

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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ISRAEL ALBERTO RIVAS-GOMEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Ninth Circuit

**APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI**

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 23 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISRAEL ALBERTO RIVAS  
GOMEZ, AKA Pirra, AKA Israel Gomez  
Gomez,

Defendant - Appellant.

No. 23-653

D.C. No.

1:18-cr-00002-JLT-SKO-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Jennifer L. Thurston, District Judge, Presiding

Submitted March 4, 2025\*  
San Francisco, California

Before: WARDLAW, PAEZ, and LEE, Circuit Judges.

Israel Alberto Rivas-Gomez (“Rivas”) appeals his convictions for murder and kidnapping in aid of racketeering under 18 U.S.C. § 1959(a)(1) (“VICAR”).

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

On the evening of December 18, 2019, Abel Rodriguez (“Rodriguez”) was

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

kidnapped and murdered by several individuals associated with the gang MS-13—“Molesto,” “Pilancho,” “Little Whisper,” Rivas, and Marcos Castro (“Castro”). Sometime after 8:00 p.m. that evening, Molesto and Castro transported Rodriguez to a canal, where Molesto held Rodriguez at knifepoint. Later that evening, Rivas, Little Whisper, and Pilancho arrived at the canal, and Rivas drove the group—minus Castro—to the mountains. According to Rivas’s statements to detectives, Molesto confronted Rodriguez about a prior incident, where Rodriguez had followed Molesto and Little Whisper with a knife and a bat. Once the group arrived at the mountain, Molesto, Pilancho, and Little Whisper took Rodriguez out of the car, over a fence, and hacked and stabbed him to death. At some point during the attack, Molesto called Rivas over and instructed him to hack and stab Rodriguez, though Rivas claimed that Rodriguez was unresponsive at that point.

Rivas and Castro were charged as co-defendants for their participation in the kidnapping and murder of Rodriguez under VICAR. With respect to Rivas, the government charged him as engaging in murder and kidnapping under California law, as a principal or aider and abettor, and argued that Rivas engaged in these crimes to advance his stature in the gang. Following a 30-day trial, a jury convicted Rivas on both counts.

1. The district court erred by declining to instruct the jury on the elements of California aiding and abetting liability to show that Rivas was liable

for California murder in satisfaction of VICAR’s third element.<sup>1</sup> “The third element [of VICAR]—requiring proof that a defendant has committed one of the enumerated offenses, in violation of state or federal law—incorporates the elements of the relevant predicate violation.” *Elmore*, 118 F.4th at 1199. And where the predicate violation is based on state law, “courts, in certain circumstances, should instruct on the state definition or otherwise risk prejudice to the defendant.” *United States v. Adkins*, 883 F.3d 1207, 1211 (9th Cir. 2018). Accordingly, to prove that Rivas was liable for California murder as an aider and abettor, the district court was required to instruct the jury on the elements of California aiding and abetting liability, to the extent it differed from federal law. *Id.*<sup>2</sup>

Nonetheless, the district court’s error was harmless. *See United States v.*

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<sup>1</sup> To sustain a VICAR conviction, the government must prove beyond a reasonable doubt:

- (1) that the criminal organization exists; (2) that the organization is a racketeering enterprise; (3) that the defendants committed a violent crime; and (4) that they acted for the purpose of promoting their position in or receiving something of pecuniary value from a qualifying racketeering enterprise.

*United States v. Elmore*, 118 F.4th 1193, 1199 (9th Cir. 2024) (quotations and citations omitted).

<sup>2</sup> The government cites to out-of-circuit authority to contend that it may utilize federal liability theories to show an underlying violation of state law. *See, e.g., United States v. Diaz*, 176 F.3d 52, 96 (2d Cir. 1999). However, we are not bound by this authority. And we note that the Second Circuit has subsequently questioned the validity of these authorities. *See United States v. Carrillo*, 229 F.3d 177, 183–85 (2d Cir. 2000); *see also Adkins*, 883 F.3d at 1211 (citing *Carillo* with approval).

*Conti*, 804 F.3d 977, 980 (9th Cir. 2015). Applying the elements of California aiding and abetting liability, “it appears beyond a reasonable doubt” that the jury would have convicted Rivas as an aider and abettor. *See id.* (internal citation and quotation marks omitted). Rivas contends that California and federal law differ, because, in the context of aiding and abetting *implied malice* murder, California law focuses on aiding and abetting the “life-endangering *act*, not the result of that act.” *See People v. Reyes*, 14 Cal. 5th 981, 991 (2023).

However, California law recognizes two mental states that support a conviction of murder: (1) express malice; and (2) implied malice. Cal. Penal Code § 188. And in the context of aiding and abetting *express malice* murder, California courts permit the use of California’s standard aiding and abetting jury instruction<sup>3</sup>—which is substantially similar to the federal instruction that was given here. *See People v. Powell*, 63 Cal. App. 5th 689, 715 (2021); *People v. Coley*, 77 Cal. App. 5th 539, 547, (2022), *as modified* (Apr. 15, 2022). Here, there is no question that: (1) at a minimum, Molesto murdered Rodriguez with express malice, given that he had been looking for Rodriguez, orchestrated the kidnapping and murder, kidnapped Rodriguez, and hacked and stabbed Rodriguez to death; and (2) Rivas aided Molesto’s commission of the murder. Thus, the result under California law would be the same as under federal aiding and abetting, since Rivas

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<sup>3</sup> *See* Jud. Council of Cal. Crim. Jury Instr. No. 401 (2024).

would be guilty of aiding and abetting an express malice murder.

Furthermore, even applying the elements of aiding and abetting *implied malice* murder, the jury would still have convicted Rivas beyond a reasonable doubt. Rivas’s only claim of prejudice is that California law requires that a defendant engage in an act that aids or abets the life ending act—*i.e.* the stabbing and hacking of the victim—and that the government failed to show this. However, Rivas’s actions of driving Rodriguez to a secluded location where he was ultimately hacked and stabbed to death constitutes an act that aided the act of stabbing and hacking Rodriguez as it made it more difficult for Rodriguez to escape. *See Reyes*, 14 Cal. 5th at 991 (“For the direct aider and abettor, the actus reus includes whatever acts constitute aiding the commission of the life-endangering act.”).

2. The district court properly denied Rivas’s motion for judgment of acquittal based on his argument that there was insufficient evidence for a reasonable jury to find that: (1) he aided and abetted the murder and kidnapping—specifically that he did not learn of the crime when he had a reasonable opportunity to withdraw—and; (2) his primary motivation for engaging in the crime was to advance his stature in the gang. “[W]e view the evidence in the light most favorable to the prosecution and determine whether any rational jury could have found [the defendant] guilty of each element of the crime beyond a reasonable

doubt.” *United States v. Ruiz*, 462 F.3d 1082, 1088 (9th Cir. 2006).

Here, the government presented sufficient, albeit circumstantial, evidence from which a rational jury could have found that Rivas aided and abetted the murder and kidnapping, and did so for the purpose of advancing his stature in the gang. As to whether Rivas had the opportunity to withdraw, the government presented: (1) evidence that crimes such as Rodriguez’s kidnapping and murder are typically highly coordinated and planned in advance; (2) testimony from Snakers, a cooperating MS-13 member, that Rivas was seeking to rise to the rank of homeboy, that to rise to the rank of homeboy, Rivas “had to kill somebody,” and that Snakers was aware of a plan to kill Rodriguez; and (3) evidence that there was a deleted phone call between Rivas and Molesto the day before the crime. As to whether Rivas engaged in the crime for a gang-motivated purpose, the government presented: (1) significant evidence of Rivas’s membership in MS-13; (2) evidence showing that Rivas was familiar with the inner workings of the gang; and (3) testimony from Snakers that Rivas was seeking to rise to the level of homeboy, and that to advance to that rank an MS-13 member must kill someone.

Drawing all reasonable inferences in the government’s favor, a rational jury could have concluded beyond a reasonable doubt that: (1) Rivas learned of the plan to murder and kidnap the victim, at least, the day before the crime occurred; and (2) Rivas participated in the crime to advance to the rank of homeboy.



3. The district court properly denied Rivas’s motion to sever and his motion for a new trial based on his argument that his Sixth Amendment right of confrontation was violated. “The Sixth Amendment’s Confrontation Clause guarantees the right of a criminal defendant ‘to be confronted with the witnesses *against him*’ . . . [and] forbids the introduction of out-of-court ‘testimonial’ statements unless the witness is unavailable and the defendant has had the chance to cross-examine the witness previously.” *Samia v. United States*, 599 U.S. 635, 643 (2023) (emphasis added) (citation omitted). Thus, “a witness whose testimony is introduced at a joint trial is not considered to be a witness ‘against’ a defendant if the jury is instructed to consider that testimony only against a codefendant.” *Richardson v. Marsh*, 481 U.S. 200, 206 (1987).

Here, the district court instructed the jury three times that it could only consider the statements of co-defendant Castro in the case against Castro. And the government carefully divided the evidence between Rivas and Castro in its closing arguments.

Although it appears that some of Castro’s statements—that Rodriguez was a member of rival gang and had attacked Pilancho with a bat—may have been utilized against Rivas in the government’s rebuttal argument, we nonetheless find this purported error harmless. *See United States v. Nguyen*, 565 F.3d 668, 674 (9th Cir. 2009). As an initial matter, similar information was elicited from Rivas’s own

statements at his questioning, where he: (1) recounted that Molesto stated he was looking for Rodriguez because he had assaulted Molesto and Little Whisper; and (2) acknowledged that Rodriguez was likely kidnapped because Rodriguez was a member of a rival gang.

Furthermore, these statements by Castro were relevant to show that Rivas and Castro engaged in the crime to advance their stature in the gang, in satisfaction of VICAR's fourth element. And notwithstanding these statements by Castro, the government presented significant evidence that Rivas engaged in this crime to advance to the level of homeboy through: (1) testimony from the Government's expert that a retaliatory attack could still constitute a gang motivated attack; and (2) testimony from Snakers that Rivas sought to advance to the level of homeboy and that Rivas would need to kill in order to advance to that rank. Thus, it appears the jury would still have reached the conclusion that Rivas engaged in the crime to advance his stature in the gang beyond a reasonable doubt.

4. The district court properly denied Rivas's motion to suppress based on his argument that his *Miranda* warnings were insufficiently conveyed. At the outset, we emphasize that officers can always be certain that *Miranda* has been satisfied if they clearly recite the warnings contained in *Miranda*. See *United States v. Loucious*, 847 F.3d 1146, 1151 (9th Cir. 2017). Nonetheless, *Miranda* does not require a verbatim recitation, so long as the core rights have been

sufficiently conveyed to a defendant. *See id.* at 1149.

Here, utilizing Rivas's translation of the *Miranda* warnings given in Spanish, the detective sufficiently conveyed to Rivas his core *Miranda* rights. Rivas contends that he was misled into believing that the right to an attorney was "self-executing," because detectives questioned him prior to reading him his *Miranda* rights. Thus, Rivas contends that the detective was required to state that an attorney would be appointed to Rivas before questioning "if he so desires" to dispel this confusion. However, the *Miranda* warning apprised Rivas of his right to have an attorney before and during questioning. The only logical inference from this provision of rights is that Rivas would have needed to invoke the right to have an attorney present; the alternative hypothetical, that an attorney would suddenly appear without request or statement of financial need by the suspect, is the kind of "counterintuitive and unlikely scenario" which we have found unavailing. *Florida v. Powell*, 559 U.S. 50, 51 (2010); *see also Loucious*, 847 F.3d at 1148.

**AFFIRMED.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

JUL 31 2025

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISRAEL ALBERTO RIVAS GOMEZ,  
AKA Pirra, AKA Israel Gomez Gomez,

Defendant - Appellant.

No. 23-653

D.C. No.

1:18-cr-00002-JLT-SKO-1  
Eastern District of California,  
Fresno

ORDER

Before: WARDLAW, PAEZ, and LEE, Circuit Judges.

The panel has unanimously voted to deny the petition for panel rehearing.

Judge Wardlaw and Judge Lee vote to deny the petition for rehearing en banc (Dkt. 48), and Judge Paez so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40. The petition for panel rehearing and rehearing en banc is **DENIED**.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

ISRAEL ALBERTO RIVAS GOMEZ and  
JOHN DOE aka "MARCOS CASTRO",  
Defendants.

