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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF COLUMBIA**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DANIEL RODRIGUEZ,

16 Defendant.
17
18

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

**NOTICE OF PUBLIC
AUTHORITY DEFENSE**

19 Daniel Rodriguez, by and through counsel, hereby gives notice pursuant to
20 Federal Rule of Criminal Procedure 12.3 that he may assert as a defense at trial
21 that he was acting under public authority.¹
22

23 **I. RULE 12.3**

24 (a) Notice of the Defense and Disclosure of Witnesses.
25

26 ¹ Rule 12.3(a)(1) provides that the defendant must file the instant notice within the time provided for filing pretrial motions, or at any later time the Court sets.

1 (1) Notice in General. If a defendant intends to assert a defense
2 of actual or believed exercise of public authority on behalf of a
3 law enforcement agency or federal intelligence agency at the
4 time of the alleged offense, the defendant must so notify an
5 attorney for the government in writing and must file a copy of
6 the notice with the clerk within the time provided for filing a
7 pretrial motion, or at any later time the court sets. The notice
8 filed with the clerk must be under seal if the notice identifies a
9 federal intelligence agency as the source of public authority.

6 (2) Contents of Notice. The notice must contain the following
7 information:

8 (A) the law enforcement agency or federal
9 intelligence agency involved;

10 (B) the agency member on whose behalf the
11 defendant claims to have acted; and

12 (C) the time during which the defendant claims to
13 have acted with public authority.

14 **II. NOTICE**

15 A Public Authority Defense, while also stemming from the due process
16 clause, is grounded in the Federal Rules of Criminal Procedure that requires
17 notice to the Government. *See* Fed. R. Crim. P. 12.3. The foundation of the
18 public authority defense is that it offends due process to convict an individual
19 who was acting upon authorization of a government official. *See United States v.*
20 *Doe*, 705 F.3d 1134, 1145 (9th Cir. 2013). The genesis of the authority defense is
21 the decision in *United States v. Barker*, 546 F. 2d 940 (D.C. Cir. 1976).

22 In *United States v. Barker*, defendants were recruited to participate in a
23 national security operation led by a White House official, whom the defendants
24 had previously known as a CIA agent. *Barker*, 546 F.2d at 949. In reversing the
25 defendants' convictions, the appellate court carved out an exception to the
26

1 mistake of law rule that would allow exoneration of a defendant who relied on
2 authority. *Id.* at 947-49.

3 While it is not settled how this Circuit has interpreted *Barker* for purposes
4 of an affirmative defense, counsel for Mr. Rodriguez is filing this Notice out of an
5 abundance of caution.
6

7 In Accordance with Rule 12.3, Mr. Rodriguez is noticing the following,
8 tracking the requirements listed above:
9

10 (A) The Executive Branch - the law enforcement agency or federal
11 intelligence agency involved;

12 (B) Former President Donald Trump - the agency member on whose
13 behalf the defendant claims to have acted; and
14

15 (C) On or about January 6, 2021 - the time during which the
16 defendant claims to have acted with public authority.

17 **Dated:** October 15, 2021.
18

19 Respectfully submitted,

20 RENE L. VALLADARES
21 Federal Public Defender

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

24 REBECCA A. LEVY
25 MARGARET W. LAMBROSE
26 KATHERINE TANAKA
Assistant Federal Public Defenders

Attorneys for Daniel Rodriguez

1 **Certificate of Electronic Service**

2 The undersigned hereby certifies that she is an employee of the Federal
3 Public Defender for the District of Nevada and is a person of such age and
4 discretion as to be competent to serve papers.
5

6 That on October 15, 2021, she served an electronic copy of the above and
7 foregoing **NOTICE OF PUBLIC AUTHORITY DEFENSE** by electronic service
8 (ECF) to the person named below:
9

10
11 CHANNING D. PHILLIPS
12 United States Attorney
13 Kimberly L. Paschall
14 Risa Berkower
15 Tara Ravindra
16 Assistant United States Attorneys
17 555 4th Street, NW
18 Washington, DC 20530

16 /s/ Cecilia Valencia
17 Employee of the Federal Public
18 Defender
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