

## **APPENDIXES**

### **Appendix A.— Tenth Circuit Order and Judgment**

*United States v. Gigena*, No. 25-4112, filed August 13, 2026.

[Record: Tenth Circuit Order and Judgment, No. 25-4112, Doc. 85-1, Aug. 13, 2026.]

### **Appendix B — Order Denying Panel Rehearing and Rehearing En Banc**

Order denying petitioner’s petition for panel rehearing and rehearing en banc, No. 25-4112, filed August 31, 2026.

[Record: Tenth Circuit order denying panel rehearing and rehearing en banc, No. 25-4112, Doc. 88, Aug. 31, 2026.]

### **Appendix C — District Court Orders Granting Pre-Trial, Granting Post-Trial Motions, and Addressing Lodged Filings**

District court order granting pre-trial continuances, orders denying (pre)post-trial motions and addressing pretrial lodged filings, order denying post-trial continuance for transcripts at sentencing, and order denying motion for vindictive prosecution and motion for 28 USC §1927 sanctions.

[Record: Supp.ROA Vol. IV, Doc. 54-1, pp. 159–160, 261–262; ROA Vol. I, pp. 83–85, 86–99, 205–206, 233–234.]

## **Appendix D — Rule 29 Sufficiency Challenge Excerpts**

Materials preserving petitioner’s sufficiency challenge to federal-officer status and official duty.

[Record: Rule 29 preservation, Supp.ROA Vol. I, Doc. 40, pp. 276–280; Supp.ROA Vol. IV, Doc. 54-1, pp. 514–516, 518–525, 660–663; ROA Vol. I, Doc. 16-1, pp. 15–16, pp. 78–82.]

## **Appendix E — Emergency Discovery / TFO Bona Fide Request Excerpts**

Materials requesting oath, deputation, MOU, expiration, renewal, United States Attorney approval, USMS policy, body-worn-camera, and task-force authorization records.

[Record: ROA Vol. I, Doc. 16-1, pp. 100–108, 182–184, 185–191.]

## **Appendix F — Petition for Panel Rehearing and Rehearing En Banc**

Petition for panel rehearing and rehearing en banc filed in *United States v. Gigena*, No. 25-4112.

[Record: Petition for Panel Rehearing and Rehearing En Banc, No. 25-4112, Doc. 86-1]

## **Appendix G — Juror No. 8 Filed Impressions**

Post-verdict juror impressions bearing on prejudice from omitted theory-of-defense instructions.

[Record: Supp.ROA Vol. VI, Doc. 54-3, pp. 114–115, 118–127.]

## **Appendix H — Tribal Court Custody Decree and Tribal Materials**

Tribal Court custody decree, federally recognized American Indian tribal status materials, dismissed state-criminal witnesses' declarations, and the government's sentencing-material acknowledgment that petitioner's relocation conduct was "not illegal."

[Tribal Custody Decree; Letter to Pope Leo; Record: Supp.ROA Vol. V, Doc. 54-2, pp. 188–189, 192, 423–442, 476–486, 494–495, 499–501, 503, 542–548, 613–621, 629–632, 689–700; ROA-Vol. I (Dkt.16-1, p.178).]

## **Appendix I — EOUSA Final Agency Action / FOIA Response**

EOUSA final agency action and FOIA materials concerning United States Attorney approval and warrant status.

[Record: Supp.ROA Vol. V, Doc. 54-2, pp. 179–184.]

## **Appendix J — USMS Policy and OIG Special Deputation Materials**

Relevant excerpts from USMS Policy Directives 8.18, 8.9, and 2.11, and DOJ OIG Audit 24-116 concerning special deputation authority and lapses.

[Record: DOJ OIG Audit 24-116 (Key Excerpts), ROA Vol. I, Doc. 16-1, pp. 109–143, 120–121, 123–125; USMS Policy Directives 8.18, 8.9, and 2.11, Supp.ROA Vol. IV, Doc. 54-1, pp. 664–685.]

## **Appendix K — No-Stipulation Email / Instruction to Counsel and Chambers**

Pretrial instruction not to stipulate that the alleged victim was a federal officer engaged in official duties.

[Record: Supp.ROA Vol. V, Doc. 54-1, p. 527.]

## **Appendix L — Selected Trial Transcript Excerpts**

Officer deputation testimony, warrant deficiency, body-worn-camera/MOU testimony, warrant stipulation and correction, prosecutor's closing argument, credibility/vouching statements, prosecutor contact with witness Erika Faerber, video/audio exhibit alteration issue, and final jury instructions.

[Record: Supp.ROA-Vol.I (Dkt.40,p.106, p.107L.23–24, p.108L.19–21, p.114L.2–23, p.155, p.213-215, p.274L.19–p.276L.5, p.334L.1–5, 11–13, p.356L.18–p.358L.4, p.371L.3–4, p.371L.19–p.372L.15, p.375L.6–11, p.376L.3–5, p.395L.18–22).]

## **Appendix M — Relevant Photographic Exhibits**

Photographs showing petitioner holding his children to demonstrate their size, related photographs, petitioner's injuries, photographs showing no visible neck injuries to the officer, and photographs or records showing the children's injuries after the arrest.

[Record: Supp.ROA Vol. IV, Doc. 54-1, pp.152–54, pp.156–58, pp.605–09; Trial Exhibits Doc. 67, pp.1–2.]

## **Appendix N — Served Subpoena, Omitted Witness Testimony, Witness Limitations, and Preserved Right to Testify**

Materials concerning the served subpoena for petitioner's sister, Leilani Gigena, and petitioner's contention that her favorable testimony was omitted despite her status as a key defense witness. Materials also concerning prosecutor, defense counsel, and court discussions about witness limitations, leading government witnesses, the warrant stipulation, redactions, and petitioner's preserved right to testify.

[Record: Supp.ROA-Vol.VII (Doc.63, pp.24–29, 37, 48, 50, 78–79); Supp.ROA-Vol.I (Dkt.40, p.14L.1–p.18L.16, p.320L.1–p.321L.25, p.341L.15–p.342L.25).]

## **Appendix O — Jury Selection / Panel Alteration Materials**

Materials concerning petitioner's preserved jury-selection objection, the alleged post-selection cross-out or replacement of the only Native American juror, jury panel records, Jury Notes, Jury Instruction A, and counsel's jury notes.

[Record: Supp.ROA-Vol.I (Dkt.40, p.42L.23–p.43L.1, p.89L.5–13, p.96L.6–12); Supp.ROA-Vol.VI (Dkt.54-3, pp.22–28); Supp.ROA-Vol.V (Dkt.54-2, pp.85–86, 110–114).]

## **Appendix A — Tenth Circuit Order and Judgment**

*United States v. Gigena*, No. 25-4112, filed August 13, 2026.

[Record: Tenth Circuit Order and Judgment, No. 25-4112, Doc. 85-1, Aug. 13, 2026.]

**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**August 13, 2026**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GABRIEL GIGENA,

Defendant - Appellant.

No. 25-4112  
(D.C. No. 2:24-CR-00228-TS-CMR-1)  
(D. Utah)

**ORDER AND JUDGMENT\***

Before **TYMKOVICH, McHUGH, and FEDERICO**, Circuit Judges.

A jury convicted pro se appellant Gabriel Gigena of assaulting a federal officer. The district court then imposed a below-guidelines sentence. Gigena appeals the conviction and challenges the sentence as procedurally

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\* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

and substantively unreasonable. Exercising jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), we affirm.

## I

Following a domestic dispute in California, Gigena took his twin daughters to Utah in the middle of the night. A California court issued a warrant for Gigena's arrest. The United States Marshal's Service in Utah formed a task force to execute the warrant. The task force deputized local police officers for the assignment.

Task force police officers spotted Gigena and his daughters at a park in Park City, Utah. Gigena walked past a van where Officer Michael Piekarczyk and another officer were watching him. The officers got out of the van to arrest him. Officer Piekarczyk wore a task force badge at his hip and placard on his vest that said "POLICE." Supp. R. I at 168.

Officer Piekarczyk ran toward Gigena and announced, "Gabriel" and "Police." *Id.* at 131. He then knocked Gigena's hands away from his daughters and tackled him to the ground. In response, Gigena got his arm around Officer Piekarczyk's neck and put him in headlock. Officer Piekarczyk tried to break free but could not. He was able to call out, "He's choking me." *Id.* at 196.

Additional officers arrived announcing themselves. One officer secured the children while others tried to free Officer Piekarczyk. The

officers ordered Gigena to stop fighting, and Gigena, who claims to be a tribal chief, said, “You can’t arrest me. I’m a chief.” *Id.* at 203. Police car lights continued to flash, and sirens continued to blare.

The officers eventually succeeded in prying Gigena’s hands apart by peeling his fingers away individually to break his grip. Officer Piekarczyk sustained injuries to his neck, back and head from Gigena’s headlock. The police arrested Gigena. A federal grand jury indicted Gigena for assaulting a federal officer in violation of 18 U.S.C. §§ 111(a)(1) and 1114.

Judge Ted Stewart was assigned to Gigena’s case. He had originally been assigned to a civil case filed by Gigena, but he recused from that case due to another judge’s scheduling conflict and the parties’ request to proceed on the scheduled trial date. Neither Gigena nor the government objected.

Before trial, Gigena submitted several pro se documents. The district court lodged these documents, but it did not consider them because Gigena was represented by counsel.

At trial, Gigena did not challenge the lawfulness of his arrest. Gigena also did not dispute that Officer Piekarczyk was a federal officer engaged in official duties. For his defense, Gigena argued that he had been subdued instantly, he had not assaulted the officer, he reacted to the sudden confrontation, and he had no intent to assault anyone. Gigena did not raise

self-defense, nor did he seek a self-defense instruction. Several officers testified that Gigena would not willingly release the chokehold on Officer Piekarczyk despite receiving orders to do so. The jury convicted Gigena.

After the verdict, Gigena moved to terminate his counsel and represent himself. The district court permitted him to do so. Gigena then filed a series of post-trial motions and moved the district court to adjudicate his pre-trial pro se documents. In a written order, the district court considered and rejected his post-trial motions concluding that: (1) Judge Stewart's assignment to Gigena's criminal case and subsequent recusal from Gigena's civil case was not improper and did not require disqualification; (2) Gigena was not prohibited from testifying; (3) Gigena did not request a self-defense instruction, nor did he argue self-defense; and (4) there was no violation of Gigena's Sixth Amendment right to a speedy trial. The district court then decided to review Gigena's pre-trial documents and found no arguments of merit. The district court rejected Gigena's argument that with no memorandum of understanding between the local law enforcement and the U.S. Marshals, the government could not establish Officer Piekarczyk was a federal officer. It also rejected his assertion that the district court did not have subject matter jurisdiction over the case because as a tribal chief, he was entitled to tribal immunity.

The district court sentenced Gigena to 15 months' imprisonment and three years of supervised release – a sentence below the United States Sentencing Guidelines advisory range of 21-27 months' imprisonment. It reasoned Gigena's conduct was initially understandable given that he was tackled by surprise. Gigena timely appealed.

## II

Gigena challenges decisions concerning claims in pre-trial documents he lodged while he was counseled and decisions concerning claims in post-trial motions he filed pro se.<sup>1</sup> As explained below, any issue relating to the pre-trial documents are waived.

As for the post-trial motions, we resolve them as follows: 1) several of Gigena's post-trial claims fail to survive plain error review; 2) he fails to show the district court lacked subject matter jurisdiction based on tribal immunity; 3) the district court did not err in denying his motion to disqualify the trial judge; and 4) his ineffective assistance of counsel claim must be brought on collateral review. Gigena's remaining arguments challenging the sufficiency of the evidence and the reasonableness of his sentence also fail.

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<sup>1</sup> Because Gigena proceeds pro se, we construe his pleadings liberally, but we do not act as his advocate. *See United States v. Sjodin*, 139 F.4th 1188, 1205 (10th Cir. 2025) (observing the court will liberally construe a pro se litigant's filings but will not make arguments for a litigant).

**A**

Gigena filed pre-trial documents that were lodged in the district court related to issues he raises on appeal – sufficiency of the indictment and vindictive prosecution. Under Federal Rule of Criminal Procedure 12(b)(3), a party must raise these challenges before trial. The district court declined to review them at the time he filed them because he had counsel. *See United States v. Pearl*, 324 F.3d 1210, 1216 (10th Cir. 2003) (denying motion to file a pro se pleading because the litigant was represented). Post-trial, the district court allowed Gigena to proceed pro se and decided that “[o]ut of an abundance of caution,” it would review “the pre-trial lodged documents in search of any arguments that could support a new trial or acquittal,” but found none of merit. R. I at 96. Gigena does not challenge this decision, so he has waived any argument on these issues. *Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) (“Issues not raised in the opening brief are deemed abandoned or waived.” (internal quotation marks omitted)).

**B**

**1**

Gigena challenges the district court’s rulings concerning the following claims asserted in the post-trial motions – a prosecutorial misconduct claim, an unlawful arrest claim, a jury-instructions claim, and a Sixth Amendment speedy-trial claim. Because these challenges were not properly preserved in

the district court, all are subject to plain error review. To show plain error, a party must establish the presence of “(1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Gonzalez-Huerta*, 403 F.3d 727, 732 (10th Cir. 2005). “An error is plain if it is clear or obvious.” *United States v. Chatwin*, 60 F.4th 604, 606 (10th Cir. 2023).

Gigena’s prosecutorial misconduct claim fails. He argues the prosecutor “repeated improper statements, vouched for officer credibility, and misrepresented the law and evidence.” Aplt. Op. Br. at 32. But he does not point to specific statements or conduct by the prosecutor that suggest misconduct that “prejudice[d] a specific constitutional right” or rendered the trial “so fundamentally unfair as to deny [him] due process.” *United States v. Christy*, 916 F.3d 814, 824 (10th Cir. 2019) (internal quotation marks omitted). He also argues the government failed to turn over exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), but he does not identify any exculpatory evidence, let alone explain how it might be favorable or material. See *United States v. Velarde*, 485 F.3d 553, 558 (10th Cir. 2007) (explaining a “*Brady* violation must show that (1) the prosecution suppressed evidence, (2) the evidence was favorable to the defendant, and (3) the evidence was material” (internal quotation marks

omitted)). And the Sixth Amendment speedy-trial claim also fails because he did not show the delay was presumptively prejudicial. *See United States v. Medina*, 918 F.3d 774, 780 (10th Cir. 2019) (concluding that to trigger the speedy-trial analysis, the delay must approach the general one-year threshold to establish presumptive prejudice). Gigena thus does not show the district court committed error that was plain. And he fails to argue that his unlawful-arrest claim and jury-instructions claim should be reviewed for plain error, so we deem these arguments to be waived. *See United States v. Leffler*, 942 F.3d 1192, 1196 (10th Cir. 2019) (“When an appellant fails to preserve an issue and also fails to make a plain-error argument on appeal, we ordinarily deem the issue waived (rather than merely forfeited) and decline to review the issue at all – for plain error or otherwise.”).

2

Gigena also argues the district court did not have subject matter jurisdiction due to tribal sovereignty and immunity. “We review issues of subject matter jurisdiction de novo.” *Youren v. Tintic Sch. Dist.*, 343 F.3d 1296, 1305 (10th Cir. 2003). Gigena asserts that the California court that issued the children’s custody order and his arrest warrant lacked jurisdiction to do so because he belongs to a tribe, and therefore, the District Court for the District of Utah did not have jurisdiction to preside over his criminal prosecution. His argument is misplaced. Gigena was indicted for

and convicted of assault of a federal officer under 18 U.S.C. §§ 111(a)(1) and 1114. 18 U.S.C. § 3231 confers on district courts “jurisdiction . . . of all offenses against the laws of the United States.” The district court thus had subject matter jurisdiction to hear this case. *See* 18 U.S.C. § 3231.

3

The district court denied one of Gigena’s post-trial motions as a motion to disqualify Judge Stewart. We review the denial of a motion to disqualify a judge for abuse of discretion. *See United States v. Cooley*, 1 F.3d 985, 994 (10th Cir. 1993).

To disqualify a judge, 28 U.S.C. § 144 requires a party to timely file a sufficient affidavit stating the facts and reasons which “give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment.” *Bell v. Chandler*, 569 F.2d 556, 559 (10th Cir. 1978) (internal quotation marks omitted). “Disqualification under 28 U.S.C. § 144 places a substantial burden on the moving party to demonstrate that the judge is not impartial, not a burden on the judge to prove that he is impartial.” *In re McCarthy*, 368 F.3d 1266, 1269 (10th Cir. 2004). Disqualification under § 144 is only appropriate when a party’s affidavit is both timely and sufficient. *See id.*; *Green v. Dorrell*, 969 F.2d 915, 919 (10th Cir. 1992).

Gigena does not challenge the district court’s characterization of his motion as seeking to disqualify Judge Stewart. He argues Judge Stewart’s

recusal from Gigena's civil case and assignment to Gigena's underlying criminal case constituted structural error violating his due process rights and right to an impartial tribunal. But Gigena did not object to his assignment nor does Gigena now present an adequately developed argument that the reassignment demonstrated Judge Stewart is not impartial. Gigena further argues that Judge Stewart's rulings suppressed exculpatory evidence, but he does not point to what exculpatory evidence was suppressed. And Gigena failed to comply with the § 144 procedural requirements and failed to make a meaningful argument to support disqualification. Under these circumstances, we find no abuse of discretion.

4

Gigena made arguments in several post-trial filings that the district court construed as asserting Sixth Amendment ineffective assistance of counsel claim. The district court declined to consider Gigena's arguments at that stage of the proceedings because a defendant must bring an ineffective assistance of counsel claim in collateral proceedings. We agree with the district court. *See United States v. Galloway*, 56 F.3d 1239, 1240 (10th Cir. 1995) (concluding that except under circumstances not present here, "[i]neffective assistance of counsel claims should be brought in collateral proceedings, not on direct appeal").

C

Gigena challenges the sufficiency of the evidence for his conviction. “We review de novo whether there was sufficient evidence to support a defendant’s convictions.” *United States v. Robinson*, 993 F.3d 839, 844 (10th Cir. 2021). “We consider all evidence, circumstantial and direct, but we do not weigh the evidence or consider credibility of the witnesses.” *Id.* (internal quotation marks omitted). We review the evidence “and any reasonable inferences drawn therefrom in the light most favorable to the government.” *United States v. Isabella*, 918 F.3d 816, 830 (10th Cir. 2019). “[A]n inference is only reasonable where there exists a probability that the conclusion flows from the proven facts,” *United States v. Rahseparian*, 231 F.3d 1257, 1262 (10th Cir. 2000) (internal quotation marks omitted), whereas “[a]n inference is unreasonable where the jury engaged in a degree of speculation and conjecture that renders its findings a guess or mere possibility,” *id.* (internal quotation marks omitted). “Rather than examining the evidence in bits and pieces, we evaluate the sufficiency of the evidence by considering the collective inferences to be drawn from the evidence as a whole.” *United States v. Tennison*, 13 F.4th 1049, 1059 (10th Cir. 2021) (internal quotation marks omitted). Thus, reversing a jury conviction for insufficient evidence is only appropriate “when no reasonable jury could

find the defendant guilty beyond a reasonable doubt.” *Isabella*, 918 F.3d at 830.

Assault of a federal officer requires the government to show the defendant “forcibly assault[ed], resist[ed], oppose[d], impede[d], intimidate[d], or interfere[d] with any person designated in section 1114 of [Title 18] while engaged in or on account of the performance of official duties.” 18 U.S.C. § 111(a)(1). 18 U.S.C. § 1114 designates as a federal officer “any officer or employee of the United States... or any person assisting such an officer or employee in the performance of such duties or on account of that assistance.”

Gigena argues the government failed to provide sufficient evidence to show that Officer Piekarczyk was a federal officer within the meaning of the statute. He asserts that the lack of warrant in hand with an affidavit, lack of approval from the United States’ Attorney’s Office for the task force, and lack of a memorandum of understanding between the U.S. Marshals and local law enforcement means the government failed to provide evidence that Officer Piekarczyk was a federal officer at the time of the event. Gigena then argues the government failed to present evidence to overcome certain defenses – self-defense, honest-mistake, excessive force, and entrapment – to establish intent. Both arguments fail.

