

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA

v.

Criminal No.

ARRAIGNMENT ORDER AND STANDARD DISCOVERY REQUESTS

I. ARRAIGNMENT ORDER

[Defendant present] At _____, on the ____ day of _____, 20 ____, came the United States of America by _____, Assistant United States Attorney, and also came the defendant in person and by counsel, _____, for the purpose of an arraignment.

After the Court questioned the defendant and was satisfied that the defendant had received a copy of the indictment, and had read and understood the contents thereof, and that his/her attorney had explained the nature of the charges to him/her, the defendant entered a voluntary plea of **NOT GUILTY** to the indictment.

[Defendant not present] At _____, on the ____ day of _____, 20 ____, came the United States of America by _____, Assistant United States Attorney, and also came _____, counsel for the defendant, who had previously waived his/her right to be present at the arraignment, which waiver was accepted. A **NOT GUILTY** plea to the indictment was entered for the defendant, pursuant to the waiver.

IT IS ORDERED that this case be set for jury trial at _____ a.m. on the ____ day of _____, 20 ____, in _____, before the Honorable _____.

IT IS FURTHER ORDERED that pursuant to LR Gen P 5.07(c), if either party requires any courtroom technology for a hearing or trial, counsel shall notify the court's technology staff at least five business days before the hearing or trial.

IT IS FURTHER ORDERED that a pretrial hearing on motions in this case be held on the ____ day of _____, 20 ____, at _____ am/pm in _____. Counsel must immediately notify the presiding judge if the parties reached agreement on all pretrial issues, rendering the pretrial hearing on motions unnecessary.

Proposed witness and exhibit lists are due to the presiding judge by the ____ day of _____,

20__.

IT IS FURTHER ORDERED that if the parties elect to use the Standard Discovery Requests, pretrial motions are due by the ____ day of _____, 20___. Proposed Voir Dire Questions and Jury Instructions are due to the presiding judge by the ____ day of _____, 20___.

IT IS FURTHER ORDERED that any defendant represented by court-appointed counsel has the right to subpoena witnesses to testify in this case on the date of trial, and the costs incurred by the process and fees of the witnesses so subpoenaed be paid in the same manner in which similar costs and fees are paid in the case of witnesses so subpoenaed on behalf of the government.

II. CUSTODIAL/NON-CUSTODIAL STATUS

(check applicable sections)

- _____ (I) The defendant was previously ordered detained pending trial.
- _____ (II) On the government's motion for a detention hearing, the Court **ORDERS** that a detention hearing be held on the ____ day of _____, 20__, at _____ am/pm in _____. The defendant is remanded to the temporary custody of the United States Marshal pending the detention hearing.
- _____ (III) The defendant was previously released on a surety/non-surety bond in the amount of \$ _____ with special conditions set forth in the Order Setting Conditions of Release, the provisions of which are hereby **ORDERED** to continue.
- _____ (IV) The defendant is hereby **ORDERED** released on a surety/non-surety bond in the amount of \$ _____ as set forth in the Order Setting Conditions of Release.
- _____ (V) The defendant was previously released on his/her own personal recognizance with special conditions set forth in the Order Setting Conditions of Release, the provisions of which are hereby **ORDERED** to continue.
- _____ (VI) The defendant is hereby **ORDERED** released on his/her own personal recognizance, as set forth in the Order Setting Conditions of Release.
- _____ (VII) The defendant is hereby **ORDERED** detained as set forth in the Detention Order.

III. STANDARD DISCOVERY REQUEST FORM

(initial “a” or “b”)

_____ (a) The defendant has elected to use the Standard Discovery Requests, as set forth in LR CR P 16.01(a).

_____ (b) The defendant has elected **not** to use the Standard Discovery Requests, as set forth in LR CR P 16.01(a). Accordingly, the defendant is ORDERED to file all pretrial motions together with supporting memoranda within twenty days of this Order, by the _____ day of _____, 20____. The government is ORDERED to file responses within ten days of receipt of defendant’s pretrial motions, by the _____ day of _____, 20____.

Whereupon, the parties make the following **Standard Discovery Requests**:

On Behalf of the Defendant, Counsel asks the Government to: (defense counsel must initial all applicable sections)

_____ A. Pursuant to FR Crim P 16(a)(1)(A), disclose to defendant the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial.

