

United States District Court
District of Columbia

United States of America,

Plaintiff,

v.

Daniel Rodriguez,

Defendant.

Case No. 1:21-cr-00246-ABJ-1

**NOTICE IN RESPONSE TO
DECEMBER 3, 2021 ORDER**

In its December 3 order, this Court ordered the parties to state their positions regarding whether pages 37–38 of the interrogation transcript are accurate when compared with the video of the interrogation—”specifically, the precise words used by Special Agent Armenta, and whether the defendant said the word ‘no’ when shaking his head.”¹ Despite this Court’s original order for simultaneous briefing,² the December 3 order also provided the government with an extended opportunity to respond to Mr. Rodriguez’s supplemental brief to the motion to suppress.³

¹ See December 3 Minute Order.

² See ECF No. 66-1 (Transcript of Motion Hearing) at 106.

³ See December 3 Minute Order.

In compliance with this Court’s order, Mr. Rodriguez maintains the original transcript is accurate in that Mr. Rodriguez clearly says “No” in response to Special Agent Armenta’s question asking if Mr. Rodriguez would like to talk about the alleged assault on Officer Fanone.⁴ However, contrary to what is transcribed in the original transcript, Special Agent Armenta actually asks, “Do you want to talk about that?”—not, “And you don’t want to talk about that?” as transcribed in the original transcript.⁵ The answer “No” in response to the direct question, “Do you want to talk about that?” leaves no question as to whether Mr. Rodriguez wished to remain silent on the topic of the alleged assault.

To address the Court’s December 3 order, Mr. Rodriguez hired Oasis Reporting Service—an independent national court reporting service—to transcribe the portion of the interrogation video being reviewed by this Court. Without providing the original transcript, or any background information or

Despite the government’s decision not to file a simultaneous supplemental brief, it now has the renewed opportunity to file a response to Mr. Rodriguez’s supplement, with the additional benefit of Mr. Rodriguez’s position filed here. In light of the Court’s sua sponte order, Mr. Rodriguez respectfully requests the opportunity to file a reply to the government’s supplemental brief, to the extent it becomes necessary.

⁴ See Interrogation Video at 7:55:03.

⁵ Compare Exhibit A at 4 (Transcript of interrogation interview by Oasis Reporting Service) with ECF No. 38-1 at 37-38 (Original interrogation transcript provided by the government). See also Interrogation Video at 7:54:58–7:55:00.

instructions to Oasis Reporting Service, other than to transcribe minutes 7:54–7:55 of the interrogation video, the certified transcript⁶ reflected the following:

SPECIAL AGENT ELIAS: And you think that’s why we’re you’re here today, is because you climbed the scaffolding?

MR. RODRIGUEZ: No. You guys kind of told me, that I assaulted an officer.

SPECIAL AGENT ARMENTA: Do you want to talk about that?

MR. RODRIGUEZ: No.

While there is a minor difference in the precise wording of Special Agent Armenta’s question to Mr. Rodriguez asking if he wanted to talk about the alleged assault, it is clear that, in addition to demonstrably shaking his head in response to the question, Mr. Rodriguez audibly says “No.”⁷ Whether Special Agent Armenta’s question to Mr. Rodriguez was, “Do you want to talk about that?” as opposed to, “And you don’t want to talk about that?” does not change the clear meaning behind Mr. Rodriguez’s “No.”

When assessing a defendant’s invocation of the right to remain silent, the question is whether the articulated invocation was “sufficiently clear that a reasonable police officer in the circumstances would understand.” *Davis v. United States*, 512 U.S. 452, 459 (1994). Here, Mr. Rodriguez, in both his

⁶ Exhibit A at 4.

⁷ See Exhibit A at 4 and ECF No. 38-1 at 38; see also Interrogation Video at 7:55:01–03.

physical body language⁸ and verbal response to Special Agent Armenta's question, unambiguously and unequivocally conveyed he did not want to talk about the alleged assault on Officer Fanone. Accordingly, based on both versions of the transcript, Mr. Rodriguez unambiguously and unequivocally invoked his right to silence by shaking his head and verbally responding "No" to Special Agent Armenta's question: "Do you want to talk about that?"

Dated: December 7, 2021.

Respectfully submitted,

RENE L. VALLADARES
Federal Public Defender

/s/Rebecca A. Levy
/s/Margaret W. Lambrose
By: */s/Katherine Tanaka*

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⁸ Based on the video, it appears both Special Agents Armenta and Elias are looking at Mr. Rodriguez when he shakes his head and responds "No." See Interrogation Video at 7:55:01–02.

Certificate of Electronic Service

The undersigned hereby certifies that she is an employee of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on December 7, 2021, she served an electronic copy of the above and foregoing **NOTICE IN RESPONSE TO DECEMBER 3, 2021 ORDER** by electronic service (ECF) to the person named below:

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