

1 WILLIAM P. COLE  
2 Acting United States Attorney (under 28 U.S.C. § 515)  
3 California State Bar No. 186772  
4 ANDREW G. SCHOPLER  
5 HELEN H. HONG  
6 Assistant U.S. Attorneys  
7 California State Bar Nos. 236585/235635  
8 880 Front Street, Room 6293  
9 San Diego, CA 92101  
10 Tel: (619) 546-8068/6990  
11 Fax: (619) 546-0631  
12 Email: william.p.cole@usdoj.gov

13 Attorneys for the United States

14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 RAVNEET SINGH (2),

20 Defendant.

Case No.: 14CR0388-MMA

**UNITED STATES' RESPONSE IN  
OPPOSITION TO DEFENDANT  
RAVNEET SINGH'S MOTION TO  
SUPPRESS STATEMENTS AND FOR  
AN EVIDENTIARY HEARING**

Date: July 17, 2015

Time: 1:30 p.m.

Ctrm: Hon. Michael M. Anello

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I

INTRODUCTION

The recording of defendant Ravneet Singh’s interview dispels any notion that the FBI subjected him to unwarned custodial interrogation, a deliberate “two-step” interrogation, or any other Fifth Amendment violation. The recording reveals a calm exchange between Singh and two FBI agents in a non-custodial setting. Singh is an active—even jocular—participant, repeatedly expressing his willingness to continue the conversation.

Furthermore, even assuming the encounter became “custodial” at some point, an individual may selectively waive his *Miranda* rights, deciding to respond to some questions but not others. When Singh declined to answer a question without first consulting an attorney, agents were free to ask him about other subjects.

Because the agents did not violate Singh’s rights, the Court should deny his motion.

II

BACKGROUND

A. The Superseding Indictment

On August 12, 2014, a federal grand jury returned a superseding indictment against Jose Susumo Azano Matsura, Singh, ElectionMall, Inc., and Marco Polo Cortes. The superseding indictment charges Singh with: conspiracy to make campaign donations by a foreign national aggregating \$25,000 and more, and to

1 falsify records, all in violation of 18 U.S.C. § 371; donation by a foreign national, in  
2 violation of 2 U.S.C. § 437g & 441e (now 52 U.S.C. §§ 30109 & 30121);<sup>1</sup>  
3 falsification of records, in violation of 18 U.S.C. § 1519 (two counts); and bribery, in  
4 violation of 18 U.S.C. § 201(b).  
5

6 **B. The Campaign Finance Scheme**

7 Azano is a Mexican citizen who never obtained U.S. legal permanent resident  
8 status. Accordingly, Azano is a “foreign national” under Title 52, prohibited from  
9 making donations and contributions – directly or indirectly – in connection with any  
10 federal, state or local election.  
11

12 Ernesto Encinas is a retired San Diego Police Department (SDPD) detective  
13 who owned a private security and consulting business. Encinas oversaw Azano’s  
14 protection detail.  
15

16 Cortes is a San Diego-based lobbyist who, according to public filings, lobbied  
17 police officials, city councilmembers, and council staff. Cortes was a close associate  
18 of Azano and Encinas.  
19

20 Singh was the President and CEO of ElectionMall. He specialized in providing  
21 web and social media services to political campaigns throughout the world.  
22

23 As detailed in the superseding indictment, Azano conspired with Cortes, Singh,  
24 ElectionMall, Encinas and others to violate the prohibition on foreign money in  
25

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26  
27 <sup>1</sup> In 2014, after the return of the superseding indictment, Congress renumbered  
28 the United States Code and moved these campaign finance statutes from Title 2 to  
Title 52.

1 federal and local elections. In fact, Azano quickly became one of San Diego's major  
2 sources of campaign cash, secretly donating hundreds of thousands of dollars in  
3 connection with the 2012 San Diego mayoral primary and general election cycles, and  
4 another \$30,000 to the Democratic Congressional Campaign Committee.  
5

6 Singh joined the conspiracy by providing Azano-funded (and unreported) web  
7 and social media services promoting, first, the "Candidate 1" mayoral campaign and,  
8 second, the "Candidate 3" mayoral campaign.  
9

### 10 **1. The Candidate 1 Mayoral Campaign<sup>2</sup>**

11 In December 2011, Candidate 1 sent an email to campaign staff members,  
12 stating that Candidate 1 had received a conference call from Encinas, Azano and  
13 Singh, that Azano was very wealthy, and that Azano wanted Candidate 1 to speak  
14 with Singh because Singh was "a master of Internet campaign stuff." Candidate 1  
15 stated that it was unclear whether Singh wanted "to do some volunteer advising or  
16 some form of paid work," but that Candidate 1 told him "about our budget issues."  
17 Candidate 1 stated that Singh "apparently flew to SD just to talk with Mr A who  
18 wanted him to talk to me!"  
19  
20  
21

22 In February 2012, ElectionMall's Director of Executive Affairs for Latin  
23 America copied Azano and Singh on an email stating:  
24

25 . . . Attached you will find the invoices[.] The second invoice is for  
26 [Candidate 1's first name][.] By BBM [BlackBerry Messenger

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27 <sup>2</sup> To provide context for subjects discussed during Singh's interview, the United  
28 States provides brief background on the campaign finance offenses, Singh's  
subsequent conversations with Encinas, and the bribery offense.