First, our review of the record, specifically the trial testimony, confirms the government presented sufficient evidence showing Officer Piekarczyk was deputized by the United States Marshals Services as a task force officer, and therefore a federal officer for purposes of the assault statute. And in any event, the statute also specifically includes “any person assisting” a federal officer in the performance of federal duties. 18 U.S.C. § 1114. Second, a prosecutor need not present evidence to overcome a defense that is not pursued by the defendant at trial in order to establish intent. We thus conclude the government presented sufficient evidence to permit a rational jury to find the essential elements of the crime beyond a reasonable doubt.

#### D

Finally, Gigena argues that his sentence is procedurally and substantively unreasonable. “We review sentences for reasonableness under a deferential abuse of discretion standard.” *United States v. Haley*, 529 F.3d 1308, 1311 (10th Cir. 2008). So “[w]e review the district court’s legal interpretation and application of the sentencing guidelines de novo and review the court’s factual findings for clear error, giving due deference to the district court’s application of the guidelines to the facts.” *United States v. Henry*, 164 F.3d 1304, 1310 (10th Cir. 1999). This review “includes both a procedural component, encompassing the method by which a

sentence was calculated, as well as a substantive component, which relates to the length of the resulting sentence.” *United States v. Smart*, 518 F.3d 800, 803 (10th Cir. 2008). “A sentence is procedurally unreasonable if the district court incorrectly calculates or fails to calculate the Guidelines sentence, treats the Guidelines as mandatory, fails to consider the § 3553(a) factors, relies on clearly erroneous facts, or inadequately explains the sentence.” *Haley*, 529 F.3d at 1311. A sentence is substantively unreasonable if “the court imposes a sentence that does not fairly reflect the relevant sentencing factors or circumstances of the defendant.” *United States v. Maldonado-Passage*, 56 F.4th 830, 842 (10th Cir. 2022). “[W]e will deem a sentence unreasonable only if it is arbitrary, capricious, whimsical, or manifestly unreasonable.” *United States v. Lente*, 759 F.3d 1149, 1158 (10th Cir. 2014) (internal quotation marks omitted).

Gigena does not distinguish his procedural and substantive reasonableness arguments. For his procedural challenge, he appears to take issue with the method by which the sentence was calculated because he argues the district court improperly relied on a previous conviction while calculating his criminal history category. Whereas for his substantive challenge he asserts the district court considered improper criminal history.

The Presentence Investigation Report (PSR) stated the base offense level for 18 U.S.C. § 111(a)(1) as 10. It then considered specific offense

characteristics and accounted for a five-point increase – three points for an offense involving physical contact and two points for the victim sustaining bodily injury. After the increases, the offense level total was 15. Gigena does not challenge these calculations. The PSR then determined he had three criminal history points for a 2007 conviction related to evading a peace officer and drug charges, putting him in criminal history category II. The advisory guidelines range for a base offense level of 15 and criminal history category II is 21 to 27 months' imprisonment. USSG Ch. 5, Pt. A. After hearing from both parties, the district court adopted the PSR without changes to the guideline calculations. The district court then discussed the 18 U.S.C. § 3553(a) factors in detail and imposed a below-guidelines sentence of 15 months' imprisonment, followed by three years of supervised release.

Gigena argues the district court improperly relied on the 2007 conviction to calculate his criminal history category because it was outside the 15-year period considered when calculating criminal history points, and the PSR stated the records were not available. Gigena asserts “[t]here are no indicia that [he] was incarcerated during the 15-year window” and that the PSR does not corroborate the conviction. Aplt. Op. Br. at 42. He further contends that but for this error, he would be in a lower criminal history category and thus a materially lower guideline range. We disagree.

Gigena has “an affirmative duty to make a showing that the information in the PSR was unreliable and articulate the reasons why the facts contained therein were untrue or inaccurate.” *United States v. McDonald*, 43 F.4th 1090, 1096 (10th Cir. 2022) (brackets, underlining, and internal quotation marks omitted). The PSR states that he was reincarcerated for this conviction in 2009, and he does not directly dispute that fact, nor does he claim that the conviction in the report did not happen. He rests solely on the lack of corroboration that he was incarcerated. This is insufficient to trigger a Federal Rule of Criminal Procedure 32(i)(2)(B) fact finding inquiry by the district court. *See id.* (concluding that an objection that the information was not credible or reliable alone was insufficient to trigger the district court’s Rule 32 fact finding obligation).

As for Gigena’s substantive-reasonableness challenge, we find it unpersuasive. A below-guidelines sentence is presumptively reasonable. *See United States v. Balbin-Mesa*, 643 F.3d 783, 788 (10th Cir. 2011). Gigena argues the district court improperly relied on stale convictions and an irrelevant speeding ticket in its decision. We find nothing in the record to show the district court’s variance to impose a below-guidelines sentence was influenced by either the convictions or the speeding ticket. The record is clear that the district court thoughtfully considered the § 3553(a) factors

in determining Gigena's sentence. Under these circumstances, Gigena fails to rebut the presumption that his sentence is reasonable.

### III

For the foregoing reasons, we affirm the district court's judgment. We deny all pending motions as meritless.

Entered for the Court

Richard E.N. Federico  
Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT  
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Christopher M. Wolpert  
Clerk of Court

Jane K. Castro  
Chief Deputy Clerk

August 13, 2026

Gabriel Omar Gigena  
33rd Dynasty of the Kingdom of Hayah Hawah  
6990 South Park Centre Drive, Suite 1  
Salt Lake City, UT 84121

**RE: 25-4112, United States v. Gigena**  
Dist/Ag docket: 2:24-CR-00228-TS-CMR-1

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert  
Clerk of Court

cc: Tyler Murray  
Joseph Palmer

CMW/eb

## **Appendix B — Order Denying Panel Rehearing and Rehearing En Banc**

Order denying petitioner's petition for panel rehearing and rehearing en banc, No.

25-4112, filed August 31, 2026.

[Record: Tenth Circuit order denying panel rehearing and rehearing en banc, No.

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**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**August 31, 2026**

**FOR THE TENTH CIRCUIT**

**Christopher M. Wolpert**  
**Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GABRIEL GIGENA,

Defendant - Appellant.

No. 25-4112  
(D.C. No. 2:24-CR-00228-TS-CMR-1)  
(D. Utah)

**ORDER**

Before **TYMKOVICH, McHUGH, and FEDERICO**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

Per Curiam

## **Appendix C — District Court Orders Granting Pre-Trial, Granting Post-Trial Motions, and Addressing Lodged Filings**

District court order granting pre-trial continuances, orders denying (pre)post-trial motions and addressing pretrial lodged filings, order denying post-trial continuance for transcripts at sentencing, and order denying motion for vindictive prosecution and motion for 28 USC §1927 sanctions.

[Record: Supp.ROA Vol. IV, Doc. 54-1, pp. 159–160, 261–262; ROA Vol. I, pp. 83–85, 86–99, 205–206, 233–234.]

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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL OMAR GIGENA,

Defendant.

**ORDER CONTINUING JURY TRIAL  
AND EXCLUDING TIME UNDER THE  
SPEEDY TRIAL ACT**

Case No. 2:24-cr-228-HCN-CMR

Howard C. Nielson, Jr.  
United States District Judge

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Having considered Defendant's stipulated motion to continue jury trial, the court hereby finds as follows:

Defendant Gabriel Omar Gigena appeared in court for his arraignment on the indictment in this matter on August 29, 2024. *See Dkt. No. 7*. The court scheduled a trial for November 5, 2024, *see id.*, within the 70-day time period that the Speedy Trial Act requires.

Mr. Gigena seeks a 60-day continuance of the trial pursuant to 18 U.S.C. § 3161(h)(7). *See Dkt. No. 22*. He is not in custody. *See id.* ¶ 2. Defense counsel represents that he has conferred with Mr. Gigena and explained why the requested continuance is necessary, and that Mr. Gigena agrees that the continuance will not hinder or prejudice his defense. *See id.* Counsel for the government stipulates to the motion. *See id.* There are no co-defendants.

Defense counsel represents that he has conferred with Mr. Gigena in person, telephonically, and via email regarding the circumstances of his case, the allegations against him, and potential defenses. *See id.* ¶ 1. Defense counsel further represents that he is still in the early stages of investigating the case and the allegations underpinning the charged offenses and that much work remains to prepare this matter for trial or potential resolution. *See id.* Specifically, defense counsel represents that he needs additional time to identify potential witnesses and to

spot legal issues presented by the case, especially given the number of potential witnesses involved and the nature of the allegations against Mr. Gigena. *See id.*

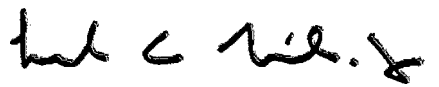
Based on the foregoing, the court finds that failure to grant a continuance would “result in a miscarriage of justice” and deny counsel “the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.” 18 U.S.C. § 3161(h)(7)(B)(i), (iv). The court further finds that the length of the requested continuance is reasonable and reasonably related to the reasons for the continuance. For these reasons, the court finds that “the ends of justice served by the granting of such continuance outweigh the best interest of the public and the defendant in a speedy trial.” *Id.* § 3161(h)(7). Accordingly, the court finds that there are facts that support a continuance of the trial date in this matter, and good cause for a finding of excludable time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, *et seq.*

THEREFORE, FOR GOOD CAUSE SHOWN:

1. The trial in this matter is continued from November 5, 2024 to January 14, 2025.
2. The time period from October 7, 2024, to January 14, 2025, inclusive, is excluded in computing the time within which the trial must commence, pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (h)(7)(B)(iv).

IT IS SO ORDERED.

Dated this 24th day of October, 2024.  
BY THE COURT:



Howard C. Nielson, Jr.  
United States District Judge

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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL OMAR GIGENA,

Defendant.

**ORDER CONTINUING JURY TRIAL  
AND EXCLUDING TIME UNDER THE  
SPEEDY TRIAL ACT**

Case No. 2:24-cr-228-HCN-CMR

Howard C. Nielson, Jr.  
United States District Judge

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Having considered Defendant's stipulated motion to continue jury trial, the court hereby finds as follows:

Defendant Gabriel Omar Gigena appeared in court for his arraignment on the indictment in this matter on August 29, 2024. *See Dkt. No. 7*. The court scheduled a trial for November 5, 2024, *see id.*, within the 70-day time period that the Speedy Trial Act requires. Trial is currently scheduled for January 14, 2025. *See Dkt. No. 24*.

Mr. Gigena seeks a 90-day continuance of the trial pursuant to 18 U.S.C. § 3161(h)(7). *See Dkt. No. 31*. He is not in custody. *See id.* at 2 ¶ 8. Defense counsel represents that he has conferred with Mr. Gigena and explained why the requested continuance is necessary, and that Mr. Gigena agrees that the continuance will not hinder or prejudice his defense. *See id.* Counsel for the Government stipulates to the motion. *See id.* There are no co-defendants. *See id.*

Defense counsel represents that he has conferred with Mr. Gigena multiple times in person, telephonically, and via email regarding his case. *See id.* at 2 ¶ 7. Defense counsel further represents that he is in the process of preparing this case for trial and that additional time is necessary to complete various essential tasks before the case is ready for trial, including compiling potential exhibits, identifying witnesses, and preparing generally to meet the

Government's evidence at trial. *See id.* Defense counsel asserts that additional time is required to accomplish these tasks given the nature of the allegations against Mr. Gigena and the potential witnesses involved in the case. *See id.*

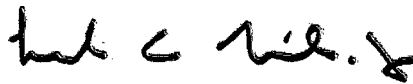
Based on the foregoing, the court finds that failure to grant a continuance would "result in a miscarriage of justice" and deny counsel "the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. § 3161(h)(7)(B)(i), (iv). The court further finds that the length of the requested continuance is reasonable and reasonably related to the reasons for the continuance. For these reasons, the court finds that "the ends of justice served by the granting of such continuance outweigh the best interest of the public and the defendant in a speedy trial." *Id.* § 3161(h)(7). Accordingly, the court finds that there are facts that support a continuance of the trial date in this matter, and good cause for a finding of excludable time pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, *et seq.*

THEREFORE, FOR GOOD CAUSE SHOWN:

1. The trial in this matter is continued from January 14, 2025 to April 22, 2025.
2. The time period from December 16, 2024, to April 22, 2025, inclusive, is excluded in computing the time within which the trial must commence, pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (h)(7)(B)(iv).

IT IS SO ORDERED.

Dated this 7th day of January, 2025.  
BY THE COURT:



Howard C. Nielson, Jr.  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GIGENA,

Defendant.

MEMORANDUM DECISION AND  
ORDER GRANTING IN PART  
DEFENDANT'S MOTION TO FILE  
LODGED DOCUMENTS

Case No. 2:24-CR-228-TS

District Judge Ted Stewart

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This matter is before the Court on Defendant Gabriel Gigena's Motion to File Lodged Documents.<sup>1</sup> For the reasons discussed herein, the Court will grant the Motion in part.

On April 16, 2025, a jury found Defendant guilty of one Count of Assault on a Federal Officer, in violation of 18 U.S.C. §§ 111(a)(1), 1114. Following the verdict, Defendant moved to terminate his attorneys and represent himself. Following a *Farretta* hearing, held on June 17, 2025, Defendant was permitted to represent himself and his appointed counsel withdrew.<sup>2</sup> Prior to the trial and during the time between the verdict and the *Faretta* hearing, Defendant filed numerous documents, some of which were couched as motions, which were lodged due to Defendant having appointed counsel at the time they were filed.

On June 23, 2025, Defendant filed a Motion to File Lodged Documents, requesting the Court's determination of each of the lodged documents.<sup>3</sup> To the extent the Motion seeks the

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<sup>1</sup> Docket No. 46.

<sup>2</sup> Docket Nos. 97, 98.

<sup>3</sup> Docket No. 101.

Court's consideration of documents lodged before the trial, the Court will deny the Motion.

Counsel was appointed to represent Defendant on September 5, 2024. Subsequently, Defendant filed several pro se documents that were lodged.<sup>4</sup> During a status conference held on March 12, 2025, the Honorable Howard C. Nielson explained to Defendant that his filings were lodged and would not be addressed by the Court because Defendant was represented by appointed counsel and all filings must be directed through his counsel. Defendant indicated that he understood and apparently chose to continue trial proceedings with appointed counsel. Defendant did not request to represent himself until after the trial. Defendant is not entitled to a determination of his pretrial filings during the time he accepted appointed counsel's assistance.

To the extent the Motion seeks the Court's determination of each of the documents lodged after the jury verdict, the Court will grant the Motion. The Court will address each of the post-trial lodged documents as a motion in a separate order.

To the extent Defendant seeks a determination that the government's failure to address the previously lodged documents results in an "acquiesce[nce] to all factors, violations, and relief requested," the Court denies the Motion. The government had no responsibility to respond to a lodged document, as Defendant indicated he understood at the March 12 status conference. The government has since filed a response to Defendant's lodged filings.<sup>5</sup>

It is therefore

ORDERED that Defendant's Motion to File Lodged Documents (Docket No. 101) is GRANTED in part and DENIED in part.

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<sup>4</sup> Docket Nos. 13, 14, 19, 20, 23, 27, and 28.

<sup>5</sup> Docket No. 103.

DATED this 21st day of July, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over a horizontal line.

Ted Stewart  
United States District Judge

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GIGENA,

Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT'S  
POST-TRIAL MOTIONS

Case No. 2:24-CR-228-TS

District Judge Ted Stewart

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This matter is before the Court on numerous Motions and Notices filed by self-represented Defendant Gabriel Gigena, following his conviction by jury verdict on April 16, 2025.

I. BACKGROUND

On April 16, 2025, a jury found Defendant guilty of one Count of Assault on a Federal Officer, in violation of 18 U.S.C. §§ 111(a)(1), 1114. Following the verdict, Defendant moved to terminate his attorneys and represent himself. Following a *Farretta* hearing, held on June 17, 2025, Defendant was permitted to represent himself and his appointed counsel withdrew.<sup>1</sup> During the time between the verdict and the *Faretta* hearing, Defendant filed numerous documents, some of which were couched as motions, that were lodged due to Defendant having appointed counsel at the time they were filed. Following a motion by Defendant, the Court agreed to consider and address each of the documents lodged after the trial as motions. The Court does so herein.

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<sup>1</sup> Docket Nos. 97, 98.

## II. DISCUSSION

The Court notes that “[a] pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.”<sup>2</sup> Therefore, “if the [C]ourt can reasonably read the pleadings to state a valid claim on which [Defendant] could prevail, it [will] do so despite [any] failure [by Defendant] to cite proper legal authority, his confusion of various legal theories, . . . or his unfamiliarity with pleading requirements.”<sup>3</sup> However, it is not the Court’s “proper function . . . to assume the role of advocate for the pro se litigant.”<sup>4</sup> Therefore, the Court will not construct legal theories or supply unasserted facts on Defendant’s behalf.<sup>5</sup> The below analysis represents the Court’s best interpretation of Defendant’s filings.

### A. NOTICES AND RULE 51 FILINGS

Defendant’s “Notice of Conflicts of Interest,”<sup>6</sup> filed on April 23, 2025, does not appear to seek any action or determination by the Court. The Court will, accordingly, not address this document further. Similarly, Defendant’s Rule 51 Preserving Claimed Errors<sup>7</sup> and Rule 51 Preserving Claimed Errors Second Round Errors<sup>8</sup> do not appear to appear to seek any action or determination by this Court. Instead, they appear only to seek preservation of numerous objections to perceived errors of the trial proceedings, and make a record of perceived bias and

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<sup>2</sup> *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

<sup>6</sup> Docket No. 80.

<sup>7</sup> Docket No. 81.

<sup>8</sup> Docket No. 86.

misconduct on the part of those involved in Defendant's trial, including this Court. These filings appear directed toward an appeal. Accordingly, the Court will not address these documents further.

Regarding, Defendant's Rule 51 Preserving Claimed Errors Third Round of Error Specific to Judge Stewart,<sup>9</sup> it is unclear if Defendant is seeking only to preserve errors, or if he is seeking some action by the Court. This filing accuses this Court of judicial misconduct. As best as the Court can understand, Defendant takes issue with the Court's recusal from civil proceedings in which he is the plaintiff,<sup>10</sup> and "self reassignment" to the instant criminal case, which, Defendant asserts, was done to manipulate the outcome of the criminal trial.

To the extent Defendant seeks this Court's recusal from the case, the Court declines to do so. 28 U.S.C. § 455(a) provides that a judge "shall disqualify himself in any proceedings in which his impartiality might reasonably be questioned." "A judge has a continuing duty to recuse under § 455(a) if sufficient factual grounds exist to cause a reasonable, objective person, knowing all the relevant facts, to question the judge's impartiality."<sup>11</sup> However, "[a] trial judge has as much obligation not to recuse himself when there is no reason to do so as he does to recuse himself when the converse is true."<sup>12</sup>

Defendant asserts no legitimate basis on which the Court should have recused or should now recuse. This Court agreed to preside over Defendant's case at the request of the Judge originally assigned to the case, due to that judge having an unavoidable scheduling conflict and

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<sup>9</sup> Docket No. 87

<sup>10</sup> See Docket Nos. 13, 14, 19, 20, 23, 27, and 28.

<sup>11</sup> *United States v. Pearson*, 203 F.3d 1243, 1277 (10th Cir. 2000).

<sup>12</sup> *United States v. Bray*, 546 F.2d 851, 857 (10th Cir. 1976).

the parties' desire for the trial to proceed on or before the date the trial was then scheduled. The Court made the parties aware of this during the final pretrial conference, which was the first hearing this Court presided over.<sup>13</sup> Neither party objected. Upon reassignment to the criminal case, the Court recused from the related civil case.<sup>14</sup> This was done to avoid any question of impartiality in the civil proceeding. At the time of the recusal, the Court had not reviewed or considered any matters in the civil proceeding, aside from conducting a routine conflicts check. The Court's recusal from the associated civil proceedings does not provide a basis for recusal in this case.

