized that they had not abandoned their search for him, and also  
16 undercuts any defense claims that the collisions were accidents. *See United States v.*  
17 *Ruiz*, No. 22-50175, 2023 WL 6999439, at \*1 (9th Cir. Oct. 24, 2023) (quoting *United*  
18 *States v. Daly*, 974 F.2d 1216, 1217 (9th Cir. 1992)) (finding district court properly  
19 admitted prior act evidence as inextricably intertwined in case charging assault of a  
20 federal officer where the testimony helped demonstrate the defendant’s intent, and was  
21 “therefore ‘necessary to put [the defendant’s] illegal conduct into context and to rebut his  
22 claims of self-defense’”); *see also United States v. Luyster*, 821 F. App’x 819, 820 (9th  
23 Cir. 2020) (explaining evidence of a prior assault was inextricably intertwined with the  
24 offenses charged because it “immediately preceded [the crime] as a temporal matter” and  
25 “kickstarted a sequence of events that culminated” in the offense conduct).

26       Second, the evidence is critical to understanding the extent of law enforcement’s  
27 subsequent efforts to locate Vivanco-Reyes on June 6, 2025. Without knowing the

1 circumstances of the prior flight, the jury would be left with the misimpression that the  
2 charged conduct was the first time law enforcement had encountered the defendant, and  
3 the jury could be concerned by the show of force that day (such as the use of aerial  
4 surveillance, multiple government vehicles and agents, etc.). Having that context would  
5 instead advance the Government’s “coherent and comprehensible story” of how law  
6 enforcement—and, in particular, the victims—sought to effectuate the arrest as part of  
7 their official duties in light of a prior failed attempt. *See Vizcarra-Martinez*, 66 F.3d at  
8 1012-13; Ninth Circuit Model Criminal Jury Instruction 8.2 (requiring, under the second  
9 element, that the forcible assault occur while the victim “was engaged in, or on account  
10 of” his “official duties”).

11 Evidence of Vivanco-Reyes’s May 22, 2025 flight from law enforcement is  
12 inextricably intertwined with the assaults charged and is admissible on that basis.

13 **2. Alternatively, the evidence satisfies the criteria for admission**  
14 **under Rule 404(b).**

15 If the Court finds the exception above does not apply, the evidence at issue is  
16 nonetheless admissible under Rule 404(b). Although evidence of other crimes, wrongs,  
17 or acts is prohibited if used to show propensity, it may be admissible instead for the  
18 purposes proposed here: “proving . . . intent, . . . absence of mistake, or lack of accident.”  
19 *See Fed. R. Evid. 404(b)(1)-(2)*. By its terms, Rule 404(b) “is a rule of inclusion—not  
20 exclusion[.]” *United States v. Curtin*, 489 F.3d 935, 944 (9th Cir. 2007) (en banc).  
21 “Once it has been established that the evidence offered serves one of these purposes, . . .  
22 the only conditions justifying the exclusion of the evidence are those described in Rule  
23 403[.]” *Id.* (citation and internal quotation marks omitted).

24 In this Circuit, evidence of a defendant’s uncharged acts is admissible under Rule  
25 404(b) if it: “(1) tends to prove a material point in issue; (2) is not too remote in time; (3)  
26 is proven with evidence sufficient to show that the act was committed; and (4) if admitted  
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1 to prove intent, is similar to the offense charged.” *United States v. Wells*, 879 F.3d 900,  
2 930 (9th Cir. 2018) (citation omitted). Each of these four criteria is met here.

3 **a. The evidence is material because it helps prove an element**  
4 **of the offense.**

5 To prove the requisite “forcible assault,” the Government must demonstrate that  
6 Vivanco-Reyes’s conduct was intentional and not the result a mistake or accident. *See*  
7 Ninth Circuit Model Criminal Jury Instruction 8.2. As explained above, evidence of the  
8 defendant’s initial flight from law enforcement provides relevant and meaningful context  
9 to the later assaults. Indeed, Vivanco-Reyes’s prior conduct bolsters the Government’s  
10 theory that Vivanco-Reyes was not solely attempting to flee on June 6, 2025, but that he  
11 meant to crash into the government vehicles because he was pushed at that moment to  
12 use all force necessary to escape from potential arrest.

