

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA AND PECOS DIVISIONS**

**UNITED STATES OF AMERICA**

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v.

**NO:**

**STANDING DISCOVERY ORDER**

This Order renders routine motions for discovery unnecessary and they will not be filed. If the parties in this action have not already done so, they shall, **within fourteen (14) days from the date of entry of this Order on the docket (unless otherwise specified herein)**, confer and accomplish the following:

A. Upon request of the Defendant, the Government shall permit the Defendant to inspect and copy the following items, or supply copies thereof, which are within the possession, custody, or control of the Government, the existence of which is known or by the exercise of due diligence may become known to the attorney for the Government:

1. Any relevant written or recorded statements made by the Defendant;<sup>1</sup>
2. The Defendant's arrest and conviction record;
3. Results or reports of physical or mental examinations, and of scientific tests, including, without limitation, any handwriting analysis or experiments, which are material to the preparation of the defense or are intended for use by the Government as evidence in chief at the trial;
4. The substance of any oral statement made by the Defendant before or after the Defendant's arrest in response to interrogation by someone then known to be a Government agent which the Government intends to offer in evidence at trial;
5. Recorded grand jury testimony of the Defendant relating to the offense(s) charged; and

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<sup>1</sup> If the Defendant is an organization as described in FED. R. CRIM. P. 16(a)(1)(C), the provisions of that Rule shall control productions.

6. Books, papers, documents, photographs, tangible objects, buildings or places which the Government intends to use as evidence at trial to prove its case-in-chief or were obtained from or belong to the Defendant.

B. Upon receipt by the Defendant of the materials in A(3) or (6) of this Order from the Government, the Defendant shall permit the Government to inspect and copy the following items, or supply copies thereof, which are within the possession, custody or control of the Defendant, the existence of which is known or by the exercise of due diligence may become known to the Defendant:<sup>2</sup>

1. Books, papers, documents, photographs or tangible objects which a Defendant intends to introduce as evidence in chief at trial; and
2. Any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case which the Defendant intends to introduce as evidence in chief at trial, or which were prepared by a defense witness who will testify concerning the contents thereof.

C. Upon written request of the Defendant, the Government shall disclose to the Defendant a written summary of all expert testimony the Government intends to use. This summary shall describe the witnesses' opinions, the bases and reasons therefore, and the witnesses' qualification. (FED. R. CRIM. P. 16(a)(1)(G)).

D. If a Defendant intends to rely upon the defense of insanity at the time of the alleged crime or intends to introduce expert testimony relating to a mental disease, defect or other condition bearing upon the issue of whether the Defendant had the mental state required for the offense charged, the Defendant shall give written notice thereof to the Government. The Defendant shall give notice **within twenty-one (21) days of the entry of this Order.** (FED. R. CRIM. P. 12.2)

E. The Government shall reveal to the Defendant and permit inspection and copying of all information and material known to the Government which may be favorable to the Defendant on the issues of guilt or punishment within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 U.S. 97 (1976).

F. The Government shall state whether the Defendant was identified in any lineup, show up, photo spread, or similar identification proceeding, and produce any pictures utilized or resulting therefrom.

G. The Government shall advise its agents and officers involved in this case to preserve all rough notes, including notes pertaining to confidential informants.

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<sup>2</sup> Receipt by a party shall be viewed as tantamount to a "request" under the provisions of FED. R. CRIM. P. 16(b)(1). Any party who does not request the production of discovery, but accepts and receives such materials, is deemed to have made an implied request.



H. Upon request, the Government shall advise the Defendant of the general nature of any evidence it intends to offer at trial under F. R. E. 404(b).

I. The Government shall state whether the Defendant was an aggrieved person, as defined in 18 U.S.C. § 2501(11), of any electronic surveillance, and if so, shall set forth in detail the circumstances thereof. The Government shall comply with the provisions of 18 U.S.C. § 2518(9).

J. Upon request, the Government shall provide the Defendant, for independent expert examination, copies of all latent fingerprints or palm prints identified by a Government expert as those of the Defendant.

K. The Parties shall make every possible effort in good faith to stipulate to all facts and points of law, the truth and existence of which is not contested, and the early resolution of which will expedite the trial. No stipulation made by the Defendant at the conference shall be used against the Defendant unless the stipulation is reduced to writing and signed by the Defendant and counsel.

L. The Government shall obtain the record of prior convictions of any witness who will testify for the Government at trial, including informants, so that the record will be available to the Defendant at trial.

M. The Government shall disclose to the Defendant the existence and substance of any payments, promises of immunity, leniency, or preferential treatment, made to prospective Government witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959).

N. The Government will transcribe the grand jury testimony of all witnesses who will testify for the Government at the trial of this cause so that the witnesses' statements will be available without delay at trial and be furnished to the Defendant pursuant to 18 U.S.C. § 3500.

O. **Within twenty-one (21) days of the entry of this Order**, the Government shall advise the Defendant whether there are any Confidential Informants (CI) with knowledge of the facts in this case. If so, the Government will also inform the Defendant the level of activity engaged in by the CI and whether the CI is likely to be called to testify at trial. The identity of the CI may be masked. Should the Government believe the sensitive nature of this information requires such action, the Government may submit the information to the Court *in camera* for review. Should the Defendant seek disclosure of any CI identity, the Defendant may request a hearing at which to satisfy the requirements of *U.S. v. Vizcarra-Porras*, 889 F.2d 1435 1438 (5<sup>th</sup> Cir. 1989) cert. denied, 495 U.S. 940 (1990).

**P. The Court may refuse to hear or deny a non-dispositive motion, including motions to continue, unless the movant includes a certificate of conference within the body of the motion, or affixed thereto, stating each party's position, to include all parties to a case, as unopposed or opposed. If opposed, the certificate will advise the Court that counsel for all parties have first conferred in a good faith attempt to resolve the matter by agreement and, further, will state the specific reason(s) no agreement was made.**

It shall be the continuing duty of counsel to immediately reveal to opposing counsel newly-discovered information or other material within the scope of this Order.

If counsel believes another party has failed to comply with this Order, counsel shall notify opposing counsel in writing **prior** to filing a motion requesting relief. No party will file a Motion for Compliance with this Order until such notice has been given along with an opportunity for compliance.

Upon a sufficient showing the Court may, upon motion properly filed and in compliance with this Order, order that the discovery or inspection provided for by this Order be denied, restricted, deferred, or make such other order as is appropriate. Counsel will, and the Court expects counsel to, make good faith efforts to comply with the letter and spirit of this Order.

All notices of defenses pursuant to FED. R. CRIM. P. 12(b)(1) and (2) or 12.3 shall be given **within twenty-one (21) days of the entry of this Order**. All other motions (excluding motions in limine) shall be filed in this cause no later than **thirty (30) days from the entry of this Order**.<sup>3</sup>

Requests for special jury instructions and motions in limine shall be submitted **prior** to Jury Selection.<sup>4</sup>

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<sup>3</sup> The **only** manner in which the above dates may be extended is by Order of the Court. The Order will be agreed to and prepared by the parties (or otherwise granted by the Court after a written motion) and thereafter signed and filed by the Court **prior** to the deadline.

<sup>4</sup> There is no need to submit routine and standard instructions or instructions which are fundamental to the basic elements of the charged offense(s); however, any defenses or unique

**Sanctions may be imposed for failure to comply with this Order.**

It is so **ORDERED**.

Signed this 27<sup>th</sup> day of July, 2020.

  
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**DAVID COUNTS**  
United States District Judge

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instructions not routinely included in the District Court's charge shall be submitted in accordance with this Order.