

FEDERAL DEFENDERS OF SAN DIEGO, INC.

THE COMMUNITY DEFENDER ORGANIZATION FOR THE SOUTHERN DISTRICT OF CALIFORNIA

April 30, 2025

****Delivered via electronic mail only****

Assigned Assistant United States Attorney
880 Front Street
San Diego, CA 92101

RE: United States v. CLIENT
Case No.: 25MJ0000

Dear Counsel:

I represent Mr. CLIENT in the above-captioned criminal case. Mr. CLIENT asserts his Fifth and Sixth Amendment rights to remain silent and to be represented by counsel both inside and outside the courtroom. He also requests that the government preserve and disclose all information and material discoverable under applicable constitutional provisions, statutes, and the Federal Rules. Mr. CLIENT's request is continuing; that is, he requests that the government disclose all information and material currently in its custody and control and that the government immediately provide all discoverable information and material it obtains in the future.

Mr. CLIENT requests that counsel for the government confirm receipt of this letter. He requests that government counsel review his requests and notify defense counsel of any discovery disputes or intent not to comply with the general or specific requests below **within 5 days of the receipt of this letter**. Last, he requests that the government notify defense counsel of a convenient time, no later than 14 days after arraignment on an indictment or information, to meet and confer regarding discovery under Fed. R. Crim. P. 16.1 and Criminal Local Rule 16.1.

I. Mr. CLIENT asserts his rights under the Fifth and Sixth Amendments to remain silent and to communicate with the government only through counsel.

Mr. CLIENT asserts his right under the Fifth and Sixth Amendments to remain silent and to have all communication about his case (or any other criminal investigation) take place through counsel. *See Maine v. Moulton*, 474 U.S. 159, 176 (1985) (holding that the Sixth Amendment is violated when government obtains confession by knowingly circumventing accused's right to have counsel present in a confrontation between accused and government); *Edwards v. Arizona*, 451 U.S. 477, 484 (1981) (stating that once accused has expressed desire to deal with law enforcement only through counsel, no interrogation may take place in absence of counsel unless accused initiates communication with law enforcement). He does not wish to speak with prosecutors or any agent or employee of the government about his case.

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California Professional Rule of Conduct 4.2 also prohibits you or any other prosecutor from speaking to Mr. CLIENT now that he is represented by counsel. *See United States v. Talao*, 222 F.3d 1133 (9th Cir. 2000) (recognizing that Cal. Prof. Conduct Rule [4.2] prohibiting ex-parte contacts with represented parties applies to federal prosecutors); *see also* ABA Rule 4.2. The same is true for your agents.

You are now on notice of Mr. CLIENT's position in this matter. Please advise accordingly all members of the United States Attorney's Office as well as your agents, investigators and any others working on your behalf.

II. Mr. CLIENT Requests that the government produce all information and material discoverable under Fed. R. Crim. P. 16.

Mr. CLIENT hereby requests disclosure and inspection of *all* information and material discoverable under Rule 16(a), including: 1) any oral statement by Mr. CLIENT; 2) any written or recorded statement by Mr. CLIENT; 3) Mr. CLIENT's prior record; 4) documents and objects material to the preparation of the defense; 5) reports of examinations and tests; and 6) information related to expert witnesses. *See* Fed. R. Crim. P. 16(a)(1)(A)-(G). The government's duty to disclose is continuing through the conclusion of the case, Fed. R. Crim. P. 16(c), and Mr. CLIENT's request for disclosure herein also continues through the conclusion of the case.

Mr. CLIENT makes certain specific requests below under Rule 16 in order to assist government counsel in the identification, preservation, and disclosure of information. His specific requests are not intended to be exclusive, however, and Mr. CLIENT asks that the government preserve and disclose all discoverable information even if not identified specifically in this letter. *See California v. Trombetta*, 467 U.S. 479, 489 (1984) (stating that the Due Process Clause requires preservation of material evidence).

Mr. CLIENT recognizes that Rule 16 provides for inspection, rather than disclosure, of certain information and material. He asks that the government nonetheless provide copies of any material to the defense out of courtesy and to avoid delay. When provision of copies is not possible, Mr. CLIENT requests that the government make any information and material available for inspection **no later than 21 days before the first motion hearing**.

Mr. CLIENT requests that the government preserve and disclose the following:

Mr. CLIENT's Statements. Mr. CLIENT requests the government disclose any and all written, recorded and oral statements made by him, as well as any written summaries of his oral statements contained in the handwritten notes of any Government agent. Fed. R. Crim. P. 16(a)(1)(A) & (B). The Advisory Committee Notes and the 1991 amendments to Rule 16 make clear that the Government must reveal all of Mr. CLIENT's statements, whether written or oral, regardless of whether the Government intends to make

any use of those statements. Mr. CLIENT specifically requests any audio and videotaped copies of his statements and any rough notes taken pertaining to the substance of his statements. Additionally, Mr. CLIENT requests copies of the audio tapes of his alleged prior deportations or removals. Furthermore, pursuant to Fed. R. Crim. P. 16(a)(1)(B)(i), Mr. CLIENT requests copies of the audio tapes of any taped telephone call made while he was in custody.