1 communication], Mr[.] Lambo<sup>3</sup> indicated to Mr[.] Singh that the 125  
2 will be paid by Friday and the remaining 75 will be paid this week.  
3 Additionally[,] there is a 28.000 google buy [sic] that is also pending.  
4 If you could please make sure [these] payments are taken care of[,] I  
would greatly appreciate it. . . . PS I am ccing Mr[.] Lamborghini to  
help speed up the process[.]

5 The second invoice for \$75,000 – issued to Broadlink, S.A. de C.V., in Jalisco,  
6 Mexico – was for the Candidate 1-related work to “PROMOTE: Online  
7 Outreach\*\*Any of the following: Display Ads, Banner Ads, Text Ads, Key Ad Word  
8 Placement.”  
9

10 About a month later, ElectionMall’s Director of Executive Affairs for Latin  
11 America sent another email, including Azano as a recipient:  
12

13 . . . Enclosed is the invoice for the betty boo project for 100k it was  
14 originally 75[,] but Mr[.] Singh explained the need for the additional  
15 25 during his last visit to San Diego and Mr A verbally agreed[.] The  
16 second invoice is for 28k for google key ad word buy that was placed  
17 a month ago. Mr[.] Singh [BlackBerry Messengered] Mr A this week  
and he indicated that the transfer could be made . . . .

18 One of the attached invoices – again issued to Broadlink, S.A. de C.V. – was  
19 substantively identical to the “PROMOTE: Online Outreach\*\*” invoice referenced  
20 above, but in the amount of \$100,000 rather than \$75,000. In a response that same  
21 day, Azano refused to pay the additional \$25,000, writing: “No more money that  
22 wasn’t the agmt with Ravi [Singh] we will only transfer what I told him” [sic].  
23

24 In June 2012, Encinas sent an email to Singh, advising that Azano was annoyed  
25 with Singh for not setting up a political action committee:  
26

27 \_\_\_\_\_  
28 <sup>3</sup> “Mr. Lambo” was a nickname for Azano, apparently derived from Azano’s  
penchant for luxury automobile.

1 Hi Ravi, I talked to him the other day and without going into too  
2 much detail he was upset about the money he said he sent you to form  
3 a PAC and do the social media. He said since no PAC was formed he  
4 wants that money back. . . .

5 Singh replied: "I am not responding to this email. Because of the legal ramifications.  
6 Please talk to me . . . in person."

## 7 **2. The Candidate 3 Mayoral Campaign**

8 A few weeks before the November 2012 general election, Encinas and Cortes  
9 walked into Candidate 3's campaign offices, explaining that they wanted to help the  
10 campaign. The next day, Singh and one of his associates set up computer equipment  
11 in the campaign offices. Encinas and Cortes introduced Singh to a campaign official  
12 and offered to handle social media efforts, such as boosting Facebook "likes" and  
13 online branding. When the campaign official later pressed for a price quote, Singh  
14 demurred, saying that it would be "taken care of." Singh indicated that the campaign  
15 might be invoiced for "some" services. Singh codenamed the project "Plastic Man."

16 Singh was apparently effective at harnessing social media in favor of the  
17 campaign. At one point, Singh showed the campaign official charts of how Candidate  
18 3's Facebook "likes" had grown exponentially, and described how he (Singh) had  
19 succeeded in burying news about other candidates amidst positive media coverage of  
20 Candidate 3 online. Singh also helped create images and illustrations for Candidate  
21 3's brand, such as the digital image of a spinning globe to accompany President Bill  
22 Clinton's recorded endorsement of Candidate 3.  
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1 Singh's team spent many days working out of Candidate 3's campaign office,  
2 but the campaign did not pay Singh for the work and did not list Singh's work as an  
3 in-kind contribution on any of its public filings. Similarly, no independent  
4 expenditure committee reported Singh's work as a contribution in support of the  
5 campaign. Instead, just as with the Candidate 1 project, Singh invoiced Broadlink in  
6 Mexico. On October 29, 2012, Broadlink wired \$95,000 to ElectionMall.  
7