No. 1:18-cr-00002-JLT-SKO

ORDER DENYING DEFENDANTS'  
MOTIONS TO RECONSIDER PRIOR  
ORDERS RE CHANGE OF VENUE AND  
SUPPRESSION OF CERTAIN POST-  
ARREST STATEMENTS

(Doc. Nos. 227, 228, 236, 327)

**INTRODUCTION**

Defendants Israel Alberto Rivas Gomez ("Rivas Gomez") and John Doe aka "Marcos Castro" ("Castro") have submitted numerous motions *in limine* and motions for reconsideration of prior rulings in advance of the trial of this case, currently scheduled for June 14, 2022. (Doc. No. 344.) A hearing was held to address some of these motions on December 16, 2021 before District Judge Dale A. Drozd. (Doc. No. 332.) Assistant U.S. Attorneys Ross Pearson, Melanie Alsworth, Christopher Baker, and Justin Gilio appeared at that hearing on behalf of the government; Federal Defender Heather Williams appeared on behalf of defendant Rivas Gomez

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1 and attorney Kevin Little appeared on behalf of defendant Castro. (*Id.*)<sup>1</sup> For the reasons  
2 explained below, defendants' motion for reconsideration will be denied.

### 3 ANALYSIS

#### 4 A. Defendant Rivas Gomez's Motions For Reconsideration

##### 5 1. Motion to Reconsider Order Denying Motion for Change of Venue (Doc. No. 227)

6 Defendant Rivas Gomez first filed a motion for change of venue on April 2, 2020. (Doc.  
7 No. 88.)<sup>2</sup> Therein he argued that pretrial publicity regarding his trial and about the MS-13 gang  
8 generally<sup>3</sup> rendered it "impossible" to seat an impartial jury within the Fresno Division of the  
9 Eastern District of California. The court reviewed the applicable legal standards as well as the  
10 evidence (Doc. No. 89, 126, 168) regarding media coverage presented by the defense in support  
11 of the motion for change of venue in detail. (Doc. No. 182 at 2-5.) Upon doing so, the court  
12 concluded that the media coverage upon which defendants relied in support of their motion was  
13 primarily merely factual, not nearly as voluminous as defendants' claimed and did not compel the  
14 granting of a change of venue. (*Id.* at 3-5.) Accordingly, that motion was denied without  
15 prejudice to its renewal during jury selection, if appropriate. (*Id.* at 5.)

16 In moving to reconsider the court's denial of that motion defendant contends that  
17 "inflammatory publicity" concerning MS-13 since the court's issuance of its prior order calls for  
18 the granting of a change of venue. (Doc. Nos. 227.) In advancing this claim, however, defendant  
19 points only to three newspaper articles, one that appeared in April in the Fresno Bee and two  
20 substantially identical articles that appeared in or about September of 2021 in the Fresno Bee and  
21

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22 <sup>1</sup> Though this case has been re-assigned to District Judge Jennifer L. Thurston, the motions  
23 addressed in this order are requests to reconsider prior orders previously issued by the  
24 undersigned while presiding over this action. Moreover, the undersigned not only heard oral  
25 argument with respect to these motions for reconsideration on December 16, 2021, just prior to  
the case being reassigned to Judge Thurston, but is also very familiar with the facts relevant to  
their resolution.

26 <sup>2</sup> Defendant Castro joined in the motion for a change of venue. (Doc. No. 91.)

27 <sup>3</sup> Defendant Rivas Gomez also argued that the then-recent COVID-related death of a law  
28 enforcement officer associated with the investigation also played a role in undermining the  
possibility of seating an impartial jury in this case. (Doc. No. 168.)

1 the Free Press, as well as a September 2021 press release issued by the U.S. Attorney's Office for  
 2 the Eastern District of California. (Doc. No. 227-1 through 3.) Those newspaper articles did  
 3 report MS-13 related violence in the Fresno/Mendota area. The April 1, 2021 Fresno Bee article  
 4 reported that "14 homicides took place in and around Mendota from 2015 to late 2017 and were  
 5 connected by investigators to the MS-13 gang." (Doc. No 227-2 at 2.) That article, which was  
 6 published almost eleven months ago, did refer to this prosecution as still pending and identified  
 7 the defendants in this case by name, referring to them as "alleged MS-13 members." (*Id.* at 3.)  
 8 The brief reference to the defendants and to this case specifically in the article was purely factual  
 9 in nature. The remainder of the article can be fairly characterized as focusing on the lack of  
 10 prosecutions in connection with other acts of violence in the Mendota/Fresno area. (Doc. 227-2.)  
 11 The other two articles presented in support of the motion for reconsideration were published in or  
 12 about late September of 2021 and merely provided factual coverage of a trial that the undersigned  
 13 presided over in which the defendant, identified as a MS-13 member, was convicted of assault  
 14 with a dangerous weapon in Aid of Racketeering in violation of 18 U.S.C. 1959 and Conspiracy  
 15 to Distribute Marijuana in violation of 21 U.S.C. §§ 846 and 841. *See United States v. Lorenzo*  
 16 *Amador*, 18-cr-207 (E.D. Cal.).<sup>4</sup> That case involved the stabbing of a purported Bulldog rival  
 17 gang member by MS-13 gang members in Mendota as well as the latter's marijuana distribution  
 18 activities.<sup>5</sup> Consideration of these new exhibits does not support the granting of the pending

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19  
 20 <sup>4</sup> These two articles appear to have been based largely on the press release from the U.S.  
 Attorney's Office with respect to the jury's verdict in that case.

21  
 22 <sup>5</sup> Defendant Rivas Gomez also relies upon an incident that took place during the trial of  
 23 defendant Amador's case in which one of the jurors reported to the court during the trial that a  
 24 Spanish-speaking individual had driven into the juror's neighborhood attempting to sell a cell  
 25 phone. When the juror's neighbor indicated that he did not wish to purchase the cell phone, the  
 26 individual drove away and yelled out, "You tell those motherfuckers!" Defendant concedes that  
 27 there was no evidence suggesting that this incident had anything to do with the juror's service in  
 28 the Amador trial. The undersigned conducted a thorough inquiry on the record and allowed  
 counsel in the Amador case to inquire of the juror as well before determining that there was no  
 cause to remove the juror in question since he had merely reported the incident to the police and  
 to the court out of an abundance of caution and because the court had advised jurors to report any  
 outside contact to the court and not because he associated the incident with defendant Amador or  
 the case he was hearing as a juror. Accordingly, the court does not view this incident as have any  
 relevance to, or providing any support for, the pending motion for reconsideration. Indeed, the

1 motion for reconsideration.

2 “To support a change of venue motion,” a defendant “must demonstrate either actual or  
3 presumed prejudice.” *Daniels v. Woodford*, 428 F.3d 1181, 1211 (9th Cir. 2005). “Prejudice is  
4 presumed only in extreme instances when the record demonstrates that the community where the  
5 trial was held was saturated with prejudicial and inflammatory media publicity about the crime.”  
6 *Id.* (quotations and citation omitted). The presumption applies to cases in which “the adverse  
7 publicity is so pervasive and inflammatory that the jurors cannot be believed when they assert that  
8 they can be impartial.” *United States v. Croft*, 124 F.3d 1109, 1115 (9th Cir. 1997). “Three  
9 factors should be considered in determining presumed prejudice: (1) whether there was a barrage  
10 of inflammatory publicity immediately prior to trial, amounting to a huge [ ] wave of public  
11 passion; (2) whether the news accounts were primarily factual because such accounts tend to be  
12 less inflammatory than editorials or cartoons; and (3) whether the media accounts contained  
13 inflammatory or prejudicial material not admissible at trial.” *Daniels*, 428 F.3d at 1211  
14 (quotations and citation omitted).

15 As discussed in the court’s order denying the defendants’ original motion for a change of  
16 venue, no evidence has been presented even suggesting, let alone establishing, that there has been  
17 a “barrage” of inflammatory publicity prior to the trial of this case. As the government points out,  
18 defendant has presented essentially only two new newspaper articles involving MS-13 published  
19 since the denial of defendants’ motion for a change of venue over one year ago and those new  
20 press reports were primarily factual in nature. This case, quite simply, cannot be said to have  
21 drawn extensive media coverage and what mention in the media there has been in no way  
22 approaches the level of a barrage of inflammatory publicity.

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26 undersigned observes that there was no difficulty in selecting a fair and impartial jury in the  
27 Amador case despite rather extensive *voir dire* regarding MS-13. The court recognizes that the  
28 charges brought in this case are more serious than those brought in the Amador prosecution.  
Nonetheless, that distinction by itself, especially absent prejudicial pretrial publicity, does not  
compel the granting of a change of venue in this case at this time.



Accordingly, the motion for reconsideration of the court's order denying defendants' motion for a change of venue will be denied without prejudice to a renewal of that motion during jury selection, if appropriate.

2. Motion for Reconsideration of Order Denying the Motion to Suppress Statements (Doc. No. 228)

Defendant Rivas Gomez was interviewed by law enforcement officers on December 21 and again on December 26, 2017. Counsel on his behalf previously moved to suppress those statements on the ground that defendant did not knowingly and voluntarily waive his *Miranda* rights before speaking to the officers. (Doc. Nos. 92, 131.) The court denied the motion based upon its review of the transcripts and video recording of defendant's statements, concluding that this evidence reflected that defendant Rivas Gomez was given appropriate *Miranda* warnings, understood the warnings given to him and knowingly and voluntarily waived his *Miranda* rights before speaking with the officers. (Doc. No. 184 at 7-14.) In that order, the court noted that defendant's *post-hoc* attestation that he had not understood the *Miranda* warning was insufficient to overcome the weight of evidence establishing otherwise.<sup>6</sup>

In moving for reconsideration of that order, counsel on behalf of defendant Rivas Gomez now contends that there is "newly discovered evidence" supporting suppression of his statements made to law enforcement officers. Specifically, it is now argued that defendant Rivas Gomez suffers from mental defects that prevented him from knowingly and voluntarily waiving his

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<sup>6</sup> Specifically, the undersigned concluded that the video recording of the December 21, 2017 interview established that Detective Mora read defendant Rivas Gomez his *Miranda* rights from a Spanish-language *Miranda* card and asked him if he understood those rights. (Doc. Nos. 93-8 at 18-19; 93-9 at 17; Government's Sealed Ex. 11 at 19:40-20:50; Doc. Nos. 101 at 8; 101-4 at 2-3; 131 at 5-8; see also Doc. No. 92 at 4.) Defendant Rivas Gomez did not indicate in any way that he was confused or failed to understand that warning, with the exception of Detective Mora's warning regarding the appointment of free counsel. (Doc. Nos. 93-8 at 18-19; 93-9 at 17; Government's Sealed Ex. 11 at 19:40-20:50; Doc. Nos. 101 at 8; 101-4 at 2-3; 131 at 5-8; see also Doc. No. 92 at 4.) As to only that aspect of the advisement, defendant initially sought clarification of his right to have appointed counsel present but, once clarified by the detectives, clearly indicated his understanding that he was entitled to a "free attorney." (Doc. Nos. 93-8 at 19; 93-9 at 17; 101-4 at 3; 131 at 7; Government's Sealed Ex. 11 at 19:40-20:50.) Moreover, the court found that defendant's nonverbal gestures (such as nodding) during the advisement indicated his understanding of the *Miranda* warnings given.

1 *Miranda* rights. After the denial of the motion to suppress his statements in February of 2021,  
 2 defendant Rivas Gomez was evaluated by Psychologist Dr. Diomaris Safi, who met with  
 3 defendant—all but once via phone or video call—and interviewed members of defendant’s  
 4 family. (Doc. No. 228-5.) Dr. Safi reported that defendant sometimes hears voices and has  
 5 visions, which started when he was approximately 20 years old. (*Id.*) Further, according to his  
 6 counsel, Dr. Safi concluded that, due to defendant’s “low intellectual functioning” combined with  
 7 the Detective Mora’s poor Spanish language skills, defendant “likely did not understand his rights  
 8 to remain silent or to have free counsel present during questioning, or the risk of moving forward  
 9 by talking or not having a lawyer.” (Doc. No. 228 at 6.)

10 As another judge of this district court has recently observed with respect to the legal  
 11 standards applicable to motions to reconsider in criminal cases:

12 Although the Federal Rules of Criminal Procedure do not expressly  
 13 authorize motions for reconsideration, the Ninth Circuit has  
 14 “approved of the judicial economy that results from the pretrial  
 15 reconsideration of suppression orders by the district court.” *United*  
 16 *States v. Rabb*, 752 F.2d 1320, 1322 (9th Cir. 1984), *abrogated in*  
 17 *part on other grounds by Bourjaily v. United States*, 483 U.S. 171  
 (1987). “No precise ‘rule’ governs the district court’s inherent power  
 to grant or deny a motion to reconsider a prior ruling in a criminal  
 proceeding.” *United States v. Lopez-Cruz*, 730 F.3d 803, 811 (9th  
 Cir. 2013). It is instead a matter of discretion. *Id.*

18 Both “simple mistakes” and “shifting precedent” might justify  
 19 reconsideration of a nonfinal order. *See Martin*, 226 F.3d at 1049.  
 20 This court’s local rules also impose requirements on parties who  
 21 request reconsideration in criminal cases. *See* E.D. Cal. L.R. 430.1(i).  
 22 Among other things, a motion for reconsideration must identify what  
 23 “new or different facts or circumstances” support the motion “or  
 24 what other grounds” might warrant reconsideration. *Id.* 430.1(i)(3).  
 But as is true of motions for reconsideration in civil cases, motions  
 for reconsideration in criminal cases are almost always denied when  
 they rest on arguments or evidence the moving party previously  
 raised or could have raised and when denial would not cause manifest  
 injustice. *See Cachil Dehe Band of Wintun Indians of Colusa Indian*  
*Cnty. v. California*, 649 F. Supp. 2d 1063, 1069 (E.D. Cal. 2009).

