

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	
v.)	
)	Criminal No. 20-cr-00040 (BAH)
JESSICA JOHANNA OSEGUERA)	
GONZALEZ,)	
)	
Defendant.)	
_____)	

DEFENDANT’S NOTICE OF FILING

Defendant Jessica Johanna Oseguera Gonzalez, by and through undersigned counsel, respectfully notes the filing of the attached discovery letter.

Respectfully submitted,

/s/ Steven J. McCool
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Counsel for Jessica Johanna Oseguera Gonzalez

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February 2020, the foregoing was served electronically on the counsel of record through the U.S. District Court for the District of Columbia Electronic Document Filing System (ECF) and the document is available on the ECF system.

/s/ Steven J. McCool
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February 28, 2020

VIA ELECTRONIC TRANSMISSION ONLY

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Washington, D.C. 20530

Re: *United States v. Jessica Johanna Oseguera Gonzalez*,
Criminal No. 20-cr-00040 (BAH)

Dear Counsel:

As you know, I represent Jessica Gonzalez in the above-captioned case, which is currently pending before the Honorable Beryl A. Howell and the Honorable Robin M. Meriweather in the United States District Court for the District of Columbia. I am writing to request discovery of information in the above-captioned case, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963) and other applicable authority referenced below. Please provide the following material for this matter as soon as possible so that we may investigate and prepare for Mr. Gonzalez's detention hearing and her defense at trial.

I would greatly appreciate it if you would respond to each request separately, fully, and in writing. If there are any documents or information responsive to any of the following requests that you refuse to produce, please define or designate the documents or information in your response with sufficient particularity to allow us to make a motion for a court order to require production of these documents or information.

I. BRADY EVIDENCE

Pursuant to *Brady*, we request that the Government produce all evidence that would permit Ms. Gonzalez to challenge the weight of the evidence at the detention hearing scheduled for Monday, March 2, 2020. We make an additional, specific request that the Government

identify all cases within the past five years where the United States has charged an individual under 21 U.S.C. §§ 1904 and 1906. We make an additional specific request that the Government provide all evidence the Government had in its possession to support a finding of probable cause when law enforcement officers surveilled and attempted to interview Ms. Gonzalez in August 2019. So we may make use of this evidence, I ask that that it be provided to us by the close of business today.

When the government suppresses evidence favorable to an accused that is material to guilt or to punishment, it violates the defendant's right to due process. *Brady v. Maryland*, 373 U.S. 83 (1963); *see also Cone v. Bell*, 556 U.S. 449, 451 (2009). "*Brady* suppression occurs when the government fails to turn over even evidence that is known only to police investigators." *Youngblood v. W. Virginia*, 547 U.S. 867, 869-70 (2006) (internal citations omitted). "Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of **the proceeding** would have been different.'" *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (emphasis added) (internal citations omitted). The plain language of *Strickler* does not limit *Brady* to trial, and instead applies more broadly to "proceeding[s]." *Id.* A criminal defendant has the right to present evidence at a detention hearing challenging "[t]he weight of the evidence against the person." *Tyler v. United States*, 705 A.2d 270, 275 (D.C. 1997). This is consistent with the longstanding principle that "[i]n our society, liberty is the norm and detention prior to trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Therefore, a court's authority to detain a person before trial must be "carefully limited." *Id.* Consistent with this mandate, the Bail Reform Act grants the trial court a limited and carefully circumscribed authority to hold a defendant before trial. Judges at detention hearings have been required to consider "the weight of the evidence against the person." *See* 18 U.S.C. § 3142(g)(2). The right to challenge the weight of the evidence necessarily indicates a defendant's right to present exculpatory evidence. If the evidence were not exculpatory, there would be no reason for a defendant to present the evidence at a detention hearing. Moreover, the right to present exculpatory evidence means that a defendant has the right to receive such evidence and to receive it in time to make use of it. Suppression of material exculpatory evidence is violative of due process. The restriction on a person's liberty has always been a chief concern of the Fifth Amendment as evidenced by its prohibition against depriving a person of "liberty" without due process. U.S. Const. amend. V.

II. DEFENDANT'S STATEMENTS

Pursuant to Federal Rule of Criminal Procedure 16(a)(1), we request that the Government produce all statements made by Ms. Gonzalez.

(a) **Statements to law enforcement officers/government agents.**

Please disclose to us and make available for inspection, copying, or photographing: any relevant written or recorded statements made by Ms. Gonzalez, or copies thereof, 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 you or any other attorney for the Government, and that portion of any written record containing the substance of any relevant oral statement made by Ms. Gonzalez whether before or after arrest in response to interrogation by any person then known to Ms. Gonzalez to be a Government agent. We request that you disclose the

substance of any other oral statement whether before or after arrest in response to interrogation by any person then known to Ms. Gonzalez to be a Government agent if the Government intends to use that statement at trial. We also request any statements made by Ms. Gonzalez even if the government only intends to use such statements in rebuttal.

(b) Statements to others.