Defendant also asserts that the Court conspired to withhold exculpatory information from the jury, however he fails to identify any exculpatory evidence that was excluded. In fact, the Court did not deny any motion or request to admit evidence by the Defendant, either before or during trial. The only requested evidence excluded during trial was evidence sought to be admitted by the government. To date, the Court is unaware of the existence of exculpatory evidence in this case. Therefore, this argument does not provide a basis for recusal.

To the extent the Defendant seeks disqualification under 28 U.S.C. § 144, Defendant's filing is insufficient. Section 144 provides in part:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at

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<sup>13</sup> Docket No. 47.

<sup>14</sup> See Docket No. 40 (case reassigned to Judge Ted Stewart); *Gigena v. Calaveras Cnty of California*, 2:24-cv-963, Docket No. 9 (Judge Ted Stewart's order of recusal).

which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith

“An affidavit must comply with § 144 before it can effectively disqualify a judge.”<sup>15</sup>

Defendant has not complied with the requirements stated in § 144. Further, even accepting the assertions stated in the filing as true, the Court’s disqualification is improper. “The simple filing of an affidavit does not automatically disqualify a judge.”<sup>16</sup> To require disqualification of the judge, the affidavit “must contain more than mere conclusions. They must show facts indicating the existence of a judge’s personal bias and prejudice.”<sup>17</sup> For the reasons discussed above, Defendant’s filing fails to include such facts. Because Defendant has failed to both comply with § 144 procedural requirements and allege sufficient facts in support of disqualification, the Court will not disqualify itself.

#### B. MOTION FOR ACQUITTAL

Defendant filed a Motion, Amended Motion, and Supplemental Motion in support of a Judgement of Acquittal under Rule 29.<sup>18</sup> A Rule 29 motion, or renewal of such, must be brought within 14 days after a guilty verdict.<sup>19</sup> After Defendant’s request to represent himself was granted, he filed a Motion requesting that all lodged documents be considered as filed on the date they were lodged.<sup>20</sup> Defendant’s Rule 29 Motion was filed on May 8, 2025, which is 22 days

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<sup>15</sup> *Bray*, 546 F.2d at 857.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Docket Nos. 88, 90, and 91.

<sup>19</sup> Fed. R. Crim. P. 29(c)(1).

<sup>20</sup> Docket No. 101.

after Defendant's guilty verdict. The Motion is therefore untimely. Even considering the substance of Defendant's Rule 29 Motions, however, the Motion fails to justify acquittal.

Defendant argues he is entitled to acquittal: (1) for the reasons stated in the above-discussed Rule 51 filings; (2) for the reasons discussed in his pretrial filings, which were lodged; (3) because the officer involved in his case was not a "federal officer;" (4) because the Court failed to provide the jury with a self-defense instruction; and (5) because Jury Instruction No. 15 improperly expanded the scope of the Indictment without a grand jury.

Many of these assertions, even taken as true, would not support a judgement of acquittal. An acquittal is appropriate under Rule 29, only when the government presents insufficient evidence as to each of the requisite elements of a charge at trial.<sup>21</sup> Defendant's arguments are likely more properly considered in the context of a motion for a new trial under Federal Rule of Criminal Procedure 33(a),<sup>22</sup> which provides that "the court may vacate any judgment and grant a new trial if the interest of justice so requires." Generally, new trials are disfavored and courts are instructed to exercise great caution before granting them.<sup>23</sup> In determining whether a new trial is justified, courts consider whether there has been an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice.<sup>24</sup> For

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<sup>21</sup> Fed. R. Crim. P. 29(a) ("After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.").

<sup>22</sup> Defendant's Motion would also be untimely if asserted as a motion for a new trial, which must be brought within 14 days of trial, absent newly discovered evidence. Fed. R. Crim. P. 33(b).

<sup>23</sup> *United States v. Troutman*, 814 F.2d 1428, 1455 (10th Cir. 1987).

<sup>24</sup> *United States v. Sims*, 252 F. Supp. 2d 1255, 1260 (D.N.M. 2003) (citing *Major v. Benton*, 647 F.2d 110, 112 (10th Cir. 1981); *United States v. Prince*, 167 F. Supp. 2d 1296, 1300 (D. Kan. 2001)).

sake of completeness, the Court will consider Defendant's arguments under both Rule 29 and Rule 33.

*1. Preserved Error Filings*

In Docket No. 80, Defendant generally asserts that his counsel committed insubordination and violated his constitutional rights, and that both this Court and the prosecuting attorneys had a conflict of interest, committed errors with malice, and conspired against Defendant's constitutional rights. These allegations are generally unsupported and do not justify acquittal or a new trial.

Docket No. 81 raises numerous "objections." Objection 1 asserts he was wrongfully prohibited from testifying at trial. However, during trial, on the morning of April 16, 2025, the Court informed Defendant in no uncertain terms that Defendant had a constitutional right to testify or not to testify, that it was entirely up to him to decide for or against it, and he had a right to do so against the advice of his counsel. Defendant indicated that he understood. Later that day, before the close of evidence, the Court asked Mr. Gigena if he intended to testify. Mr. Gigena indicated he would not testify and was "reserving his right" to do so. At no point did Defendant indicate he had changed his mind and wished to testify until after the guilty verdict.

Objection 2 argues that the Court erred in not instructing the jury as to self-defense. Defendant did not request a self defense instruction prior to trial, or argue self-defense at trial.<sup>25</sup> The Court, therefore, finds no error in failing to provide such an instruction.

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<sup>25</sup> *United States v. Walker*, 130 F.4th 802, 806 (10th Cir. 2025) ("To preserve an objection to jury instructions, a party 'must inform the court of its specific objection and the grounds for the objection before the jury retires to deliberate.'") (quoting Fed. R. Crim. P. 30(d)).

Objections 3 through 5 relate to the jury. Defendant first asserts that one member of the jury, who was not empaneled, was a family member of the chief US Marshal and tainted the jury pool. Defendant does not explain how this juror tainted the entire jury pool and why he believes such occurred. The Court does not otherwise have a reason to suspect the empaneled jury was tainted or impartial. Next, Defendant asserts a juror was “suspiciously” removed from the jury panel resulting in a jury that was without diversity. Again, without more detail as to the basis of Defendant’s concern, the Court cannot find an error occurred during jury selection. Notably, Defendant did not object to the empaneled jury at trial. Finally, Defendant asserts the jury had access to excluded materials on the docket, which caused them to be impartial. The Court instructed the jury not to perform any independent research of the case. The Court gave this instruction at the end of each trial day and confirmed the following morning that the jury members had followed this instruction. Defendant’s assertions do not support that any of the jury members improperly accessed the court docket or were otherwise biased.

Objection 6 asserts speedy trial act violations. First, he asserts his Indictment was untimely. An indictment must be filed within 30 days of the Defendant’s arrest.<sup>26</sup> Here, Defendant’s arrest warrant was issued after the Indictment and was, accordingly, timely. The arrest that occurred as a result of the warrant issued by the state of California and which gave rise to the charges in this case does not factor into the Court’s speedy trial calculation. Next, regarding the trial timing, the Court has carefully reviewed the docket and, for the reasons

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<sup>26</sup> 18 U.S.C. § 3161(b).

explained by the government in their response,<sup>27</sup> the Court finds no Speedy Trial Act violation occurred.

“In determining whether a defendant’s Sixth Amendment right to a speedy trial has been violated, a court must balance four factors: (1) the length of delay; (2) the reason for delay; (3) the defendant’s assertion of his right; and (4) any prejudice to the defendant.”<sup>28</sup> If the length of delay is not “presumptively prejudicial,” the Court need not consider the remaining the factors.<sup>29</sup> The Tenth Circuit has held that a delay of less than about 12 months is not presumptively prejudicial.<sup>30</sup> Defendant was tried well within a year of the issuance of both his Indictment and federal arrest warrant.<sup>31</sup> Accordingly, Defendant’s delay is not presumptively prejudicial and the Court need not consider the remaining factors. Even if the Court were to consider the remaining factors, the Court finds they each weigh against finding a violation of Defendant’s right to a speedy trial where each continuance was requested by Defendant pursuant to the ends-of-justice, and Defendant has not asserted any specific prejudice he suffered as a result of the continuances.<sup>32</sup>

In objections 7 through 25, Defendant raises numerous objections related to his counsels’ purported failure to follow his directives, failure to raise certain defenses, and other perceived

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<sup>27</sup> Docket No. 103, at 5–8.

<sup>28</sup> *United States v. Abdush-Shakur*, 465 F.3d 458, 464 (10th Cir. 2006).

<sup>29</sup> *Id.* at 465.

<sup>30</sup> *United States v. Nixon*, 919 F.3d 1265, 1270 (10th Cir. 2019) (“The bare minimum for judicial examination would consist of the period of roughly twelve months.”) (internal quotation marks and citation omitted).

<sup>31</sup> *Jackson v. Ray*, 390 F.3d 1254, 1261 (10th Cir. 2004) (holding that the length of the delay is measured from “when the defendant is arrested or indicted, whichever comes first”).

<sup>32</sup> *See* 18 U.S.C. § 3161(h)(7)(A).

failures of behalf of his counsel. The Court will interpret these objections as a claim of ineffective assistance of counsel. The Tenth Circuit has “insist[ed] that, except in extraordinary circumstances, defendants must bring ineffective assistance of counsel claims in collateral proceedings” rather than in motions for a new trial.<sup>33</sup> Accordingly, the Court will not consider Defendant’s ineffective assistance of counsel arguments at this stage of the proceedings.

Objection 26 appears to assert a violation of Defendant’s First Amendment right to free exercise of religion. The basis of the violation is entirely unclear to the Court and the Court is not otherwise aware of any basis on which the Defendant’s First Amendment rights could have been violated during the proceedings.

Docket No. 86 largely asserts additional or repeated complaints against Defendant’s counsel. As discussed above, the Court will treat these objections as a claim for ineffective assistance of counsel, which is best asserted in collateral proceedings. The final objection states that the government lacks standing to bring a charge against Defendant, though the legal basis of the assertion is not clear. 28 U.S.C. § 547 provides that “each United States attorney, within [their] district, shall . . . prosecute for all offenses against the United States.” Defendant was charged with and convicted of Assault on a Federal Officer, in violation of 18 U.S.C. § 111(a)(1), 1114, which is a federal offense. Accordingly, the Court sees no basis to question the government’s standing in this case.

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<sup>33</sup> *United States v. Carbajal-Moreno*, 136 F. App’x 163, 167 (10th Cir. 2005) (upholding district court’s denial of motion for new trial based on ineffective assistance of counsel as “stem[ing] directly from [Tenth Circuit] precedent”).

Docket No. 87 accuses this Court of judicial misconduct. This filing has been addressed above. For substantively the same reasons the Court declines to recuse or disqualify itself, the Court finds these arguments do not serve as a basis for a new trial.

## *2. Pretrial Filings*

Defendant filed several documents which were lodged before trial commenced.<sup>34</sup> Defendant had appointed counsel during this time and the Court has previously determined that it would not consider arguments raised in these filings. Out of an abundance of caution, the Court reviewed the each of the pre-trial lodged documents in search of any arguments that could support a new trial or acquittal. The Court found none that have not been addressed herein.

## *3. The Officer Involved*

Defendant argues that his charges must be dismissed because the government did not prove that Officer Piekarczyk, the officer he was convicted of assaulting, was “a federal officer.”<sup>35</sup> Defendant further asserts that Officer Piekarczyk stated that Sandy City, the police agency that employed Officer Piekarczyk, did not have a memorandum of understanding with the U.S. Marshals and, therefore, he could not have been a federal officer.<sup>36</sup>

The jury was instructed as to the elements of the charged offense. This included instructing that, to find Defendant guilty, the jury must find beyond a reasonable doubt that the person assaulted “was a federal officer who was then engaged in the performance of his official duty.” The jury found Defendant guilty after having been given this instruction. Further, the

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<sup>34</sup> Docket No. 90, at 2.

<sup>35</sup> *Id.* at 6.

<sup>36</sup> Docket No. 91, at 2.

Court found that the government presented sufficient evidence to support this element. During trial, Officer Piekarczyk testified that he was called in on his day off to assist in effectuating the arrest warrant. He testified that, on that day, he was working as a Federal Task Force officer by special designation. He further detailed how he and his fellow Task Force members planned and executed the search warrant leading up to the incident in question and, ultimately, Defendant's arrest. Defendant has not provided, and the Court is not aware of, any legal authority that would require the existence of a memorandum of understanding between Sandy City and the Federal government for this element to be met.

#### *4. Self-Defense Instruction*

Defendant again argues he should be acquitted because the Court failed to instruct the jury as to self defense.<sup>37</sup> As previously discussed, Defendant did not request a self defense instruction and did not argue self-defense at trial.<sup>38</sup> "A party cannot use a motion [for a new trial] to raise arguments or evidence that should have been raised in the first instance."<sup>39</sup> The Court understands that Defendant was, at the time of trial, represented by counsel who he now claims was ineffective. However, as discussed above, the effectiveness of Defendant's counsel is not an issue for determination at this time. As such, the Court is not positioned to determine whether Defendant's Counsel's failure to assert self-defense is so prejudicial as to justify a new trial.

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<sup>37</sup> Docket No. 90, at 2.

<sup>38</sup> See *Bros. v. Johnson*, 105 F.4th 1279, 1284 (10th Cir. 2024) ("To preserve an objection to jury instructions on appeal, the objection at the district court must distinctly state the matter objected to and the grounds for the objection.") (internal quotation marks and citation omitted).

<sup>39</sup> *Barrett v Fields*, 941 F. Supp. 980, 984 (D. Kan. 1996).

5. *Jury Instruction No. 15.*

Defendant asserts that Jury Instruction No. 15 erroneously expanded the scope of and amended the Indictment.<sup>40</sup> “The Constitution does not forbid all amendments of an indictment, but only those that effectively subject a defendant to the risk of conviction for an offense that was not originally charged in the indictment.”<sup>41</sup> Instruction No. 15 was modeled after the Tenth Circuit’s Pattern Criminal Jury Instruction 2.09, and instructed to the jurors as to the elements of a violation of 18 U.S.C. § 111(a)(1). While the instruction includes language beyond what is included in the Indictment, the additional language provided further explanation of the law to be applied by the jury in assessing the requisite elements. The Court finds the instruction does not run the risk of subjecting Defendant to conviction for an offense not charged in the Indictment, alter the essential elements improperly, or otherwise prejudice Defendant.

C. DEFENDANT’S OBJECTION TO MAGISTRATE JUDGE’S FINDINGS AND RECOMMENDATIONS<sup>42</sup>

This filing appears to dispute the Magistrate Judge’s determination on May 5, 2025, denying Defendant’s motion for new counsel and delaying a *Faretta* hearing.<sup>43</sup> Defendant has since been allowed to represent himself, as he requested. Defendant’s arguments are, therefore, seemingly moot.

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<sup>40</sup> Docket No. 90, at 2–6.

<sup>41</sup> *United States v. Wacker*, 72 F.3d 1453, 1474 (10th Cir. 1995), *modified* (Mar. 11, 1996) (internal quotation marks and citation omitted); *see also United States v. Kalu*, 791 F.3d 1194, 1206–07 (10th Cir. 2015) (“The use of the term ‘knowingly participated’ instead of ‘devised or intended to devise’ did not alter any of the essential elements of a § 1341 offense, nor did it prejudice [the] defense at trial.”).

<sup>42</sup> Docket No. 93.

<sup>43</sup> Docket No. 89.

D. DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER  
JURISDICTION<sup>44</sup>

Defendant asserts that the Court lacks subject-matter jurisdiction, that the government lacks standing to bring the suit, and that Defendant is entitled to "Tribal Immunity" from suit. The Court has carefully reviewed Defendant's arguments and points of authority and finds them unpersuasive. For the reasons stated previously, the government has standing to bring this criminal prosecution. Further, for the reasons in the government's response,<sup>45</sup> the Court finds it has jurisdiction over this matter and that Defendant is not entitled to immunity.

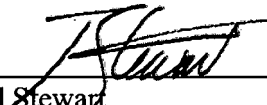
III. CONCLUSION

For the reasons discussed herein, the Court will deny each of the above-discussed Motions filed by Defendant.

SO ORDERED

DATED this 21st day of July, 2025.

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

---

<sup>44</sup> Docket No. 95.

<sup>45</sup> Docket No. 103, at 3–4.

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GIGENA,

Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT'S  
MOTION TO CONTINUE SENTENCING

Case No. 2:24-CR-228-TS

District Judge Ted Stewart

---

This matter is before the Court on Defendant Gabriel Gigena's Motion for Continuance of his sentencing scheduled for August 27, 2025.<sup>1</sup> The Court will deny the Motion. Defendant asserts he needs a copy of the trial transcript before sentencing can occur. He has previously represented via email that he requires the transcript to "address objections" to the Presentence Investigation Report (the "PSR").<sup>2</sup>

Defendant has not explained why access to the transcript is necessary for him to make his objections or how the trial transcript will assist him. Notably, Defendant has already filed numerous objections to the PSR, including objections to the paragraphs that detail the criminal conduct for which he is being charged.<sup>3</sup>

Defendant asserts that the Court has previously granted continuances "for the reason of the court reporter failing to prepare the court transcripts so that the Defendant can have a fair

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<sup>1</sup> Docket No. 121.

<sup>2</sup> Docket No. 121-3, at 3.

<sup>3</sup> See Docket No. 99.

hearing and accurate information to present to the Court.”<sup>4</sup> The Court clarifies that it has made no such findings. Defendant’s informal requests to continue his sentencing date via email were accommodated based upon his assertion that he was not prepared to move forward as scheduled. The Court allowed the continuances as a courtesy but has not made findings as to any justification for allowing such continuances. Further, the most recent communication from the Court regarding the sentencing date warned that the previously granted continuance would be the last.<sup>5</sup>

Defendant also asks the Court to order the court reporter to prepare the trial transcript. Upon consultation with the court reporter, the Court has learned that Defendant has not requested the transcript or paid the necessary fees for obtaining it. While, as Defendant asserts, his previous counsel had requested the transcript, the transcript request was withdrawn after Defendant fired his counsel. As Defendant is now representing himself, he must file his own transcript request.

Based on the above analysis, the Court finds Defendant has not demonstrated good cause to further delay the sentencing. It is therefore

ORDERED that Defendant’s Motion for Continuance (Docket No. 121) is DENIED.

DATED this 22nd day of August, 2025.

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

---

<sup>4</sup> Docket No. 121, at 1.

<sup>5</sup> Docket No. 121-3, at 3 (“The Judge will grant one final continuance, and set sentencing for 8/27 at 10:00 a.m.”).

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GIGENA,

Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT'S  
MOTIONS

Case No. 2:24-CR-228-TS

District Judge Ted Stewart

---

This matter is before the Court on Defendant's Motion for Rule 11 and 28 U.S.C. § 1927 Sanctions<sup>1</sup> and Motion for Dismissal Rule 12 Vindictive Prosecution and Selective Prosecution and CCP § 425.16 Malicious Prosecution.<sup>2</sup>

The Court will deny Defendant's Motion for Sanctions. First, Rule 11 sanctions are available under Rule 11 of the Federal Rules of Civil Procedure and, accordingly, limited to civil proceedings. As this is a criminal case, the Court does not have authority to impose such sanctions. If there were some criminal counterpart, the record does not support that *the attorneys* have submitted any baseless filings. Therefore, Rule 11 sanctions would not be appropriate.<sup>3</sup>

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<sup>1</sup> Docket No. 123.

<sup>2</sup> Docket No. 125.

<sup>3</sup> *Collins v. Daniels*, 916 F.3d 1302, 1322 (10th Cir. 2019) (“[T]he central purpose of Rule 11 is to deter baseless filings in district court and thus ... streamline the administration and procedure of the federal courts.”) (internal quotation marks and citation omitted).