25 *United States v. Louangamath*, No. 2:20-cr-00034-KJM, 2021 WL 5989756, at \*2 (E.D. Cal.,  
 26 Dec. 17, 2021); *see also United States v. Feathers*, No. 14-CR-00531-LHK-1, 2017 WL 783947,  
 27 at \*2–3 (N.D. Cal. Mar. 1, 2017) (A district court may grant reconsideration only upon finding  
 28 some “mistake,” “newly discovered evidence which by due diligence could not have been

1 discovered before the court’s decision,” “fraud,” or “any other reason justifying relief”—though  
2 this last option is reserved for those few cases involving “manifest injustice” and “extraordinary  
3 circumstances [that] prevented a party from taking timely action to prevent or correct an  
4 erroneous judgment.”)

5 Here, Dr. Safi’s evaluation upon which defendant relies does not compel reconsideration  
6 of the prior order denying the motion to suppress statements.<sup>7</sup> Significantly, Dr. Safi’s evaluation  
7 relied heavily on information that this court had already considered in its order denying  
8 defendant’s original motion to suppress his statements. In this regard, the undersigned was aware  
9 of and specifically considered defendant’s educational history and his post-interrogation claim  
10 that he did not understand his *Miranda* rights when he waived them. (Doc. No. 184 at 7, n.3, 10,  
11 12-13 (acknowledging and addressing defendants claims in moving to suppress his statements  
12 that he was tired and confused, was only 23 years old at the time, had only a sixth grade education  
13 and had never been arrested before). The only truly new information contained in Dr. Safi’s  
14 report submitted in support of reconsideration is her finding that defendant Rivas Gomez has  
15 “lower than average” intellectual functioning and that he reports experiencing occasional  
16 hallucinations and/or hearing of “voices” since the age of 20. (Doc. No. 228-5 at 11.) But, even  
17 accepted as true, these facts do not suggest that defendant’s was incapable of knowingly and  
18 voluntarily waiving his *Miranda* waiver.

19 Most important in this regard, Dr. Safi concluded that defendant does not suffer from any  
20 “significant cognitive deficits, typically established by IQ testing.” (Doc. No. 228-5 at 12.)  
21 Further, defendant’s own conclusory reports of experiencing hallucinations, even if accepted as  
22 true, do not suggest that such hallucinations or visions have ever impaired defendant’s ability to  
23 interact with or understand communications by others. Nor does defendant now claim that he  
24 was experiencing hallucinations at the time he waived his rights under *Miranda* and agreed to  
25 answer the officers’ questions. In short, nothing new presented by defendant Rivas Gomez in his  
26

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27 <sup>7</sup> Defendant Rivas Gomez has made no showing as to why in the exercise of due diligence the  
28 new evidence now offered, Dr. Safi’s evaluation and report, could not have been discovered prior  
to the court’s denial of his original motion to suppress his statements to officers.

1 motion for reconsideration provides a basis upon which to reconsider the court's order denying  
 2 his original motion to suppress his statements made to law enforcement officers. As the court  
 3 concluded in that prior order, based on its review of the transcripts and the videos recording of  
 4 defendant's statements to police, there is simply "no indication that defendant Rivas Gomez was  
 5 confused after being read his rights." (Doc. No. 184 at 13–14.)

6 **B. Defendant Castro's Motions For Reconsideration**

7 3. Motion to Reconsider Order Denying Motion to Exclude Defendant's Post-Arrest  
 8 Statements (Doc. Nos. 236 at 18-22, 327 at 18-22)

9 Defendant Castro previously moved to suppress all of his post-arrest statements made to  
 10 law enforcement officers. (Doc. No. 122.) The court granted that motion in part, concluding that  
 11 at a point during his interrogation on December 21, 2017, defendant Castro had invoked his right  
 12 to counsel. (Doc. Nos. 201 at 17-34, 39 and 204 at 17-34, 39.) Accordingly, the court ordered  
 13 that all statements made by defendant Castro after his invocation of his right to counsel on  
 14 December 21 and all of his statements made to officers on December 26, 2017 would be excluded  
 15 from evidence during the government's case in chief. (Id. at 39.) Defendant now moves for  
 16 reconsideration of the court's order denying his motion to exclude statements made by him to  
 17 police on December 19-20 and up until his invocation of the right to counsel on December 21,  
 18 2017, based solely on his contention that the court's prior order was "clearly erroneous and  
 19 manifestly unjust" because "the Court's summary of the evidence supporting the defendant's  
 20 contention that he was read his administrative immigration rights on December 19, 2017 belies  
 21 the record." (Doc. No. 236 at 19.)

22 In his original motion to suppress his earliest made statements, defendant Castro's counsel  
 23 argued that Castro's waiver of his Miranda rights was not valid because he had received  
 24 confusing and conflicting immigration and *Miranda* advisements with respect to his right to  
 25 counsel when he was first taken into custody on December 19, 2017 and that Ninth Circuit  
 26 precedent required suppression, citing *United States v. San Juan-Cruz*, 314 F.3d 384 (9th Cir.  
 27 2002). The defendant's argument in this regard relied on his counsel's contention that Castro was  
 28 advised of his administrative immigration rights by Deportation Officer ("DO") Monique Jacques

1 on December 19, 2017, approximately 1.5 to 2 hours before he was Mirandized by Fresno County  
2 Sheriff's Department detectives. (Doc. Nos. 201 and 204 at 15 .) Defendant Castro's motion  
3 directed at his pre-invocation statements only had arguable merit if he was in fact informed by  
4 DO Jacques, prior to being advised of his *Miranda* rights, that in connection with his immigration  
5 rights he may be required to pay for an attorney if he desired counsel and was confused by what  
6 could be characterized as potentially conflicting advisements.

7 In denying the original motion to suppress these pre-invocation statements, the court  
8 found that defendant Castro had not submitted sufficient evidence that he had been advised of his  
9 administrative immigration rights by DO Jacques before being advised of his *Miranda* rights by  
10 law enforcement officers. Specifically, the court noted that defendant Castro had offered a single  
11 exhibit in support of his counsel's contention that the immigration advisement took place first,  
12 just prior to the *Miranda* warning: a Notice to Appear, Warrant, Notice of Custody  
13 Determination and Record of Deportable Alien (I-213) that was dated December 19, 2017. (Doc.  
14 No. 119 at 40–52 (Ex. 1).) On that form, DO Jacques had noted that she notified Castro of his  
15 administrative rights, but Castro's signature appears nowhere on the form. (*Id.*) Further, none of  
16 the certificates of service are signed by an officer so as to indicate that defendant Castro was  
17 served with the notices. (*Id.*) Moreover, DO Jacques submitted a sworn declaration attesting that  
18 she was "positive" she did not read defendant Castro his immigration administrative advisements  
19 on December 19, 2017, because she would have had him initial, sign, and date the forms if she  
20 had so advised him. (Doc. No. 138-8 ¶¶ 5–6.)

21 Defendant Castro's counsel argues that the court, in concluding that Castro had not been  
22 advised of his administrative rights on December 19, 2017, did not give proper weight to the note  
23 that DO Jacques placed on the I-213 form confirming that Castro had been advised of his rights;  
24 specifically, defendant Castro notes that this was a typed report confirming advisement, not  
25 merely a check-box on a form. (Doc. 236 at 20.) Defense counsel also opines that the court  
26 credited DO Jacques's memory of the event, recorded in her declaration three years after the fact,  
27 with undue weight. Defense counsel argues that the dated I-213 form is more reliable than DO  
28 Jacques's declaration and that the declaration itself does not describe the "actual" events of

1 December 19; it merely describes with DO Jacques supposes what she would have done had she  
2 been acting in accordance with her custom and practice. Defendant Castro's counsel points out  
3 that DO Jacques conceded in her declaration that she did not recall whether defendant Castro  
4 asked her about his right to an attorney or whether she advised him of that right. (Doc. No. 138-8  
5 at 2–3.)

6 Counsel on behalf of defendant Castro also contends that the court should hold an  
7 evidentiary hearing on this issue. The government counters that the pending motion to reconsider  
8 is merely an improper effort to “rehash old arguments” that the court has already rejected. (Doc.  
9 No. 278 at 3) (citing *United States v. Brown*, No. 2:13-CR-00407-TLN, 2016 WL 6988665, at \*2  
10 (E.D. Cal. Nov. 29, 2016)). Further, the government asserts, even if Castro had been advised of  
11 some administrative rights prior to being Mirandized on December 19, 2017, there is no evidence  
12 before the court that he was told he might need to pay for an attorney in connection with  
13 immigration proceedings until after he knowingly and voluntarily spoke to law enforcement  
14 officers regarding his role in the kidnapping and murder of victim A.R. and thereafter provided an  
15 additional statement to detectives on December 21, 2017.

16 At the hearing on the pending motion for reconsideration, counsel on behalf of defendant  
17 Castro conceded that no new argument or evidence was being presented in support of that motion.  
18 The court finds no basis upon which it should reconsider its prior order denying defendant  
19 Castro's motion to suppress his statements made to law enforcement officers in part and granting  
20 it in part. In its prior order the court noted that defendant Castro did not submit his own  
21 declaration in support of his motion (Doc. Nos 201 and 204 at 6, n. 1.) Nor did his counsel then,  
22 or now in moving for reconsideration, proffer any testimony from defendant Castro that he  
23 actually did receive an arguably conflicting advisement regarding his right to counsel from  
24 immigration and law enforcement and was thereby confused. In light of this lack of evidence, in  
25 its prior the court concluded as to this aspect of defendant's motion as follows:

26 It is undisputed that defendant Castro was not released from Fresno  
27 County Jail and brought for the first time to ICE headquarters in  
28 Fresno for booking until February 21, 2019 at 6:02 p.m.. (Doc. Nos.  
138-4 at 2; 138-5 at 2–3.) It was then that ICE DO Romero read  
defendant Castro his immigration advisements as evidenced by I-826



1 and I-862 forms initialed, dated, and fingerprinted by defendant  
2 Castro on that date. (Doc. No. 154 at 17 (citing Doc. No. 119 at 440–  
42).)

3 There is simply no evidence then that DO Jacques read defendant  
4 Castro his immigration administrative advisements on December 19,  
5 2017, including the potentially confusing advisement of his right to  
6 counsel without cost to the government. Rather, the uncontroverted  
7 evidence before the court establishes that defendant Castro was not  
8 read his immigration administrative advisements until the evening of  
9 December 21, 2017, when he was first booked into ICE custody. (Id.  
10 at 436–43; Doc. Nos. 138-5 at 2–3; 138-9 ¶¶ 3–5.) Thus,  
11 approximately two days passed after defendant was first read his  
12 *Miranda* rights by detectives on December 19, 2017, waived those  
13 rights and voluntarily agreed to be interviewed by detectives, before  
14 he received his immigration administrative advisements from DO  
15 Romero. (Doc. Nos. 119 at 56, 80–81, 436–43; 138-5 at 2–3; 138-9  
16 ¶¶ 3–5.) Moreover, the second interview of defendant Castro by  
17 detectives occurred on December 21, 2017 at least 1.5 hours before  
18 he was taken into ICE custody and advised of his administrative  
19 rights by DO Romero. (See Doc. No. 138-5 at 2–3; see also Doc.  
20 Nos. 119 at 341; 154 at 14, 16.) Given this sequence of events  
21 (*Miranda* advisement, waiver of rights and interrogation, followed  
22 by later administrative advisement) there is no credible claim that  
23 defendant Castro was confused by the advisements regarding his  
24 right to have counsel appointed on his behalf and present for his  
25 interrogation by the detectives. As such, defendant Castro’s motion  
26 to suppress his interrogation statements on the grounds that he  
27 received confusing and misleading advisements regarding his right  
28 to counsel as prohibited by the Ninth Circuit in *San Juan-Cruz* (Doc.  
No. 119 at 7 (citing *id.* at 436–41)), will be denied.

(Doc. Nos. 201 and 204 at 15-17.)