_____ B. **[Individual defendant]** Pursuant to FR Crim P 16(a)(1)(B), disclose to defendant and make available for inspection, copying or photographing, all of the following:

- (i) any relevant written or recorded statement by the defendant if the statement is within the government’s possession, custody, or control, and the attorney for the government knows--or through due diligence could know--that the statement exists;
- (ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and
- (iii) the defendant’s recorded testimony before a grand jury relating to the charged offense.

_____ C. **[Organization defendant]** Pursuant to FR Crim P 16(a)(1)(C), where the defendant is an organization, e.g., corporation, partnership, association or labor union, disclose to the defendant any statement described in FR Crim P 16(a)(1)(A) and (B), if the government contends that the person making the statement

- (i) was legally able to bind the defendant regarding the subject of the statement because of that person’s position as the defendant’s director, officer, employee, or agent; or
- (ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person’s position as the defendant’s director, officer, employee, or agent.

_____ D. Pursuant to FR Crim P 16(a)(1)(D), furnish the defendant with a copy of the defendant’s prior criminal record that is within the government’s possession, custody, or control if the attorney for the government knows--or through due diligence could know--that the record exists.

_____ E. Pursuant to FR Crim P 16(a)(1)(E), permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control, and

- (i) the item is material to preparing the defense,
- (ii) the government intends to use the item in its case in chief at trial, or
- (iii) the item was obtained from or belongs to the defendant.

_____ F. Pursuant to FR Crim P 16(a)(1)(F), permit the defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if

- (i) the item is within the government's possession, custody or control,
- (ii) the attorney for the government knows--or through due diligence could know--that the item exists, and
- (iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.

_____ G. Pursuant to FR Crim P 16(a)(1)(G), give to the defendant a written summary of any testimony that the government intends to use under Federal Rules of Evidence (FRE) 702, 703, or 705 during its case-in-chief at trial. If the government requests discovery under FR Crim P 16(b)(1)(C)(ii) and the defendant complies, the government must, at the defendant's request, give the defendant a written summary of testimony that the government intends to use under FRE 702, 703, or 705 at trial regarding the defendant's mental condition. The summary must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

_____ H. Disclose to defendant any matter as to which the government will seek judicial notice.

_____ I. Disclose to defendant whether any evidence is derived through wiretaps.

_____ J. Provide notice to defendant of the government's intention to use evidence pursuant to FR Crim P 12(b)(4)(B).

2. Government Responses to Defendant's Standard Discovery Requests.

(initial line)

_____ Pursuant to Local Rule 16.01(c), the Government agrees to provide the materials to the defendant within ten days of the date of this Order, by the _____ day of _____, 20___. Further, the government must file a written response to the defendant's standard discovery requests with the Clerk within the time frame set forth above.

3. Reciprocal Discovery and Filing of Additional Motions by Defendant.

a. Pursuant to Local Rule 16.01(e), The defendant shall provide all reciprocal discovery to the government within 10 days of receiving discovery materials from the government.

b. Pursuant to Local Rule 47.01, the defendant shall file all motions within ten days after receipt by defense counsel of LR Cr P 16.01 materials unless the Court, for good cause shown, extends the time upon written application made within the ten-day period.

4. Continuing Duty of Disclosure.

The defendant and the government agree that their respective duties of disclosure and discovery pursuant to this Order are continuing, and that they shall produce additional responsive information as soon as it is received, and in no event later than the time for such disclosure as required by law, rule of criminal procedure, or order of Court.

IV. DISCLOSURE OF IMPEACHMENT AND 404(b) EVIDENCE, INCLUDING GIGLIO
(government and defense counsel initial and fill in lines)

_____ A. No later than fourteen days before trial, the government shall disclose all Notice of FRE 404(b) evidence, Giglio material and any Roviario witness not included in the government's discovery.

_____ B. The government shall disclose Brady evidence at the time the disclosures described in LR Cr P 16.01 are made. Additional Brady material not known to the government at the time of disclosure of other discovery material, as described above, shall be disclosed immediately in writing setting forth the material in detail.

_____ C. The defendant agrees to use all material provided by the government that is subject to the provisions of FR Crim P 6(e) only in the preparation of the defense, and will not copy or publish to any person whose knowledge of the materials is not necessary to the preparation of the defense and, further, that upon request, will return all copies of these materials to the government or destroyed at the close of the case.

The Clerk of this Court is directed to send a copy of this Order to the defendant, counsel of record, the United States Marshal and the United States Probation Office.

ENTER: _____

United States Magistrate Judge

Counsel for Defendant

Assistant United States Attorney