

January 13, 2023

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXASUNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISIONBY: Michael Trujillo
DEPUTY

THE HONORABLE ANNE T. BERTON

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ALL CRIMINAL CASES

**STANDING ORDER REGARDING PRETRIAL MOTIONS, CERTAIN DISCLOSURES,
AND TRIAL PREPAREDNESS IN CRIMINAL CASES**

This Standing Order is to inform counsel of the courtroom practices and procedures before the undersigned in all criminal trials. Counsel should carefully **REVIEW** and must **COMPLY** with the following:

A. Pretrial Motions

The parties shall file pretrial motions, if any, **within fourteen days after arraignment or waiver of arraignment**. See Fed. R. Crim. P. 12(c)(1); Local Rule CR-12.

B. Disclosures Under *Brady*, *Giglio*, and *Napue*

Not later than three weeks before trial, the Government shall disclose to the Defendant and permit inspection and copying of all information and materials 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), or which tends to impeach the Government witnesses. Further, **not later than three weeks before trial**, the Government shall disclose to the Defendant the existence and substance of any payments or promises of immunity, leniency, or preferential treatment made to prospective Government witnesses within the scope of *Giglio v. United States*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959).

The Government is reminded that it has a continuing obligation to disclose any exculpatory evidence to the Defendant and to learn of any such evidence known to others acting

on the Government's behalf, including law enforcement. *See Kyles v. Whitley*, 514 U.S. 419, 437–38 (1995). The Government's disclosure obligations apply even when the Defendant has not requested any exculpatory evidence from the Government. *See United States v. Agurs*, 427 U.S. 97, 107 (1976). These obligations to provide exculpatory evidence in a timely manner are not diminished by the fact that such evidence also constitutes evidence that must be produced later pursuant to the Jencks Act, 18 U.S.C. § 3500, or by the fact that such evidence need not be produced according to Rule 16. *See United States v. Campagnuolo*, 592 F.2d 852, 860–62 (5th Cir. 1979); *see also* Fed. R. Crim. P. 16 advisory comm.'s notes to 1974 amend. ("The rule is intended to prescribe the minimum amount of discovery to which the parties are entitled."). If the Government identifies any evidence which it believes to be exculpatory or favorable to the Defendant but not material, the Government shall submit such information to the Court for *in camera* review.

C. Joint Proposed Jury Charge

In case of a trial by jury, the parties shall meet and confer and file, **not later than two weeks before trial**, a Joint Proposed Jury Charge and a Verdict Form consistent with the guidelines provided in this section. Upon so filing, the parties shall promptly email a Microsoft Word version of the Joint Proposed Jury Charge and the Verdict Form as filed, to the undersigned's email address at Anne_Berton@txwd.uscourts.gov (the email's subject line must include the case number and the text "Joint Proposed Jury Charge").

The Court prefers that the Proposed Jury Charge be based on the Fifth Circuit Pattern Jury Instructions (the most recent edition); however, the Court may consider instructions based on another circuit's pattern jury instructions. **For general and preliminary jury instructions based on the Fifth Circuit Pattern Jury Instructions**, the parties need only provide a list of the

citations and the titles of specific sections of the Fifth Circuit Pattern Jury Instructions (e.g., § 1.05 Presumption of Innocence, Burden of Proof, Reasonable Doubt), but not the full text of the specific sections; however, to the extent that a specific section requires case-specific information (e.g., § 1.18 regarding Expert Opinion Testimony requires the name of expert and subject matter of the expert's opinion testimony) or if the text of the specific section of the Fifth Circuit Pattern Jury Instructions is substantively modified in any respect in the parties' Joint Proposed Charge, the parties must additionally provide the full text of the specific section as modified, highlighting or otherwise pointing out the modification. **For substantive offense jury instructions based on the Fifth Circuit Pattern Jury Instructions**, the parties must provide the citation, the title, and the full text (modified with case specific information as needed) of the specific section of the Fifth Circuit Pattern Jury Instructions that contains the proposed instruction.