8  
9 **C. Encinas's Recorded Conversations with Singh**

10 After investigators identified Singh's involvement in the 2012 campaign  
11 finance scheme, and after Encinas began cooperating with the investigation, Encinas  
12 engaged Singh in a series of recorded calls to shed further light on Singh's knowledge  
13 and prior activities. For example, in November 2013, Encinas told Singh (as a ruse)  
14 that Azano wanted to finance an email blast supporting another campaign by  
15 Candidate 1, that Azano wanted Singh to handle it, but that a campaign official was  
16 concerned because Azano was a foreign national. Encinas told Singh that he had  
17 assured the campaign official that "it's not gonna get back to the campaign. It's gonna  
18 be like we did before with [Candidate 3] and everything, it's just gonna be  
19 independent and you don't have to worry about it." Singh stated that the financing  
20 had to come from the campaign or a political action committee. Singh falsely claimed  
21 that during the Candidate 3 campaign, everything was "legit" because they did it  
22 "through the campaign." Singh concluded, however, by stating: "Just do me a favor  
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1 and tell Mr. A we're a-go on the blast, so he has validation and I can go and get that  
2 taken care of."

3 A few weeks later, Singh called Encinas and they again discussed how to  
4 handle the Azano-financed email blast:  
5

6 Encinas: Mr. A . . . before he sends an email blast, wants to wait  
7 till after the mayoral election . . . so that's good, you  
8 know we talked about it, just make sure that you don't  
charge the campaign, you know . . .

9 Singh: Right.

Encinas: Don't even run it through the campaign.

10 Singh: Okay.

11 Encinas: Kind of an IE [independent expenditure]. He'll pay you,  
and that way it will be taken care of that way.

12 Singh: Okay. So, Mr. A will take care of everything, correct?

13 Encinas: Yeah, he'll pay you direct.

14 Singh: Okay. Got it. Sounds good.

15 Encinas also told Singh that he would like to discuss a "new foreign investor  
16 guy" (another ruse) who was interested in supporting a particular mayoral candidate.

17 Singh told Encinas he was with him "110%."

18  
19 About a week later, over Skype, Singh and Encinas discussed the new foreign  
20 investor. Encinas explained that the foreign investor wanted to give a little boost to a  
21 particular mayoral candidate behind in the polls. Encinas stated: "I told him about  
22 your services, basically how you won the election for [Candidate 3] and how  
23 impressive you are at doing the social media stuff, and he's really interested." Singh  
24 was interested as well:  
25

26  
27 Singh: . . . And you're thinking A to Z or just an overall digital  
28 strategy? And then, he'd just basically be a sponsor,  
we'd run it through a separate PAC or whatever kind of



1 deal and keep him isolated, but he can make a direct  
2 payment to us, correct?

3 Encinas: Yeah, he'll make a direct payment to you, he doesn't  
4 want to do an IE, doesn't want to do anything. He wants  
5 to keep himself secret. He'll pay you direct. Just like  
6 Mr. A did with you, that's how he wants to do it.

7 Singh inquired whether the foreigner had "access" at the candidate's campaign:

8 Encinas: No, he's a foreign national so he doesn't want to get  
9 involved.

10 Singh: No, no, no, but does he know the candidate?

11 Encinas: Yeah, he knows the candidate, that's why he wants to  
12 support him.

13 About a week later, Singh called Encinas, assuring him that he would soon  
14 provide the proposal for the "confidential" matter they had discussed, which Singh  
15 codenamed "Plastic Man 2." A few days later, Encinas received a glossy 50-page  
16 proposal for \$225,000 in services.

17 **D. Singh Pays \$1,000 to Obtain Classified Information About a Business Rival**

18 In November 2013, Singh left Encinas a voicemail, stating he needed some  
19 "background checks done on a couple of people." Singh stated, "I don't know if you  
20 still have that contact at the DEA." Later that day, Singh again inquired whether  
21 Encinas still had contacts at the DEA, explaining that he wanted some information  
22 about "some guys in Columbia I'm doing work with." Encinas told Singh that he had  
23 some really good stuff he could get him, but that he'd rather talk with Singh in person  
24 about it. Singh replied, "Yeah, I agree. I agree."  
25  
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1 In subsequent conversations, Singh explained one of the “Columbian guys” was  
2 giving him a hard time, sabotaging a contract he was pursuing in Columbia. Singh  
3 needed “to get some leverage.” Encinas explained the could get non-public  
4 information “only available to federal agencies, particularly DEA,” but that his DEA  
5 contact charges \$1,000 for the information. Encinas stated: “My DEA guy will be  
6 able to get that information, classified information for you, okay?” Singh replied:  
7  
8 “Man, I appreciate it. Thank you so much.”  
9

10 Encinas reminded Singh several times that he needed the name that Singh  
11 wanted the DEA contact to run. On January 15, 2014, Singh gave the name to  
12 Encinas. The next day, Encinas met Singh in San Diego and, during a car ride, told  
13 Singh that his contact was ready to exchange the information for the payment. Singh  
14 indicated that he didn’t realize the exchange was happening right then, and that he  
15 didn’t have the money on him. Encinas and Singh went to a bank, and Singh pulled  
16 out \$1,000. They then met an undercover FBI agent (posing as a DEA agent) in a  
17 parking lot at Balboa Park. Encinas handed the agent the \$1,000, and the agent  
18 handed over an envelope.  
19  
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22 Encinas and Singh drove to Encinas’s business office. They walked through the  
23 front office into Encinas’s office, where Encinas sat down behind his desk and Singh  
24 sat in front of it. Singh opened the envelope and pulled out a report clearly marked  
25 “classified” (a mock-up prepared by the FBI). After reviewing it, Singh said, “Great.”  
26  
27  
28

1 He explained that the subject of the report was interfering with Singh's bid on a \$2  
2 million contract in Columbia.