13 The first criterion is met because the evidence helps to prove a material point: that  
14 the defendant intended to commit the assaults charged, which is an essential component  
15 of the offenses that the Government must prove beyond a reasonable doubt.

16 **b. The evidence is not too remote in time.**

17 Vivanco-Reyes initially fled from law enforcement on May 22, 2025, fifteen days  
18 before the assaults occurred on June 6, 2025. The close proximity of his prior conduct to  
19 the crimes charged easily satisfies the second criterion. Although “[t]his circuit has not  
20 adopted a bright line rule concerning remoteness in time,” *United States v. Rude*, 88 F.3d  
21 1538, 1550 (9th Cir. 1996), approximately two weeks is well within range. *Cf. United*  
22 *States v. Johnson*, 132 F.3d 1279, 1283 (9th Cir. 1997) (evidence sufficiently recent  
23 “notwithstanding the thirteen or more years that had elapsed” since the defendant’s  
24 alleged prior bad acts).

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1                   **c. Sufficient evidence proves that the defendant committed**  
2                   **the prior flight.**

3                   The Government would prove the facts of the May 22, 2025 incident through the  
4 testimony of one of the two HSI agents who witnessed firsthand the defendant’s flight  
5 from law enforcement that day. This witness would describe how he positively identified  
6 the defendant as the driver of the Infiniti G37 vehicle (including his familiarity with  
7 Vivanco-Reyes’s appearance based on his review of a photo of the defendant) and detail  
8 the numerous opportunities the defendant had—but ultimately rejected—to yield to the  
9 agents. In this Circuit, the “the testimony of a single witness can be sufficient” proof that  
10 a defendant committed the prior acts. *See Johnson*, 132 F.3d at 1283; *see also United*  
11 *States v. Hinton*, 31 F.3d 817, 823 (9th Cir. 1994). Here, the HSI agent’s testimony is  
12 more than sufficient to meet the “low threshold” of the third criterion. *See United States*  
13 *v. Romero*, 282 F.3d 683, 688 (9th Cir. 2002).

14                   **d. The prior flight is similar to the crimes charged.**

15                   Lastly, the evidence of Vivanco-Reyes’s prior acts is probative of his intentions  
16 because it is substantially similar to the charged offenses. In both incidents, Vivanco-  
17 Reyes was a driver who refused to stop immediately when confronted with law  
18 enforcement vehicles flashing lights and blaring sirens. He also drove extremely  
19 dangerously to flee on both occasions, including at high speed and with no regard for his  
20 surroundings or the occupants of other vehicles.

21                   On May 22, 2025, Vivanco-Reyes successfully fled from the agents without  
22 impacting their vehicles or causing injuries, but this is likely because the agents’ vehicles  
23 did not block his direct path of exit. By contrast, his means of escape were significantly  
24 more restricted in the subsequent encounter and he nonetheless chose to forge ahead by  
25 striking the victims’ vehicles. The last criterion of the Rule 404(b) standard is met  
26 notwithstanding these differences because the prior conduct and offense conduct “need  
27 not be identical . . . but instead need only [to] be similar enough”. *See Johnson*, 132 F.3d

1 at 1283. Vivanco-Reyes’s conduct in each of these incidents is sufficiently similar to  
2 warrant admission here.

3 **3. The evidence should not be excluded under Rule 403.**

4 A district court may exclude relevant evidence if its probative value is  
5 substantially outweighed by one or more of the dangers specified in Rule 403, including  
6 unfair prejudice. Fed. R. Evid. 403. The application of this rule “must be cautious and  
7 sparing” because the rule’s “major function is limited to excluding matter of scant or  
8 cumulative probative force, dragged in by the heels for the sake of its prejudicial effect.”  
9 *United States v. Hankey*, 203 F.3d 1160, 1172 (9th Cir. 2000) (quotation omitted). Those  
10 concerns are not present here.

11 Any potential prejudicial effect of the evidence at issue is limited and ultimately  
12 does not outweigh the evidence’s probative value. The United States would present the  
13 facts of the prior flight from law enforcement through the brief testimony of a single  
14 witness. That witness’s testimony would not inflame the jury because he would discuss  
15 actions that are substantially similar to the offense conduct. Indeed, after considering the  
16 Rule 403 balancing test, the Ninth Circuit has routinely upheld the admission of evidence  
17 of prior acts resembling the crimes charged for non-propensity purposes. *See, e.g.,*  
18 *United States v. King*, 200 F.3d at 1211, 1215 (9th Cir. 1999) (prior check fraud  
19 admissible in bank and wire fraud prosecution); *United States v. Bowman*, 720 F.2d 1103,  
20 1105 (9th Cir. 1983) (prior assault conviction admissible in assault with a dangerous  
21 weapon prosecution).