Evidence Seized. Mr. CLIENT requests production of any property, objects, or other evidence seized as a result of any search, either warrantless or with a warrant. Fed. R. Crim. P. 16(a)(1)(E)(iii). This includes:

- Mr. CLIENT cellphone(s). Additionally, to the extent given, Mr. CLIENT hereby withdraws any and all consent to search his cellphone(s).
- Mr. CLIENT's personal items and effects, whether kept as evidence or not.

Reports, Memoranda, Emails, Forms, Notes and Other Written Materials.

Mr. CLIENT requests disclosure of any and all books, papers, documents, and data containing the recorded observations or communications of any government agent related to Mr. CLIENT's arrest, detention, immigration inspection, questioning, transport, and prosecution. This includes, but is not limited to:

- Any and all reports, memoranda, notes and emails prepared by law-enforcement officers and agents involved in Mr. CLIENT's apprehension, arrest, questioning, transportation, and prosecution.
- Any and all records contained within Mr. CLIENT's A-File, T-File, or other immigration-related database in the custody or control of the government, to include the Department of Justice, the Department of Homeland Security, or any investigative, law-enforcement, or immigration-enforcement agency.

Recorded Communications by Law Enforcement. Mr. CLIENT requests production of any recorded radio, email, text, telephone, or other electronic communication by government agents concerning his pursuit, apprehension, questioning, and prosecution. This includes dispatch tapes of all radio communications by agents involved in Mr. CLIENT's arrest beginning one hour before agents became aware of Mr. CLIENT and concluding at the time Mr. CLIENT arrived at the Border Patrol station or other detention facility.

Photographs, Video, Audio Recordings, and Other Data. Mr. CLIENT requests production of any photographs, video, audio recordings, and other data concerning his pursuit, apprehension, questioning, and prosecution. *See* Fed. R. Crim. P. 16(a)(1)(E). This includes, but is not limited to:

- Photographs, video, and audio recordings at any port of entry depicting Mr. CLIENT or the agents involved in his apprehension
- Any photographs, video, and audio recordings captured by scope, remote video surveillance, aircraft, drone, or any other surveillance system
- Any and all related dispatch recordings
- Body camera footage
- Any data captured or observed by remote sensors, including time and location information

Tangible Objects. Mr. CLIENT requests the opportunity to inspect, copy, and test, as necessary, all other documents and tangible objects, including photographs, books, papers, documents, fingerprint analyses, or copies of portions thereof, which are material to the defense, intended for use in the Government's case-in-chief, or were obtained from or belong to Mr. CLIENT. Fed. R. Crim. P. 16(a)(1)(E).

Mr. CLIENT's Prior Record. Mr. CLIENT requests disclosure of his prior criminal record. Fed. R. Crim. P. 16(a)(1)(D). Specifically, he requests a certified copy of the docket, charging documents, plea or trial transcript, sentencing transcript, and judgment of any prior conviction the government will rely on at any evidentiary hearing, trial, or sentencing.

Scientific and Other Information. Mr. CLIENT requests the results of any scientific or other tests or examinations conducted by any Government agency or their subcontractors in connection with this case. *See* Fed. R. Crim. P. 16(a)(1)(G).

Expert Witnesses. Mr. CLIENT requests the name, qualifications, and a written summary of the testimony of any person that the Government intends to call as an expert witness during its case in chief. Fed. R. Crim. P. 16(a)(1)(E). The defense requests the notice of expert testimony be provided a minimum of **three weeks prior to trial** so the defense can properly prepare to address and respond to this testimony, including obtaining its own expert and/or investigating the opinions, credentials of the Government's expert and a hearing in advance of trial to determine the admissibility of qualifications of any expert. *See Kumbo Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999) (trial judge is "gatekeeper" and must determine, reliability and relevancy of expert testimony and such determinations may require "special briefing or other proceedings").

III. Mr. CLIENT requests disclosure of all exculpatory and impeachment information and materials

Mr. CLIENT requests all information and items—including documents, statements, agents' reports, and tangible evidence—favorable to Mr. CLIENT at any evidentiary hearing, trial, or sentencing. Impeachment as well as exculpatory evidence falls within the definition of evidence favorable to the accused. *United States v. Bagley*, 473 U.S. 667 (1985); *United States v. Agurs*, 427 U.S. 97 (1976). Favorable evidence must be produced regardless of whether the

government believes it would affect the outcome at trial. *See United States v. Bundy*, 968 F.3d 1019, 1033 (9th Cir. 2020). Mr. CLIENT's request is intended to continue indefinitely; that is, he expects the government to provide exculpatory information through trial and sentencing and even after final judgment.

Mr. CLIENT makes certain specific requests below in order to assist government counsel in the identification, preservation, and disclosure of exculpatory information. His specific requests are not intended to be exclusive, however, and Mr. CLIENT asks that the government preserve and disclose all exculpatory information and material, even if not identified specifically in this letter. Mr. CLIENT puts the government on notice that, if the government fails to adhere to its *Brady* obligations, Mr. CLIENT intends to seek all appropriate sanctions pursuant to Federal Rule of Criminal Procedure 5(f) and the Due Process Protection Act. Pub. L. No. 116-182, 134 Stat. 894 (2020).