We request discovery of any statements, written or oral, made by Ms. Gonzalez to any person who, in turn, communicated those statements to Government agents. Although the Jencks Act requires that statements made by third parties to the Government be produced prior to cross-examination, there is authority to allow the Court to order such production earlier and even prior to trial. *See United States v. Thevis*, 84 F.R.D. 47, 55-56 (N.D. Ga. 1979); *Davis v. United States*, 413 F.2d 1226, 1230-31 (5th Cir. 1969) (recordings of conversation between defendant and government informant held to be statement of defendant and discoverable); *United States v. Bailleaux*, 685 F.2d 1105, 1114 (9th Cir. 1982), *modified on other grounds*, *Huddleston v. United States*, 485 U.S. 681 (1988) (“We believe the Government should disclose any statement made by the defendant that may be relevant to any possible defense or contention that the defendant might assert. Ordinarily, a statement made by the defendant during the course of the investigation of the crime charged should be presumed to be subject to disclosure, unless it is clear that the statement cannot be relevant. Where the Government is in doubt, the written or recorded statement should be disclosed, if a proper request is made.”).

(c) Statements of those with knowledge.

We request all statements, written or oral, made by persons known to or interviewed by the Government who have knowledge of the facts pertaining to the case. The names of persons with knowledge of the facts relevant to the case are the most critical information obtainable for preparation of an adequate defense and to ensure a fair trial. *United States v. Cadet*, 727 F.2d 1453, 1468-69 (9th Cir. 1984).

III. PRIOR RECORD

Pursuant to Fed. R. Crim. P. 16(a)(1)(D), we request any prior criminal record pertaining to Ms. Gonzalez. Specifically, we request that you furnish us with a copy of Ms. Gonzalez’s prior criminal record (arrests and convictions), if any, 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 Government.

IV. DOCUMENTS AND TANGIBLE OBJECTS

Pursuant to Fed. R. Crim. P. 16(a)(1)(E), we request documents and tangible objects. We request that you provide all books, papers, documents, notes, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody or control of the Government, and which are material to the preparation of Ms. Gonzalez’s defense, or are intended for use by the Government as evidence in its case-in-chief at the trial, or were obtained from or belong to Ms. Gonzalez.

V. REPORTS OF EXAMINATIONS AND TESTS

Pursuant to Fed. R. Crim. P. 16(a)(1)(F), we request any and all reports of examinations and tests. We request that you provide us the results or reports of any physical or mental examination and of any scientific test or experiment, or copies thereof, which are in 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 you or any attorney for the Government, and which are material to the preparation of Ms. Gonzalez's defense or are intended for use by the Government as evidence in its case-in-chief at trial.

Such results or reports of examinations and tests include, but are not limited to, all photographs relating to this matter, including, but not limited to, all photographs taken during the execution of any search warrants in this matter.

If such materials exist, please provide it immediately. If it comes into existence at a later time, please provide us with such material as soon as it is complete, and in sufficient time for us to incorporate the material into our preparation for trial, including the possible need to seek alternative testing and/or the assistance of experts to examine the material provided or to testify concerning the material provided.

VI. EVIDENCE OF UNCHARGED MISCONDUCT

We request, pursuant to Federal Rule of Evidence 404(b), all evidence of uncharged misconduct the Government will seek to introduce at trial, either in its case-in-chief or in rebuttal. This disclosure should be disclosed with at least the degree of particularity required in an indictment, with the witnesses named. This disclosure should identify whether any such evidence will be introduced by means of a documentary exhibit, and, if so, the identity of the document. This disclosure should address whether the uncharged misconduct is presently the subject of a pending charge or ongoing investigation, the purpose for which the uncharged misconduct is offered, and should include any "reverse 404(b)" evidence that may tend to negate Ms. Gonzalez's alleged guilt regarding the uncharged misconduct.

In order to avoid any delay in this matter, we request the government's notice of intent to introduce 404(b) evidence and the government's expert disclosures, if any, by March 25, 2020.

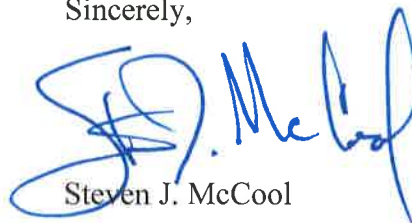
VII. EXPLANATORY COMMENTS

In addition to the above listed requests, we request early disclosure of all *Jencks* material so that if there are any issues concerning disclosure that may need to be resolved in advance, counsel will have adequate time to review the material. This will ensure that there will be no delay of court proceedings while counsel reviews the material, considers any discovery or *Brady* ramifications, and prepares to use the material in cross-examination. We also request that you diligently preserve all *Jencks* material.

We believe that the requested material is discoverable under the Federal Rules of Criminal Procedure and/or under pertinent case law. In the event that you are unable or unwilling to provide the requested information or if you disagree with any of the foregoing representations, please advise me promptly so that we may file any necessary pretrial motions.

Thank you in advance for your prompt attention to these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "S.J. McCool". The signature is stylized with large, overlapping loops and a prominent "S" at the beginning.

Steven J. McCool

Attorney for Jessica Gonzalez