

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

CARL DELANO TORJAGBO

CRIMINAL ACTION NO.
1:22-CR-171-MLB-RDC

Motion for an Order Enforcing Brady v. Maryland
and the Due Process Protections Act

COMES NOW the Defendant, CARL DELANO TORJAGBO, by and through undersigned counsel, and files this motion for an order enforcing *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and the Due Process Protections Act. We are interested primarily in protecting Mr. Torjagbo's rights under *Brady* and its progeny. We are also interested in making sure that Mr. Torjagbo will receive any Brady evidence (which includes Giglio and sentencing mitigation evidence) in time to make effective use of it prior to trial. To aid the Government in complying with its Brady obligations, it may be helpful for undersigned counsel to identify certain information that may fall into that class. Clarification of Brady issues would also aid Mr. Torjagbo in knowing what to expect and when to expect the information.

AUTHORITY

Brady v. Maryland held that

[T]he suppression by the prosecution of evidence favorable to an accused ... violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Brady, 373 U.S. at 87. Many cases since then have interpreted a prosecutor's Brady obligations. Today, *Brady* and its progeny impose on the prosecution a "duty to learn of"¹ and disclose to the defense all "favorable,"² information "known to the others acting on the government's behalf in the case, including the police,"³ a group commonly referred to as "the prosecution team."⁴ The prosecution must disclose this information at such a time and in such a manner as to allow the defense to use the favorable material effectively"⁵ – which, as a practical matter, means well before trial,

¹ *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

² *Brady*, 373 U.S. at 87

³ *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

⁴ See the Department of Justice Deputy Attorney General David Ogden Memorandum of January 4, 2010, Step 1A, which may be found at <https://www.justice.gov/archives/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states> (last visited March 6, 2023).

⁵ See *United States v. Bueno-Sierra*, 99 F.3d 375 (11th Cir. 1996) (late disclosure caused one day delay in trial). We do not wish to delay the trial.

if not at the outset of the case, because the due process obligation under *Brady* to disclose exculpatory information is for the purpose of allowing defense counsel an opportunity to investigate the facts of the case and, with the help of the defendant, to craft an appropriate defense.

Although the *Brady* case itself speaks in terms of materiality, we ask the Court to recognize that materiality applies in the context of post-conviction review, but for pretrial disclosures the appropriate inquiry is whether the evidence at issue may be favorable to the accused.⁶

Although the United States criminal legal system is based on the adversarial approach to justice, *Brady* represents a bit of a departure from that approach at least enough to “ensure that a miscarriage of justice does not occur.” See *United States v. Bagley*, 473 U.S. 667, 675 n. 6 (1985) :

By requiring the prosecutor to assist the defense in making its case, the

Brady rule represents a limited departure from a pure adversary model.

The Court has recognized, however, that the prosecutor's role

transcends that of an adversary: he "is the representative not of an

⁶ For example, in *United States v. Safavian*, 233 F.R.D. 12, 16 (D.D.C. 2005), the Court held that “the only question before (and even during) trial is whether the evidence at issue may be ‘favorable to the accused’; if so, it must be disclosed without regard to whether the failure to disclose it likely would affect the outcome of the upcoming trial. See also *United States v. Carter*, 313 F. Supp. 2d 921 (E.D. Wisc. 2004) (rejecting pretrial materiality analysis); *United States v. Sudikoff*, 36 F. Supp. 2d 1196 (C.D. Cal. 1999) (same).

ordinary party to a controversy, but of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done." Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935). See Brady v. Maryland, 373 U.S., at 87-88, 83 S.Ct., at 1196-1197.

Specific Requests

1. Mr. Torjagbo requests any and all information that might tend to negate an element of any of the charged offenses or that bears upon the mental or psychological state of Mr. Torjagbo at the time of the alleged offenses.
2. Mr. Torjagbo specifically requests any and all information that the Government may possess which is contrary to any averment contained in the indictment.
3. Mr. Torjagbo specifically requests any information the Government may possess regarding the operations or business activity of Kremkov Industries.
4. Mr. Torjagbo also specifically requests any information that the Government may possess regarding whether persons listed on the Kremkov payroll logs that were submitted to J.P. Morgan Chase Bank are real persons, whether they reside principally in the United

States, and whether they have had any association with Mr. Torjagbo or Kremkov Industries.

5. Mr. Torjagbo requests that the Government identify the agents and agencies the prosecution considers to be a part of its “prosecution team” and whether the Government has made a request for information favorable to the defense to all such persons and agencies.
 6. Mr. Torjagbo requests a disclosure deadline of 30 days from today.
 7. We ask that the Court specifically request that the Government affirm whether or not it has so far disclosed all Brady evidence of which it has knowledge.
 8. We finally ask that if the Government has information that may be favorable to the defense, but decides that it need not disclose the information that the defense be notified so that we can have the opportunity to request an *in camera* review of the information at issue.
- WHEREFORE, Mr. Torjagbo requests that this motion be granted.

Respectfully submitted, this 12th day of February, 2024.

s/ Kendal D. Silas

Kendal D. Silas

Georgia State Bar Number 645959

Attorney for Carl Torjagbo

FEDERAL DEFENDER PROGRAM, INC.

1500 CENTENNIAL TOWER

101 MARIETTA STREET, NW

ATLANTA, GEORGIA 30303

404-688-7530