18 The renewed arguments advanced in support of defendant Castro’s motion for  
19 reconsideration do not persuade the court that its prior order in this regard was in any way clearly  
20 erroneous or manifestly unjust. *See United States v. Raileanu*, 609 Fed. Appx. 377, 380 (9th Cir.  
21 2015) (“Furthermore, at least one and a half to two hours separated administration of the two sets  
22 of warnings, which of course were not read by the same officer.”) Indeed, no showing has been  
23 made that could even arguably justify the granting of the motion to suppress these earliest made  
24 statements by defendant Castro to law enforcement officers under the decision in *San Juan-Cruz*.  
25 The motion to reconsider the prior order denying this aspect of defendant Castro’s motion will  
26 therefore be denied.

27 ////

28 ////

**CONCLUSION**

For all of the reasons explained above:

1. Defendant Rivas Gomez's motion to reconsider his motion for a change of venue (Doc. No. 227) is denied;
2. Defendant Rivas Gomez's motion to reconsider his motion to suppress statements (Doc. No. 228) is denied; and
3. Defendant Castro's motion to reconsider his motion to exclude defendant's post-arrest statements (Doc. Nos. 236 at 18-22, 327 at 18-22) is denied.

IT IS SO ORDERED.

Dated: **February 28, 2022**

  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ISRAEL ALBERTO RIVAS GOMEZ and  
JOHN DOE aka "Marcos Castro,"

Defendants.

No. 1:18-cr-00002-NONE-SKO

ORDER DENYING DEFENDANT RIVAS  
GOMEZ'S MOTION FOR EVIDENTIARY  
HEARING AND MOTION TO SUPPRESS  
STATEMENTS

(Doc. Nos. 92, 166)

Defendant Israel Alberto Rivas Gomez moves to suppress his statements given on December 21, 2017 and December 26, 2017 on the grounds that law enforcement officers inadequately advised him of his *Miranda* rights. (Doc. Nos. 92; 131.) Defendant further contends that his December 26, 2017 statement should be suppressed because law enforcement unnecessarily delayed in bringing him before a federal magistrate judge for arraignment, in violation of Rule 5 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3501, and the rule announced by the Supreme Court in *McNabb v. United States*, 318 U.S. 332 (1943), and *Mallory v. United States*, 354 U.S. 449 (1957), authorizing suppression of any confession obtained during a period of unreasonable delay before appearance for purposes of arraignment and advisement of rights by the court. (Doc. No. 92 at 14.) On May 15, 2020, the government filed an opposition to that motion, arguing that the *Miranda* advisements given to defendant Rivas Gomez by Fresno County Sheriff's Department Detectives Jose Mora and Adam Maldonado on December 21, 2017

1 and December 26, 2017 were sufficient. (Doc. No. 101.) The government contends that  
 2 defendant Rivas Gomez knowingly and voluntarily waived his rights when making his statements  
 3 to the detectives. (*Id.* at 5.) Finally, the government argues that the right of prompt presentment  
 4 was not violated where defendant Rivas Gomez made his initial appearance at the first possible  
 5 hearing calendar after the federal criminal complaint charging him was filed. (*Id.* at 6.) On June  
 6 25, 2020, defendant Rivas Gomez filed an amended reply in support of his motion to suppress the  
 7 statements. (Doc. No. 131.) On September 22, 2020, defendants Rivas Gomez and Marcos  
 8 Castro filed a joint defense motion for evidentiary hearing with respect to their motions to  
 9 suppress. (Doc. No. 166.) On September 30, 2020, the government opposed the motion for an  
 10 evidentiary hearing. (Doc. No. 173.)

11 Hearings on these motions were held on October 1 and 15, 2020. Assistant United States  
 12 Attorneys Kathleen Servatius and Ross Pearson appeared at the hearing on behalf of the  
 13 government. Federal Defender Heather Williams and Assistant Federal Defender Erin Snider  
 14 appeared on behalf for defendant Rivas Gomez and attorney Kevin Little appeared on behalf of  
 15 defendant Marcos Castro.

16 The nature of this criminal prosecution has been summarized in the court's prior order and  
 17 need not be repeated here. This order addresses only defendant Rivas Gomez's motion to  
 18 suppress his statements to law enforcement officers.

#### 19 **A. Factual Background as to Defendant Rivas Gomez**

20 The facts relevant to this motion are as follows.<sup>1</sup> On December 21, 2017, defendant Rivas  
 21 Gomez was detained by Fresno County Sheriff Detective Andrew Solis and Deputy Briana Leon  
 22

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23 <sup>1</sup> These facts are derived from the parties' briefs (Doc. Nos. 92, 101, 131), translated transcripts  
 24 of the interviews at issue (Doc. Nos. 93-8; 93-9; 93-10; 93-18; 101-4; 101-5; 170-1), and video  
 25 recordings of the December 21, 2017 and December 26, 2017 interviews (Sealed Government  
 26 Exs. 11 & 12). Defendant Rivas Gomez and the government submitted different transcripts of the  
 27 December 21, 2017 and December 26, 2017 interviews translated into English. (*See* Doc. Nos.  
 28 93-8; 93-9; 93-10; 93-18; 170-1; 101-4; 101-5; 111; 112.) FBI Language Analyst Sabrina  
 Jennings attests to the accuracy of the government's December 21, 2017 and December 26, 2017  
 translations. (Doc. No. 101-13.) Defendant Rivas Gomez noted at the October 1, 2020 hearing  
 and in its briefing that the December 26, 2017 Salvadorian English translation draft is not yet  
 complete. (*See* Doc. No. 170 at 1.)

1 at his home in Mendota, CA at approximately 6:00 a.m. and taken to the Fresno County Sheriff's  
2 Department Headquarters, where he arrived between 7:00 a.m. and 8:00 a.m. (Doc. Nos. 92 at 2–  
3 3; 93-2 at 8; 93-3 at 3; 93-5.) At approximately 4:30 p.m., Fresno County Sheriff's Homicide  
4 Detectives Adam Maldonado and Jose Mora began questioning defendant Rivas Gomez. (Doc.  
5 No. 92 at 3; 93-7 at 1.)

6 After asking Rivas Gomez a series of personal history questions, Detective Mora read  
7 Rivas Gomez his *Miranda* rights from a Spanish-language *Miranda* card and asked him if he  
8 understood those rights. (Doc. Nos. 93-8 at 18–19; 93-9 at 17; Government's Sealed Ex. 11 at  
9 19:40–20:50; Doc. No. 101 at 8; Doc. No. 101-4 at 2–3; *see also* Doc. No. 92 at 4.) Defendant  
10 Rivas Gomez immediately indicated that he did not understand what Detective Mora had said  
11 with respect to the appointment of counsel on his behalf at no charge to him. (Doc. Nos. 93-8 at  
12 19; 93-9 at 17; 101-4 at 3.) Specifically, defendant Rivas Gomez sought clarification as to that  
13 aspect of the advisement, by asking the detective "Like some taxes?," "what taxes?" or "some  
14 taxes?" (*Id.*) Detective Maldonado responded to that inquiry by stating "Free of charge" and  
15 "Without cost." (Doc. Nos. 93-8 at 19; 93-9 at 17; 101-4 at 3; Government's Sealed Ex. 11 at  
16 19:40–20:50.) Defendant Rivas Gomez immediately replied, "Oh, yeah. Like a free attorney"  
17 and "Oh, I see, like a free lawyer?" (Doc. Nos. 93-8 at 19; 93-9 at 17; 101-4 at 3; Government's  
18 Sealed Ex. 11 at 19:40–20:50.) Detective Mora responded "yes." (*Id.*) When asked if he then  
19 understood, defendant Rivas Gomez answered affirmatively. (*Id.*) (Doc. Nos. 93-8 at 19; 93-9 at  
20 17; 101-4 at 3.) Other than as to his rights with respect to the appointment of counsel, regarding  
21 which he received clarification when sought, after being read each aspect of his rights defendant  
22 Rivas Gomez indicated that he understood the advisement provided to him. (*Id.*) Moreover, the  
23 video recording of defendant Rivas Gomez's interview reflects that he also made nonverbal  
24 gestures (i.e., nodding) that are reasonably interpreted as indicating that he understood the  
25 *Miranda* warnings being given to him. (Doc. Nos. 93-8 at 18–19; 93-9 at 16–17; 101-4 at 2–3;  
26 Government's Sealed Ex. 11 at 19:40–20:50.)

27 This first interrogation of defendant Rivas Gomez lasted approximately three hours,  
28 ending at approximately 7:30 p.m. on December 21, 2017. At approximately 8:00 p.m. that night,

1 Detectives Maldonado and Mora drove Rivas Gomez to a field outside of Mendota, where Rivas  
 2 Gomez directed them to the body of the victim. (Doc. Nos. 92 at 7; 101 at 11.) A deputy then  
 3 transported defendant Rivas Gomez back to Fresno County Jail where he was booked on state  
 4 charges of murder, kidnapping, and conspiracy to commit murder, including gang enhancements.  
 5 (Doc. Nos. 101 at 11; 101-7.)

6 The following day, Friday, December 22, 2017, at approximately 5:00 p.m., FBI Agent  
 7 Ryan Demmon met with United States Magistrate Judge Barbara A. McAuliffe in her chambers,  
 8 where she signed the federal criminal complaint, and Agent Demmon's affidavit in support  
 9 thereof, charging Rivas Gomez with kidnapping and murder in aid of racketeering and conspiracy  
 10 to kidnap and murder in aid of racketeering. (Doc. No. 101-12 ¶ 5.)

11 On Tuesday, December 26, 2016, at approximately 7:30 a.m., Detectives Mora and  
 12 Maldonado questioned defendant Rivas Gomez again at the Fresno County Sheriff's Department.  
 13 (Doc. Nos. 92 at 7; 101 at 13; 131 at 5–8; 170-1 at 1.) This interview was also recorded, and both  
 14 parties have submitted transcriptions of it. (Doc. Nos. 93-18 at 1–2; 101-5; 131 at 5–8; 170-1.)  
 15 Before commencing this second interview, Detective Maldonado again advised defendant Rivas  
 16 Gomez of all the *Miranda* warnings read from his department-issued Spanish version of the  
 17 *Miranda* warnings card, and asked Rivas Gomez if he understood. (Doc. Nos. 93-18; 101 at 13;  
 18 101-5 at 2–3; 131 at 5–8; Sealed Government Ex. 12 at 4:43–5:57; *see also* Doc. No. 170-1 at 1.)  
 19 Defendant Rivas Gomez once again responded “yes” after being read each aspect of that  
 20 advisement of rights, indicating that he understood, and did not ask any follow-up questions at  
 21 that time. (Doc. Nos. 93-18 at 1–2; 101-5 at 2–3; 131 at 5–8; 170-1 at 1–2.) Detectives Mora and  
 22 Maldonado proceeded with their interview of Rivas Gomez. (*Id.*) This second interrogation of  
 23 the defendant lasted approximately 1.5 hours. (*See* Doc. No 170-1 at 3.) Defendant Rivas  
 24 Gomez was then transported to the federal courthouse in Fresno where he made his initial  
 25 appearance for arraignment in this case on the afternoon of December 26, 2017. (Doc. No. 6.)

## 26 LEGAL STANDARDS

27 The Fifth Amendment to the United States Constitution provides that “[n]o person ... shall  
 28 be compelled in any criminal case to be a witness against himself[.]” U.S. Const. amend. V. The

1 Supreme Court has “recognized that custodial interrogations, by their very nature, generate  
 2 ‘compelling pressures which work to undermine the individuals will to resist and to compel him  
 3 to speak where he would not otherwise do so freely.’” *Moran v. Burbine*, 475 U.S. 412, 420  
 4 (1986) (quoting *Miranda*, 384 U.S. at 467). “To combat this inherent compulsion, and thereby  
 5 protect the Fifth Amendment privilege against self-incrimination, *Miranda* imposed on the police  
 6 an obligation to follow certain procedures in their dealings with the accused.” *Moran*, 475 U.S. at  
 7 420; *see also Dickerson v. United States*, 530 U.S. 428, 435 (2000); *United States v. IMM*, 747  
 8 F.3d 754, 764 (9th Cir. 2014). Specifically, the Supreme Court has held the Constitution  
 9 requires:

10 that a person questioned by law enforcement officers after being  
 11 “taken into custody or otherwise deprived of his freedom of action in  
 12 any significant way” must first “be warned that he has a right to  
 13 remain silent, that any statement he does make may be used as  
 evidence against him, and that he has a right to the presence of an  
 attorney, either retained or appointed.”

14 *Stansbury v. California*, 511 U.S. 318, 322 (1994) (quoting *Miranda*, 384 U.S. at 444); *see also*  
 15 *IMM*, 747 F.3d at 764. “An officer’s obligation to administer *Miranda* warnings attaches . . . only  
 16 where there has been such a restriction on a person’s freedom as to render him in custody.”  
 17 *Stansbury*, 511 U.S. at 322 (internal quotation marks omitted) (quoting *Oregon v. Mathiason*, 429  
 18 U.S. 492, 495 (1977)). The Supreme Court has also explained as follows:

19 The prophylactic *Miranda* warnings are not themselves rights  
 20 protected by the Constitution but [are] instead measures to insure that  
 21 the right against compulsory self-incrimination [is] protected.  
 22 Reviewing courts therefore need not examine *Miranda* warnings as  
 if construing a will or defining the terms of an easement. The inquiry  
 is simply whether the warnings reasonably conve[y] to [a suspect]  
 his rights as required by *Miranda*.

