

United States District Court  
District of Columbia

United States of America,

Plaintiff,

v.

Daniel Rodriguez,

Defendant.

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

**RESPONSE TO UNITED STATE’S MOTION IN LIMINE (ECF NO. 133)**

In accordance with this Court’s Scheduling Order and Minute Order issued on February 1, 2023, Mr. Rodriguez will be raising any objections to the government’s exhibit list on February 6, 2023. This list will include his hearsay objections. He respectfully requests that, although contrary to this district’s practice, this Court hold a pretrial hearing to determine whether the government has met its burden to admit co-conspirator statements as non-hearsay statements made in furtherance of the conspiracy.

While courts have “broadly construed” the category of statements made in furtherance of a conspiracy, the government must meet this threshold requirement. Certain statements, like those made after the objectives of the conspiracy have either failed or been achieved, or during the concealment period, are not by definition statements made in furtherance of a conspiracy. *See, e.g., United States v. Alcorta*, 853 F.3d 1123, 1139 (10th Cir. 2017) (“Statements made after the

objectives of the conspiracy have either failed or been achieved are not made during the conspiracy and must be excluded.”); *United States v. Perholtz*, 842 F.2d 343, 356–357 (D.C. Cir. 1988) (statements made “during a subsequent period when the conspirators were engaged in nothing more than concealment of the criminal enterprise” were not in furtherance of conspiracy). The government bears the burden of establishing the statements it intends to admit are in furtherance of the conspiracy and that they do not fall outside of this definition.

While Mr. Rodriguez intends to raise all hearsay objections that are identifiable from the government’s witness list, he respectfully reserves the right to make hearsay objections and make any necessary hearsay arguments when eliciting testimony on cross-examination, that may arise during trial.

**Dated:** February 3, 2023

Respectfully submitted,

RENE L. VALLADARES  
Federal Public Defender

By: */s/Rebecca A. Levy*  
*/s/Margaret W. Lambrose*  
*/s/Katherine Tanaka*  
\_\_\_\_\_  
REBECCA A. LEVY  
MARGARET W. LAMBROSE  
KATHERINE TANAKA  
Assistant Federal Public Defenders  
Attorneys for Daniel Rodriguez

### 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 February 3, 2023, she served an electronic copy of the above and foregoing **RESPONSE TO THE UNITED STATE'S MOTION IN LIMINE (ECF NO. 133)** by electronic service (ECF) to the person named below:

CHANNING D. PHILLIPS  
United States Attorney  
Kimberly L. Paschall  
Assistant United States Attorneys  
555 4<sup>th</sup> Street, NW  
Washington, DC 20530

*/s/ Cecilia Valencia*  
\_\_\_\_\_  
Employee of the Federal Public  
Defender