Regarding § 1927 sanctions, the Court finds no evidence to support that the attorneys involved in this case acted in bad faith to multiply the proceedings.<sup>4</sup>

The Court will also deny Defendant's Motion to Dismiss. First, a motion to dismiss is not procedurally proper at this stage of the case. The Court has previously considered defendant's "motions to dismiss" as motions for a new trial or for acquittal.<sup>5</sup> However, even if the Court were to do so again, such motions would be untimely. Further, the substance of the Motion does not factually or legally support Defendant's requested relief and raises arguments substantively similar to those already rejected by the Court.

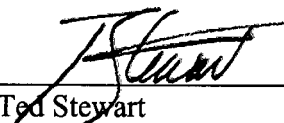
It is therefore

ORDERED that Defendant's Motion for Sanctions (Docket No. 123) is DENIED. It is further

ORDERED that Defendant's Motion to Dismiss (Docket No. 125) is DENIED.

DATED this 26th day of August, 2025.

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

---

<sup>4</sup> *Baca v. Berry*, 806 F.3d 1262, 1268 (10th Cir. 2015) ("Courts need not find that an attorney subjectively acted in bad faith. Rather, any conduct that, viewed objectively, manifests either intentional or reckless disregard of the attorney's duties to the court is sanctionable.") (internal quotation marks and citations omitted).

<sup>5</sup> Docket No. 111.

## **Appendix D — Rule 29 Sufficiency Challenge Excerpts**

Materials preserving petitioner's sufficiency challenge to federal-officer status and official duty.

[Record: Rule 29 preservation, Supp.ROA Vol. I, Doc. 40, pp. 276–280;

Supp.ROA Vol. IV, Doc. 54-1, pp. 514–516, 518–525, 660–663; ROA Vol. I, Doc.

16-1, pp. 15–16, pp. 78–82.]

1 is still stipulated that he was subject to a California state  
2 arrest warrant.

3 **MR. PEAD:** Thank you, Your Honor.

4 At this time, Your Honor, the United States rests  
5 their case-in-chief.

6 **THE COURT:** Thank you, Mr. Pead.

7 The Defendant has witnesses, but they were not  
8 scheduled until tomorrow, so we'll be through for the  
9 afternoon. We will begin tomorrow at 8:30.

10 I think you should be fully prepared to see the end  
11 of the trial, which would include the Defendant's witnesses,  
12 potential, whether we call some rebuttal witness by the  
13 Government, and closing arguments, instructions from the Court  
14 as to the law, and then you'll begin your deliberations  
15 tomorrow. So contemplate that when you do your scheduling.

16 And without repeating them, I would just remind you  
17 of the instructions about your conduct outside of the  
18 courtroom.

19 Again, we thank you for your service, and we will  
20 look forward to seeing tomorrow morning at 8:30.

21 **THE COURTROOM DEPUTY:** All rise for the jury.

22 *(Jurors exit the courtroom at 11:51 a.m.)*

23 **THE COURT:** Mr. Knell?

24 **MR. KNELL:** Yes, Your Honor. The Defense would move  
25 under Rule 29 for a judgment of acquittal based on

1 insufficiency of the evidence in light of the Government  
2 resting its case. We don't believe the Government has  
3 established the necessary element under the offense. We don't  
4 believe that Mr. Gigena had the intent to commit assault based  
5 on these circumstances, with the truncated timeline, the  
6 injuries he sustained, and so forth. So we'd move for that,  
7 according --

8           **THE COURT:** May I ask for clarification? What do you  
9 mean truncated?

10           **MR. KNELL:** We're talking about an interaction that  
11 was a matter of seconds, and the understanding of what was  
12 happening.

13           **THE COURT:** Okay.

14           Mr. Pead, Mr. Yeates?

15           **MR. PEAD:** Your Honor, and I'm referring to *United*  
16 *States v. Delgado-Uribe* that is enlightening on this subject.  
17 It says a couple of things.

18           First, that the Court is to simply determine whether  
19 the evidence, if believed, would establish each element of the  
20 crime, and in making this determination they are to view the  
21 evidence in a light most favorable to the prosecution as to  
22 whether any reasonable and rational trier of fact could find  
23 the Defendant guilty.

24           We think there is ample and extensive testimony that  
25 the Defendant placed TFO Piekarczyk in a chokehold, which he

1 did not relent until he was forced to, and thereby assaulted  
2 him. While doing this, he continued to resist, oppose, impede  
3 and interfere with Officer Piekarczyk's arrest of him.

4 Multiple believable witnesses have testified that  
5 Officer Piekarczyk is a federal officer and that he was engaged  
6 in his duties.

7 With regard to the Defendant's intent, it can be  
8 easily inferred that the Defendant was aware of the situation  
9 he was in. He was told by police, by numerous people,  
10 including before he was arrested by Officer Piekarczyk, excuse  
11 me, before he was tackled.

12 And then after he was tackled multiple officers  
13 continued to say who he was, and there were other indicators of  
14 a police presence, including red and blue lights, stop, stop  
15 resisting, we're the police, numerous announcements of that,  
16 and many officers are commanding him to stop and he does not.

17 Despite their announcement as cops and their demands  
18 to stop and their police presence all of which indicate his  
19 knowledge of the situation, which goes to his intent, knowing  
20 where he was, that he was acting specifically in response to  
21 this.

22 And witnesses have described his affect, his face  
23 scrunching with effort, his veins popping with exertion, and  
24 the physical description of him constricting his grip by  
25 Officer Piekarczyk of his neck.

1 And we also have the statement by TFO Justin Hansen  
2 at the end of the case here, where he said the Defendant --  
3 excuse me, it was Deputy Marshal Arnold -- that the Defendant  
4 was cognizant and aware of his surroundings when he talked to  
5 him after this incident.

6 We know that by those indicators of his intent, that  
7 he intended to make physical contact with Officer Piekarczyk;

8 And lastly, that his extensive exertion of effort and  
9 affect indicate that he intended to injure or threaten injury  
10 toward Officer Piekarczyk, so we would ask the Court to deny  
11 the Rule 29 Motion.

12 **THE COURT:** Thank you, Mr. Pead.

13 Do you wish to respond, Mr. Knell?

14 **MR. KNELL:** No, Your Honor.

15 **THE COURT:** Mr. Knell, the Court will deny the  
16 motion. It will prepare a written ruling so that you  
17 understand the reasons for it.

18 **MR. KNELL:** Understood.

19 **THE COURT:** For my benefit, again, besides  
20 Mr. Gigena, who do you intend to call tomorrow?

21 **MR. KNELL:** We have Erika Faerber noticed.

22 **THE COURT:** Okay. Will she go first?

23 **MR. KNELL:** Yes.

24 **THE COURT:** Okay. All right. Thank you.

25 Anything else from either of you?

1 Claimer: Gabriel Omar Gigena,  
2 6990 South Park Centre Drive  
3 Dept. 1 New Center Park Drive Suite 1  
4 Salt Lake City, Kingdom of Hayah Hawah,  
(UT, 84121)

5 Office of Chief Cornerstone of  
6 The Kingdom of Hayah Hawah  
7 (209)273-7762  
8 chiefcornerstone@kingdomofhayahhawah.org

FILED  
2025 MAY 1  
CLERK  
U.S. DISTRICT COURT

9  
10  
11 **IN THE UNITED STATES DISTRICT COURT,**  
12 **DISTRICT OF THE UTAH**

13 United States of America,  
14 Plaintiff/Trustee,  
15 vs.

Case No.: 2:24CR00228-TS

16 Gabriel Omar Gigena,  
17 Office of Chief Cornerstone of  
18 The Kingdom of Hayah Hawah,  
19 In Respectable Pro Per, entire all Org.,

RULE 29 DEFENDANT'S MOTION FOR  
JUDGEMENT OF ACQUITTAL  
FILE ON DEMAND

DATE ACTION FILED: JULY 10, 2024  
TRIAL DATE: APRIL 14, 2025

20 Defendant/Protester/Trustee/Beneficiary,

21 **RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL**

22 **TAKE NOTICE - TO EACH PARTY AND TO COUNSEL OF RECORD FOR**  
23 **EACH PARTY: YOU ARE HEREBY NOTIFIED THAT the Defendant Moves for Acquittal**  
24 **according to Rule 29.**

25 I, Gabriel Omar Gigena, in the Office of Chief Cornerstone, declare in good  
26 faith and belief that the Court must Grant this Rule 29 Motion for Acquittal for the reasons  
27 hereafter:

- 28 1. For all the reasons put forward in the three Rule 51 Preserving Claimed  
Errors as Objections, (Dkt. 80, 81, 83, 84, 86, 87), 35 Objections in total,  
with more specification herewith.

**RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-1 OF 3**

**UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

2. For all the reasons and uncontested facts put forward in Notice of Federally Recognized American Indian Tribal Chief, (Dkt. 19, and 2:24CV00805-DBB-DAO GvN Dkt. 11-1, pp.1-3), the Motion to Dismiss, (Dkt. 19, 21, 23, and GvN Dkt. 1, 9, 10, 11), and the Notice of Noncompliance and violation of Aug. 29, 2024, Court Order, (Dkt. 27, 28)
3. For the specific reason of failing to instruct the Jury to the Jury Instruction of, "[On the other hand, the defendant would not be guilty of [assaulting] [resisting] [opposing] [impeding] [intimidat- ing] or [interfering with] an officer if the defendant had no knowledge of the officer's identity and reasonably believed he was the subject of a hostile attack against his person such that he was entitled to use reasonable force in his defense. The government must establish beyond a reason- able doubt that the defendant did not act in self defense.]", with the facts of Excessive Force testified to and the uncontested facts declared to, a reasonable jury would find the Defendant Not Guilty.

The flagrant misconduct of all the objections that were meant to deceive the Jury, and presumably the Grand Jury, significantly impaired the Juries' ability to conduct its constitutional function of an independent judgement, clear Obstruction of Justice, intentional corrupt practices, and violated the fundamental fairness and due process of the US Constitution.

For the foregoing reasons the Defendant request the Honorable Court to Grant the Defendant's Motion for Judgement of Acquittal.

**RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-2 OF 3**

**UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawaii**

"Fear thou not; for I am with thee; be not dismayed; for I am thy God: I will strengthen thee; yea, I will help thee; yea, I will uphold thee with the right hand of my righteousness." Isaiah 41:10 King James version

"I can do all things through Christ which strengtheneth me." Philippians 4:13 King James version

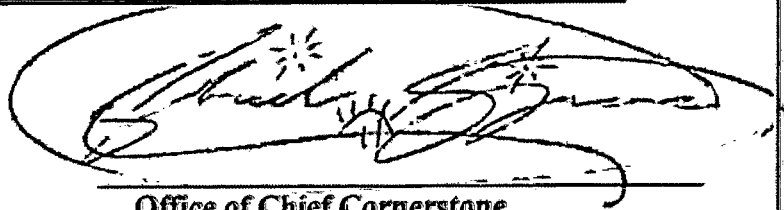
**IN THE NAME ABOVE ALL NAMES, IN THE NAME OF GESU AMEN**

I declare on Revered Divine Grace, Holiness, and under penalty of perjury under the law of The United States and in equilibrium with The Great Constitution of the Kingdom of Hayah Hawah that the forgoing is true and correct, and if called upon to testify to the matters herein, I could and would testify competently thereto.

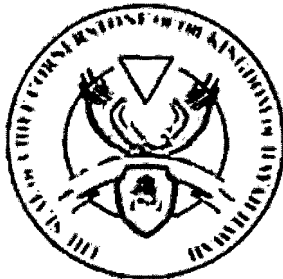
Executed: May 1, 2025.

Revered and Divinely Upheld.

**THE SILVER DRAGON OF THE GOLDEN DAWN**



Office of Chief Cornerstone  
Gabriel Omar Gigena,



Respectable Pro Per,  
Claimer: Gabriel Omar Gigena,  
6990 South Park Centre Drive  
Dept. 1 New Center Park Drive Suite 1  
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**RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-3 OF 3**

**UNITED STATES OF AMERICA V. Gabriel Gigena**

**Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah**

1 Claimant: Gabriel Omar Gigena,  
2 6990 South Park Centre Drive  
3 Dept. 1 New Center Park Drive Suite 1  
4 Salt Lake City, Kingdom of Hayah Hawah,  
(UT, 84121)

5 Office of Chief Cornerstone of  
6 The Kingdom of Hayah Hawah  
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LODGED  
2025 MAY 8  
CLERK  
U.S. DISTRICT COURT

7 **IN THE UNITED STATES DISTRICT COURT,**  
8 **DISTRICT OF THE UTAH**

9 United States of America,  
10 Plaintiff/Trustee,  
11 vs.

Case No.: 2:24CR00228-TS

12 **Gabriel Omar Gigena,**  
13 **Office of Chief Cornerstone of**  
14 **The Kingdom of Hayah Hawah,**  
15 **In Respectable Pro Per, entire all Org.,**  
16 **Defendant/Protester/Trustee/Beneficiary,**

**FIRST AMEND RULE 29 DEFENDANT'S**  
**MOTION FOR JUDGEMENT OF ACQUITTAL**  
**FILE ON DEMAND**

DATE ACTION FILED: JULY 10, 2024  
TRIAL DATE: APRIL 14, 2025

17 **FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL**

18 **TAKE NOTICE - TO EACH PARTY AND TO COUNSEL OF RECORD FOR**  
19 **EACH PARTY: YOU ARE HEREBY NOTIFIED THAT the Defendant Moves for Acquittal**  
20 **according to Rule 29.**

21 **I, Gabriel Omar Gigena, in the Office of Chief Cornerstone, declare in good**  
22 **faith and belief that the Court must Grant this Rule 29 Motion for Acquittal for the reasons**  
23 **hereafter:**

- 24 **1. For all the reasons put forward in the three Rule 51 Preserving Claimed Errors as**  
25 **Objections, (Dkt. 80, 81, 83, 84, 86, 87), 35 Objections in total, with more**  
26 **specification herewith.**

27 **FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-1 OF 8**

28 **UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

1 2. For all the reasons and uncontested facts put forward in Notice of Federally  
2 Recognized American Indian Tribal Chief, (Dkt. 19, and *Gigena v. Nielson*,  
3 2:24CV00805-DBB-DAO, GvN Dkt. 11-1, pp.1-3), the Motion to Dismiss/Petition  
4 for Writ of Mandamus/ Writ of Habeas Corpus, (Dkt. 19, 21, 23, and GvN Dkt. 1, 7,  
5 9, 10, 11, 12), and the Notice of Noncompliance and violation of Aug. 29, 2024,  
6 Court Order, (Dkt. 27, 28).

7  
8 3. For the specific reason of failing to instruct the Jury to the Jury Instruction of, "[On  
9 the other hand, the defendant would not be guilty of [assaulting] [resisting]  
10 [opposing] [impeding] [intimidat- ing] or [interfering with] an officer if the  
11 defendant had no knowledge of the officer's identity and reasonably believed he was  
12 the subject of a hostile attack against his person such that he was entitled to use  
13 reasonable force in his defense. The government must establish beyond a reason-  
14 able doubt that the defendant did not act in self defense.]", as the evidence gave rise  
15 to self-defense and other justifiable action (*See United States v. Corrigan*, 548 F.2d  
16 879, 883 (10<sup>th</sup> Cir. 1977); *See also United States v. Feola*, U.S. 671, 685-86 (1975)),  
17 with the facts of Excessive Force testified to and the uncontested facts declared by  
18 the Defendant, a reasonable jury would find the Defendant Not Guilty.  
19

20 4. For the specific reason of failing to properly instruct the Jury, Defendant does here  
21 now object, a violation of the Fifth Amendment, pursuant to Rule 51 preservation of  
22 Errors, Defendant objects to Jury Instruction No. 15, which expands the scope, that  
23 Defendant "threatened or cause injury", 18 USC §111(b), this is an unauthorized  
24 Amendment to the indictment charging instrument. The Court, prosecution, and  
25

26  
27 FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-2 OF 8

28 UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawaii

1 Public Defender changed the nature of the charge without the grand jury issuing a  
2 new indictment, which if they had against the general rule, would have violated the  
3 Speedy Trial Act. There was no injury in fact caused by the Defendant, *See Exhibit*  
4 *RPT-FBI-01-00005* and *See* no medical reports submitted. The Ab Initio Final Court  
5 Ruling that the Fact of the charge was a nonviolent charge of "causing contact", 18  
6 USC §111(a), to which the facts testified is that the officer "caused the contact".  
7 Case USA v. Gigena 2:24-mj-00094-AC, in the California Eastern District, (CA Dkt.  
8 4), and the prosecutor has capitulated that the Sandy City officer "caused the contact"  
9 and the Defendant was just walking with his Daughters prior to the officer Tackling  
10 (Excessive Force, Entrapment, State Caused Danger Doctrine). "causing the  
11 contact", without just cause, (Dkt. 57).

14 The general rule is that indictments cannot be amended in substance. "An  
15 amendment to an indictment occurs when the charging terms of an indictment are  
16 altered." *United States v. Cancelliere*, 69 F.3d 1116, 1121 (11th Cir. 1995). *Russell*  
17 *v. United States*, 369 U.S. 749, 769 (1962), the Court pointed out that a consequence  
18 of amending the indictment is that the defendant "could then be convicted on the  
19 basis of facts not found by, and perhaps not even presented to, the grand jury which  
20 indicted him." "Thus, the Fifth Amendment forbids amendment of an indictment by  
21 the Court, whether actual or constructive." *United States v. Wacker*, 72 F.3d 1453,  
22 1474 (10th Cir. 1995), *petition for cert. filed*, (Jun. 10, 1996)(No. 95-9284). *See*  
23 *Stirone v. United States*, 361 U.S. 212 (1960) (The Supreme Court reversed the  
24 defendant's conviction on the ground that he was convicted of a different crime from  
25  
26

27 FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-3 OF 8

28 UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

1 that charged, in violation of his Fifth Amendment right to be indicted by a grand  
2 jury).

3 The specificity requirement serves to insure that a defendant only has to answer  
4 to charges actually brought by the grand jury and not a prosecutor's interpretation  
5 of the charges, that the defendant is apprised of the charges against him in order to  
6 permit preparation of his defense, and that the defendant is protected against double  
7 jeopardy. *See United States v. Haas*, 583 F.2d 216 (5th Cir.), *reh'g denied*, 588 F.2d  
8 829, *cert. denied*, 440 U.S. 981 (1978).

9  
10 "An indictment that tracks the words of the statute violated is generally  
11 sufficient, but implied, necessary elements, not presented in the statutory language,  
12 must be included. . . ." *United States v. Jackson*, 72 F.3d 1370, 1380 (9th Cir. 1995),  
13 *cert. denied*, 116 S.Ct 1546 (1996).

14  
15 The rule reiterates the Court's views in *United States v. Cruikshank*, 92 U.S.  
16 542, 558 (1875), "It is an elementary principle of criminal pleading, that where the  
17 definition of the offense, whether it be at common law or by statute, "includes  
18 generic terms, it is not sufficient that the indictment shall charge the offense in the  
19 same generic terms as in the definition; but . . . it must descend to particulars."

20  
21 The absence of such allegations in the indictment was not cured by the  
22 government's proof at trial of these elements or their inclusion in the court's  
23 instructions to the jury. *See United States v. Opsta*, 659 F.2d 848 (8th Cir.  
24 1981). *Cf., United States v. Daniels*, 973 F.2d 272, 274-75 (4th Cir. 1992), *cert.*  
25 *denied*, 506 S.Ct. 1086 (1993)(citation to statute insufficient to cure failure of  
26

27 FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-4 OF 8

28 UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

1 indictment to allege each element of crime when indictment neither tracked  
2 statutory language nor cited actual sections violated, because omission opens risk  
3 of grand jury failure to consider and find all elements of crime). *United States v.*  
4 *Rajo*, 727 F.2d 1415, 1416, 1418-19 (9th Cir. 1983) (indictment for theft of public  
5 property insufficient when it contained only general citation to statute without any  
6 reference to act allegedly committed or to specific provisions of statute)

7  
8 *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) ("Where guilt depends  
9 so crucially upon . . . a specific identification of fact, . . . cases have uniformly held  
10 that an indictment must do more than simply repeat the language of the criminal  
11 statute.") (citing *Hamling*, 418 U.S. at 118).