23 *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989) (internal citations and quotations omitted).  
 24 “For inculpatory statements made by a defendant during custodial interrogation to be admissible  
 25 in evidence, the defendant’s ‘waiver of *Miranda* rights must be voluntary, knowing, and  
 26 intelligent.’” *United States v. Garibay*, 143 F.3d 534, 536 (9th Cir. 1998) (quoting *United States*  
 27 *v. Binder*, 769 F.2d 595, 599 (9th Cir. 1985)); *see also United States v. Shi*, 525 F.3d 709, 727  
 28 (9th Cir. 2008). “A valid waiver of *Miranda* rights depends upon the ‘totality of the

circumstances including the background, experience, and conduct of defendant.” *Shi*, 525 F.3d at 727 (quoting *Garibay*, 143 F.3d at 536). “To satisfy this burden, the prosecution must introduce sufficient evidence to establish that under the ‘totality of the circumstances,’ the defendant was aware of ‘the nature of the right being abandoned and the consequences of the decision to abandon it.’” *Garibay*, 143 F.3d at 536–37 (quoting *Moran*, 475 U.S. at 421); *see also United States v. Younger*, 398 F.3d 1179, 1185 (9th Cir. 2005). Moreover, there is a presumption against waiver of one’s *Miranda* rights and a heavy burden of showing a valid waiver by a preponderance of the evidence is on the prosecution. *Colorado v. Connelly*, 479 U.S. 157, 167–68 (1986); *United States v. Bernard S.*, 795 F.2d 749, 752 (9th Cir. 1986); *Shi*, 525 F.3d at 727–28; *see also Garibay*, 143 F.3d at 537 (“The government’s burden to make such a showing ‘is great,’ and the court will ‘indulge every reasonable presumption against waiver of fundamental constitutional rights.’”) (quoting *United States v. Heldt*, 745 F.2d 1275, 1277 (9th Cir. 1984). Courts are to consider the following factors in determining whether a defendant “knowingly and intelligently waived [her] constitutional rights”:

(1) whether the defendant signed a written waiver; (2) whether the defendant was advised of his rights in his native tongue; (3) whether the defendant appeared to understand his rights; (4) whether a defendant had the assistance of a translator; (5) whether the defendant’s rights were individually and repeatedly explained to him; and (6) whether the defendant had prior experience with the criminal justice system.

*Garibay*, 143 F.3d at 538 (internal citations omitted); *see also United States v. Crews*, 502 F.3d 1130, 1140 (9th Cir. 2007).<sup>2</sup>

## ANALYSIS

### A. Motion to Suppress and Motion for Evidentiary Hearing

As noted, defendant Rivas Gomez has moved for an evidentiary hearing in connection with his motion to suppress his statements made to law enforcement officers. (Doc. No. 166.)

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<sup>2</sup> Although no written waiver of *Miranda* rights is required (*see United States v. Calise*, 996 F.2d 1019, 1022 (9th Cir. 1993)), the absence of a signed waiver form certainly does not aid the government in satisfying its heavy burden of establishing by a preponderance of the evidence that the waiver of *Miranda* rights was voluntary, knowing, and intelligent. *Garibay*, 143 F.3d at 536–37 84).

Specifically, Rivas Gomez seeks an evidentiary hearing regarding the Spanish translations of the *Miranda* advisements given to him on December 21 and 26, 2017. He also seeks an evidentiary hearing to develop the record regarding the alleged delay in bringing him for an initial appearance before any court, state or federal, in connection with his argument that his statements to law enforcement during his interrogation on December 26, 2017, should be suppressed due to that allegedly unreasonable delay. (*Id.* at 2.)

Defendant Rivas Gomez has not submitted his own declaration in support of his motion. Nonetheless, his counsel proffers that the defendant would testify that he did not understand the *Miranda* rights read to him on either December 21, 2017 or December 26, 2017<sup>3</sup> and that were an evidentiary hearing held the defense would “call one to two Spanish interpreters and/or translators with at least one carrying expertise or experience in Salvadorian Spanish eccentricities.”<sup>4</sup> (*Id.*; *see also* Doc. No. 92 at 6–7.) Based upon this proffer, defendant Rivas Gomez argues “[t]here are factual disputes concerning what was said in Spanish and how it translates versus how it is interpreted into English, as well as what Rivas Gomez understood as his rights and whether any knowing or voluntary waiver of them occurred.” (Doc. No. 166 at 3.)

#### 1. December 21, 2017 Interrogation

For the reasons explained below, defendant Rivas Gomez’s motion to suppress his statements made at his December 21, 2017 interrogation and his request for an evidentiary

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<sup>3</sup> The defense has submitted the declaration of Federal Defender staff interpreter/assistant investigator Edgar Salazar. (Doc. No. 93-11.) Investigator Salazar declares that on March 10, 2020, he met with defendant Gomez Rivas to read a Spanish language transcript of the defendant’s December 21, 2017 interrogation by Detective Maldonado. (*Id.*) Salazar states that when he asked defendant Rivas Gomez if he understood the advisements given to him by Detective Maldonado on that date, the defendant answered that “he did not really understand what Detective Maldonado was saying to him.” (*Id.*) Salazar also states that during this meeting, the defendant explained that “by the time this interview took place, he had not slept in three days, was very tired and confused and that all he wanted to do was go home.” (*Id.*)

<sup>4</sup> Defense counsel notes that neither the identity of any defense interpreter nor the final versions of any defense translation of the interrogation has been disclosed to the government. (Doc. No. 166 at 2 n.1.) Defense counsel states that as of the filing of the pending motion [September 22, 2020], those transcripts were not yet completed or proofread and that the various impacts of the COVID-19 pandemic and other factors had delayed defense preparation in this regard. (*Id.*)



1 hearing in that regard will be denied.

2 “An evidentiary hearing on a motion to suppress need be held only when the moving  
3 papers allege facts with sufficient definiteness, clarity, and specificity to enable the trial court to  
4 conclude that contested issues of fact exist.” *United States v. Howell*, 231 F.3d 615, 620 (9th Cir.  
5 2000) (citing *United States v. Walczak*, 783 F.2d 852, 857 (9th Cir. 1986), *United States v.*  
6 *Harris*, 914 F.2d 927, 933 (7th Cir. 1990), *United States v. Irwin*, 612 F.2d 1182, 1187 n.14 (9th  
7 Cir. 1980) and *United States v. Carrion*, 463 F.2d 704, 706 (9th Cir. 1972)). “[T]o mandate an  
8 evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported  
9 by more than a desire to cross-examine.” *United States v. Marcello*, 731 F.2d 1354, 1358 (9th  
10 Cir. 1984)); *United States v. Woodson*, No. CR 11-00531 WHA, 2011 WL 5884913, at \*6 (N.D.  
11 Cal. Nov. 23, 2011) (denying a defense request for an evidentiary hearing because “mere refusal  
12 to accept the uncontradicted evidence does not create a material issue of fact”); *United States v.*  
13 *Walker*, 239 F. Supp. 3d 738, 739 (S.D.N.Y. 2017) (“While [an evidentiary hearing] might have  
14 been warranted if there were important credibility issues that could not be addressed from the  
15 paper record, the defendant has made no showing that that is the case here.”).

16 In *United States v. Rodriguez-Hernandez*, the Ninth Circuit held that a defendant’s after-  
17 the-fact declaration was not sufficiently specific to create a contested issue of fact where the  
18 defendant stated he did not understand that he had the right to an appointed attorney to represent  
19 him before he answered the agents’ questions, or that the government would pay for a lawyer.  
20 See *United States v. Rodriguez-Hernandez*, No. 05-50077, 2007 WL 135686, at \*1 (9th Cir.  
21 2007).<sup>5</sup> The court also held that the conclusory declaration failed to establish a significant  
22 material dispute about whether his waiver was voluntary, knowing, and intelligent. See *id.*  
23 (“[defendant] was advised of his rights in Spanish; he stated at the time that he understood each of  
24 the rights . . . .”) (citing *United States v. Garibay*, 143 F.3d 534, 538 (9th Cir. 1998)); see also  
25 *United States v. Razo-Quiroz*, No. 1:19-cr-00015-DAD-BAM, at 11–13 (E.D. Cal. July 11, 2019)  
26 (Doc. No. 351) (denying motions for an evidentiary hearing and to suppress statements where the

27 \_\_\_\_\_  
28 <sup>5</sup> Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule 36-3(b).



1 defendant heard *Miranda* warnings several times in her native language, did not indicate she was  
 2 confused as she had in a prior interview, and stated without pause that she understood her rights).

3 Here, as noted, defendant Rivas Gomez has not submitted a declaration stating that he did  
 4 not understand the advisement of *Miranda* rights as given to him by detectives on December 21,  
 5 2017. Even if he had submitted such a declaration, neither an after-the-fact declaration from  
 6 defendant Rivas Gomez nor the hearsay declaration that has been submitted by the defense  
 7 investigator would be of much value in assessing whether defendant Rivas Gomez knowingly and  
 8 intelligently waived his rights after receiving the *Miranda* warnings given by Detectives Mora  
 9 and Maldonado.

10 Counsel for defendant Rivas Gomez argues that the detectives switched back and forth  
 11 between the formal and informal version of the “you” singular verb conjugation in Spanish and  
 12 that this confused defendant Rivas Gomez regarding his rights. (Doc. No. 92 at 9.) This  
 13 argument is unpersuasive. The government has submitted the recorded December 21, 2017  
 14 interview of defendant Rivas Gomez for the court’s review. (Government’s Sealed Ex. 11.)  
 15 Based on the court’s own viewing of that interview, as well as a review of the transcripts both  
 16 parties have submitted, there is no indication that defendant Rivas Gomez was confused after  
 17 being read his rights. The video recording of the December 21, 2017 interview shows that  
 18 Detective Mora read Rivas Gomez his *Miranda* rights from a Spanish-language *Miranda* card and  
 19 then asked him if he understood those rights. (Doc. Nos. 93-8 at 18–19; 93-9 at 17;  
 20 Government’s Sealed Ex. 11 at 19:40–20:50; Doc. No. 101 at 8; Doc. No. 101-4 at 2–3; 131 at 5–  
 21 8; *see also* Doc. No. 92 at 4.) When the complete *Miranda* warnings were given to defendant  
 22 Rivas Gomez, he did not indicate in any way that he was confused or failed to understand that  
 23 warning, with the exception of Detective Mora’s warning regarding the appointment of free  
 24 counsel. (Doc. Nos. 93-8 at 18–19; 93-9 at 17; Government’s Sealed Ex. 11 at 19:40–20:50; Doc.  
 25 Nos. 101 at 8; 101-4 at 2–3; 131 at 5–8; *see also* Doc. No. 92 at 4.) As detailed above, defendant  
 26 Rivas Gomez initially sought clarification of his right to have appointed counsel present but, once  
 27 clarified by the detectives, clearly indicated his understanding that he was entitled to a “free  
 28 attorney.” (Doc. Nos. 93-8 at 19; 93-9 at 17; 101-4 at 3; 131 at 7; Government’s Sealed Ex. 11 at

1 19:40–20:50.) Moreover, the video recording of the interview reflects, in the court’s view, that  
 2 defendant Rivas Gomez made nonverbal gestures (i.e., nodding) that are reasonably interpreted as  
 3 also indicating that he understood the *Miranda* warnings given to him.<sup>6</sup> (Doc. Nos. 93-8 at 18–  
 4 19; 93-9 at 16–17; 101-4 at 2–3; Government’s Sealed Ex. 11 at 19:40–20:50.) Other than his  
 5 initial indication of confusion after being read his right to have free counsel, which the detectives  
 6 immediately clarified when he asked, defendant Rivas Gomez did not demonstrate any other  
 7 signs of confusion or lack of understanding.<sup>7</sup> (*See id.*) Defense Investigator Salazar’s generic  
 8 declaration fails to create a dispute of fact regarding defendant Rivas Gomez’s understanding of  
 9 his *Miranda* rights as read to him on December 21, 2017. *See Rodriguez-Hernandez*, 2007 WL  
 10 135686, at \*1.

