

**FILED**

February 12, 2024

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

BY: David Cano  
DEPUTY

THE HONORABLE ANNE T. BERTON      §  
   §  
   §      ALL CRIMINAL CASES

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

Counsel **SHALL** carefully review and comply with these practices and procedures:

<b>Upon Defendant's Request for Trial</b>	<b><u>Pretrial Motions.</u></b> The parties shall request a briefing schedule from the Court to file pretrial motions, if any.
<b>Not Later Than Three Weeks Before Trial</b>	<p><b><u>Disclosures Under <i>Brady</i>, <i>Giglio</i>, and <i>Napue</i>.</u></b></p> <p>The Government shall disclose to the Defendant and permit inspection and copying of all information and materials known to the Government which may favor the Defendant on the issues of guilt or punishment within the scope of <i>Brady v. Maryland</i>, 373 U.S. 83 (1963), or which tends to impeach the Government witnesses. The Government shall also 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 <i>Giglio v. United States</i>, 405 U.S. 150 (1972), and <i>Napue v. Illinois</i>, 360 U.S. 264 (1959).</p> <p>The Court reminds the Government of its 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. <i>See Kyles v. Whitley</i>, 514 U.S. 419 (1995). The Government's disclosure obligations apply even when the defendant has not requested any exculpatory evidence from the Government. <i>See United States v. Agurs</i>, 427 U.S. 97 (1976).</p> <p>These obligations to timely provide exculpatory evidence are not diminished by the fact that such evidence also constitutes evidence that must be produced later under the Jencks Act, 18 U.S.C. § 3500, or by the fact that such evidence need not be produced according to Federal Rule of Criminal Procedure 16. <i>See United States v. Campagnuolo</i>, 59 F.2d 852 (5th Cir. 1979); 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 <i>in camera</i> review.</p>



**Not Later Than  
Two Weeks  
Before Trial**

**Joint Proposed Jury Charge and Verdict Form (If Jury Trial).**

The parties shall meet and confer, and then file a Joint Proposed Jury Charge and a Verdict Form consistent with the guidelines provided below. Upon so filing, the parties shall promptly email a Microsoft Word version of the Joint Purposed Jury Charge and the Verdict Form as filed, to the undersigned's email address at [anne\\_berton@txwd.uscourts.gov](mailto: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 also 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 must provide the full text of their respective proposed charge, denoting the party's 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 must provide the full text of the proposed instruction or set of instructions, denoting that proposing party's name, and the other party must include the nature of its objection, if any, to the proposed instruction or set of instructions.



<p><b>Not Later Than Ten Days Before Trial</b></p>	<p><b><u>Proposed Voir Dire Questions and Case Summary (If Jury Trial).</u></b> The parties shall file 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 whether anyone has heard anything about the case.</p> <p><b><u>Joint Motion in Limine (If Jury Trial).</u></b> The parties shall file 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 in it that are not jointly agreed upon by the parties will be addressed at a pretrial conference to be held before the trial.</p> <p><b><u>Joint Exhibit List.</u></b> 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-1 6(h).</p> <p><b><u>Witnesses.</u></b> The parties shall file a list of any potential trial witnesses.</p> <p><b><u>Stipulated Facts.</u></b> The parties shall file a list of proposed stipulated facts, if any.</p> <p><b><u>Length of Trial.</u></b> The parties shall jointly file a statement with an estimate of the probable length of trial.</p> <p><b><u>Interpreters.</u></b> Any need for an interpreter, for the Defendant or a witness, should be communicated to Courtroom Deputy Cecie Rodriguez at (915) 834-0534.</p>
<p><b>Not Later Than Seven Days Before Trial</b></p>	<p><b><u>Technology.</u></b> 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 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.</p>

<p><b>Before the Start of Voir Dire</b></p>	<p><b><u>Physical Delivery of Binders.</u></b> Each party shall hand-deliver the following:</p> <ul style="list-style-type: none"> <li>• Two binders for Judge Berton and her law clerk containing: <ul style="list-style-type: none"> <li>○ A list of proposed stipulated facts, if any;</li> <li>○ An exhibit list, with spaces to mark whether the exhibit was admitted or not;</li> <li>○ All exhibits; and</li> <li>○ A witness list.</li> </ul> </li> <li>• One binder for opposing counsel containing <u>all</u> exhibits.</li> <li>• One binder for the witness stand containing <u>all</u> exhibits.</li> </ul> <p>Any exhibit impracticable for paper submission must be submitted by USB drive, email, or other appropriate electronic means to the law clerk.</p>
<p><b>During Voir Dire</b></p>	<p>Each party will be allotted ten minutes to ask any additional questions.</p>
<p><b>During Opening Statements</b></p>	<p>The Court will limit opening statements to ten minutes per side. Only in special circumstances (for example, multiple defendants) will the Court consider allowing additional time for opening statements.</p>

So ORDERED and SIGNED this 12<sup>th</sup> day of February, 2024.

  
 ANNE T. BERTON  
 UNITED STATES MAGISTRATE JUDGE