12  
13 *United States v. Dixon*, 509 U.S. 688 (1993) (The same elements bar a second  
14 prosecution for either charge of "causing contact", 18 USC §111(a) and "causing  
15 injury", 18 USC §111(b), under the Fifth Amendment Double Jeopardy Clause,  
16 reinforcing the *Blockburger* test, *Blockburger v. United States*, 284 U.S. 299  
17 (1932)).

18  
19 The prosecutor's failure to prosecute the particulars of an insufficient  
20 indictment cuts both ways at the heart of the case and because the jury was  
21 empaneled Double Jeopardy attaches. See *Serfass v. United States*, 420 U.S. 377  
22 (1975) (In the case of a jury trial, jeopardy attaches when a jury is empaneled and  
23 sworn. *Downum v. United States*, 372 U. S. 734 (1963); *Illinois v. Somerville*, 410  
24 U. S. 458 (1973). In a nonjury trial, jeopardy attaches when the court begins to hear  
25 evidence. *McCarthy v. Zerbst*, 85 F.2d 640, 642 (CA10 1936). See *Wade v. Hunter*,  
26

27 FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-5 OF 8

28 UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

336 U. S. 684, 336 U. S. 688 (1949). The Court has consistently adhered to the view that jeopardy does not attach, and the constitutional prohibition can have no application, until a defendant is "put to trial before the trier of the facts, whether the trier be a jury or a judge." *United States v. Jorn*, supra, at 400 U. S. 479. See *Kepner v. United States*, 195 U. S. 100, 195 U. S. 128, 130-131 (1904); *United States v. Macdonald*, 207 U. S. 120, 207 U. S. 127 (1907); *Bassing v. Cady*, 208 U. S. 386, 208 U. S. 391-392 (1908); *Collins v. Loisel*, 262 U. S. 426, 262 U. S. 429 (1923)).

5. For the reason that the prosecutor failed to present any substantial evidence to the element that the Sandy City officer was a federal officer engaged in his official duties as a duly authorized federal officer, *See United States Marshals Service Policy Directive(s) §8.18 (C)(1)(a)(1-4) & (C)(2)(b), and §8.9 (E)(1-2), (C)(3), and (D)*. The Court was on notice before the Trial that there was no legally valid stipulation to eliminate the prosecution's burden of proof of an element and prejudice the Defendant's rights, *See Email in Chambers (GvN Dkt. 11-3, p. 29)*. *See Strickland v. Washington*, 466 U.S. 668 (1984) (Test for Ineffective Assistance of Counsel Sixth Amendment Violation). A stipulation which is inherently false and against the client's wish is a clear deficiency that is prejudicial to the Defendant and the Defendant's right to have an advocate zealously defend the Defendant's interests and violates the Defendant's right to a fair trial by removing the element of the prosecution's burden of proof that substantially impacted the independency of the Jury and the Jury's ability to reach a fair verdict.

1 The flagrant misconduct of all the objections that were meant to deceive the Jury, and  
2 presumably the Grand Jury, significantly impaired the Juries' ability to conduct its constitutional  
3 function of an independent judgement, clear Obstruction of Justice, intentional corrupt practices,  
4 and violated the fundamental fairness and due process of the US Constitution.

5  
6 For the foregoing reasons the Defendant requests the Honorable Court to Grant the  
7 Defendant's Motion for Judgement of Acquittal. See Exhibits A, B, C, D, E, F, and G.

8 *"Fear thou not; for I am with thee: be not dismayed; for I am thy God: I will strengthen*  
9 *thee; yea, I will help thee; yea, I will uphold thee with the right hand of my righteousness."* Isaiah  
10 **41:10 King James version**

11  
12 *"I can do all things through Christ which strengtheneth me."* Philippians 4:13 King  
13 **James version**

14 *Before I formed thee in the belly I knew thee; and before thou camest forth out of the womb*  
15 *I sanctified thee; and I ordained thee a prophet unto the nations. Jeremiah 1:5 King James*  
16 **version**

17  
18 *Be not afraid of their faces: for I am with thee to deliver thee, saith the LORD. Then the*  
19 *LORD put forth his hand, and touched my mouth. And the LORD said unto me, Behold, I have put*  
20 *my words in thy mouth. See, I have this day set thee over the nations and over the kingdoms, to*  
21 *root out, and to pull down, and to destroy, and to throw down, to build, and to plant. Jeremiah*  
22 **1:8-10 King James version**

23  
24 **IN THE NAME ABOVE ALL NAMES, IN THE NAME OF GESU AMEN**

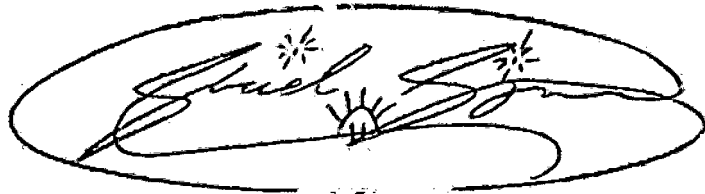
25  
26  
27 **FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-7 OF 8**  
28 **UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah.**

I declare on Revered Divine Grace, Holiness, and under penalty of perjury under the law of The United States and in equilibrium with The Great Constitution of the Kingdom of Hayah Hawah that the foregoing is true and correct, and if called upon to testify to the matters herein, I could and would testify competently thereto.

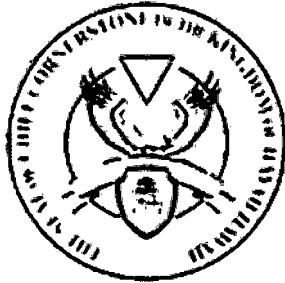
Executed: May 8, 2025.

Revered and Divinely Upheld.

**THE SILVER DRAGON OF THE GOLDEN DAWN**



Office of Chief Cornerstone  
Gabriel Omar Gigena,



Respectable Pro Per,  
Claimer: Gabriel Omar Gigena,  
6990 South Park Centre Drive  
Dept. 1 New Center Park Drive Suite 1  
Salt Lake City, Kingdom of Hayah Hawah,  
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Office of Chief Cornerstone of  
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FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL-8 OF 8

UNITED STATES OF AMERICA V. Gabriel Gigena

Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

1 Claimer: Gabriel Omar Gigena,  
2 6990 South Park Centre Drive  
3 Dept. I New Center Park Drive Suite 1  
4 Salt Lake City, Kingdom of Hayah Hawah,  
(UT, 84121)

5 Office of Chief Cornerstone of  
6 The Kingdom of Hayah Hawah  
(209)273-7762  
chiefcornerstone@kingdomofhayahhawah.org

FILED  
2025 MAY 9  
CLERK  
U.S. DISTRICT COURT

7 **IN THE UNITED STATES DISTRICT COURT,**  
8 **DISTRICT OF THE UTAH**

9 United States of America,  
10 Plaintiff/Trustee,  
11 vs.

Case No.: 2:24CR00228-TS

12 **Gabriel Omar Gigena,**  
13 **Office of Chief Cornerstone of**  
14 **The Kingdom of Hayah Hawah,**  
15 **In Respectable Pro Per, entire all Org.,**

FIRST AMEND RULE 29 DEFENDANT'S  
MOTION FOR JUDGEMENT OF ACQUITTAL  
SUPPLEMENTAL  
FILE ON DEMAND

DATE ACTION FILED: JULY 10, 2024  
TRIAL DATE: APRIL 14, 2025

16 **Defendant/Protester/Trustee/Beneficiary,**

17 **FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL**  
18 **SUPPLEMENTAL**

19 **TAKE NOTICE - TO EACH PARTY AND TO COUNSEL OF RECORD FOR**  
20 **EACH PARTY: YOU ARE HEREBY NOTIFIED THAT the Defendant Moves for Acquittal**  
21 **according to Rule 29.**

22 **I, Gabriel Omar Gigena, in the Office of Chief Cornerstone, declare in good**  
23 **faith and belief that the Court must Grant this Rule 29 Motion for Acquittal for the reasons**  
24 **hereafter:**

25 **1. For the reasons that the Sandy City officer Piekarczyk testified that Sandy City did**  
26 **not have a Memorandum of Understanding with the US Marshals in accordance with**  
27 **FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL**  
28 **SUPPLEMENTAL-1 OF 4**

**UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

1 the United States Marshals Service Policy Directive 8.18, he could not be a Federal  
2 Officer to meet the element of being a "federal officer engaged in his official duties".  
3

4  
5 For the foregoing reasons the Defendant requests the Honorable Court to Grant the  
6 Defendant's Motion for Judgement of Acquittal. See Attached Exhibits A.  
7

8 *"The righteous man wisely considereth the house of the wicked: but God overthroweth the*  
9 *wicked for their wickedness."* Proverbs 21:12 King James version  
10

11  
12 *"It is joy to the just to do judgment: but destruction shall be to the workers of iniquity."*  
13 Proverbs 21:15 King James version  
14

15 *"In thee, O LORD, do I put my trust; let me never be ashamed: deliver me in thy*  
16 *righteousness. Bow down thine ear to me; deliver me speedily: be thou my strong rock, for an*  
17 *house of defence to save me. For thou art my rock and my fortress; therefore for thy name's sake*  
18 *lead me, and guide me. Pull me out of the net that they have laid privily for me: for thou art my*  
19 *strength. Into thine hand I commit my spirit: thou hast redeemed me, O LORD God of truth. I have*  
20 *hated them that regard lying vanities: but I trust in the LORD. I will be glad and rejoice in thy*  
21 *mercy: for thou hast considered my trouble; thou hast known my soul in adversities; And hast not*  
22 *shut me up into the hand of the enemy; thou hast set my feet in a large room. Have mercy upon me,*  
23 *O LORD, for I am in trouble: mine eye is consumed with grief, yea, my soul and my belly. For my*  
24  
25  
26

27 **FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL**  
28 **SUPPLEMENTAL-2 OF 4**

**UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

1 life is spent with grief, and my years with sighing: my strength faileth because of mine iniquity,  
2 and my bones are consumed. I was a reproach among all mine enemies, but especially among my  
3 neighbours, and a fear to mine acquaintance: they that did see me without fled from me. I am  
4 forgotten as a dead man out of mind: I am like a broken vessel. For I have heard the slander of  
5 many: fear was on every side: while they took counsel together against me, they devised to take  
6 away my life. But I trusted in thee, O LORD: I said, Thou art my God. My times are in thy hand.  
7 deliver me from the hand of mine enemies, and from them that persecute me. Make thy face to  
8 shine upon thy servant: save me for thy mercies' sake. Let me not be ashamed, O LORD; for I have  
9 called upon thee: let the wicked be ashamed, and let them be silent in the grave. Let the lying lips  
10 be put to silence; which speak grievous things proudly and contemptuously against the righteous.  
11 Oh how great is thy goodness, which thou hast laid up for them that fear thee; which thou hast  
12 wrought for them that trust in thee before the sons of men! Thou shalt hide them in the secret of  
13 thy presence from the pride of man: thou shalt keep them secretly in a pavilion from the strife of  
14 tongues. Blessed be the LORD: for he hath shewed me his marvellous kindness in a strong city.  
15 For I said in my haste, I am cut off from before thine eyes: nevertheless thou heardest the voice of  
16 my supplications when I cried unto thee. O love the LORD, all ye his saints: for the LORD  
17 preserveth the faithful, and plentifully rewardeth the proud doer. Be of good courage, and he shall  
18 strengthen your heart, all ye that hope in the LORD." Psalm 31:1-24 King James version

19  
20  
21  
22 **IN THE NAME ABOVE ALL NAMES, IN THE NAME OF GESU AMEN**

23  
24  
25  
26  
27 **FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL**  
**SUPPLEMENTAL-3 OF 4**

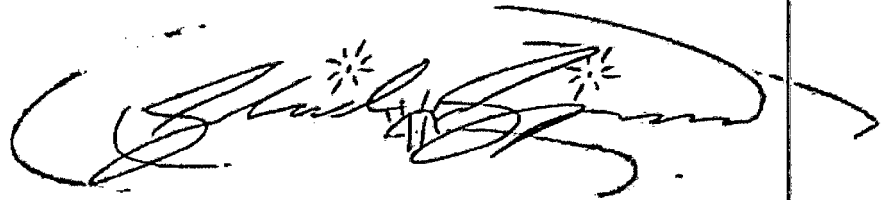
28 **UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

I declare on Revered Divine Grace, Holiness, and under penalty of perjury under the law of The United States and in equilibrium with The Great Constitution of the Kingdom of Hayah Hawah that the foregoing is true and correct, and if called upon to testify to the matters herein, I could and would testify competently thereto.

Executed: May 9, 2025.

Revered and Divinely Upheld,

**THE SILVER DRAGON OF THE GOLDEN DAWN**



Office of Chief Cornerstone  
Gabriel Omar Gigena,

Respectable Pro Per,  
Claimer: Gabriel Omar Gigena,  
6990 South Park Centre Drive  
Dept. 1 New Center Park Drive Suite 1  
Salt Lake City, Kingdom of Hayah Hawah,  
(UT, 84121)

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FIRST AMEND RULE 29 DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL  
SUPPLEMENTAL-4 OF 4

UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GIGENA,

Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT'S  
RULE 29 MOTION

Case No. 2:24-CR-228-TS

District Judge Ted Stewart

---

This matter is before the Court on Defendant's Motion for a Judgment of Acquittal.

Following the conclusion of the government's presentation of the evidence in its case-in-chief, on April 15, 2025, Defendant orally moved for a judgment of acquittal under Fed. R. Crim. P. 29(a). The Court orally denied Defendant's Motion. The Court's reasoning for the denial is stated herein.

I. STANDARD

Fed. R. of Crim. P. 29(a) provides: "After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." In considering a sufficiency of the evidence challenge, the Court must "review the evidence and its reasonable inferences in the light most favorable to the government" and "determine whether a reasonable

jury could find the defendant guilty beyond a reasonable doubt.”<sup>1</sup> The Court must not “weigh conflicting evidence or consider witness credibility.”<sup>2</sup>

## II. BACKGROUND

Defendant was Indicted on July 10, 2024, for one count of Assault on a Federal Officer in violation of 18 U.S.C. §§ 111(a)(1), 1114. On August 29, 2024, Defendant entered a plea of not guilty. The Court conducted a jury trial on the charge beginning on April 14, 2025. On the first day of trial, the government presented testimony and evidence from Officer Piekarczyk who testified as follows. Officer Piekarczyk worked as a federal Task Force officer by special designation. On May 4, 2024, he was called in to help effectuate an arrest warrant on Defendant. That day, the Task Force met to strategize about the intended arrest, surveilled the area where Defendant was expected to be, located Defendant at a park with his daughters and other members of his family, and positioned themselves around the parking lot close to where Defendant was located. After some time of surveilling Defendant at the park, Defendant and his family started to leave the park and, in so doing, walked by the vehicle where Officer Piekarczyk was waiting. After Defendant passed the vehicle, Officer Piekarczyk and another officer exited the vehicle for the purpose of making an arrest. Officer Piekarczyk ran after Defendant. As he approached, he knocked Defendant’s daughters’ hands away from Defendant and tackled him to the ground. Officer Piekarczyk testified that, as they landed on the ground, Defendant put Officer Piekarczyk in a chokehold and would not let go until two other officers pried Defendant’s arm away from around Officer Piekarczyk’s neck. Defendant was subsequently arrested.

---

<sup>1</sup> *United States v. Ramos-Arenas*, 596 F.3d 783, 786 (10th Cir. 2010) (citing *United States v. Phillips*, 583 F.3d 1261, 1264 (10th Cir. 2009)).

<sup>2</sup> *Id.* (quoting *United States v. Castorena-Jaime*, 285 F.3d 916, 933 (10th Cir. 2002)).

During the course of the trial, the government called five additional witnesses. Each of the witnesses were law enforcement officers who were members of the Task Force and asked to assist in executing the arrest warrant against Defendant on May 4, 2024. Each of the witnesses offered testimony of the arrest from their perspective and generally corroborated Officer Piekarczyk's testimony.

### III. DISCUSSION

As stated, Defendant is charged in the Indictment with one Count of Assault on a Federal Officer. To prove Defendant guilty of Assault on a Federal Officer, the government must prove beyond a reasonable doubt that (1) Defendant forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with a person; (2) that person was a federal officer who was then engaged in the performance of his official duty; (3) Defendant did such acts intentionally; and (4) Defendant made physical contact with the federal officer.<sup>3</sup>

First, the government presented sufficient evidence that Defendant forcibly assaulted, resisted, or interfered with a person. Officer Piekarczyk testified that after he yelled, "Gabriel" and "Police," he tackled Defendant to the ground and, as they fell, Officer Piekarczyk felt Defendant's arm wrap around his neck into a chokehold position. He then testified that he felt Defendant exert "an incredible amount of force" around his neck. Officer Piekarczyk testified that he was able to breathe, but was not able to escape the chokehold despite his efforts and training.

Officer Piekarczyk testified that, in his best estimate, the chokehold lasted 15 to 30 seconds and, during that time, he asked his fellow officers for help and tried to hit Defendant in

---

<sup>3</sup> 18 U.S.C. §§ 111(a)(1), 1114.

the head and face in his efforts to escape the chokehold. Several of Officer Piekarczyk's fellow Task Force officers testified that they observed Defendant with his arm wrapped around Officer Piekarczyk's neck and observed Defendant straining to hold his position. Several also testified that they heard Officer Piekarczyk state "he's choking me" and that he asked for help.

Officer Piekarczyk and his fellow Task Force officers further testified that many officers arrived on scene during the encounter and continually identified themselves as police officers and instructed Defendant to release Officer Piekarczyk, but Defendant would not relent. The Task Force officers further testified that one of Officer Piekarczyk's fellow officers was ultimately able to pry Defendant's arm away from around Officer Piekarczyk's neck. Finally, Officer Piekarczyk testified that he sustained injuries from the encounter, including scrapes, scuffs, a sore neck, a sore back, and headaches. The government introduced images documenting some of the alleged injuries.

Second, the government presented sufficient evidence that the person assaulted was a federal officer engaged in the performance of his official duty. The parties stipulated that an arrest warrant was issued against Defendant on May 3, 2024. Officer Piekarczyk testified that he was called in on his day off to assist in effectuating the arrest warrant. He testified that, on that day, he was working as a Federal Task Force officer by special designation. He further detailed how he and his fellow Task Force members planned and executed the search warrant leading up to the incident in question and, ultimately, Defendant's arrest.

Third, the government presented sufficient evidence that Defendant acted intentionally. Based on the evidence described regarding the first element, a jury could reasonably conclude that Defendant intended to assault, resist, and interfere with Officer Piekarczyk by placing him in a chokehold, applying significant pressure, and not letting go despite Officer Piekarczyk's efforts

to escape and the other Task Force officer's commands that Defendant release Officer Piekarczyk.

Fourth, the government presented sufficient evidence that Defendant made physical contact with the federal officer. The same evidence discussed above is sufficient to support that Defendant made physical contact with the federal officer.

Based on the above analysis, the Court concludes that the government presented sufficient evidence in support of each of the requisite elements to sustain a conviction of Assault of a Federal Officer in violation of 18 U.S.C. §§ 111(a)(1), 1114. Accordingly, the Court denies Defendant's Motion for Acquittal.

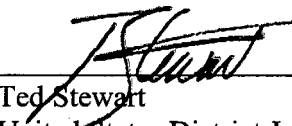
#### IV. CONCLUSION

It is therefore

ORDERED that Defendant's oral Motion for Acquittal, made April 15, 2025, is DENIED.

DATED this 16th day of April, 2025.

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

## **Appendix E — Emergency Discovery / TFO Bona Fide Request Excerpts**

Materials requesting oath, deputation, MOU, expiration, renewal, United States Attorney approval, USMS policy, body-worn-camera, and task-force authorization records.

[Record: ROA Vol. I, Doc. 16-1, pp. 100–108, 182–184, 185–191.]