11 The totality of circumstances establish that the statements of defendant to detectives on  
 12 December 21, 2017 were voluntarily made. Defendant Rivas Gomez was twenty-three years old  
 13 at the time of questioning (Doc. No. 101-6 at 5) and does not argue that he suffers any mental  
 14 defects. While Rivas Gomez contends he had never been arrested before and has only a sixth-  
 15 grade education (Doc. No. 92 at 2), nothing in the recordings or transcripts of that interview  
 16 before the court (*see generally* Government’s Sealed Ex. 11), suggests that he did not understand

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17  
 18 <sup>6</sup> “If the prosecution’s showing that under the totality of the circumstances the defendant was  
 19 aware of [his] rights and the consequences of the decision to abandon those rights, *see Garibay*,  
 20 143 F.3d at 536, could be effectively rebutted by a later declaration by the defendant stating  
 21 merely that [he] did not understand, then no oral waiver of one’s rights under *Miranda* would  
 22 ever be effective.” *United States v. Razo-Quiroz*, No. 1:19-cr-00015-DAD-BAM, at 13 n.8 (E.D.  
 23 Cal. July 11, 2019) (Doc. No. 351).

24 <sup>7</sup> Defendant Rivas Gomez also argues that the detectives did not re-advise him of his *Miranda*  
 25 rights when he directed them to the decedent’s body after his interrogation on December 21,  
 26 2017. (*See* Doc. No. 92 at 7.) However, defendant Rivas Gomez does not identify any  
 27 statements he made during the car ride to the site which he claims should be suppressed from  
 28 evidence. (*See generally id.*) In any event, because the court finds that the initial *Miranda*  
 advisements given to the defendant were sufficient, the detectives were under no duty to re-  
 administer *Miranda* advisements to the defendant after a mere thirty-minute break in questioning.  
*See United States v. Andaverde*, 64 F.3d 1305, 1312 (9th Cir. 1995) (“This circuit in *United States*  
*v. Nordling* . . . held that, because the police had advised the suspect of his rights and ‘no  
 appreciable time had elapsed’ between the end of the police interrogation and the beginning of the  
 narcotics investigation, the narcotics agents were not required to readminister the warnings.”)  
 (collecting cases).

1 the advisement of rights provided to him by the detectives. *See Hernandez v. Ducart*, 824 F.  
 2 App’x 491, 493–94 (9th Cir. 2020) (affirming that while maturity is relevant in determining  
 3 police coercion, defendant had endured only two hours of questioning, received *Miranda*  
 4 warnings, and was able to “parry the officers with some agility while maintaining composure  
 5 throughout”). Notably, defendant Rivas Gomez does not allege that he was threatened with  
 6 physical force or otherwise by law enforcement officers. Indeed, the room where the  
 7 interrogation took place was well lit and defendant was not handcuffed during his questioning.  
 8 *See Hernandez*, 824 F. App’x at 493–94.

9 Defendant Rivas Gomez further argues that detectives did not inform him what they were  
 10 investigating or why he had been held in custody for nine hours. (Doc. No. 92 at 6.) Title 18  
 11 U.S.C. § 3501(b) provides as follows:

12 The trial judge in determining the issue of voluntariness shall take  
 13 into consideration all the circumstances surrounding the giving of the  
 14 confession, including (1) the time elapsing between arrest and  
 15 arraignment of the defendant making the confession, if it was made  
 16 after arrest and before arraignment, (2) whether such defendant knew  
 17 the nature of the offense with which he was charged or of which he  
 18 was suspected at the time of making the confession, (3) whether or  
 19 not such defendant was advised or knew that he was not required to  
 20 make any statement and that any such statement could be used  
 against him, (4) whether or not such defendant had been advised  
 prior to questioning of his right to the assistance of counsel; and (5)  
 whether or not such defendant was without the assistance of counsel  
 when questioned and when giving such confession.

19 The presence or absence of any of the above-mentioned factors to be  
 20 taken into consideration by the judge need not be conclusive on the  
 issue of voluntariness of the confession.

21 Thus, while whether a defendant knew of the nature of the investigation is a factor courts consider  
 22 in determining whether a waiver of one’s rights is voluntary, its absence is not dispositive as to  
 23 the voluntariness of the suspect’s statement. *See Andaverde*, 64 F.3d at 1311–12 (“A defendant  
 24 need not be advised before he confesses of the specific statute he is suspected of violating”)  
 25 (citations omitted). Likewise, that the defendant was in custody for approximately nine hours  
 26 before being questioned by detectives is not dispositive as to the voluntariness of his statements to  
 27 police. *See Cook v. Kernan*, 948 F.3d 952, 968–69 (9th Cir. 2020) (“The factors to be considered  
 28 include the degree of police coercion; the length, location and continuity of the interrogation; and

1 the defendant’s maturity, education, physical condition, mental health, and age.”) (quoting *Brown*  
 2 *v. Horell*, 544 F.3d 969, 979 (9th Cir. 2011). The court notes that the questioning of defendant  
 3 Rivas Gomez occurred the same day he was arrested. *See Andaverde*, 64 F.3d at 1311 (noting  
 4 that the defendant’s questioning on the same day of his arrest “clearly weights in favor of  
 5 voluntariness”); *see also United States v. Kremmerer*, No. 3:19-cr-02513-GPC, 2020 WL  
 6 4737173 (S.D. Cal. Aug. 14, 2020) (holding a *Miranda* waiver to be voluntary despite the  
 7 defendant being held in custody for six hours, with a portion of that time spent in handcuffs or an  
 8 ankle chain).

9 In this case, defendant Rivas Gomez was interrogated for approximately 3.5 hours.  
 10 Courts have found interrogations of similar length not to be improperly prolonged questioning for  
 11 purposes of assessing voluntariness. *See Berghuis v. Thompkins*, 560 U.S. 370, 387 (2010)  
 12 (finding that the duration of a three-hour interrogation alone was insufficient to establish coercion  
 13 unless it were “accompanied . . . by other facts indicating coercion, such as an incapacitated and  
 14 sedated suspect, sleep and food deprivation, and threats.”); *Hernandez*, 824 F. App’x at 493  
 15 (holding a confession to be voluntary where the questioning lasted just over two hours, included  
 16 four breaks, defendant was offered food and water, and his restraints were loosened).<sup>8</sup>

17 Most importantly, the undersigned has reviewed the recorded December 21, 2017  
 18 interview. The detectives were calm and professional, offering defendant Rivas Gomez food and  
 19 water, and even eliciting smiles from him at one point when discussing Salvadorian food. (*See*  
 20 *generally* Government’s Sealed Ex. 11; Doc. No. 93-9 at 16.) There is simply no evidence before  
 21 the court suggesting coercion or that would support a finding that defendant Rivas Gomez’s  
 22 statements to the detectives were not voluntarily made. *See Moran*, 475 U.S. at 421; *Kernan*, 948  
 23 F.3d at 968–69. While defendant Rivas Gomez now argues that he was tired and had not slept in  
 24 three days, the evidence before the court depicts defendant Rivas Gomez sleeping in his holding

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25 <sup>8</sup> This is certainly not, for instance, a case involving a teenage suspect, questioned for nearly  
 26 thirteen hours by “tag teams” of two, three, and four detectives, while isolated, sleep deprived,  
 27 and held in a room with only a straight-backed chair and no table to lean on, and relentlessly  
 28 questioned even after he stopped responding while being told that he had to answer the questions  
 being put to him. *See Doody v. Ryan*, 649 F.3d 986, 1009, 1012–13 (9th Cir. 2011) (finding a  
 confession given under such circumstances to have been involuntary).

1 cell at times with no indication whatsoever that the detectives subjected him to sleep deprivation  
2 of any kind. (Doc. No. 101-1 at 2.)

3 Given the totality of the circumstances as established by the evidence before the court, the  
4 undersigned finds that defendant Rivas Gomez knowingly and voluntarily waived his *Miranda*  
5 rights. The court will therefore deny his motion to suppress his statements made at his December  
6 21, 2017 interrogation.

7 2. December 26, 2017 Statements

8 The court also concludes that an evidentiary hearing is unnecessary to resolve defendant  
9 Rivas Gomez's motion to suppress his interrogation statements made on December 26, 2017. In  
10 this regard, he argues that the statements made by him that day should be suppressed because the  
11 detectives provided him at that time only an abbreviated reading of his *Miranda* rights and that  
12 the government failed to timely bring him before a court for his initial appearance following his  
13 arrest. (Doc. Nos. 101-5 at 2–3; 131 at 14; 166 at 2.)

14 As indicated above, on December 26, 2017, Detective Maldonado gave defendant a  
15 complete *Miranda* warning and in response thereto defendant Rivas Gomez indicated he  
16 understood those right before making any statement to Detectives Maldonado and Mora. (Doc.  
17 Nos. 93-18 at 1–2; 101-5 at 2–3; 131 at 14–16.) Nonetheless, defendant Rivas Gomez argues that  
18 he still did not understand his rights prior to the December 26, 2017 interview because Detective  
19 Maldonado “minimize[ed] the rights notices as a mere formality by saying . . . ‘You agree that I  
20 gave you the notices the other day? I have to give them to you again, and – and I ask you for the  
21 same thing if you understand those notices, just you say yes or no, after – each notice, ok?’”  
22 (Doc. No. 92 at 10, 13.)

23 To satisfy its burden of showing a valid waiver as to this second interview on December  
24 26, 2017, the government points to Detective Maldonado's *Miranda* warning and defendant's oral  
25 waiver of his rights following the giving of that advisement. While Detective Maldonado  
26 prefaced the warnings by telling the defendant that the two of them had previously gone through  
27 the advisement at his prior interview, Detective Maldonado nevertheless once again provided  
28 Rivas Gomez the complete *Miranda* warnings. (Doc. Nos. 93-18 at 1–2; 101-5 at 2–3; 131 at 14–

16.) At that point, defendant Rivas Gomez had heard the *Miranda* warnings more than once in Spanish and, if he was confused about any one of the advisements within that warning, he could have indicated such, as he had on December 21, 2017 when he asked for clarification regarding his right to the appointment and presence of an attorney. Yet, he did not do so when advised of his *Miranda* rights by Detective Maldonado on this occasion, instead stating without pause that he understood his rights and proceeding to answer questions put to him. (Doc. Nos. 93-18 at 1–2; 101-5 at 2–3; 131 at 14–16; Government’s Sealed Ex. 12 at 4:43–5:50.) Accordingly, the court finds defendant Rivas Gomez’s argument in this regard to be unpersuasive.

For the same reasons discussed in connection with defendant’s December 21, 2017 interview, the court does not find any of the hallmarks of a coercive, involuntary confession to be present during his December 26, 2017 interrogation. Rather, the court concludes that defendant Rivas Gomez’s waiver of his rights and his statements thereafter were knowing, intelligent, and voluntary. Therefore, with respect to defendant Rivas Gomez’s argument that he received an abbreviated or minimized *Miranda* advisement, his motion to suppress his statements made to Detectives Maldonado and Mora on December 26, 2017 will be denied.

The court is also not persuaded by defendant Rivas Gomez’s argument that the government violated his right to prompt initial appearance before a court. (Doc. Nos. 92 at 14–17; 166 at 2.) The Supreme Court has held that 18 U.S.C. § 3501(c), upon which defendant relies in part in moving to suppress his statements, does not apply to statements made by a person who is being held solely on state charges. *United States v. Alvarez-Sanchez*, 511 U.S. 350, 350–52 (1994). In that case the Supreme Court reasoned:

Because the term delay presumes an obligation to act, there can be no “delay” in bringing a person before a federal judicial officer until there is some obligation to do so in the first place. Such a duty does not arise until the person is arrested or detained for a federal crime. Although a person arrested on a federal charge by any officer—local, state, or federal—is under “arrest or other detention” for the purposes of § 3501(c) and its safe harbor period, one arrested on state charges is not. This is true even if the arrest officers believe or have cause to believe that federal law also has been violated, because such a belief does not alter the underlying basis for the arrest and subsequent custody.

*Id.* at 350 (holding § 3501(c) did not apply where defendant was arrested on state charges by local



1 authorities on Friday, was questioned by federal authorities the following Monday, a criminal  
 2 complaint was prepared that same day, and was presented to a federal magistrate judge the  
 3 following day). The Supreme Court in *Alvarez-Sanchez* did identify “one presumably rare  
 4 scenario that might present some potential for confusion; namely, the situation that would arise if  
 5 state or local authorities, acting in collusion with federal officers, were to arrest and detain  
 6 someone in order to allow the federal agents to interrogate him in violation of his right to a  
 7 prompt federal presentment.” *Id.* at 359–60. However, there is no evidence (or even a  
 8 suggestion) of any such collusion between state and federal authorities in this case.