22 Evidence of a defendant’s prior bad acts may be “damaging”; however, it should  
23 not be excluded unless the danger of “unfair prejudice” substantially outweighs its  
24 probative value. *See United States v. Simas*, 937 F.2d 459, 464 (9th Cir. 1991) (emphasis  
25 in original); *see also United States v. Thornhill*, 940 F.3d 1114, 1123 (9th Cir. 2019)  
26 (emphases in original) (citation omitted) (“[E]ven where evidence is *highly* prejudicial, it  
27 is not necessarily *unfairly* prejudicial”). An instruction from this Court limiting the

1 purposes for which the jury may consider the agent’s testimony would safeguard against  
2 any prejudicial impact that could result from its admission. *See, e.g., United States v.*  
3 *Romero*, 282 F.3d 683, 688 & n.1 (9th Cir. 2002); *see also* Ninth Circuit Model Criminal  
4 Jury Instructions 2.10 & 3.3 (“Other Crimes, Wrongs or Acts of Defendant”).

5 **C. Motion to exclude testimony by defense expert Dr. Yurivia Cervantes-**  
6 **Manzo as irrelevant, unreliable, and misleading.**

7 The defense has disclosed its intention to offer testimony from Dr. Yurivia  
8 Cervantes-Manzo, a licensed psychologist, on matters pertaining to the defendant’s  
9 claimed diagnosis of post-traumatic stress disorder (“PTSD”). *See* Exhibit 1 (filed under  
10 seal) (Psychological Evaluation Report dated September 18, 2025). The Court should  
11 exclude testimony from this witness as irrelevant because binding authority forecloses  
12 any diminished capacity defense in this case. To the extent the testimony is deemed  
13 relevant, the Court should exclude it as: (i) unreliable because Dr. Cervantes-Manzo  
14 offers broad-based opinions that lack specifics on the defendant’s purported disorder, and  
15 (ii) misleading because it would suggest to the jury that a heightened *mens rea*  
16 requirement applies in order to convict.

17 Evidence is relevant if “it has any tendency to make a fact more or less probable  
18 than it would be without the evidence,” and “the fact is of consequence in determining  
19 the action.” Fed. R. Evid. 401. Evidence failing these elements is irrelevant and  
20 inadmissible. *See* Fed. R. Evid. 402. In the context of expert testimony, the district court  
21 performs a critical gatekeeping function to ensure that the witness’s testimony “will help  
22 the trier of fact to understand the evidence or to determine a fact in issue” and is  
23 otherwise “reliable.” *See* Fed. R. Evidence 702 (outlining criteria the proponent of expert  
24 testimony must establish by a preponderance).

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1           **1. The defense is precluded from raising a diminished capacity**  
 2           **defense to the assaults at trial.**

3           The Ninth Circuit has unequivocally held that “§ 111 is a general intent crime.”  
 4           *United States v. Jim*, 865 F.2d 211, 215 (9th Cir. 1989). General intent “is only the  
 5           intention to make the bodily movement that constitutes the act that the crime requires”;  
 6           thus, “all that is required is proof that the person acted intentionally in the sense that he  
 7           was aware of what he was doing.” 21 Am. Jur. 2d *Criminal Law* § 113 (May 2025). As  
 8           a result, diminished capacity is not a defense to a general intent crime because that  
 9           defense is “aimed at a nonexistent element of specific intent.” *United States v. Vela*, 624  
 10          F.3d 1148, 1154-1155 (9th Cir. 2010) (collecting cases, and concluding the defense’s  
 11          attempt to present a diminished capacity defense in a Section 111 case was properly  
 12          denied); *see also Jim*, 865 F.2d at 215 (affirming district court’s refusal to instruct the  
 13          jury on a defense of voluntary intoxication).