Defendant: **Gabriel Omar Gigena, Chief Wót'ááh Atsá,**  
6990 South Park Centre Drive  
**Dept. 1 New Center Park Drive Suite 1**  
Salt Lake City, **Kingdom of Hayah Hawah,**  
(UT, 84121)

Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah  
(209)273-7762  
chiefcornerstone@kingdomofhayahhawah.org

FILED  
2025 AUG 1  
CLERK  
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT,  
AND DISTRICT OF THE UTAH**

United States of America,  
Plaintiff/Trustee,

Case No.: 2:24CR00228-TS

vs.

**Gabriel Omar Gigena,**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah,**  
In Respectable Pro Per, entire all Org.,

**DEFENDANT'S EMERGENCY MOTION FOR  
DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR  
DISCOVERY GRANTED ON AUG. 29, 2024  
FILE ON DEMAND**

Defendant/Protester/Trustee/Beneficiary,

DATE ACTION FILED: JULY 10, 2024  
TRIAL DATE: APRIL 14, 2025  
HEARING DATE:

**DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024**

**TAKE NOTICE - TO EACH PARTY AND TO COUNSEL OF RECORD FOR  
EACH PARTY: YOU ARE HEREBY NOTIFIED THAT the Defendant Moves for Emergency  
Discovery of Exculpatory Documents and Evidence and Enforcement of Brady Orders and Oral  
Motion for Discovery Granted on Aug. 29, 2024.**

**RELIEF SOUGHT AND GROUNDS FOR RELIEF**

- Discovery Demand for the Certified Prosecution Memorandum AKA Case Impression Memorandum pre-indictment. Everything Unredacted.
- Discovery Demand for, Correlative to May 4, 2024, A Certified Copy of Sandy City Police Department Utah Officer, Micheal Piekarczyk's, SA146, Unit 130, Letter of Suitability for a United States Marshals Service Special Deputy, AKA VFAST Task Force Officer (TFO) in the Utah District, from the Home Agency,

Sandy City PD; the Application for the USMS Special Deputy, review, and  
**DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-1 OF 9**

UNITED STATES OF AMERICA V. **Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

1 Approval; the Oath Form; the Memorandum of Understanding with Sandy City PD  
2 and the USMS; The Notarized affidavit signed by the requesting individual that  
3 firearms safety training, which meets or exceeds the standards established by the  
4 United States Marshals Service for the type of firearm the individual seeks to carry,  
5 was completed within 30 days from the date of the request for initial deputations  
6 and within the six-month period prior to the request for redeputations. The  
7 expiration dates, renewal dates, changes in eligibility and status, and terminated  
8 Oath forms. Any and All other related evidence connected to the Special  
9 Deputization Process of Micheal Piekarczyk, SA146, Unit 130. Everything  
Unredacted.

- 10 • Discovery Demand for all the Certified FOIA information requested From  
11 September 13, 2024, to October 25, 2024.
- 12 • Discovery Demand for a Certified Copy of the United States Marshals Service  
13 Policy 17.11 as of May 4, 2024.
- 14 • Discovery Demand for a Certified Copy of the official issuance of the fugitive  
15 identification number before May 4, 2024.
- 16 • Discovery Demand for the Certified HOA video surveillance footage given to the  
17 FBI.
- 18 • Discovery Demand for All the Certified Body Camera Footage that is mandated by  
19 law and policy.
- 20 • Discovery Demand for the Certified Jury Preemptions “Blue Form” used at Trial.

### 21 Legal Standard

22 Magistrate Judge Allison Claire Court Order, “Under federal law, including Rule 5(f) of  
23 the Federal Rules of Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963), and all  
24 applicable decisions from the Supreme Court and the Ninth Circuit interpreting Brady, the  
25 government has a continuing obligation to produce all information or evidence known to the  
26 government relating to guilt or punishment that might reasonably be considered favorable to the

27 **DEFENDANT’S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-2 OF 9**

28 UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

1 defendant's case, even if the evidence is not admissible so long as it is reasonably likely to lead to  
2 admissible evidence. See *United States v. Price*, 566 F.3d 900,913 n.14 (9th Cir. 2009).  
3 Accordingly, the court orders the government to produce to the defendant in a timely manner all  
4 such information or evidence.

5 Information or evidence may be favorable to a defendant's case if it either may help bolster  
6 the defendant's case or impeach a prosecutor's witness or other government evidence. If doubt  
7 exists, it should be resolved in favor of the defendant with full disclosure being made.

8 If the government believes that a required disclosure would compromise witness safety,  
9 victim rights, national security, a sensitive law-enforcement technique, or any other substantial  
10 government interest, the government may apply to the Court for a modification of the requirements  
11 of this Disclosure Order, which may include *in camera* review and/or withholding or subjecting to  
12 a protective order all or part of the information.

13 This Disclosure Order is entered under Rule 5(f) and does not relieve any party in this  
14 matter of any other discovery obligation. The consequences for violating either this Disclosure  
15 Order or the government's obligations under *Brady* include, but are not limited to, the following:  
16 contempt, sanction, referral to a disciplinary authority, adverse jury instruction, exclusion of  
17 evidence, and dismissal of charges. Nothing in this Disclosure Order enlarges or diminishes the  
18 government's obligation to disclose information and evidence to a defendant under *Brady*, as  
19 interpreted and applied under Supreme Court and Ninth Circuit precedent. As the Supreme Court  
20 noted, "the government violates the Constitution's Due Process Clause 'if it withholds evidence  
21 that is favorable to the defense and material to the defendant's guilt or punishment.'" *Turner v.*  
22 *United States*, 137 S. Ct. 1885, 1888 (2017), quoting *Smith v. Cain*, 565 U.S. 73, 75 (2012)."

23 Magistrate Judge Cecilia M. Romero Court Order August 29, 2024, "In accordance with  
24 the Due Process Protections Act, counsel is reminded of the disclosure obligation of the prosecutor  
25 under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. In particular, the suppression by  
26 the prosecution of evidence favorable to an accused upon request violates due process where the  
27 evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of  
28 the prosecution. *Id.* at 87. Evidence is material within the meaning of *Brady* when there is a

**DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-3 OF 9**

UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

1 reasonable probability that, had the evidence been disclosed, the result of the proceeding would  
2 have been different. *Cone v. Bell*, 556 U.S. 449, 469-470 (2009). A reasonable probability does  
3 not mean that the defendant would more likely than not have received a different verdict with the  
4 evidence, only that the likelihood of a different result is great enough to undermine confidence in  
5 the outcome of the trial. *Smith v. Cain*, 565 U.S. 73, 75 (2012). Possible consequences for a  
6 violation of this Order may include, but are not limited to, exclusion of evidence at trial, a finding  
7 of contempt, granting of a continuance, and dismissal of the charges with prejudice.”

8 “DOCKET TEXT ORDER granting 9 Motion for Discovery as to Gabriel Gigena (1)  
9 Signed by Magistrate Judge Cecilia M. Romero on 8/29/2024.”

### 10 Background Process

11 On Aug. 14, 2024, and Aug. 29, 2024, the Court issued two *Brady* Orders for the prosecutor  
12 to disclose all Exculpatory Evidence. (Dkt. 8) (Case 2:24-mj-00094-AC Dkt. 2). The defendant  
13 issued a Motion for all discovery correlative to and inclusive of all Exculpatory Evidence. (Dkt.  
14 9). The Court granted the Motion. (Dkt. 10).

15 On September 1, 2024, the Defendant filed a Complaint with the US Department of Justice  
16 Office of the Inspector General. (Dkt. 23-3, pp. 2-4). The Inspector General issued a public Audit  
17 of the US Marshals Service’s Special Deputation Authority, September 2024. (Audit 24-116  
18 Attached)

19 From September 13, 2024, to October 25, 2024, the Defendant requested from the US  
20 Marshals all documents correlative to the *Brady* Order and Exculpatory Evidence:

21 *1) all documents and email communications leading up to and concerning said incident*  
22 *of May 4, 2024, including the transition of the warrant and custody order, 2) a full and accurate*  
23 *list of all personnel involved in the execution of said warrant and custody order including those of*  
24 *the state agencies assisting and involved, 3) As pursuant to the June 7, 2021, Memorandum and*  
25 *Utah Law, Body Cams are required, all footage is demanded to be produced from all agencies*  
26 *involved, 4) All personnel records, all training records, and all discipline records of all US*  
27 *Marshals VFAST personnel and agencies involved is demand to be produced, 5) All records of the*

28 **DEFENDANT’S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-4 OF 9**

UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

1 *number of individuals killed and/or injured by the Utah VFAST Task Force with the date of the*  
2 *incidents up to September 13, 2024. Any failure to produce said information will be assumed to be*  
3 *in bad faith and be interpreted against your agency and all other agencies involved. (Dkt. 28, pp.*  
4 *1-43).* The US Marshals refused said request with Notice of and violation of the Court's *Brady*  
5 *Order.*

6 On November 14, 2024, the Defendant issued a Notice of Noncompliance for the requested  
7 Exculpatory Evidence.

8 From April 14-16, 2025, a trial was held where the prosecutor used perjury statements to  
9 manufacture an invalid and void verdict against the Defendant.

10 The Defendant now moves for the Exculpatory Documents and Evidence Demanded to  
11 prove this perjury and disingenuous conduct.

#### 12 **Heart-to-Heart Bull Session**

13 To purify this case in the Crucible of Justice, the prosecutor is mandated to provide the  
14 Exculpatory Documents, Evidence, and Discovery Demanded. The Inspector General has laid out  
15 all the perinate documentation and process that must be in place prior to a state officer being  
16 considered a valid USMS special deputy to have standing to bring the charge of 18 USC 111(a).

17 The officer's testimony crumbles the bulwark of the prosecutor's sandcastle. The officer  
18 testified to not being a valid USMS special deputy. (Dkt. 93-5, p.1; 93-7, p.1). Aside from not  
19 having a Memorandum of Understanding between the officer's home agency, Sandy City Police  
20 Department, and the USMS, the Inspector General states, "USMS Policy Directive 17.11 sets the  
21 duration of individual special deputations, which ranges between 1 and 3 years based on specific  
22 categories." (Audit 24-116, p.9 Attached). The officer testified that he was deputized April 2021.  
23 Though unverified, this means that the deputization lapsed as of the date of the unlawful arrest,  
24 May 4, 2024. The officer testified that his home agency had changed twice which would terminate  
25 his deputization upon transfer as there would have to be a letter of suitability from the home agency  
26 and thereafter approval with all other perinate documents; the Application for the USMS Special  
27 Deputy, review, and Approval; the Oath Form; the Memorandum of Understanding with the home

28 **DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
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1 agency and the USMS; The Notarized affidavit signed by the requesting individual that firearms  
2 safety training, which meets or exceeds the standards established by the United States Marshals  
3 Service for the type of firearm the individual seeks to carry, was completed within 30 days from  
4 the date of the request for initial deputations and within the six-month period prior to the request  
5 for redeputations. **(DOJ Dept. Manual 132 Attached)**. The expiration dates, renewal dates,  
6 changes in eligibility and status, and terminated Oath forms.

7 The Defendant requested all of these Exculpatory Documents and Evidence months in  
8 advance of trial, and the prosecutor is mandated to have all of this information prior to ever seeking  
9 an indictment. All of these Exculpatory Documents and Evidence inclusive of a facially valid  
10 warrant with the underling subject-matter jurisdiction is a fundamental necessary element of the  
11 charge to have standing to bring a charge of 18 USC 111(a), and standing is nonwaivable as a mere  
12 contemptuous stipulation between conspiring federal attorneys.

13 The Executive Office for the US Attorney with Final Agency Action supersedes the  
14 contemptuous stipulation of a warrant by ruling that there was no warrant and there was no US  
15 Attorney Approval to initiate a Task Force according to law and USMS Policy 8.18 (C)(2)(b), so  
16 no one on scene was acting within the scope of federal authority. **(Dkt. 95-1, pp.1-2; 95-2, pp.1-4)**.

17 The Inspector General has determined that unauthorized Special Deputies has been a  
18 problem for almost 30 years when auditing the FBI who had to use the USMS to special deputize,  
19 and stated, "Prior to deputation, the officer would be functioning as a federal officer without the  
20 proper authority. This could place the officer in a position where any civil liability incurred would  
21 be without the backing of the federal government." And further stated, "For example, in  
22 Albuquerque, New Mexico, the task force could not bring federal charges against an individual  
23 who assaulted a non-deputized member during a fugitive arrest." **(Audit 97-28, Section III Attached)**.

24 Had the Defendant not acted in self-defense and actual started a fight with the Sandy City  
25 officer without special deputy authority, the officer is still a private person assaulting a free person  
26

27 **DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-6 OF 9**

28 UNITED STATES OF AMERICA V. **Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

1 who was not breaking any laws, and the officer abused the Defendant's daughters without just  
2 cause nor grounds to arrest the Defendant and kidnap the Defendant's daughters.

3 This is the same for the personal frolic of all the officers on scene who are beyond the veil  
4 and acting without the approval of a US Attorney. (Dkt. 95-1, pp.1-2; 95-2, pp.1-4). This is  
5 excluding the factor that the Defendant is a Federally Recognized American Indian Tribal Chief  
6 acting within the scope of that office. (Dkt. 114, pp.1-2).

7 Special Deputies can be charged with state (and Tribal) charges inclusive of Murder. See  
8 *State of Ohio v. Meade*, No. 2:2021cv05587 - Document 17 (S.D. Ohio 2022) (**Opinion Attached**)  
9 (Analyzes the *Limited* duties of a Special Deputy for Federal Authority to protect for Federal  
10 Removal from state (and Tribal) Court; Ruling Criminal Conduct is not a protected Federal  
11 Authority and the narrow duties of Special Deputies are not the same authorities as a USMS  
12 Deputy).

13 The only Subject-Matter Jurisdiction the Court has is 18 USC §241 for the officers  
14 conspiring to injure, oppress, threaten, or intimidate the Defendant in any State, Territory,  
15 Commonwealth, Possession, or District in the free exercise and enjoyment of any right and  
16 privilege secured to the Defendant by the Constitution and laws of the United States, and because  
17 of his having so exercised the same; and for going in disguise on the highway, and on the premises  
18 of another, with intent to prevent and hinder the Defendant's free exercise and enjoyment of any  
19 right and privilege so secured; while kidnapping the Defendant's daughters.

20 The Defendant through multiple cases has shouted from the rooftops to having legal and  
21 lawful custody of his daughters, was accosted by unknown assailants posing as federal officers,  
22 they acted Ultra Vires without US Attorney approval and, here now added, without a Fugitive  
23 Identification Number, they falsely claimed to enforce a nonexistent warrant for Ex Post Facto  
24 violating an unserved custody decree issued without Subject-Matter Jurisdiction and without In  
25 Personam Jurisdiction, and thereafter the Defendant's daughters were kidnapped while the  
26 Defendant was subjected to unlawful criminal proceedings in state and federal courts while the  
27 assailants manufacture false predicate for their excessive deadly force in violation of clearly  
28 established Con. Law. (99-13, pp.1-39; 99-14, pp.1-25; 99-19, p.1). This over-the-top conduct

**DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-7 OF 9**

UNITED STATES OF AMERICA V. Gabriel Gigena  
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The Kingdom of Hayah Hawah

1 was arbitrary, capricious, an abuse of discretion, and not in accordance with the Law which the  
2 officers falsely billed the federal government and received funds for.

3 To date the Defendant has sought again the Exculpatory Documents and Evidence through  
4 the formal process of FOIA which is still being withheld to obstruct justice, and now the Defendant  
5 Demands the production of the Exculpatory Documents and Evidence Listed Above and prays for  
6 the Court to enforce its *Brady* and Discovery Orders to hold the Plaintiff to produce said  
7 Exculpatory Documents and Evidence Listed Above forthwith and in three days from the date of  
8 this Motion. **(FOIAs Attached).**

9  
10 **Conclusion**

11 The linchpin holding the prosecution's case from unraveling is there must be a federal  
12 officer. In this case a Special Deputy authorized by law prior to exercising the limited duties  
13 according to clearly established Con. Law. For these reasons the Defendant with Revered Divine  
14 Grace respectfully prays the Court grant this motion, and any and all other relief the Court deems  
15 is Just and Proper.

16 *"And ye shall know the truth, and the truth shall make you free."* **John 8:32 King James**  
17 **version**

18 *"Rejoicing in hope; patient in tribulation; continuing instant in prayer;"* **Romans 12:12**  
19 **King James version**

20  
21 **IN THE NAME ABOVE ALL NAMES, IN THE NAME OF GESU AMEN**  
22  
23  
24  
25  
26

27 **DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY**  
**ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-8 OF 9**

28 UNITED STATES OF AMERICA V. **Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

1 I declare on Revered Divine Grace, Holiness, and under penalty of perjury under the law  
2 of The United States and in equilibrium with The Great Constitution of the Kingdom of  
3 Hayah Hawah that the foregoing is true and correct, and if called upon to testify to the  
4 matters herein, I could and would testify competently thereto.

5 Executed: August 1, 2025.

6 Revered and Divinely Upheld,

7 **THE SILVER DRAGON OF THE GOLDEN DAWN**

8 /S/ **Gabriel Gigena**



Office of Chief Cornerstone  
Gabriel Omar Gigena,  
Chief Wót'ááh Atsá,

Respectable Pro Per,  
Defendant: **Gabriel Omar Gigena**,  
6990 South Park Centre Drive  
Dept. 1 New Center Park Drive Suite 1  
Salt Lake City, **Kingdom of Hayah Hawah**,  
(UT, 84121)

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The Kingdom of Hayah Hawah  
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27 **DEFENDANT'S EMERGENCY MOTION FOR DISCOVERY AND ENFORCEMENT OF BRADY  
ORDERS AND ORAL MOTION FOR DISCOVERY GRANTED ON AUG. 29, 2024-9 OF 9**

28 UNITED STATES OF AMERICA V. **Gabriel Gigena**  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

Defendant: **Gabriel Omar Gigena, Chief Wót'ááh Atsá,**  
6990 South Park Centre Drive  
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**FILED**  
**2025 AUG 21**  
**CLERK**  
**U.S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT,**  
**AND DISTRICT OF THE UTAH**

United States of America,  
Plaintiff/Trustee,

Case No.: 2:24CR00228-TS

vs.

**Gabriel Omar Gigena,**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah,**  
In Respectable Pro Per, entire all Org.,

**MOTION FOR SUMMARY JUDGEMENT ON**  
**DEFENDANT'S EMERGENCY MOTION FOR**  
**DISCOVERY AND ENFORCEMENT OF BRADY**  
**ORDERS AND ORAL MOTION FOR**  
**DISCOVERY GRANTED ON AUG. 29, 2024**  
**FILE ON DEMAND**

Defendant/Protester/Trustee/Beneficiary,

DATE ACTION FILED: JULY 10, 2024  
TRIAL DATE: APRIL 14, 2025  
HEARING DATE:

**MOTION FOR SUMMARY JUDGEMENT ON DEFENDANT'S EMERGENCY MOTION FOR**  
**DISCOVERY AND ENFORCEMENT OF BRADY ORDERS AND ORAL MOTION FOR DISCOVERY**  
**GRANTED ON AUG. 29, 2024**

**NOTICE - TO EACH PARTY AND TO COUNSEL OF RECORD**  
**FOR EACH PARTY: YOU ARE HEREBY NOTIFIED THAT the Defendant**  
**Moves for Judgement on Defendant's Emergency Motion for Discovery of**  
**Exculpatory Documents and Evidence and Enforcement of Brady Orders and Oral**  
**Motion for Discovery Granted on Aug. 29, 2024.**

**Judgement of Indictment Preemption**

The prosecutor has not responded with defenses or objections within the time  
prescribed by the Rules of Court to prove that the officer for which the indictment

**MOTION FOR SUMMARY JUDGEMENT ON DEFENDANT'S EMERGENCY MOTION FOR**  
**DISCOVERY AND ENFORCEMENT OF BRADY ORDERS AND ORAL MOTION FOR DISCOVERY**  
**GRANTED ON AUG. 29, 2024-1 OF 3**

UNITED STATES OF AMERICA V. **Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

1 was indeed a bona fide duly authorized “special deputy”. The prosecutor has waived  
2 all defenses and objections to prove that the officer for which the indictment was  
3 indeed a bona fide duly authorized “special deputy” and is estopped for lack of  
4 standing to further the proceedings against the Defendant.