3 **E. The Interview of Singh**

4  
5 At about 11:37a.m.,<sup>4</sup> as Singh was sharing with Encinas some ideas for the  
6 "Plastic Man 2" project, there was a knock on the front office door. Gov't Exhs. 7 and  
7 8.<sup>5</sup> Encinas answered the door, while Singh remained seated in the office with his  
8  
9 back towards the front office. FBI Special Agents Erin Phan and Omer Meisel enter  
10 the front door, walk through the front office, enter Encinas's office, and introduce  
11 themselves to Singh.<sup>6</sup>

12  
13 The ensuing conversation was calm. The agents did not frisk, cuff, arrest or  
14 otherwise restrain Singh. Instead, they shook hands. They did not stand over Singh  
15 or behind him. They left open the door to Encinas's office and nothing blocked the  
16  
17 exit. The agents did not raise their voices. Even when challenging Singh's assertions,  
18 the agents used a calm and conversational tone.

19  
20 The agents asked Singh about the envelope received from the undercover agent:  
21 "Wanna tell us what you have in the folder there?" Singh replied, "Sure." Over the  
22  
23 next several minutes, Singh tried to explain away the \$1,000 payment to the

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24 <sup>4</sup> Per the recording device.

25 <sup>5</sup> The recording is stored in five-minute file increments. The corresponding  
26 beginning and ending of each file are noted on the transcript.

27 <sup>6</sup> Singh's motion states there were two more FBI agents on the street, outside the  
28 Coastline office. But Singh had his back to the front office and could not see either  
the front door or the street. Thus, any agent standing outside would not have been  
visible to, or known to, Singh.

1 undercover agent. The agents explained to Singh that his prior conversations with  
2 Encinas were recorded:

3 Meisel: Um, Mister Encinas said he did, he said he would have  
4 access to, uh, classified information...

5 Singh: ...that's correct...

6 Meisel: ...and you said you'd be interested in that, um, you set  
7 up, uh, an area where you didn't wanna have these  
8 conversations on a...

9 Singh: ...phone...

10 Meisel: ...phone...

11 Singh: ...and went...went to via Skype...

12 Meisel: ...you went to Skype...

13 Singh: ...that's correct...

14 Meisel: ...um, you then, Ernie then explained to you the process,  
15 the payment that the DEA agent would require for the  
16 information...

17 Singh: ...that's correct...

18 Meisel: ...you agreed to it. That is all on phone conversations,  
19 video Skyping, it's all recorded, the money exchange  
20 today...

21 Singh: ...right, right...

22 Meisel: ...you got the money, uh...

23 Singh: ...I think that was you actually in the car  
24 (UI)...(LAUGHS)...

25 Meisel: ...right. Um, so...

26 Singh: ...recognize the shirt.

27 Meisel: (LAUGHS). That...that's what we call, um, damning  
28 evidence.

Govt. Exh. MH-7 at pp.6-7.

23 After again denying any intention to pay a bribe, Singh asked the agents what  
24 they needed. The agents stated that they had been conducting a public corruption  
25 investigation. Agent Phan asked Singh if he could tell them about some of his  
26 campaign work in San Diego. Singh replied that he had done some work for the  
27

1 Candidate 3 campaign and the Republican Party. Singh began dissembling about the

2 Candidate 3 work:

3 Phan: Okay. Let's talk about [Candidate 3], who was paying  
4 you for that.

5 Singh: Sure...

6 Phan: ...for those services...

7 Singh: ...sure.

8 Phan: Who paid you for those services?

9 Singh: Um, those services, directly?

10 Phan: ...umm hmm...

11 Singh: ...um, and what my time was basically compensated by  
12 the [Candidate 3] campaign and through on-line  
13 fundraising.

14 Phan: Okay. The [Candidate 3] campaign did not pay you  
15 directly.

16 Singh: No, they did not end up paying us directly. They paid us  
17 through the fundraising.

18 Phan: Through the fundraising.

19 Singh: Yeah, there was...

20 Phan: ...and who was doing the fundraising?

21 Singh: Uh, we were supposed to do the fundraising through on-  
22 line fundraising. That was...that was the objective.