14          Dr. Cervantes-Manzo’s opinions on Vivanco-Reyes’s PTSD diagnosis and its  
 15          consequent effects support a diminished capacity defense that the Ninth Circuit has found  
 16          impermissible in this context. Whether Vivanco-Reyes has this disorder does nothing to  
 17          negate his intention to assault the officers. *See United States v. Kimes*, 246 F.3d 800,  
 18          803, 809 (6th Cir. 2001) (concluding expert testimony on the defendant’s “treatment for  
 19          depression and post-traumatic stress disorder” to show he “could have experienced a  
 20          ‘hyper-startled reaction’ that robbed him of the ability to control his actions” was  
 21          inadmissible because Section 111 is a general intent crime). Because the defense expert’s  
 22          opinions cannot bear on any fact of consequence at trial, they should be excluded as  
 23          irrelevant.

24           **2. Dr. Cervantes-Manzo’s opinions are speculative and unreliable.**

25          Dr. Cervantes-Manzo’s opinions in her report amount to a cursory conclusion that  
 26          Vivanco-Reyes has PTSD, coupled with generalized assertions on how that disorder “can  
 27          impact several cognitive functions” as well as the negative potential effects of

1 unspecified “childhood adverse experiences.” Exhibit 1 at 2-5.<sup>2</sup> None of the potential  
 2 effects apply to Vivanco-Reyes specifically, and Dr. Cervantes-Manzo formed her  
 3 opinions based only on the review of documents without any personal examination of or  
 4 consultation with the defendant. *See* September 19, 2025 e-mail from defense counsel  
 5 (stating “[Dr. Cervantes-Manzo’s] application for a temporary license to evaluate [the  
 6 defendant] has been pending for over two and a half months, which has made her  
 7 evaluation of him impossible”). The expert’s laundry list of potential negative  
 8 consequences has no grounding in the precise contours of Vivanco-Reyes’s condition,  
 9 whatever that may be.<sup>3</sup> These possibilities may be pertinent to sentencing, but are  
 10 irrelevant for trial.

11 The Court should preclude Dr. Cervantes-Manzo’s expert testimony because she  
 12 offers only speculative assertions that are not tied to the specific symptoms Vivanco-  
 13 Reyes allegedly suffers.

14 **3. Testimony from the defense’s expert would mislead and confuse**  
 15 **the jury.**

16 Allowing the defense expert to testify regarding PTSD at trial would needlessly  
 17 mislead and confuse the jury into treating the Section 111 charges as specific intent as  
 18 opposed to a general intent crimes. It would suggest to the jury that Vivanco-Reyes’s  
 19 proffered diagnosis could be used—impermissibly—to find that no forcible assault  
 20

21 \_\_\_\_\_  
 22 <sup>2</sup> There is no indication in this report that Dr. Cervantes-Manzo would opine that the defendant’s disorder  
 23 renders him incapable of controlling his actions for purposes of an insanity defense, nor has the defense  
 24 provided notice of that defense.

25 <sup>3</sup> Examples of the vague opinions offered regarding persons who suffer from PTSD include:

- 26 • “Given the impact of the frontal lobes (i.e., prefrontal cortex) in PTSD, it is not uncommon to see  
 27 individuals show inefficient problem solving and decision making, particularly due to the  
 overactivation of the fight or flight response.” Exhibit 1 at 4; and
- “Trauma in general activates a stress response in individuals. . . . [W]hen someone chronically  
 activates their fight or flight response as a response to feeling overwhelmed or emotionally  
 dysregulated, it can significantly limit their ability to rationalize and capitalize on any cognitive  
 resources they might have.” *Id.*

1 occurred because, for instance, the defendant’s “fight or flight response” was activated,  
2 or the defendant felt “overwhelmed or emotionally dysregulated” when the assaults  
3 occurred. *See* Exhibit 1 at 4. Due to these substantial risks and the limited probative  
4 value of the expert’s testimony (if any), it is appropriately excludable under Rule 403.  
5 Fed. R. Evid. 403.

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V. CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court enter the enclosed proposed Order granting its motions to:

- Preclude the defense from mentioning any potential penalties or collateral consequences of conviction;
- Permit the Government to introduce evidence of Vivanco-Reyes’s May 22, 2025 flight from law enforcement; and
- Exclude any testimony from defense expert Dr. Yurivia Cervantes-Manzo.

DATED this 26th day of September, 2025.

Respectfully submitted,

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