5 These undisputed facts heretofore warrant Manifest Injustice as lack of  
6 subject-matter jurisdiction, and the Exclusive Alcira Orbit of the court is to dismiss  
7 the indictment and case with prejudice.

### 8 **Conclusion**

9 For the reasons on the Record, Moving Papers, and as Justice Requires, the  
10 Defendant Prays for the Court’s Blessing for a Ruling in favor of the Defendant  
11 issuing a summary judgement that the Plaintiff has not met their burden to establish  
12 the officer in the indictment charged was indeed a bona fide duly authorized “special  
13 deputy” and thereby estopped as a matter of course of Res Judicata and the  
14 indictment is preempted. The Defendant Prays for any and all other relief the Court  
15 deems is Just and Proper.  
16

17 *“And Jesus answering said unto him, Suffer it to be so now: for thus it*  
18 *becometh us to fulfil all righteousness. Then he suffered him. And Jesus, when he*  
19 *was baptized, went up straightway out of the water: and, lo, the heavens were opened*  
20 *unto him, and he saw the Spirit of God descending like a dove, and lighting upon*  
21 *him: And lo a voice from heaven, saying, This is my beloved Son, in whom I am well*  
22 *pleased.” Matthew 3:15-17 King James version*

23 *“And ye shall know the truth, and the truth shall make you free.” John 8:32*

24 **King James version**

25 **IN THE NAME ABOVE ALL NAMES, IN THE NAME OF GESU AMEN**

26 **MOTION FOR SUMMARY JUDGEMENT ON DEFENDANT’S EMERGENCY MOTION FOR**  
27 **DISCOVERY AND ENFORCEMENT OF BRADY ORDERS AND ORAL MOTION FOR DISCOVERY**  
28 **GRANTED ON AUG. 29, 2024-2 OF 3**

UNITED STATES OF AMERICA V. Gabriel Gigena  
Office of Chief Cornerstone of  
The Kingdom of Hayah Hawah

1 I declare on Revered Divine Grace, Holiness, and under penalty of perjury under the law  
2 of The United States and in equilibrium with The Great Constitution of the Kingdom of  
3 Hayah Hawah that the foregoing is true and correct, and if called upon to testify to the  
4 matters herein, I could and would testify competently thereto.

5 Executed: August 21, 2025.

6 Revered and Divinely Upheld,

7 **THE SILVER DRAGON OF THE GOLDEN DAWN**

8  
9 /S/ **Gabriel Gigena**



10  
11 **Office of Chief Cornerstone**  
12 **Gabriel Omar Gigena,**  
13 **Chief Wót'ááh Atsá,**

14 Respectable Pro Per,  
15 Defendant: **Gabriel Omar Gigena,**  
16 6990 South Park Centre Drive  
17 **Dept. 1 New Center Park Drive Suite 1**  
18 **Salt Lake City, Kingdom of Hayah Hawah,**  
19 (UT, 84121)

20 **Office of Chief Cornerstone of**  
21 **The Kingdom of Hayah Hawah**  
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23 **chiefcornerstone@kingdomofhayahhawah.org**

24  
25  
26 **MOTION FOR SUMMARY JUDGEMENT ON DEFENDANT'S EMERGENCY MOTION FOR**  
27 **DISCOVERY AND ENFORCEMENT OF BRADY ORDERS AND ORAL MOTION FOR DISCOVERY**  
28 **GRANTED ON AUG. 29, 2024-3 OF 3**

**UNITED STATES OF AMERICA V. Gabriel Gigena**  
**Office of Chief Cornerstone of**  
**The Kingdom of Hayah Hawah**

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

---

UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GIGENA,

Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT'S  
EMERGENCY MOTION AND MOTION  
FOR SUMMARY JUDGMENT

Case No. 2:24-CR-228-TS

District Judge Ted Stewart

---

This matter is before the Court on Defendant Gabriel Gigena's Emergency Motion for Discovery and Enforcement of Brady Orders and Oral Motion for Discovery Granted on August 29, 2024,<sup>1</sup> and Motion for Summary Judgment on the Emergency Motion.<sup>2</sup> For the reasons discussed below, the Court will deny the Motions.

I. BACKGROUND

On April 16, 2025, a jury found Defendant guilty of one Count of Assault on a Federal Officer, in violation of 18 U.S.C. §§ 111(a)(1), 1114. Following the verdict, Defendant was permitted to represent himself and his appointed counsel withdrew.<sup>3</sup> The Court subsequently considered and denied numerous motions filed by Defendant, including a motion for a new

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<sup>1</sup> Docket No. 116.

<sup>2</sup> Docket No. 118.

<sup>3</sup> Docket Nos. 97, 98.

trial.<sup>4</sup> Defendant now moves the Court to allow for discovery of purported exculpatory documents and evidence and seeks enforcement of *Brady* orders.

## II. DISCUSSION

The Court notes at the outset that “[a] pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.”<sup>5</sup> Therefore, “if the [C]ourt can reasonably read the pleadings to state a valid claim on which [Defendant] could prevail, it [will] do so despite [any] failure [by Defendant] to cite proper legal authority, his confusion of various legal theories, . . . or his unfamiliarity with pleading requirements.”<sup>6</sup> However, it is not the Court’s “proper function . . . to assume the role of advocate for the pro se litigant.”<sup>7</sup> Therefore, the Court will not construct legal theories or supply unasserted facts on Defendant’s behalf.<sup>8</sup> The below analysis represents the Court’s best interpretation of Defendant’s arguments.

There is no procedural mechanism by which the Court could order discovery at this stage in the proceedings where the trial has concluded and a verdict was rendered. Accordingly, the Court will consider Defendant’s request for discovery as a request for a new trial.

Federal Rule of Criminal Procedure 33(a) provides that “the court may vacate any judgment and grant a new trial if the interest of justice so requires.” Generally, new trials are

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<sup>4</sup> See Docket No. 111.

<sup>5</sup> *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

disfavored and courts are instructed to exercise great caution before granting them.<sup>9</sup> In determining whether a new trial is justified, courts consider whether there has been an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or prevent manifest injustice.<sup>10</sup>

A motion for a new trial must be brought within 14 days of trial, absent newly discovered evidence.<sup>11</sup> Defendant's Motion is therefore untimely. Even considering the substance of Defendant's motion, however, the Court finds that a new trial is not in the interests of justice. Defendant's Motion argues generally that (1) the government failed to provide discovery that Defendant requested prior to trial; and (2) the government failed to disclose exculpatory evidence in violation of *Brady*.<sup>12</sup>

First, Defendant asserts that he requested certain evidence from the U.S. Marshals, which was never received. Defendant appears to have requested this evidence directly from agencies via a public records request under the Freedom of Information Act ("FOIA"). A FOIA request and any denial thereof is wholly unrelated to the discovery requirements in this case, which are governed by the Federal Rules of Criminal Procedure. Any wrongful denial of a FOIA request, therefore, cannot serve as the basis for a new trial. Defendant also noted that he filed a notice of noncompliance on this docket related to not receiving records in relation to his

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<sup>9</sup> *United States v. Troutman*, 814 F.2d 1428, 1455 (10th Cir. 1987).

<sup>10</sup> *United States v. Sims*, 252 F. Supp. 2d 1255, 1260 (D.N.M. 2003) (citing *Major v. Benton*, 647 F.2d 110, 112 (10th Cir. 1981); *United States v. Prince*, 167 F. Supp. 2d 1296, 1300 (D. Kan. 2001)).

<sup>11</sup> Fed. R. Crim. P. 33(b).

<sup>12</sup> *See Brady v Maryland*, 373 U.S. 83 (1963).

FOIA request.<sup>13</sup> As noted in a previous order,<sup>14</sup> before his trial, Defendant was made aware that any filings he submitted personally while he was represented by counsel would be lodged and, therefore, would not require a response from the government or a ruling from the Court. Defendant indicated that he understood this and elected to move forward with counsel. Therefore, the government's failure to respond to Defendant's purported discovery request does not justify a new trial.

Defendant also argues the government failed to disclose exculpatory evidence in violation of *Brady*. "To establish a *Brady* violation, a defendant must show the government suppressed material evidence that was favorable to him. Mere speculation about whether evidence would have been favorable to the defendant is insufficient to support a *Brady* claim."<sup>15</sup> Regarding materiality, Defendant seems to argue that the undisclosed evidence would have shown that Officer Piekarczyk, the officer that Defendant was convicted of assaulting, was not a federal officer and is, therefore, not protected under 18 U.S.C. §§ 111(a)(1), 1114. He also argues that the evidence would show that the prosecutor engaged in perjury during the trial to obtain an unlawful verdict against Defendant.

In his Motion, Defendant provides a list of documents that he argues were not provided by the government, including "the [a]pplication for the USMS Special Deputy" and approval, the Oath Form, the MOU between the USMS and the employing agency, and other documents.

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<sup>13</sup> Docket No. 28.

<sup>14</sup> Docket No. 110, at 2.

<sup>15</sup> *United States v. Anderson*, 62 F.4th 1260, 1271 (10th Cir. 2023) (internal quotation marks and citations omitted).

It is not clear if these documents exist. Assuming they do, Defendant has not demonstrated that these documents would be material or favorable to his case.

18 U.S.C. § 111(a)(1) imposes criminal penalties on a person who “forcibly assaults, resists, . . . or interferes with any person designated in section 1114” while that person is engaged “the performance of official duties.” Section 1114 “protects ‘any officer or employee of the United States or of any agency in any branch of the United States Government while such officer or employee is engaged in or on account of the performance of official duties, *or any person assisting such an officer or employee in the performance of such duties or on account of that assistance.*’”<sup>16</sup>

“Section § 111 is ‘intended to protect both federal officers and federal functions.’”<sup>17</sup> As such, the person assaulted does not need to be a formal federal employee to be protected under the statute. For example, the Tenth Circuit has found that:

a probation officer orally employed by a United States Marshal to assist in the transportation of a federal prisoner was protected under § 111. Similarly, [the Tenth Circuit has] held a city police detective deputized to participate in a federal investigation was cloaked by §§ 111 and 1114. [They have also] concluded a private citizen, killed while helping a federal employee plot a fence funded and approved by a federal agency, was assisting a federal employee while engaged in or on account of the performance of official duties.<sup>18</sup>

In this case, the evidence at trial supported that, on the day in question, Officer Piekarczyk was employed as a federal Task Force officer by special designation to effectuate an arrest warrant on Defendant. Further, the evidence supported that numerous federal officers

---

<sup>16</sup> *United States v. Ama*, 97 F. App’x 900, 901 (10th Cir. 2004) (quoting 18 U.S.C. § 1114).

<sup>17</sup> *Id.* at 902 (quoting *United States v. Feola*, 420 U.S. 671, 679 (1975)).

<sup>18</sup> *Id.* (internal quotation marks and citations omitted).

were working on the Task Force that day for the purpose of arresting Defendant. Finally, the evidence supported that Defendant placed Officer Piekarczyk in a choke hold after Officer Piekarczyk tackled Defendant for the purpose of making the arrest.

Based on the above-described Tenth Circuit guidance and the evidence presented at trial, the Court finds that Defendant has not demonstrated that any of the alleged documents purportedly undisclosed by the government would demonstrate that Officer Piekarczyk was not protected under §§ 111(a)(1) and 1114. Even if, as Defendant seems to argue, the documents would show that Officer Piekarczyk was not an official federal officer due to some technicality or administrative error, this would not undercut the undisputed evidence presented at trial supporting that Officer Piekarczyk was assisting federal officers in the performance of official duties when he sought to arrest Defendant. Accordingly, the purported evidence Defendant alleges was wrongfully withheld would not be material to Defendant's case.

Based on this analysis the Court finds that Defendant has failed to demonstrate that he is entitled to a new trial or that the government failed to disclose exculpatory evidence in violation of *Brady*.

Defendant's Motion for "Summary Judgment" argues that his Emergency Motion should be granted because the government did not respond. Regardless of the government's response or lack thereof, the Court must follow the applicable rules and controlling law, as described above. Accordingly, the Court will deny Defendant's Motion for Summary Judgment.

### III. CONCLUSION

It is therefore

ORDERED that Defendant's Emergency Motion for Discovery and Enforcement of Brady Orders and Oral Motion for Discovery Granted on August 29, 2024 (Docket No. 116) is DENIED. It is further

ORDERED that Defendant's Motion for Summary Judgment (Docket No. 118) is DENIED.

DATED this 21st day of August, 2025.

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

**Appendix F — Petition for Panel Rehearing and Rehearing En Banc**

Petition for panel rehearing and rehearing en banc filed in *United States v. Gigena*,  
No. 25-4112.

[Record: Petition for Panel Rehearing and Rehearing En Banc, No. 25-4112, Doc.  
86-1]

**No. 25-4112**

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

---

**Gabriel Omar Gigena,**  
*Defendant-Appellant,*

v.

United States of America,  
*Plaintiff-Appellee.*

---

On Appeal from the Judgment of Judge Brian Theodore Stewart in  
United States District Court for the District of Utah

---

**PETITION FOR PANEL REHEARING AND REHEARING EN BANC**

---

APPELLANT: **Gabriel Omar Gigena,**  
6990 South Park Centre Drive  
**Dept. 1 New Center Park Drive Suite 1**  
Salt Lake City, **Kingdom of Hayah Hawah,**  
(UT, 84121)  
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Pro Se

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## **RULE 40 STATEMENT**

Appellant Gabriel Omar Gigena respectfully petitions for panel rehearing and rehearing en banc under Federal Rule of Appellate Procedure 40. Rehearing is warranted because the panel decision conflicts with *United States v. Feola*, 420 U.S. 671 (1975), and *United States v. Washington*, 79 F.4th 320, 327–31 (3d Cir. 2023) (failure to prove charged § 1114 protected-person theory required acquittal), which relied on *United States v. Torres*, 862 F.2d 1025, 1030 (3d Cir. 1988) (local employees assigned to a federal agency and sworn under federal oath may qualify), in addressing when local personnel can qualify for federal-officer protection through federal assignment and oath requirements under 5 U.S.C. §§ 3331 and 3374. The proceeding also presents exceptional questions: whether a conviction may stand where the panel acknowledged a preserved sufficiency challenge but affirmed without Rule 29 analysis of officer status, oath/deputation proof, lawful assignment, or the government’s fallback “assisting” theory.

## **I. INTRODUCTION**

On August 13, 2026, the panel affirmed Appellant’s conviction under 18 U.S.C. § 111(a). The government itself acknowledged that Appellant’s insufficiency claim was preserved. Yet the decision affirmed without conducting the required Rule 29 analysis of an essential element: whether Officer Piekarczyk was a bona fide federal

officer, or lawfully assisting one, acting within the scope of federal authority. The record identified by Appellant did not include the oath of office, current deputation papers, expiration or renewal records, memorandum of understanding, United States Attorney approval, or proof requested to bona fide federal status. Under *Feola*, knowledge of federal status is not required, but actual federal status and official duty remain elements the government must prove beyond a reasonable doubt.

The panel's treatment also conflicts with *United States v. Washington*, 79 F.4th 320, 327–31 (3d Cir. 2023). There, the indictment alleged assault on “officers of the United States,” but the proof showed private security personnel. Relying in part on *United States v. Torres*, 862 F.2d 1025, 1030 (3d Cir. 1988), which recognized that local government employees assigned to a federal agency under 5 U.S.C. § 3374 may qualify where they take the oath required by 5 U.S.C. § 3331, the Third Circuit held that the government failed to prove the operative charged federal-officer theory. The court then rejected the government's fallback reliance on § 1114's separate protection for “persons assisting” federal officers or employees because that alternative protected-person theory also was not proven. Because the proof failure required acquittal, the court did not need to resolve any separate indictment-amendment/variance question. The same principle applies here: testimony that Officer Piekarczyk was “special deputized” did not answer Appellant's preserved

challenge to oath, current deputation, renewal, MOU, USAO approval, and lawful federal-assignment proof.

## **II. STATEMENT OF THE CASE**

This prosecution arose from a May 4, 2024 Utah arrest connected to a California custody dispute. Appellant maintained that before the California order issued, a Tribal Court custody decree had awarded him custody of his twin daughters; that he relocated to Utah after leaving an abusive relationship; and that the later California emergency order and Ramey warrant were issued without service, notice, jurisdiction over the children, charges, or a probable-cause affidavit, contrary to Ex Post Facto Clause principles. Appellant was arrested in Utah while holding his daughters and contended that officers initiated a surprise tackle without a meaningful opportunity to comply.

Appellant was held 18 days without state charges being filed; state charges were later dismissed for lack of proof. A federal indictment followed on July 10, 2024, charging assault on a federal officer under §§ 111(a) and 1114. Trial occurred April 14–16, 2025. Appellant preserved the federal-status issue through Rule 29, Rule 12, and an emergency motion seeking the documents necessary to bona fide TFO status, including oath/deputation records, MOU authority, expiration and renewal records,

USMS policy compliance, certified task-force authorization, body-camera material, and United States Attorney approval.

After retained private counsel did not proceed, Appellant was represented at trial by appointed public defenders. Appellant contends appointed counsel failed to pursue the preserved officer-status, warrant, jury-instruction, discovery, and Speedy Trial issues despite his express instructions and written objections to stipulations. Appellant was granted leave to proceed pro se only after conviction and has represented himself in post-trial proceedings, appeal, and this petition.

### **III. STANDARD FOR REHEARING**

The rehearing rules require a petition seeking en banc review to identify conflict with Supreme Court, circuit, or other authoritative appellate precedent, or questions of exceptional importance. Panel rehearing is appropriate where the panel overlooked or misapprehended points of law or fact. Both standards are satisfied because the panel overlooked the preserved Rule 29 sufficiency issue and treated testimony describing a local officer as “special deputized” as legally sufficient without addressing Appellant’s documentary-proof challenge.

#### **IV. ARGUMENT**

##### **ARGUMENT I: THE PANEL FAILED TO CONDUCT RULE 29 REVIEW OF THE FEDERAL-OFFICER ELEMENT**

The government acknowledged that Appellant’s insufficiency claim was preserved. That concession matters. A preserved Rule 29 claim requires the appellate court to determine whether, viewing the evidence under the governing sufficiency standard, a rational jury could find every essential element beyond a reasonable doubt. The panel did not perform that analysis for the federal-status and official-duty elements.

Under *Feola*, § 111 does not require proof that the defendant knew the victim was a federal officer. But *Feola* does not eliminate the government’s burden to prove that the victim actually was a federal officer, or lawfully assisting one, engaged in official duties. Appellant challenged that element before and during the proceedings and sought the oath, deputation, MOU, expiration, renewal, and authorization records necessary to determine whether a local officer had federal status on May 4, 2024.

The government’s proof was testimony that Officer Piekarczyk was “special deputized” and working as a task-force officer. See Supp.ROA-Vol.I(Dkt.40, p.107, L.23–24). Appellant’s position was that testimony alone did not answer the legal question: whether the officer had current federal appointment, including an oath foundation under 5 U.S.C. § 3331 and a federal-assignment foundation comparable

to 5 U.S.C. § 3374, and whether he was acting within an authorized federal duty on May 4, 2024. *Washington* confirms that § 1114 protected-person theories matter. The government there failed to prove the charged “officer of the United States” theory under the *Torres* oath-and-assignment analysis and also failed to prove the fallback “persons assisting” theory. The Third Circuit reversed and directed judgment of acquittal, leaving any separate indictment-amendment or variance question unanswered because the Rule 29 proof failure was dispositive. The same problem appears here if the government’s fallback is that Piekarczyk was merely assisting others rather than himself a bona fide federal officer.