9 In *Alvarez-Sanchez* the defendant was arrested on a Friday afternoon, questioned by  
 10 federal authorities on the following Monday, and for reasons related to the court’s congested  
 11 docket, was brought to appear on the next available calendar before the magistrate judge on  
 12 Tuesday. *See id.* at 352. Here, defendant Rivas Gomez was arrested on Thursday, December 21,  
 13 2017, and law enforcement authorities discovered the decedent’s body late Thursday night after  
 14 questioning defendant. (Doc. No. 92 at 7.) FBI Agent Demmon states in his declaration that he  
 15 began preparing the affidavit in support of the criminal complaint charging defendant on  
 16 Thursday night and continued working on it throughout Friday, December 22, 2017, before  
 17 meeting with Magistrate Judge McAuliffe on Friday afternoon around 5:00 p.m. to swear out the  
 18 affidavit and criminal complaint.<sup>9</sup> (Doc. No. 101-12 ¶ 3.) Because of the federal holiday on  
 19 Monday, December 25, 2017, defendant Rivas Gomez was brought to the first available criminal  
 20 calendar in this court on the afternoon of Tuesday, December 26, 2017, for arraignment on the  
 21 complaint.

22 Defendant Rivas Gomez argues that he could have been brought to an initial appearance  
 23 in state or federal court on December 22, 2017. (Doc. No. 92 at 7.) However, the Supreme Court  
 24 explicitly rejected a similar argument in *Alvarez-Sanchez*, holding the “State’s failure to arraign  
 25 or prosecute respondent does not alter this conclusion.” *Alvarez-Sanchez*, 511 U.S. at 359.

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26  
 27 <sup>9</sup> Special Agent Demmon states that as he was working on the affidavit, he received additional  
 28 information relevant to the investigation as officers searched and canvassed the crime scene.  
 (Doc. No 101-12 ¶ 4.)

1 Moreover, defendant's argument does not call into question Agent Demmon's declaration stating  
2 that he was preparing the affidavit in support of the federal criminal complaint on Thursday night  
3 and through Friday as he received additional information, as well the government's contention  
4 that the U.S. Attorney's Office requires authorization from Washington, D.C. to pursue charges  
5 involving violent crimes committed in aid of racketeering. (Doc. No. 101 at 29 (citing U.S. Dept.  
6 of Justice Manual § 9-110.801).)

7 In the absence of any evidence even suggesting any collusion between state and federal  
8 authorities in order to delay defendant's initial appearance before a judicial officer, the court will  
9 deny defendant Rivas Gomez's motion to suppress his statements made at his December 26, 2017  
10 interrogation.

### 11 CONCLUSION

12 For the reasons explained above, defendant Rivas Gomez's motion for evidentiary hearing  
13 and motion to suppress his December 21, 2017 and December 26, 2017 statements to detectives  
14 (Doc. Nos. 92, 166) are denied.

15 IT IS SO ORDERED.

16 Dated: February 8, 2021

17   
UNITED STATES DISTRICT JUDGE



**Male Speaker 1:** Detective Maldonado

***[Bracketed italicized phrases are what is***

**Male Speaker 2:** Detective Mora

***actually said or translated to make sense***

**Male Speaker 3:** Israel Rivas Gomez

***in English, rather than what was***

**Male Speaker 4:** Unidentified Voice

***actually said in Spanish.]***

**[O/V]:** Overlapping Voices

**[U/A]:** Unintelligible audio

[START RECORDING [Israel Gómez 1262017 @0731hrs]]

00:00:00

Detective Maldonado: Today's date is Tuesday, December 26<sup>th</sup>, 2017 the time is 07:31 hrs. We are at FSO headquarters regarding, uh, case number 17-18697. We are speaking with Israel Rivas Gómez. Detective Maldonado, Detective Mora.

[U/A]

Detective Mora: You can sit down [*sit*].

Detective Mora: Alright, Israel, we just want to confirm the things [*that*] we talked [*talk or are talking*] about, that we talked [*talk or are talking*] about the other day.

Israel Gómez: Um-huh.

Detective Mora: [*Only*] We just have [*some*] other questions, but before that. [*Do*] you remember [*agree*] I read {*gave*} to you the rights [*notices*] the other day? I have to give them to you again, and-and I ask you [*for*] the same thing if you understand the rights [*those notices*], just [*you formal or he*] say[*s*] yes or no, um, after every {*each*} notice. OK? You have the right to remain silent. [*Do*] you understand? Yes or no? Yes or no?

Israel Gómez: Yes.

Detective Mora: Yes? Anything [*Whatever thing*] you [*I or you or he*] say[*s*] can be used against you [*you formal or him*] in a court of law [*court*]. Do you understand?

Israel Gómez: Yes.

[*you formal or he*] are being questioned [*could ask you formal or him any question*]. Do you understand?

Israel Gómez: Yes.

Detective Mora: Uh, if you [*your formal or he*] cannot pay for an attorney, you [*you formal or he*] will be provided [*will give you formal or him*] one at no cost, [*someone*] before [*when*] you [*you formal or he*] are[*/is*] asked any questions [*question*]. Do you understand?

Israel Gómez: Yes.

Detective Mora: Okay, now that you understand your [*understanding your/his*] rights in your mind, can we talk [*we can talk (a statement not a question)*] about— um, what we were talking [*speaking*] about the other day? [*or as a statement*]

Israel Gómez: Yes.

Detective Mora: Is that okay?

Israel Gómez: It's OK.

Detective Mora: OK, Israel. I just wanted to talk about a few things, uh, from that night. Uh, what's more important to me right now it's knowing where-where that boy was kidnapped.

Israel Gómez: I don't know.

Detective Mora: You don't know? They didn't talk to you, or anything like that, nothing, nothing, nothing? He didn't. Uh, Luis didn't say, you know that we'll see him over there, or I will see him walking down this street... What-what do you mean? What did he tell you?

Israel Gómez: No, he didn't say anything to me, just that-that-that he needed a ride, to take him and there when I got there and that I got down. I didn't know what I was going for.

to leave you here for a little while, so eat if you want. And then they will come to get you  
out for court, OK?

Detective Maldonado: Ok, good luck.

Israel Gómez: Ok, thank you

Detective Mora: [U/A] Good luck, huh?

Israel Gómez: [U/A]

[U/A]

01:29:05

[END RECORDING [Israel Gómez 1262017 @0731hrs]]

**Male Speaker 1:** Detective Maldonado

**Male Speaker 2:** Detective Mora

**Male Speaker 3:** Israel Rivas Gómez

**[O/V]:** Overlapping Voices

**[U/A]:** Unintelligible audio

[START RECORDING [Israel Gómez Rivas @1633hrs(volume edited).MP3]]

12:00:00 AM

Detective Maldonado: Uh, today's day is Thursday, December 21<sup>st</sup>, 2017. The time is 16:33

hours. We're at, uh, FSO headquarters, room 156, uh, regarding... FSO case number 17-

18613, Detective Maldonado, Detective Mora and we'll be speaking with, uh...

Detective Mora: Israel Gómez Rives[SIC]

[U/A]

[KEYS CLACKING]

[U/A]

[DOOR OPENING]

[TELEPHONE RINGING]

[DOOR CLOSING]

[DOOR OPENING]

[DOOR CLOSING]

[U/A]

3: Yeah? [TAPPING IN DOOR] [DOOR OPENING]

[U/A]

[DOOR CLOSING]

Detective Maldonado: What is your full name?

Israel Rivas Gómez: Israel Alberto Rivas Gómez.

Israel Rivas Gómez: Alberto.

Detective Maldonado: Alberto, yes.

[U/A]

Detective Maldonado: What is your address?

Israel Rivas Gómez: Lolita Street.

Detective Maldonado: Do you know the numbers? [O/V]

Israel Rivas Gómez: 854.

Detective Maldonado: 854?

Israel Rivas Gómez: Yes.

Detective Maldonado: What is your birth date?

Israel Rivas Gómez: 1994.

Detective Maldonado: What month and day?

Israel Rivas Gómez: Month 10 of 20, 1994.

Detective Maldonado: Do you have a phone?

Israel Rivas Gómez: Yes.

Detective Maldonado: What is it?

Israel Rivas Gómez: It's, um... five, five, nine.

Detective Maldonado: Uh-huh.

Israel Rivas Gómez: Three, eighty-two, forty-five, twenty-one.

Detective Maldonado: Twenty-one?

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: Do you work?

Israel Rivas Gómez: Yes.

Detective Maldonado: Where?

Detective Maldonado: In the field?

Israel Rivas Gómez: Uh-huh, in the field.

Detective Maldonado: What do you do right now?

Israel Rivas Gómez: Right now we're pruning pistachio.

Detective Maldonado: For what company do you work?

Israel Rivas Gómez: It's, um... Pacific Orchard.

Detective Maldonado: Pacific?

Israel Rivas Gómez: Pa-pacific [U/A] Detective Maldonado: How long have you been working  
for them?

Israel Rivas Gómez: Um... Almost since I arrived.

Detective Maldonado: When did you come?

Israel Rivas Gómez: On 2014.

Detective Maldonado: So almost three, four years?

Israel Rivas Gómez: Yes, I have been here for four years, like three years.

Detective Maldonado: When did you come to the United States?

Israel Rivas Gómez: On May, 2014. I do not remember the exact date, like on the 15th, I think,  
of May.

Detective Maldonado: Oh, ok. When you arrived, did you come straight to Mendota or you went  
to another city?

Israel Rivas Gómez: No, directly to Mendota.

Detective Maldonado: For how long have you lived—have you been living in this street Lolita?

Israel Rivas Gómez: Since I came.

Detective Maldonado: Have you always been there?

Israel Rivas Gómez: Yes. I lived one year with another sister in Naples.

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: : On which street?

Israel Rivas Gómez: In Naples.

Detective Mora: Naples.

Detective Maldonado: Oh, Naples.

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: And you said that you came—from where did you come?

Israel Rivas Gómez: From El Salvador, yes.

Detective Maldonado: From which state?

Israel Rivas Gómez: From Sensuntepeque, Cabañas.

Detective Maldonado: Uh...

Detective Mora: From which canton?

Israel Rivas Gómez: Um, well, when I was a kid I grew up in, um, i-in a canton called San  
Pedro, South to, uh, Victoria.

Detective Mora: Uh-huh.

Israel Rivas Gómez: Until nine years old. Then my parents with my mom moved to Sonsonate.

We lived there in Sonsonate... for five years. From there we went back to... We moved to  
the town, to Sensunte[SIC]...

Detective Mora: The same city?

Israel Rivas Gómez: Uh-huh, and we lived there in a neighborhood called California.

Detective Mora: So, are you from there?

Israel Rivas Gómez: Yes.

Detective Mora: So, since you came here, have you been there in-in th-the neighborhood  
California?

Israel Rivas Gómez: Uh-huh. I lived there for four years, almost five years when I came.

[U/A]

Detective Maldonado: Are you married?

Israel Rivas Gómez: No.

Detective Maldonado: Do you have children?

Israel Rivas Gómez: No.

Detective Maldonado: Do you have a car?

Israel Rivas Gómez: Yes.

Detective Maldonado: What type of car do you have?

Israel Rivas Gómez: I-i-it's a car. I just got it. It's not mine, but it is my brother's. I only got it to  
my name.

Detective Maldonado: Oh, ok.

Israel Rivas Gómez: Uh-uh-huh. A Toyota 1997, I think.

Detective Maldonado: W-what is it? Which Toyota?

Israel Rivas Gómez: Toyota.

Detective Maldonado: Don't you know which type? Car, truck, what is it?

Israel Rivas Gómez: No, it's a small car of four doors. It's where we had been working.

Detective Maldonado: Don't you know what type of—car is it?

Israel Rivas Gómez: It's a Toyota.

Detective Maldonado: Detective Maldonado: Yes, but—

Israel Rivas Gómez: But I don't know if it is...

Detective Mora: What model?

Israel Rivas Gómez: I don't know, like...

Detective Maldonado: What color?

Israel Rivas Gómez: It's like gray.



Israel Rivas Gómez: Uh-huh.

Detective Maldonado: You say that it is in your name, but it is your brother's? Which brother?

Israel Rivas Gómez: Yes, Ernesto, the brother.

Detective Maldonado: Ernesto?

[U/A]

Detective Maldonado: Does Ernesto live with you?

Israel Rivas Gómez: Yes.

Detective Maldonado: Who else lives there?

Israel Rivas Gómez: Daniel.

Detective Maldonado: Daniel.

Israel Rivas Gómez: Only three brothers and the wife of Ernesto live there, and his son.

Detective Maldonado: What is the name of Ernesto's wife?

Israel Rivas Gómez: Perla Fuentes.

Detective Maldonado: Perla?

Israel Rivas Gómez: Yes.

Detective Maldonado: Or Paula?

Israel Rivas Gómez: No, Perla.

Detective Maldonado: Perla.

Israel Rivas Gómez: Perla Fuente.

Detective Maldonado: How-how many kids does he have? Ernesto.

Israel Rivas Gómez: One, with—and he got her pregnant.

Detective Maldonado: Is she pregnant?

Israel Rivas Gómez: Yes, she is pregnant, that girl.

Detective Maldonado: How old is Ernesto?

Detective Maldonado: And... Daniel?

Israel Rivas Gómez: Twenty-five.

Detective Maldonado: And you?

Israel Rivas Gómez: Twenty-three.