Where a party proposes an instruction from **another circuit's pattern jury instructions**, that party must provide the citation, the title, and the full text of the specific section of the pattern jury instructions that contains the proposed instruction, as well as the name of the circuit and the year/edition of the pattern jury instructions.

If the parties disagree on any instruction or set of instructions (as provided under a section of the pattern jury instructions), each party shall provide the full text of their respective proposed charge, denoting the parties' name and highlighting, or otherwise pointing out, those portions of the instruction or the set of instructions about which the parties disagree, and the nature of the parties' disagreement. If a specific instruction or set of instructions is proposed by only one party, that party shall provide the full text of the proposed instruction or set of instructions, denoting that party's name, and the other party shall include the nature of its objection, if any, to the proposed instruction or set of instructions.

D. Proposed Voir Dire Questions and Case Summary

In case of a trial by jury, the parties shall file, **not later than 10 days before trial**, a list of questions each party desires the Court to ask the prospective jurors during voir dire. In addition, the parties shall jointly file a short summary of the case to be read by the Court to the panel to determine if anyone has heard anything about the case.

E. Joint Motion in Limine

In case of a trial by jury, the parties shall file, **not later than 10 days before trial**, a Joint Motion in Limine but only after the parties confer and discuss the parties' individual motion(s), if any. The Joint Motion in Limine shall identify the items that are jointly agreed upon by the parties and the items that are objected to or not agreed upon by the parties, along with any corresponding objections. Any items therein that are not jointly agreed upon by the parties will be addressed at a pretrial conference to be held before the trial.

F. Joint Exhibit List

Not later than 10 days before trial, the parties shall file a Joint Exhibit List. The Court orders that the parties confer and discuss the admissibility of their exhibits before filing the Joint Exhibit List. The joint exhibit list shall identify any objections to the exhibits designated by the other party **as well as identify the exhibits that the parties agree upon**. Any exhibits that are not jointly agreed upon by the parties will be addressed at a pretrial conference to be held before the trial.

The parties shall number their exhibits in accordance with Local Rule CV-16(h).

G. Witnesses

Not later than 10 days before trial, the parties shall file a list of any potential trial witnesses.

H. Stipulated Facts

Not later than 10 days before trial, the parties shall file a list of proposed stipulated facts, if any.

I. Length of Trial

Not later than 10 days before trial, the parties shall jointly file a statement regarding an estimate of the probable length of trial.

J. Interpreters

Not later than 10 days before trial, any need for an interpreter, for the Defendant or a witness, should be communicated to Courtroom Deputy Cecie Rodriguez at (915) 834-0534.

K. Technology

Not later than one week before trial, the parties must notify the Court if they intend to use laptops, tablets, or other electronic presentation devices of any kind (including the presentation of paper exhibits on an ELMO Document Camera). **If counsel fails to so notify the Court, counsel may be unable to use an electronic presentation device and no extensions of time or accommodations will be made for delays caused by the unavailability of electronic presentation methods. Counsel are advised that the technology in the Magistrate Courtrooms differs significantly from that in the District Courtrooms.**

L. Required Filings and Physical Delivery for the Court and its Staff

On the day, and before the start, of trial, each party shall hand-deliver **four notebooks** as follows:

- (1) Two notebooks for the Judge and her law clerk which shall contain:
 - (a) A list of proposed stipulated facts, if any.

- (b) A list of any exhibits, with a space to mark whether or not the exhibit was admitted.
 - (c) All exhibits.
 - (d) A list of any witnesses.
- (2) One notebook for opposing counsel and one notebook for the witness stand which **shall contain all exhibits.**

Any exhibit impracticable for paper submission must be submitted by USB drive, email, or other appropriate electronic means to the law clerk.

M. Voir Dire and Opening Statements

During voir dire, after the Court concludes questioning the prospective jurors, each party will be allotted ten (10) minutes to ask any additional questions.

The Court will limit opening statements to ten (10) minutes per side. Only in special circumstances (for example, multiple defendants) will the Court consider allowing additional time for opening statements.

So ORDERED and SIGNED this 13th day of January 2023.



**ANNE T. BERTON
UNITED STATES MAGISTRATE JUDGE**