Mr. CLIENT requests disclosure of the following exculpatory information:

Henthorn Material. Mr. CLIENT requests that the prosecutor assigned to this case oversee a review of all personnel files of each agent involved in the present case for impeachment material under *United States v. Henthorn* 931 F.2d 29 (9th Cir. 1991). ("The obligation [for the government] to examine the files arises by virtue of the making of a demand for their production."). *See also Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (holding that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the Government's behalf in the case, including the police.");

Evidence of Bias or Motive to Lie. Mr. CLIENT requests any evidence that any prospective government witness is biased or prejudiced against Mr. CLIENT, or has a motive to falsify or distort his or her testimony. Pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), Mr. CLIENT requests all statements and/or promises, express or implied, made to any witness, in exchange for their testimony in this case, and all other information which could be used for impeachment. This request also includes any discussion with a potential witness about or advice concerning any contemplated prosecution, or any possible plea bargain, even if no bargain was made, or the advice not followed. Specifically, this request includes any discussion with a potential witness regarding that witness' immigration status and/or any affect that the witness' statements or lack thereof might have on that status, including the granting or revoking of such immigration status or any other immigration status. For purposes of this request, "immigration status" includes, but is not limited to citizenship, nationality, a green card, border crossing card, parole letter, or permission to remain in the United States.

Impeachment Evidence. Mr. CLIENT requests any evidence that any prospective government witness has engaged in any criminal act, whether or not resulting in a conviction, and whether any witness has made a statement favorable to Mr. CLIENT. *See Fed. R. Evid.* 608, 609 and 613; *Brady v. Maryland*, 373 U.S. 83 (1963).

Evidence of Criminal Investigation of Any Government Witness. Mr. CLIENT requests any evidence that any prospective witness is under investigation by federal, state or local authorities for any criminal conduct.

Evidence Affecting Perception, Recollection, Ability to Communicate, or Truth Telling

Mr. CLIENT requests any evidence, including any medical or psychiatric report or evaluation, that tends to show that any prospective witness' ability to perceive, remember, communicate, or tell the truth is impaired, and any evidence that a witness has ever used narcotics or other controlled substances, or has ever been an alcoholic.

Informants and Cooperating Witnesses. Mr. CLIENT requests disclosure of the names and addresses of all informants or cooperating witnesses used or to be used in this case, and in particular, disclosure of any informant who was a percipient witness in this case or otherwise participated in the crime charged against Mr. CLIENT. The government must disclose the informant's identity and location, as well as the existence of any other percipient witness unknown or unknowable to the defense. *Roviaro v. United States*, 353 U.S. 53, 60-61 (1957) ("Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege [against disclosure] must give way.").

IV. Mr. CLIENT Requests Notice of Any Proposed 404(b) Evidence.

Mr. CLIENT requests notice of any "crimes, wrongs, or other acts" the government may introduce at trial. *See* Fed. R. Evid. 404(b) ("upon request of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general nature" of any evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial). Mr. CLIENT also requests the government "articulate precisely the evidential hypothesis by which a fact of consequence may be inferred from the other acts evidence." *United States v. Mehrmanesh*, 689 F.2d 822, 830 (9th Cir. 1982) (emphasis added; internal citations omitted). Mr. CLIENT requests **at least three weeks' notice before trial** to give the defense time to investigate and prepare for trial.

V. Mr. CLIENT Requests that the Government Preserve Any and All Materials and Objects that Relate to His Arrest and Prosecution.

Mr. CLIENT requests the preservation of all physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the government and which relates to the arrest or the events leading to the arrest in this case, including any and all controlled substances seized. *Trombetta*, 467 U.S. at 489. To that end, Mr. CLIENT asks government counsel to inquire immediately of all agents, prosecutors, or other actors involved in this case whether they possess any of the materials requested above. He also asks that government counsel inquire whether agents, prosecutors, or other actors involved in this case can acquire any material requested above and, if possible, to do so. Last, he asks that government counsel inform all agents, prosecutors, and other actors involved in this case to preserve any materials requested above that are currently in existence or that are created or discovered during the pendency of this prosecution.

Mr. CLIENT understands that the government may believe certain materials requested herein are not discoverable or are not discoverable at this time. If the government believes any of the above exists, but is not discoverable for any reason—for example, pursuant to Rule 26.2 or a work-product exception—Mr. CLIENT requests that the government disclose to the

defense the existence of such material and preserve it so that the court can resolve any dispute over production.

VI. Conclusion

Thank you for your assistance in this matter. If you have any questions about this letter or my client's invocation of his Fifth and Sixth Amendment rights and his request to have all communications between parties take place through counsel, please feel free to contact me at (619) 234-8467. However, I ask that all communication in regard to this letter and/or its contents take place in writing by letter or email.

Sincerely yours,

s/ Assistant Federal Defender

Assistant Federal Defender