Detective Maldonado: Everybody is close. Do you also have a sister?

Israel Rivas Gómez: Uh?

Detective Maldonado: Do you also have a sister?

Israel Rivas Gómez: Yes, I have two sisters here.

Detective Maldonado: In Mendota?

Israel Rivas Gómez: Yes.

Detective Maldonado: How old are they?

Israel Rivas Gómez: One is twenty-nine and the other is twenty... four, I think.

Detective Maldonado: The one who is twenty-nine, what's her name?

Israel Rivas Gómez: Daisy Noemí.

Detective Maldonado: What?

Israel Rivas Gómez: Daisy Noemí.

Detective Maldonado: Is she married?

Israel Rivas Gómez: Yes. She has... three kids and she is pregnant.

Detective Mora: Is Daisy twenty-nine?

Israel Rivas Gómez: Yes.

Detective Maldonado: On which street does Daisy live?

Israel Rivas Gómez: She lives in... Uh, um, I think right now she just moved [U/A] To be honest

I don't remember where she lives.

Detective Maldonado: Ok, and the other sister?

Detective Maldonado: What is her name?

Israel Rivas Gómez: Her name is Marlene Areli Rivas Cobos.

Detective Maldonado: Marlín?

Israel Rivas Gómez: Marlene.

Detective Maldonado: Marlene.

Israel Rivas Gómez: Uh-huh. Marlene Areli.

Detective Mora: Areli?

Israel Rivas Gómez: Uh-huh. Rivas Gómez. She lives—

Detective Maldonado: How is it called? [O/V]

Israel Rivas Gómez: The thing is that I don't remember the street, Cabala, over there near—near  
the firefighters.

Detective Maldonado: Uh, in Grande Street?

Israel Rivas Gómez: N-no.

Detective Maldonado: [O/V]

Israel Rivas Gómez: You take the twenty-three by [U/A], the firefighters are there. She lives in  
that street, Cabal , by the corner.

Detective Maldonado: Uh-huh.

Israel Rivas Gómez: She lives there in the corner. I don't know. I don't really know what's the  
name of the street.

Detective Maldonado: O-ok. How old is she?

Israel Rivas Gómez: She is twenty-four, I think. It's just that we were all born one year, one year,  
one year. [U/A]

Detective Maldonado: The dad didn't let the mother rest.

Israel Rivas Gómez: [CHUCKLES]

Israel Rivas Gómez: Yeah, he is younger than everybody.

Detective Maldonado: The youngest one. O-ok. And who owns the house where you live? Or  
you pay rent?

Israel Rivas Gómez: Uh... [SIGHS] I think it's my sister-in-law's. I don't know. It is in my  
brother's name.

Detective Maldonado: [O/V]

Israel Rivas Gómez: José Luis.

Detective Maldonado: The oldest one?

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: Where does he live?

Israel Rivas Gómez: Uh, he lives... Over there he lives by [U/A] with my sister—

Detective Maldonado: Where does she live?

Israel Rivas Gómez: In [U/A]

Detective Maldonado: José Luis, you said?

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: Rivas Gómez?

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: How old is he?

Israel Rivas Gómez: And uh... He is like thirty-three—I think—thirty-four.

Detective Mora: He is the oldest one.

Israel Rivas Gómez: No, there is an older one.

Detective Mora: Here too?

Israel Rivas Gómez: Yes, here.

Detective Maldonado: Do your parents live here too?

Detective Maldonado: Does he come to visit?

Israel Rivas Gómez: He has a visa.

Detective Maldonado: Oh.

Israel Rivas Gómez: My mom didn't get one.

Detective Maldonado: No.

Israel Rivas Gómez: He's the only one who comes.

Detective Maldonado: Oh.

Israel Rivas Gómez: Uh-huh, he came like two months ago. I think. Yeah, he came.

Detective Mora: Oh. He works as a temp and then he goes back?

Israel Rivas Gómez: No, no, he doesn't work when he comes.

Detective Mora: No?

Israel Rivas Gómez: He is already old.

Detective Maldonado: Oh, he is old.

Israel Rivas Gómez: Yes, he doesn't work anymore.

Detective Maldonado: Oh.

Israel Rivas Gómez: He only comes to visit us, then he goes back.

Detective Maldonado: Oh.

Detective Maldonado: For how long have you stayed here in the United States? 2014?

Israel Rivas Gómez: Almost four years, almost.

Detective Maldonado: Almost.

Israel Rivas Gómez: Yes.

Detective Maldonado: An, uh, why did you come from El Salvador?

Israel Rivas Gómez: My brothers asked us to bring my sister, Daisy Noemí.

Detective Maldonado: Uh-huh.

Detective Maldonado: Oh.

Israel Rivas Gómez: Because she is like... She is like very reckless, very mad.

Detective Maldonado: Oh.

Israel Rivas Gómez: So, he told me to come with her and—well I didn't want to come. I was  
better off over there.

Detective Maldonado: Uh-huh.

Israel Rivas Gómez: No, well, he told me to come here and so I came with here. Uh-huh.

Detective Maldonado: Didn't you have problems there in your country?

Israel Rivas Gómez: What?

Detective Maldonado: Didn't you have problems there in your country?

Israel Rivas Gómez: No, no.

Detective Maldonado: No? Oh, ok. [SIGHS] And how is Daniel doing?

Israel Rivas Gómez: He is fine, yes.

Detective Maldonado: Do you use drugs?

Israel Rivas Gómez: Yes.

Detective Maldonado: What type of drugs do you use?

Israel Rivas Gómez: Marihuana.

Detective Maldonado: Marihuana? How often do you use marihuana?

Israel Rivas Gómez: A little bit.

Detective Maldonado: A little bit? A little bit.

Israel Rivas Gómez: Yes, a little bit.

Detective Maldonado: But how often—how many times per week?

Detective Mora: Or per day?

Israel Rivas Gómez: Once a day.

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: And don't you have drugs?

Israel Rivas Gómez: No.

Detective Mora: No?

Detective Maldonado: Do you drink alcohol?

Israel Rivas Gómez: No.

Detective Maldonado: No, you don't have a vice?

Israel Rivas Gómez: What?

Detective Maldonado: Don't you have a vice?

Israel Rivas Gómez: Well, what?

Detective Maldonado: Like using...

Detective Mora: Vice.

Israel Rivas Gómez: Oh, vice? No, well, I only—only smoke marihuana.

Detective Maldonado: [CLEARS THROAT]

Israel Rivas Gómez: Yes.

Detective Maldonado: Uh-huh. Ok. Any questions?

Detective Mora: You're working right now, aren't you?

Israel Rivas Gómez: Yes.

Detective Mora: For... Pacific Orchard?

Israel Rivas Gómez: Uh-huh.

Detective Mora: How long have you been working for them?

Israel Rivas Gómez: [U/A]

Detective Mora: Four years?

Israel Rivas Gómez: Three years.

Israel Rivas Gómez: When I arrived, I went to work for another company for like six months.

From there, I went to work to this one as [U/A]

Detective Mora: Do you go with someone else or you take your car?

Israel Rivas Gómez: No, we just take the car.

Detective Mora: The car?

Israel Rivas Gómez: Uh-huh.

Detective Mora: The gray car, did you say?

Israel Rivas Gómez: Uh-huh.

Detective Mora: It was a Toyota, wasn't it?

Israel Rivas Gómez: Uh-huh.

Detective Mora: 97. Who else drives that car? Or who drives it? You? Yes? Who else?

Israel Rivas Gómez: My brother and me. We only use it to go out to buy some tacos.

Detective Mora: Do you only use it for that?

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: And which brother?

Detective Mora: Which one of the five or four?

Israel Rivas Gómez: Yes, uh, me and Daniel.

Detective Mora: Oh. And... Daniel?

Israel Rivas Gómez: Uh-huh.

Detective Mora: Have they ever stopped you?

Israel Rivas Gómez: Of course!

Detective Mora: Tickets, do you have any?

Israel Rivas Gómez: With that car, no.

Detective Mora: No?



Detective Mora: Uh-huh.

Israel Rivas Gómez: She stopped me like... I think 15 or 20 days ago.

Detective Mora: Did she have you a ticket?

Israel Rivas Gómez: No, no.

Detective Mora: Ok.

Israel Rivas Gómez: She only took pictures.

Detective Mora: Uh-huh.

Israel Rivas Gómez: She asked for my name and telephone number.

Detective Mora: Uh-huh. At what time—? Uh, at what time do you get up in the morning to go  
to work?

Israel Rivas Gómez: At four.

Detective Mora: At four?

Israel Rivas Gómez: At five.

Detective Mora: Early, four or five?

Israel Rivas Gómez: Five. Yes, at five. Work starts at seven.

Detective Mora: Oh-ok.

Israel Rivas Gómez: Lately we have been getting up at five because we leave until six, we start  
working at seven.

Detective Mora: And then—[O/V] at what time do you leave your house?

Israel Rivas Gómez: We go out at four thirty.

Detective Mora: Uh-huh.

Israel Rivas Gómez: We go home. [O/V]

Detective Mora: From home to work?

Israel Rivas Gómez: Uh-huh.

Israel Rivas Gómez: From home to work?

Detective Mora: Yes.

Israel Rivas Gómez: From home to work, we leave at six.

Detective Mora: At six?

Israel Rivas Gómez: Ten minutes to six.

Detective Mora: Uh-huh.

Israel Rivas Gómez: Work starts at seven.

Detective Mora: And how far is the, uh, your work from your house?

Israel Rivas Gómez: Mm, forty minutes.

Detective Mora: Amazing, wow. Where do you go to?

Israel Rivas Gómez: Until the one hundred ninety-eight.

Detective Mora: Oh, yes, yes.

Israel Rivas Gómez: To Dorado.

Detective Mora: And, uh, uh... So, you leave work at—at what time?

Israel Rivas Gómez: At ten minutes to six.

Detective Mora: No-no-no, I mean, once you finish— [O/V]

Israel Rivas Gómez: [O/V]

Detective Mora: —once you finish working.

Israel Rivas Gómez: Yes, I get out at four thirty.

Detective Mora: Four thirty?

Israel Rivas Gómez: Yes.

Detective Mora: [O/V] And then?

Israel Rivas Gómez: And we get home at... six thirty, sometimes we get there at seven—we have

a sister that works making food. In the afternoon, we go to give her the backpack and we stay for a while.

Detective Mora: Oh, does she prepare food for you every day?

Israel Rivas Gómez: Uh-huh.

Detective Mora: The sister?

Israel Rivas Gómez: We pay her.

Detective Mora: That's okay. What does she prepare? Salvadoran food or...?

Israel Rivas Gómez: Yes, [U/A].

Detective Mora: Uh, that is good, some pupusas.

Israel Rivas Gómez: Pupusas, just like that, uh-huh. Beans with tortillas.

Detective Mora: That's okay.

Detective Maldonado: I love pupusas.

Israel Rivas Gómez: [CHUCKLES]

Detective Mora: [U/A]

Detective Maldonado: Have you ever been arrested?

Israel Rivas Gómez: No, not here nor there.

Detective Maldonado: No? Ok. Well, here you have rights when you are being arrested like right now that you are arrested. You are, uh, detained here in the office.

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: You have, uh, been here for several hours, ok? And you are detained, ok?

And I want to speak with you regarding a case that we are investigating.

Israel Rivas Gómez: Uh-huh.

Detective Maldonado: And I am going to read you your rights, and-and then after I read them to you, I want to speak with you about it.

Detective Maldonado: You have the right to, uh, to remain silent. Do you understand? Say yes-  
say yes or no.

Israel Rivas Gómez: Yes.

Detective Maldonado: Anything that you say may be used against you in a-in a court of law. Do  
you understand? Yes or no?

Israel Rivas Gómez: Yes.

Detective Maldonado: Having the right to retain an attorney before and while you are being  
questioned. Do you understand?

Israel Rivas Gómez: Yes.

Detective Maldonado: If you cannot afford a lawyer, one will be—will be appointed before  
being questioned. Do you understand? Yes?

Israel Rivas Gómez: Some taxes?

Detective Mora: [U/A]

Detective Maldonado: If you cannot afford to hire a lawyer one will be appointed—

Detective Mora: Without cost.

Israel Rivas Gómez: Oh, I see, like a free lawyer?

Detective Mora: Yes.

Detective Maldonado: Before—before being questioned. Do you understand?

Israel Rivas Gómez: Yes.

Detective Maldonado: Yes? Let's leave the mind[SIC] rights aside. I have some questions  
regarding a case that we are investigating.

Israel Rivas Gómez: Ok.

Detective Mora: I am going to warm it up OK.

[DOOR CLOSING]

Israel Rivas Gómez: [U/A]

Detective Maldonado: Time is, uh, 19:32 hours.

2:59:40 AM

[END RECORDING [Israel Gómez Rivas @1633hrs(volume edited).MP3]]