The panel did not identify an oath under 5 U.S.C. § 3331, a federal-assignment/deputation foundation comparable to 5 U.S.C. § 3374, current deputation, MOU, expiration/renewal record, USAO approval, certified task-force authorization, or other proof establishing federal status. That absence of documentary proof was especially material because Appellant had specifically placed USMS special-deputation procedures and jurisdictional limits before the court through requests for judicial notice. Appellant requested judicial notice under Fed. R. Evid. 201 of the DOJ OIG’s *Audit of the U.S. Marshals Service’s Special Deputation Authority*, Report No. 24-116, cited in the record at ROA-Vol.I(Doc.16-1, pp.109–143, 120, 124). The audit identified deficiencies in USMS administration and oversight of special deputations, including controls over eligibility, allowable

purposes, authorization timeframes, documentation, and risks created by lapses in deputation status. Critically, the audit reported that USMS Office of General Counsel and Department officials recognized that a lapse in deputation can create legal risks because, in a criminal prosecution where a TFO with a lapsed deputation is a witness, defense counsel could challenge the TFO's jurisdiction to conduct USMS-authorized operations, thereby undermining the successful prosecution of the defendant. The audit further noted that DOJ may deny representation to a TFO personally prosecuted in connection with a federal task-force operation if the TFO was not a federal officer acting within the scope of federal authority. Those findings directly supported Appellant's request for oath records, current deputation authority, expiration and renewal documentation, MOU authority, and proof that the Utah task-force operation was authorized for a lawful federal purpose. The panel did not address that judicial-notice material, even though it bore directly on whether testimony that an officer was "special deputized" could satisfy the preserved Rule 29 challenge to federal-officer status and official duty. Nor did the panel identify the separate federal officer whom Piekarczyk allegedly assisted, the lawful federal duty being performed, or a jury finding on that alternative theory. That omission conflicts with *Feola*, *Washington* (proof failure on charged protected-person theory), and *Torres* (oath-and-assignment foundation for local personnel) and warrants rehearing.

## **ARGUMENT II: THE “ASSISTING AN OFFICER” FALLBACK WAS NOT CHARGED, FOUND, OR PROVEN**

The government argued that any technical defect in deputation was immaterial because § 1114 also covers “any person assisting” a federal officer. But that theory cannot cure a Rule 29 failure unless the indictment, instructions, verdict, and evidence allowed the jury to find it beyond a reasonable doubt. The panel did not identify any such finding. Nor did it explain how an allegedly unauthorized task-force operation, executed without the USAO approval Appellant requested in discovery and judicial notice, constituted performance of a federal duty. See Supp.ROA-Vol.V(Doc.54-2, pp.179–184) (EOUSA-2025-003904); Supp.ROA-Vol.IV(Doc.54-1, pp.664–685) (USMS task-force, arrest, and body-worn-camera policies).

## **ARGUMENT III: THE INSTRUCTIONS, STIPULATIONS, AND VERDICT FORM OBSCURED THE ELEMENTS**

The panel relied on defense counsel’s trial statement that the case was “not about” officer status. But Appellant’s briefs identified written objections to stipulations and pretrial efforts to require proof of TFO status, including Appellant’s instruction against stipulating that the alleged victim was a federal officer engaged in official duties. Supp.ROA-Vol.V(Dkt.54-2, p.527). A defendant’s conviction cannot rest on

counsel's unilateral concession of an essential element where the defendant preserved a sufficiency challenge and disputed the factual/legal foundation for the element. The jury was not asked to determine whether the officer had a current oath, valid deputation, MOU authority, or was instead merely assisting a separate federal officer.

The omission or effective removal of contested elements implicates *United States v. Gaudin*, 515 U.S. 506, 510–15 (1995) (jury must decide every essential element), *Neder v. United States*, 527 U.S. 1, 8–15 (1999) (omitted-element error requires constitutional harmless-error analysis), and *Sullivan v. Louisiana*, 508 U.S. 275, 281–82 (1993) (structural error where the jury verdict is vitiated). Appellant does not rely on *Neder* for the overbroad proposition that every omitted-element error is automatically structural. Rather, the point is that where the federal-status and official-duty questions were disputed and preserved, the panel was required to analyze whether the jury actually resolved those elements beyond a reasonable doubt.

#### **ARGUMENT IV: THE PANEL MISAPPREHENDED COUNSEL-CAUSED OMISSIONS AND THE 28(j) LETTER**

Appellant's FRAP 28(j) letter raised a distinct Sixth Amendment issue: alleged government interference with retained private counsel before trial. The letter

asserted that the prosecutor told retained counsel, “we are going to make an example out of him,” after which counsel did not proceed despite payment and an attorney-client agreement. Appellant cited *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148–50 (2006), because wrongful deprivation of retained counsel of choice is structural error and is not measured by substitute counsel’s performance under *Strickland*. See also *Sullivan v. Louisiana*, 508 U.S. 275, 281–82 (1993) (structural error not subject to ordinary harmless-error review). The panel did not mention or analyze that submission.

This omission matters because the panel repeatedly treated arguments as unraised or uncontested at trial. But Appellant’s position was that retained counsel was lost at the outset and that appointed counsel later failed to pursue Appellant’s requested Rule 29, Rule 12, discovery, jury-instruction, and speedy-trial positions. Appellant was not granted leave to proceed pro se until after conviction. Rehearing is warranted so counsel-caused omissions are not mistaken for Appellant’s personal waiver of preserved element challenges.

#### **ARGUMENT V: SECONDARY ISSUES CONFIRM EXCEPTIONAL IMPORTANCE**

**Recusal.** The petition’s remaining issues should be considered in light of the central sufficiency defect. The recusal issue confirms exceptional importance because

Appellant argued that the district court was required to accept the recusal allegations as true for legal-sufficiency purposes, citing *In re Martinez-Catala*, 129 F.3d 213, 218 (1st Cir. 1997) (recusal affidavit allegations accepted as true for legal-sufficiency review in recusal/disqualification posture), and *Netsphere, Inc. v. Baron*, 703 F.3d 296, 315 (5th Cir. 2012) (legal sufficiency assessed without resolving truth of the recusal affidavit allegations), and that close § 455(a) questions favor recusal under *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995) (reasonable doubts about impartiality require recusal). The panel did not address that posture or explain why the recusal from a directly related civil case—particularly where Appellant contended the recusal was not disclosed in the criminal proceeding—did not affect the criminal case’s trial-management rulings, witness limits, federal-status proof, and post-trial treatment of lodged motions.

**Judicial notice and official duty.** The warrant, tribal-sovereignty, and judicial-notice issues bear directly on official duty. Appellant requested judicial notice under Fed. R. Evid. 201 of EOUSA Final Agency Action EOUSA-2025-003904, cited at Supp.ROA-Vol.V(Doc.54-2, pp.179–184), which he cited as showing no United States Attorney approval to initiate a Violent Fugitive Task Force operation against him and no federal warrant. The panel did not address that request or explain how an operation allegedly lacking that approval established lawful federal duty under §§ 111 and 1114. Those omissions also intersect with the favorable-discovery issue:

the requested materials included warrant validity records, EOUSA/USAO approval, USMS task-force policy, USMS arrest policy, body-worn-camera policy, MOU/deputation/oath documentation, officer reports containing allegedly false criminal-history information, and video or audio evidence bearing on officer status/events, official duty, excessive force, and self-defense. See Supp.ROA-Vol.I(Dkt.40, p.114, L.2–23) (MOU and body-camera testimony).

**Prosecutorial misconduct.** The panel also stated that Appellant did not identify specific prosecutorial statements, but the Opening Brief identified them and the Reply Brief supplied pinpoint transcript citations. It quoted the prosecutor’s reliance on Appellant’s statement, “You can’t arrest me. I am chief the Indians,” as proof of guilt, Supp.ROA-Vol.I(Dkt.40, p.367, L.21–p.368, L.7; p.371, L.11–13; p.375, L.21–25); the vouching that “the five sworn officers who testified in this case each showed the hallmarks of credibility” and that the jury “should be confident in their testimonies,” Supp.ROA-Vol.I(Dkt.40, p.371, L.19–p.372, L.15); the claim that Appellant intentionally “chok[ed] and strangl[ed]” the officer despite testimony that the officer’s airway was not occluded, Supp.ROA-Vol.I(Dkt.40, p.136, L.2–4), despite photographic evidence Appellant cited as showing no visible neck injury, Supp.ROA-Vol.IX(Doc.67, p.2), and despite 18 U.S.C. § 113(b)(4), which defines “strangling” as intentionally, knowingly, or recklessly impeding normal breathing or circulation of blood by applying pressure to the throat or neck; and the assertion

that the officer's initial contact was "legal contact authorized by an arrest warrant," Supp.ROA-Vol.I(Dkt.40, p.376, L.3–5, L.14–16). The Reply Brief also cited the court's allowance of "substantial leeway in leading questions" so the government could control preliminary matters and avoid violating the court's evidentiary order, permitting the prosecutor to shape witness testimony on direct examination. Supp.ROA-Vol.I(Dkt.40, p.15, L.12–p.16, L.16); Fed. R. Evid. 611(c). This mattered because the government's case depended heavily on officer testimony; vouching for those officers therefore went to the heart of the disputed proof. Those statements were tied to vouching, misstatement of evidence/law, silence/status inference, and Brady issues under *Berger v. United States*, 295 U.S. 78, 88 (1935) (prosecutor may prosecute earnestly but may not use improper methods calculated to produce a wrongful conviction), *United States v. Young*, 470 U.S. 1, 11–12, 16–20 (1985) (improper prosecutorial argument must be evaluated in context and may undermine trial fairness), *Douglas v. Workman*, 560 F.3d 1156, 1179 (10th Cir. 2009) (improper vouching occurs when prosecutor implies personal knowledge of witness credibility), *Cargle v. Mullin*, 317 F.3d 1196, 1218 (10th Cir. 2003) (cumulative prosecutorial misconduct may deny due process), and *United States v. Sorensen*, 801 F.3d 1217, 1242–43 (10th Cir. 2015) (misconduct warrants reversal where there is reason to believe it influenced the verdict).

**Favorable discovery.** The Brady issue likewise involved specified favorable discovery, not generic speculation. Appellant identified exculpatory and impeachment materials relevant to the warrant, task-force authority, officer status, body-worn cameras, MOU/deputation/oath proof, altered or stripped video/audio, and officer reports. Those categories are favorable because they bear on the federal-status element, official duty, excessive force, self-defense, and impeachment under *Brady v. Maryland*, 373 U.S. 83 (1963) (duty to disclose favorable evidence), *United States v. Bagley*, 473 U.S. 667, 676, 682 (1985) (favorable evidence includes impeachment), *Giglio v. United States*, 405 U.S. 150, 154–55 (1972) (credibility evidence must be disclosed), *Kyles v. Whitley*, 514 U.S. 419, 435–36 (1995) (suppressed evidence considered cumulatively), and *Smith v. Cain*, 565 U.S. 73, 75 (2012) (material impeachment can undermine confidence in verdict). See also ROA-Vol.I(Doc.16-1, pp.109–143) (DOJ OIG Audit 24-116 on special deputation authority); Supp.ROA-Vol.V(Doc.54-2, pp.179–184) (EOUSA materials); Supp.ROA-Vol.IV(Doc.54-1, pp.664–685) (USMS policies).

**Speedy Trial and omitted defenses.** The Speedy Trial issue also tied directly to omitted defenses. Appellant was arrested May 4, 2024, federally indicted July 10, 2024, and tried April 14–16, 2025. He cited recorded calls and conferences in Supp.ROA-Vol.III(Doc.46), including “Call with Justin Public Defender part1.amr,” “Call with Justin Public Defender part2.amr,” “justinOct25th\_out.m4a,”

“001\_nov25\_2024,” and “002\_nov25\_2024,” reflecting discussion of the need to prepare self-defense, defense-of-others, excessive-force, and honest-mistake theories. The panel did not address Appellant’s argument that counsel sought continuances for those purposes but then omitted the defenses and instructions, undermining the validity of counsel’s claimed waiver of speedy-trial time under *Barker v. Wingo*, 407 U.S. 514, 530 (1972) (four-factor constitutional test), *Zedner v. United States*, 547 U.S. 489, 499 (2006) (Speedy Trial Act protections cannot be prospectively waived), *United States v. Toombs*, 574 F.3d 1262, 1271–72 (10th Cir. 2009) (ends-of-justice findings must be specific), *United States v. Black*, 830 F.3d 1099, 1111–13 (10th Cir. 2016) (Speedy Trial Act review), and *United States v. Seltzer*, 595 F.3d 1170, 1180–81 (10th Cir. 2010) (prejudice and defense impairment).

**Juror prejudice.** The prejudice from omitted defense instructions was not speculative. Appellant cited Juror No. 8’s post-verdict statement at Supp.ROA-Vol.VI(Dkt.54-3, pp.26–28), reporting that several jurors initially favored not guilty, that jurors were troubled by the surprise tackle and lack of opportunity to surrender, and that instruction language addressing whether Appellant had a fair opportunity to understand or comply would have given the not-guilty jurors “something concrete” to apply. Appellant does not rely on that statement to impeach the verdict, but to show why the panel should have addressed the instructional-error and prejudice

arguments already raised. Those arguments were supported by *United States v. Scalf*, 760 F.2d 1057, 1059 (10th Cir. 1985) (defendant entitled to theory-of-defense instruction if supported by evidence), *United States v. Montoya*, 676 F.2d 428, 431 (10th Cir. 1982) (self-defense instruction may apply where defendant reasonably acts in protective posture), *United States v. Span*, 970 F.2d 573, 577 (9th Cir. 1992) (right to be free from excessive force during arrest), *United States v. Morton*, 999 F.2d 435, 438 n.2 (9th Cir. 1993) (recognizing excessive-force defense in § 111 context), *United States v. Drapeau*, 644 F.3d 646, 654 (8th Cir. 2011) (same), and *United States v. Ornelas*, 906 F.3d 1138, 1147 (9th Cir. 2018) (excessive force is addressed through self-defense instruction in § 111 cases). The prejudice showing is also reinforced by the materiality standard under which evidence is material when there is a reasonable probability it would have altered the assessment of even one juror and undermined confidence in the verdict. *Cone v. Bell*, 556 U.S. 449, 469–70 (2009) (reasonable probability standard); *Kyles v. Whitley*, 514 U.S. 419, 435–36 (1995) (cumulative materiality and confidence in verdict); *Smith v. Cain*, 565 U.S. 73, 75–76 (2012) (material impeachment where testimony was central).

**Sentencing.** Sentencing reinforces the same proof problem. Appellant argued that the guideline range rested on disputed physical-contact and bodily-injury findings, stale or unsupported criminal-history information, and an uncorroborated 2009 reincarceration claim. The Reply Brief cited *Apprendi v. New Jersey*, 530 U.S. 466,

490 (2000) (facts increasing punishment beyond the authorized maximum must be found by a jury), *Blakely v. Washington*, 542 U.S. 296, 303–04 (2004) (statutory maximum is the maximum based on jury-found facts), *Alleyne v. United States*, 570 U.S. 99, 103 (2013) (facts increasing mandatory minimums are elements), *United States v. Booker*, 543 U.S. 220, 244 (2005) (mandatory guideline factfinding violated Sixth Amendment), *United States v. Farnworth*, 92 F.3d 1001, 1007 (10th Cir. 1996) (criminal-history timing limits), *United States v. Galaviz*, 645 F.3d 347, 361–62 (6th Cir. 2011) (false or stale criminal-history basis), *United States v. Mateo-Medina*, 845 F.3d 546, 554 (3d Cir. 2017) (sentence based on unsupported facts), *United States v. Ortiz*, 741 F.3d 288, 293–94 (1st Cir. 2014) (dismissed conviction affected criminal history), and *United States v. Cossel*, 632 F.3d 82, 88–89 (2d Cir. 2011) (unsupported facts require remand). The panel’s below-guidelines characterization did not answer whether the guideline range itself was legally and factually reliable.

## **V. MISSTATEMENTS AND OMISSIONS REQUIRING REHEARING**

The panel decision requires rehearing because it omits the issues that controlled the preserved sufficiency challenge and misapprehends the timeline of counsel and preservation.

1. The decision does not conduct Rule 29 analysis on whether the government proved bona fide federal-officer status beyond a reasonable doubt.

2. The decision identifies no oath of office, current deputation, MOU, expiration/renewal record, USAO approval, or other documentary proof establishing federal authority.
3. The decision does not address Appellant's request for judicial notice of EOUSA-2025-003904 concerning the alleged lack of United States Attorney approval and absence of a federal warrant.
4. The decision accepts the government's "assisting" fallback without identifying a charged theory, separate federal officer, lawful federal duty, or jury finding supporting that alternative.
5. The decision treats trial noncontest as waiver despite Appellant's Rule 29, Rule 12, emergency discovery, written-objection, and post-trial preservation record.
6. The decision does not address the FRAP 28(j) counsel-of-choice submission or Appellant's timeline: retained counsel did not proceed before trial; appointed counsel tried the case; Appellant proceeded pro se only after conviction.
7. The decision states that Appellant failed to identify prosecutorial misconduct despite the Reply Brief's transcript quotations concerning status/silence inference, officer-credibility vouching, "choking and strangling" language,

and the prosecutor's assertion that the initial tackle was lawful warrant contact.

8. The decision does not address the identified favorable discovery under *Brady*, *Bagley*, *Giglio*, *Kyles*, and *Smith*, including materials concerning warrant validity, task-force authority, MOU/deputation/oath proof, body-worn cameras, and video or audio evidence.
9. The decision does not address the recording citations tied to counsel's requested continuances for preparing self-defense, defense-of-others, excessive-force, and honest-mistake theories that were later omitted.
10. The decision does not address Juror No. 8's statement, cited by Appellant, indicating that several jurors initially favored not guilty and that instruction language addressing fair opportunity to understand or comply could have affected deliberations.
11. The decision characterizes the sentence as below-guidelines without resolving Appellant's argument that the guideline range rested on disputed physical-contact, bodily-injury, and criminal-history findings.

## **VI. CONCLUSION**

For the foregoing reasons, Appellant Gabriel Omar Gigena respectfully requests that this Court:

1. Grant panel rehearing or rehearing en banc;
2. Vacate the panel decision filed August 13, 2026;
3. Vacate Appellant's conviction and sentence; and
4. Order such further relief as justice requires, including judgment of acquittal on the preserved sufficiency issue or, in the alternative, remand for a new trial with proper jury findings on federal status, official duty, and any alleged “assisting” theory.

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL GIGENA,

Defendant.

**RESTRICTED & EX PARTE**

ORDER FOR ISSUANCE  
OF SUBPOENAS

Case No. 2:24-cr-00228 TS

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Pursuant to 18 U.S.C. §3006A(e) and Rule 17, Fed.R.Crim.P., the Defendant filed an application for subpoena compelling the attendance of certain witnesses. The Court, having considered the application and finding it to be well taken, IT IS HEREBY ORDERED that subpoenas be issued and addressed to the following individuals for the purpose of testifying at the Defendant's Jury Trial beginning April 14, 2025, before the Honorable Judge Ted Stewart at the United States District Court, 351 South West Temple, Salt Lake City, Utah:

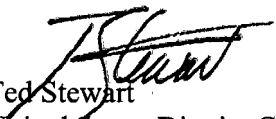
1. Leilani Gigena  
6622 Mountain Alder Way, C103  
Park City, Utah 84098  
916-969-5709
2. Erika Faerber  
6778 N. Silver Creek Drive  
Park City, Utah 84098  
678-467-8198

Accordingly, IT IS ORDERED that subpoenas shall be issued to the Defendant by the Clerk; that the Defendant shall prepare each subpoena to include the name, address and other necessary information as to each person listed in the foregoing motion. Costs incurred by process, fees and travel costs of the witnesses so subpoenaed shall be paid by the government.

Be advised that a subpoena issued by the United States District Court for a date certain remains in full force and effect for any subsequent dates to which the trial date is continued. It is the obligation of the attorney issuing the subpoena to convey this information to the person receiving the subpoena.

DATED this 8th day of April, 2025.

BY THE COURT:

  
Ted Stewart  
United States District Court Judge

**Additional material  
from this filing is  
available in the  
Clerk's Office.**