23 Phan: Umm hmm. No other way were you compensated for the  
24 work that you did on the [Candidate 3] campaign. Who  
25 were you invoicing for the [Candidate 3] campaign for  
26 the work you were doing?

27 Singh: You mean in terms of...there...there was a lot of  
28 components. So there was e-mail, data, there was, I can  
go into specifics but I...I...now I'm a little concerned  
because I do have confidentiality agreements signed with  
those (UI)...

Phan: ...confidentiality is out the window. Okay? It's a  
criminal investigation.

Singh: Alright. Well then do I need to seek counsel?

Phan: Well that's up to you.

Singh: Alright.

Phan: Let's talk about that.

Singh: So then let's...let's seek counsel on that because I...I  
don't want...

Phan: ...you...you...

1 Singh: ...to jeopardize those contracts...

2 Id. at pp.13-14.

3 Singh then asked, "Can you tell me my rights?" Id. at p.14. Agent Phan told  
4 Singh that he wasn't under arrest, but there was a possibility he could be. Id. at pp.14-  
5 15. She read him his *Miranda* rights and asked, "Do you understand those rights as  
6 I've read them to you?" Singh replied, "Yes, I do." Id. at p.16.

8 Agent Phan then explained to Singh that they wanted him to cooperate in their  
9 investigation but that, to be useful, they needed his cooperation right away. She stated  
10 that people who cooperate get the better deals. She stated, "So you need to make a  
11 decision and make it quickly. If you have an attorney that you can contact now I  
12 would advise you do that if that's what you choose to do." Id. at pp.16-17.

15 Singh told the agents that he had recently helped the FBI on some matter  
16 concerning the Prime Minister of Ireland. Agent Phan again stated that Singh could  
17 cooperate but that "it's completely up to you." Id. at p.18. She stated that "we're not  
18 arresting you right now" and that "we'd like to continue the conversation." Id. at pp.  
19 18-19. Singh replied, "By all means." Id.

22 The agents played part of a conversation in which Singh discussed a voter list  
23 that Azano purchased from him. After playing the clip, Agent Phan asked Singh if he  
24 understood it was a problem for Azano to have paid him directly. Singh replied, "I  
25 understand that completely. I can understand how that's perceived." Id. at p.22.

27 Phan: Well yeah. What is Mister A's interest? Why is he  
28 seeking influence in this campaign?

1 Singh: Yeah, I think...I think at this stage just because I have  
2 and I also (UI) I have to be also  
3 careful...(LAUGHING)...of the repercussions that might  
4 be actually caused for me on both sides of the...of the  
5 fence. That...that one I'm going to seek counsel on  
6 actually how to word that correct answer, um...

5 Phan: ...okay...

6 Singh: ...um, but, um...

7 Phan: ...let's continue then...

8 Singh: ...yeah, sure.

8 Id. at pp.22-23.

9 The agents next played a clip in which Singh tells Encinas that he gave the  
10 voter file to the [Candidate 3] campaign at Azano's request. Agent Phan stated: "So  
11 you see where we're comin' from. You know . . . you know it's a problem." Id. at  
12 p.24.

15 Singh: No, it is a problem. I understand...I...I understand the  
16 perception...

17 Phan: ...you...you understand...

18 Singh: ...I understand the perception that has been created.

19 Phan: Beyond perception though it's breaking the law.

20 Singh: I understand, ma'am. But in every...well, like I said, let  
21 me seek legal counsel on how to word that correctly  
22 because I don't want to...I don't want to give you an  
23 answer that's emotional.

21 Id.<sup>7</sup>

23 The remainder of the conversation consisted, primarily, of Singh talking about  
24 himself, Singh talking about potentially cooperating, and the agents helping him  
25

26 <sup>7</sup> A moment later, there is a five-minute gap in the recording. The recording  
27 device captured the audio and video in five-minute segments, and the segment starting  
28 at 12:00 p.m. is unreadable. However, the United States has no intention of  
introducing or using any portion of the interview from 12 p.m. forward.

1 contact an attorney. The agents left the office while Singh had multiple telephone  
2 conversations with an attorney.

3 When Singh said that he wanted to return to his hotel, the agents gave him a  
4 ride. On the way, Singh told the agents that an attorney wanted to speak with Singh  
5 immediately. The agents pulled over and stepped out of the car, so Singh could have  
6 privacy. While the agents were standing outside the car, his current defense counsel  
7 walked up to the vehicle and advised that they would be representing Singh. Singh  
8 departed with his counsel.  
9  
10

### 11 III

### 12 ARGUMENT

13  
14 The Court should deny Singh's motion for three reasons. First, the pre-  
15 *Miranda* conversation was not custodial. Second, the agents did not engage in a  
16 deliberate "two-step" interrogation. Third, even assuming custodial interrogation,  
17 Singh selectively waived his rights by answer some questions, but not others.  
18

