

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 23-60173-CR-KMW(s) (GRAHAM)

UNITED STATES OF AMERICA

vs.

**CAROLYN DENISE WADE and
TRACY D. WADE,**

Defendants.

**UNITED STATES' RESPONSE TO DEFENDANTS' MOTION
FOR SPECIFIC KYLES AND BRADY INFORMATION [DE 132]**

Introduction

The United States of America, by and through its undersigned counsel, hereby responds in opposition to the “Motion for Specific *Kyles* and *Brady* Information,” which Defendants Carolyn Denise Wade and Tracy D. Wade (“Defendants”) filed on August 21, 2024, at docket entry (“DE”) 132 (the “Motion” or “Mot.”).¹ In sum, the Motion seeks an order “requiring the government to disclose and provide specific information and materials known, or should be known to the government.” (Mot. at 1). Defendants assert that the information sought “is favorable to the defendants on the issue of their innocence and/or includes impeachment information and other material and evidence tending to discredit the government’s cooperating witness Haydee Granados,” (Mot. at 1-2), and includes 8 specific requests for information listed in paragraphs “A” through (“H”) (Mot. at 3-4).

¹ Counsel for Defendant did not confer with the government prior to filing the Motion, as required by Local Rule 88.9. On August 21, 2024, the Court entered a Paperless Order Referring Motions (DE 136), pursuant to which the Court referred this Motion (DE 132) to U.S. Magistrate Judge Patrick M. Hunt for a report and recommendation.

As explained herein, the Motion should be denied as moot to the extent it requests information that is already covered by one or more of the following: (1) the Order pursuant to the Due Process Protections Act, entered in this case on July 15, 2024 as to Defendants Carolyn Wade (DE 99) and Tracy Wade (DE 100); (2) the Paperless Standing Discovery Order, entered in this case on July 15, 2024, as to Defendants Carolyn wade (DE 99) and Tracy Wade (DE 100); and (3) the government's discovery obligations mandated by Local Rule 88.10, Rule 16(a) of the Federal Rules of Criminal Procedure, *Brady*, *Giglio*, *Napue*, and/or the government's obligation to assure a fair trial. Furthermore, government is aware of its continuing duty to disclose newly discovered additional information required by the Standing Discovery Order, Rule 16(c) of the Federal Rules of Criminal Procedure, *Brady*, *Giglio*, *Napue*, and the obligation to assure a fair trial.

To the extent that the Motion requests information outside the scope of the government's discovery obligations, the government opposes the Motion asks the Court to deny it.

Procedural and Factual Background

The government incorporates by reference, as though fully set forth herein, the procedural and factual background in its responses in opposition to Defendant Carolyn Wade's motions to dismiss, which the government filed on September 4, 2024, at DE 145 and 146.

Government's Response to the Standing Discovery Order

On July 15, 2024, Defendants were arraigned on the Superseding Indictment and the Court entered the Paperless Standing Discovery Order in relation thereto ("SDO") as to each Defendant (DE 99 as to Carolyn Wade and DE 100 as to Tracy Wade). In addition, the Court entered the following Order pursuant to the Due Process Protections Act as to each Defendant:

the Court confirms the United States obligation to disclose to the defendant all exculpatory evidence- that is, evidence that favors the defendant or casts doubt on

the United States case, as required by *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and ORDERS the United States to do so. The government has a duty to disclose any evidence that goes to negating the defendants guilt, the credibility of a witness, or that would reduce a potential sentence. The defendant is entitled to this information without a request. Failure to disclose exculpatory evidence in a timely manner may result in consequences, including, but not limited to, exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, disciplinary action, or sanctions by the Court.

DEs 99, 100.

On July 25, 2024, the government filed its response to the SDO as to Defendants Carolyn Wade (DE 118) and Tracy Wade (DE 119). In each response, the government stated, among other things:

- C. The government will disclose any information or material which may be favorable on the issues of guilt or punishment within the scope of Brady v. Maryland, 373 U.S. 83 (1963), and United States v. Agurs, 427 U.S. 97 (1976).
- D. The government will disclose any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses, within the scope of Giglio v. United States, 405 U.S. 150 (1972), or Napue v. Illinois, 360 U.S. 264 (1959).
- E. The government will disclose any prior convictions of any alleged co-conspirator, accomplice or informant who will testify for the government at trial.

The government is aware of its continuing duty to disclose such newly discovered additional information required by the Standing Discovery Order, Rule 16(c) of the Federal Rules of Criminal Procedure, Brady, Giglio, Napue, and the obligation to assure a fair trial.

DEs 118, 119.

Contemporaneous with its responses to the SDO, on July 25, 2024, the United States produced discovery to each Defendant through their joint counsel of record. The United States noted in its responses to the SDO, and in the cover letter for that discovery production, that the

discovery included both new discovery (Bates stamped 23-60173-CR_006000 through 23-60173-CR_009061 and additional non-Bates stamped records in other formats) and all prior discovery in this case, which consisted of PDF records Bates stamped 23-60173-CR_000001 through 23-60173-CR_003755 and additional non-Bates stamped files. The prior discovery included the Third-Party PPP Applications previously produced to Carolyn Wade on May 1, 2024, which is discussed extensively in the government's response (DE 146) in opposition to her motion to dismiss the Superseding Indictment.

Discussion of Applicable Law and Argument

The government's discovery obligations are mandated by, among other things, (1) the Due Process Protections Act; (2) the SDO; (3) Local Rule 88.10; (4) Rule 16(a) of the Federal Rules of Criminal Procedure; *Brady*, *Giglio*, *Napue*, and/or the government's obligation to assure a fair trial. However, "the *Brady* rule is not an evidentiary rule that grants broad discovery powers to a defendant." *United States v. Quinn*, 123 F.3d 1415, 1421 (11th Cir. 1997). Rather, *Brady* compels the government to disclose "evidence which is advantageous to the defendant, and which, if suppressed, would deprive him or her of a fair trial." *United States v. Beale*, 921 F.2d 1412, 1426 (11th Cir. 1991).

The government is aware of its discovery obligations, including under *Brady* and cases decided under the due process principles set forth in that case. To the extent that the information requested by Defendants in the Motion is covered by these obligations, the order sought in the Motion is unnecessary and should be denied as moot. To the extent that the information sought in the Motion is not covered by the government's discovery obligations, then the Motion is necessarily seeking information that is outside of the government's discovery obligations, and

should be denied. For example, *Brady* and *Giglio* do not require the government to conduct independent investigations to obtain information, of which it has no knowledge or which is not in its possession, that may be favorable to Defendants.

In sum, there is no basis, and no need, for the Court to grant the order Defendants are seeking in the Motion. Any such order is either covered by the government's existing discovery obligations, or would impose upon the government an unwarranted additional obligation.

Accordingly, the United States respectfully asks the Court to deny the Motion (DE 132).

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

By: /s/ David A. Snider
David A. Snider
Assistant United States Attorney
Court ID No. A5502260
500 E. Broward Blvd
Fort Lauderdale, FL 33394
Tel: (954) 660-5696
Fax: (954) 356-7336
Email: david.snider@usdoj.gov