

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

UNITED STATES OF AMERICA

v.

CARL DELANO TORJAGBO,
a/k/a KARL LUCIUS DELANO

CRIMINAL ACTION NUMBER
1:22-CR-171-MLB-RDC

**RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION
FOR AN ORDER ENFORCING *BRADY v. MARYLAND*
AND THE DUE PROCESS PROTECTIONS ACT**

The United States of America files this response in opposition to Defendant’s Motion for an Order Enforcing *Brady v. Maryland* and the Due Process Protections Act (Doc. 80).

Introduction

Defendant Torjagbo’s motion should be denied because it violates the Pretrial Scheduling Order (Doc. 13), which states that a discovery motion should be filed only if counsel for the government has failed to comply with written requests for information. *See id.* Thus, Defendant Torjagbo was required to request discovery materials in writing from the government prior to filing his present motion for discovery. *See id.* He failed to do so. Accordingly, Defendant Torjagbo’s motion should be denied under the terms of the Pretrial Scheduling Order.

Facts

A Pretrial Scheduling Order was issued in this case on May 16, 2022.

(*Id.*). It states in relevant part as follows:

III. Filing Pretrial Motions

The local rules require any party seeking relief through a motion to confer with opposing counsel in an attempt to resolve disputed matters prior to the filing of motions related thereto. LCrR 12.1.D, NDGa. Moreover, Rule 16 directs that the government must produce discoverable material upon only a “request” of the defendant. *See* FED. R. CRIM. P. 16. Therefore, counsel are **DIRECTED** to **NOT** file any motion for materials or information or other relief that: (1) the opposing party has agreed to provide, or (2) the party is entitled to inspect and copy under applicable criminal rules and case law, **UNLESS** the attorney certifies to the court in writing that: (1) the materials have been requested from the opposing party or the motion for other relief has been discussed with the counsel for the opposing party, and (2) the opposing counsel declines to provide the materials/information/relief requested.

(*Id.* at 4-5).

On February 12, 2024, Defendant Torjagbo filed a Motion for an Order Enforcing *Brady v. Maryland* and the Due Process Protections Act (Doc. 80).

Before filing his motion, counsel for Defendant Torjagbo did not ask counsel for the government to provide the documents and information that he seeks in his current motion, nor does defense counsel allege in his motion that he did so. (*See* Doc. 80). Furthermore, defense counsel did not provide a written certification to the Court, as required by the Pretrial Scheduling Order. (*See* Doc. 13 at 4-5).

Argument

1. Defendant Torjagbo's motion should be denied because it violates the Pretrial Scheduling Order.

District courts have “wide discretion in ruling upon discovery motions.” *Harris v. Chapman*, 97 F.3d 499, 506 (11th Cir. 1996). “Consistent with that discretion, the [Northern District of Georgia] has a standard Pretrial Scheduling Order . . . to govern the discovery process in criminal cases.” *United States v. Omar*, No. 1:12-CR-00264-SCJ, 2012 WL 6934627, at *4 (N.D. Ga. Dec. 7, 2012), *report and recommendation adopted sub nom. United States v. Barrie*, 2013 WL 315203 (N.D. Ga. Jan. 25, 2013).

Where, as here, the defendant files a discovery motion that violates the Pretrial Scheduling Order, the motion should be denied. *United States v. Omar*, No. 1:12-CR-00264-SCJ-RGV, 2012 WL 6934627, at *5 (N.D. Ga.

Dec. 7, 2012) (denying defendant's motion for additional discovery because, under the terms of the Pretrial Scheduling Order, defendant was "required to request discovery materials in writing from the government prior to filing his present motion for discovery, and he has failed to indicate whether he has done so") (internal citation omitted), *report and recommendation adopted sub nom. United States v. Barrie*, No. 1:12-CR-0264-SCJ, 2013 WL 315203 (N.D. Ga. Jan. 25, 2013); *see also United States v. Jenkins*, No. 1:08-CR-0209-CC-CCH, 2008 WL 11383980, at *1-2 (N.D. Ga. July 18, 2008) (denying defendant's pretrial motion because "counsel for Defendant has failed to comply with the terms of the Pretrial Conference Order by failing to certify in writing that the materials have been requested from counsel for the government and that counsel for the government has declined to provide the information and relief requested"). Accordingly, Defendant Torjagbo's motion should be denied because it violates the Pretrial Scheduling Order.