#### 19 A. The Pre-Warning Conversation Was Not Custodial

20  
21 The obligation to give *Miranda* warnings before interrogation extends only to a  
22 suspect "in custody." Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam).  
23 To determine whether an individual was in custody, the court decides, after  
24 considering all the circumstances, whether there was "a formal arrest or restraint on  
25 freedom of movement of the degree associated with a formal arrest." California v.  
26 Beheler, 463 U.S. 1121, 1125 (1983) (per curiam). Courts consider: (1) the language  
27  
28



1 used to summon the individual; (2) the extent to which the defendant is confronted  
2 with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the  
3 duration of the detention; and (5) the degree of pressure applied to detain the  
4 individual. United States v. Bassignani, 560 F.3d 989, 994 (9th Cir. 2009). But other  
5 factors may also be pertinent to, or even dispositive of, whether a reasonable person  
6 would have believed he was free to leave. Id. The defendant bears the burden of  
7 proving he was in custody. Id. at 993.  
8  
9

10 Here, Singh does not and cannot carry his burden of proving that the pre-  
11 *Miranda* conversation was custodial. First, the agents did not “summon” Singh at all.  
12 The conversation began exactly where the agents found Singh: seated in Encinas’s  
13 office. The agents politely introduced themselves and asked Singh what was in the  
14 envelope. They did not order him to “stop,” “come with us,” show his hands, or do  
15 anything else that one might associate with detention.<sup>8</sup>  
16  
17  
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19

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20 <sup>8</sup> Compare this absence of summoning language with the facts in United  
21 States v. Basher, 629 F.3d 1161 (9th Cir. 2011). There, two officers entered a national  
22 forest campsite to investigate gunfire heard the previous evening. One officer parked  
23 his vehicle “nose to nose” with the suspect’s truck and emitted a few bursts from his  
24 vehicle’s siren. The officers approached the tent, announced “Sheriff’s Office,” and  
25 asked the occupants to exit the tent. As the individuals exited, an officer told them to  
26 keep their hands in view. Nevertheless, the Ninth Circuit held that the defendant was  
27 not in custody: “In this case, there was no display of weapons by the officers, no use  
28 of physical force, and it does not appear there was any threatening language. . . . It  
does not appear that Basher’s movements were significantly curtailed.” Id. at 1166.  
Here, the agents did far less than found appropriate in Basher: they did not summon  
Singh at all.

1 Second, the agents did not interview Singh at a police station, in a squad car, or  
2 any other location commonly associated with custody. They interviewed him in a  
3 business office. They left the door open, and nothing obstructed his path to the exit.  
4 Singh contends that even if he had decided to leave, he had nowhere to go, because he  
5 was “unfamiliar” with his surroundings. But Singh had traveled to San Diego  
6 numerous times (including his work in the Candidate 3 campaign offices) and he had a  
7 cell phone. Far from having “nowhere to go,” he could have gone *anywhere*. Indeed,  
8 as Singh himself repeatedly informed the agents, he is a world traveler who rubs  
9 shoulders with heads of state. The notion that he couldn’t find his way beyond the  
10 front door of Encinas’s office carries no weight.  
11  
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13  
14 Third, the pre-*Miranda* conversation was brief—only around 12 minutes. The  
15 Ninth Circuit has routinely found much lengthier questioning non-custodial. See  
16 Bassignani, 560 F.3d at 996 (two-and-a-half hour interrogation in a business office  
17 was not custodial); United States v. Crawford, 372 F.3d 1048 (9th Cir.  
18 2004)(interrogation for more than an hour was not custodial); United States v. Norris,  
19 428 F.3d 907 (9th Cir. 2005)(interrogation for approximately 45 minutes was not  
20 custodial).<sup>9</sup>  
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26 <sup>9</sup> Singh asserts that he was “detained” for about 3.5 hours. In fact, he was  
27 “detained” at all. In any event, he fails to distinguish between the brief pre-*Miranda*  
28 conversation (around 12 minutes) and the remaining encounter. The length of time  
that Singh spent with agents after *Miranda* warnings has no bearing on whether the  
pre-warning conversation was custodial.

1 Fourth, the agents did confront Singh with some evidence of his guilt. But they  
2 did not confront him in an aggressive, cajoling or deceptive way. To the contrary, the  
3 tone was calm, with Singh laughing and actively participating throughout.  
4

5 Singh relies on United States v. IMM, 747 F.3d 754 (9th Cir. 2014), and United  
6 States v. Beraun-Perez, 812 f.2d 578 (9th Cir. 1987), but these cases differ  
7 substantially from his own. In Imm, the detective repeatedly confronted a 12-year-old  
8 boy “with fabricated evidence of guilt and engaged in elaborate deception.” 747 F.3d  
9 at 767. The detective accused the juvenile of dishonesty whenever he disagreed with  
10 the detective’s false representations, and he forced the juvenile to choose between  
11 adopting the detective’s false account of events as his own and calling his own  
12 grandfather a liar. Id. Similarly, in Beraun-Perez, the officers repeatedly accused the  
13 defendant of lying, confronted him with false or misleading witness statements,  
14 employed good guy/bad guy tactics, took advantage of his insecurities about his alien  
15 status, and insisted that he tell them the “truth” until he told them what they wanted.  
16 812 F.2d at 580.  
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21 In contrast, Singh is a sophisticated adult: a CEO with no immigration issues.  
22 The agents did not feed him false witness statements or fabricated evidence, but  
23 merely discussed with him his own recorded words and actions.  
24

25 Fifth, the agents did not apply any pressure to detain Singh. They did not  
26 surround him, loom over him, block the door, draw weapons, frisk him, handcuff him,  
27 or issue any commands. In fact, Agent Phan told Singh he was not under arrest.  
28

1 Unable to identify any physical pressure, Singh asserts that the agents applied  
2 “psychological” pressure by encouraging “to make a cooperation decision as soon as  
3 possible.” But the agents didn’t propose cooperation (or ask him to make a quick  
4 decision) until after the *Miranda* warnings, so the point has no bearing on whether  
5 Singh was in custody before the warnings.  
6

7           Considering all these factors, the Court should find that the pre-*Miranda*  
8 conversation with Singh was not custodial.  
9

10 **B. The Agents Did Not Employ a Deliberate Two-Step Interrogation Process**

11           Citing Missiouri v. Seibert, 542 U.S. 600 (2004), Singh contends that the agents  
12 engaged in a deliberate two-step interrogation process. But Seibert only applies where  
13 officers first interrogate the suspect *in custody*. United States v. Barnes, 713 F.3d  
14 1200, 1205 (9th Cir. 2013)(“When a law enforcement officer interrogates a suspect in  
15 custody but does not warn the suspect of his *Miranda* rights until after he has made an  
16 inculpatory statement, the inquiry is whether the officer engaged in ‘a deliberate two-  
17 step interrogation.’”); United States v. Williams, 435 F.3d 1148, 1160 (9th Cir.  
18 2006)(“Because law enforcement officers generally retain control over the timing of a  
19 *Miranda* warning and giving the warning to a custodial suspect imposes only a  
20 minimal burden, the officer’s deferral of the warning until after a suspect’s  
21 incriminating response further supports an inference of deliberateness.”)(emphasis  
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1 added). Because Singh’s pre-*Miranda* interview was not custodial, Siebert and its  
2 progeny are inapplicable.<sup>10</sup>

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5 **C. The Agents Did Not Violate Singh’s Right to Counsel**

6 Singh contends that the Court should suppress all of his post-*Miranda*  
7 statements because he asserted his right to counsel immediately before the *Miranda*  
8 warnings. For two reasons, this contention fails.

9  
10 First, as already explained, Singh’s pre-*Miranda* interview was not custodial.  
11 Singh does not cite – and the United States is not aware of – any authority requiring  
12 that a law enforcement officer terminate questioning of an unindicted and non-  
13 custodial individual merely because the individual expresses a desire to consult  
14 counsel before answering one of the officer’s questions.

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17 Second, even assuming *arguendo* that the post-*Miranda* questioning was  
18 custodial, “a defendant may selectively waive his *Miranda* rights, deciding ‘to  
19 respond to some questions but not others.’” Bruni v. Lewis, 847 F.2d 561, 563 (9th  
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22 <sup>10</sup> Singh also fails to carry his burden of proving that his post-*Miranda* interview  
23 was custodial. Indeed, the agents told Singh he was not under arrest. The recording  
24 makes clear that they advised him of his rights when Singh asked to hear them, not  
25 because he was under arrest or in custody. But because the pre-*Miranda* interview  
was not custodial, it ultimately doesn’t matter whether the post-*Miranda* interview  
was.

26 Furthermore, the two-step interrogation strategy calls for “the deliberate with-  
27 holding of the *Miranda* warning until the suspect confessed, followed by a *Miranda*  
28 warning and a repetition of the confession already given.” Williams, 435 F.3d at  
1154. Here, post-*Miranda*, the agents didn’t even return to the same topics discussed  
pre-*Miranda*.