2. Alternatively, Defendant Torjagbo's motion should be denied on the merits.

If this Court decides to consider Defendant Torjagbo's motion on the merits, it should find that Defendant Torjagbo is not entitled to the relief that he seeks.

Defendant Torjagbo's motion seeks to impose on the government various obligations that exceed the requirements of Rule 16, *Brady*, and *Giglio*. For example, Defendant Torjagbo asks the Court to impose "a disclosure deadline of 30 days." (Doc. 80 ¶ 6). He cites no authority, and the United States knows of none, requiring the government to do more than what is required by Rule 16, *Brady*, and *Giglio*.

Nor does Defendant Torjagbo cite any authority requiring the government to produce Rule 16, *Brady*, or *Giglio* materials earlier than required by law. "Under the Pretrial Scheduling Order, the government is required to provide [Defendant Torjagbo] *Giglio* information 'sufficiently in advance of trial to allow [him] to use it effectively,' but no later than production of Jencks Act material." *Omar*, 2012 WL 6934627, at *6 (quoting Pretrial Scheduling Order). And with respect to Jencks Act material, the Eleventh Circuit has stated as follows: "Our precedent on this issue could

not be more clear. The government is not required to disclose any statement in its possession until after the witness has testified on direct.” *United States v. Calderon*, 127 F.3d 1314, 1335 (11th Cir. 1997).

Nevertheless, consistent with the government’s “liberal discovery policy,” *Omar*, 2012 WL 6934627, at *6, n.7, the United States has already provided Defendant Torjagbo with virtually every document in its file, including not only Rule 16 discovery but early Jencks Act material as well.

The government is not aware of any *Brady* or *Giglio* material. If the government becomes aware of any *Brady* or *Giglio* material, it will produce it in a timely manner.

Moreover, Defendant Torjagbo’s requests should be denied because they are just interrogatories clothed as a discovery motion. If this were a civil case, Defendant Torjagbo would be entitled to serve the opposing party with interrogatories. *See* FED. R. CIV. P. 33. But this is a criminal case. A defendant has no right to serve the government with interrogatories in a criminal case. *United States v. Linen Supply Inst. of Greater New York*, 18 F.R.D. 452, 453 (S.D.N.Y. 1955) (“The Federal Rules of Criminal Procedure make no provision for answers to interrogatories.”); *see also United States v.*

Kenny, 462 F.2d 1205, 1212 (3d Cir. 1972) (holding that the government was not required to answer “a set of detailed interrogatories in the guise of a bill of particulars”).

Defendant Torjagbo’s request number 5 is improper for two other reasons. First, it asks the Court to require the government to “identify the agents and agencies [that it] considers to be a part of its ‘prosecution team.’” (Doc. 80 ¶ 5). The question of whether someone is a member of the prosecution team is a legal question, which must be determined by the Court on a case-by-case basis using principles of agency law. *United States v. Bourassa*, No. 4:18-CR-3-MLB-WEJ, 2020 WL 8484885, at *6 (N.D. Ga. Sept. 4, 2020) (citing *Avila v. Quarterman*, 560 F.3d 299, 307-08 (5th Cir. 2009)), *report and recommendation adopted*, 2020 WL 7778038 (N.D. Ga. Dec. 31, 2020); *see also United States v. Vest*, No. 06-CR-30011-DRH, 2006 WL 2135760, at *3 (S.D. Ill. July 28, 2006) (denying defendant’s motion for bill of particulars because it required the Government “to make legal conclusions”). Therefore, whether the government considers someone to be part of the prosecution team is irrelevant. It is the Court’s opinion that counts. Second, Request number 5 is improper because it is the functional

equivalent of a request for admissions and calls for a legal conclusion.

Even if it were proper for a defendant to serve the government with a request for admissions in a criminal case, it would be improper for a defendant to ask the government to admit a legal conclusion, such as whether someone is part of the prosecution team. *See United States v.*

Annamalai, No. 20-10543, 2022 WL 16959207, at *4 (11th Cir. Nov. 16, 2022), *cert. denied*, 143 S. Ct. 1069 (2023) (holding that “a party cannot use Rule 36 to request admissions to legal conclusions”).

Conclusion

For the reasons set forth above, Defendant Torjagbo is not entitled to the relief that he seeks in his Motion for an Order Enforcing *Brady v. Maryland* and the Due Process Protections Act (Doc. 80). Therefore, the motion should be denied.

Respectfully submitted,

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