1 Cir. 1988)(citation omitted). For example, in United States v. Banks, 282 F.3d 699  
2 (9th Cir. 2002), about midway through a 45-minute interrogation, agents asked Banks  
3 to reveal his drug suppliers. Banks replied that he would not reveal his suppliers  
4 before talking to an attorney. Id. at 702. The questioning continued. On appeal,  
5 Banks asserted that the agents' continued questioning violated his right to counsel.  
6 The Ninth Circuit disagreed: "The agents reasonably understood Banks' statement to  
7 mean he was willing to answer some questions but not others." Id. at 706.  
8  
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10 Similarly, in United States v. Ivy, 929 F.2d 147 (5th Cir. 1991), during  
11 interrogation, the officer asked who Ivy could get dynamite from. Ivy stated, "I'll tell  
12 you, let me talk to my lawyer before I answer that." The officer replied, "All right.  
13 Let's talk about something else." Id. at 152. The interrogation continued. The court  
14 denied Ivy's motion to suppress, finding Ivy "was not asking for an attorney but was  
15 choosing at that time not to talk about a particular area of inquiry until he talked to an  
16 attorney." Id. The Fifth Circuit affirmed: "Ivy expressed his unwillingness to answer  
17 questions about where he obtained materials to make a bomb, and Lieutenant Waller  
18 honored this request by moving to a different subject." Id. at 153.  
19  
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22 The same applies here. Immediately before the *Miranda* warnings, Singh  
23 declined to answer a question about who he invoiced for the Candidate 3 work,  
24 claiming he was concerned about a purported "confidentiality agreement":  
25

26 Phan: . . . Who were you invoicing for the [Candidate 3]  
27 campaign for the work you were doing?

28 Singh: You mean in terms of...there...there was a lot of  
components. So there was e-mail, data, there was, I can

1 go into specifics but I...I...now I'm a little concerned  
2 because I do have confidentiality agreements signed with  
those (UI)...

3 Phan: ...confidentiality is out the window. Okay? It's a  
criminal investigation.

4 Singh: Alright. Well then do I need to seek counsel?

5 Phan: Well that's up to you.

6 Singh: Alright.

7 Phan: Let's talk about that.

8 Singh: So then let's...let's seek counsel on *that* because I...I  
don't want...

9 Phan: ...you...you...

Singh: ...to jeopardize those contracts...

10 Gov't Exh. 7 at p.14 (emphasis added). The agents did not question Singh any further  
11 on who he invoiced for the [Candidate 3] work.

12  
13 Similarly, about five minutes after the *Miranda* warnings, Singh declined to  
14 answer a question about Azano's interests:

15 Phan: ... What is Mister A's interest? Why is he seeking  
16 influence in this campaign?

17 Singh: Yeah, I think...I think at this stage just because I have  
18 and I also (UI) I have to be also  
19 careful...(LAUGHING)...of the repercussions that might  
20 be actually caused for me on both sides of the...of the  
fence. That...that one I'm going to seek counsel on  
actually how to word *that* correct answer, um...

21 Phan: ...okay...

22 Singh: ...um, but, um...

23 Phan: ...let's continue then...

Singh: ...yeah, sure.

24 Id. at pp.22-23 (emphasis added).

25  
26 In each of these instances, Singh merely expressed unwillingness to answer  
27 specific questions (i.e., "let's seek counsel on *that*" and "I'm going to seek counsel on  
28 actually how to word *that* correct answer"), while expressing no unwillingness to

1 discuss other topics. The agents respected his requests and moved to different topics.  
2 Thus, as in Banks and Ivy, the agents did not violate his right to counsel.<sup>11</sup>

3 **D. An Evidentiary Hearing is Not Required**

4  
5 Finally, the Court should deny Singh's request for an evidentiary hearing.  
6 Absent any genuinely-disputed material fact, an evidentiary hearing is unnecessary.  
7 Singh claims that an evidentiary hearing is necessary for two reasons: (1) to "fill in"  
8 the five-minute gap in the recording beginning at 12:00 p.m.; and (2) to determine  
9 whether the agents deliberately engaged in a two-step interrogation process. The  
10 United States, however, does not intend to use any of Singh's statements from 12:00  
11 p.m. forward, so the "gap" is immaterial. And because the pre-*Miranda* interview was  
12 not custodial (an issue that can be determined by reviewing the recording), there was  
13 no two-step interrogation process at all and thus no need for an evidentiary hearing  
14 concerning the agents' subjective intent.  
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25 <sup>11</sup> Singh notes that, about 15 minutes after the *Miranda* warnings (about 12:08  
26 p.m.), he stated, "I better get a lawyer." But no interrogation occurred beyond that  
27 point. Rather, the rest of the encounter consisted generally of the agents discussing  
28 with Singh the logistics of reaching an attorney to decide whether to cooperate. In any  
event, as previously mentioned, the United States has no intention of introducing or  
using any of Singh's statements beyond the 12:00 p.m. mark.



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IV

CONCLUSION

For the foregoing reasons, the Court should deny Singh's motion to suppress, as well as his request for an evidentiary hearing.

DATED: July 3, 2015

Respectfully submitted,

s/ William P. Cole

s/ Andrew G. Schopler

s/ Helen H. Hong

WILLIAM P. COLE

Acting United States Attorney

ANDREW G. SCHOPLER

HELEN H. HONG

Assistant United States Attorney

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAVNEET SINGH (2),

Defendant.

Case No.: 14CR0388-MMA

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, William P. Cole, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the foregoing brief on the parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 3, 2015

*s/ William P. Cole*

WILLIAM P. COLE