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May 4, 2022

Kelly Lawrence, AUSA
United States Attorney's Office
United States Courthouse
One Courthouse Way
Boston, MA 02210

Re: Discovery Requests - *United States v. Aticha Jittaphol*

Dear Ms. Lawrence:

On behalf of Aticha Jittaphol, I request the following additional discovery.[1]

All requests seek not only paper materials, but any form of electronic material, including email, texts and materials stored by any electronic device, software, or cloud method.

[1] As used throughout this letter, the term "government" includes all branches of the Department of Justice (DOJ), including the Bureau of Prisons (BOP), as well as all state, local and federal police, investigative and prosecutorial agencies involved in the investigation or prosecution of the crimes charged in the indictment. *See Kyles v. Whitley*, 514 U.S. 419, 437 (1995) ("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"); *United States v. Osorio*, 929 F.2d 753, 762 (1st Cir. 1991) ("the prosecutor is duly bound to demand compliance with disclosure responsibilities by all relevant dimensions of the government"); *United States v. Owens*, 933 F. Supp. 76, 86 (D. Mass. 1996) (disclosure obligation "governs all the office of the United States Attorney and the Justice Department itself, ... the Bureau of Prisons ... and all other governmental agencies including state officers acting as agents of the federal government"); *United States v. Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992) (federal prosecutor had authority to search for exculpatory evidence in Washington, D.C. Metropolitan Police Department's homicide and internal affairs file). *See also Giglio v. United States*, 405 U.S. 150 (1972); *United States v. Bagley*, 473 U.S. 667, 674-675 (1985); *United States v. Upton*, 856 F. Supp. 727, 750 (E.D.N.Y. 1994) ("The inquiry is not whether the United States Attorney's Office physically possesses the discovery material; the inquiry is the extent to which there was a joint investigation with another agency."); *United States v. Libby*, 429 F.Supp.2d 1 (D.D.C. 2006).

All requests relating to any statement include a request for notes prepared by any law enforcement agent and/or prosecutor documenting or detailing any such statement.

1. All recordings of communications that concern Ms. Jittaphol, and/or the Mantra Dhevi Spa, (hereafter "Spa"), and/or any potential witness.

2. Copies of any transcripts, including preliminary transcripts, of any recorded statements and/or communications that concern Ms. Jittaphol, and/or the Spa, and/or any potential witness.

3. All documents and materials describing statements and/or communications by anyone that concern Ms. Jittaphol, and/or the Spa, and/or any potential witness.

4. All bank records of Ms. Jittaphol and/or the Spa.

5. All documents and materials concerning Pollawat Tippawong, including but not limited to:

(a) How law enforcement became aware of Ms. Tippawong having any association with Ms. Jittaphol;

(b) All photographs shown to Ms. Tippawong on February 2, 2021, or March 19, 2021, or at any other time, the identity of each person whose photo she was shown, when she was shown each photo, and all documents and materials concerning any connection between any of these individuals and Ms. Jittaphol;

(c) All communications between the government and Attorney Austin Andenmatten;

(d) All bank records;

(e) All documents and materials concerning any loan extended by Ms. Tippawong to anyone, including amounts charged or received in consideration of the loan;

(f) All documents and materials concerning any false statement made by Ms. Tippawong to the government, and/or any statement that any government interviewee of Ms. Tippawong, any agent involved in this investigation, and/or any prosecutor, suspected was false;

(g) All documents and materials concerning any statements made by anyone concerning Ms. Tippawong;

(h) All documents and materials concerning any illegal activity of Ms. Tippawong, including but not limited to prostitution, usury, money laundering, customs violations, and any other crime, state or federal;

(i) All documents and materials concerning any effort to corroborate any statement made by Ms. Tippawong concerning Ms. Jittaphol and/or the Spa;

(j) Criminal record;

(k) All documents and materials concerning the 12/1/21 incident involving a money seizure, including but not limited to the entire file concerning CBPO seizure # 2022SZ0020525;

(l) All documents and materials concerning any investigation of the source of the funds that were seized on 12/1/21;

(m) All documents and materials concerning any government communications with Ms. Tippawong and/or her attorney following the 12/1/21 incident concerning any potential consequences, and/or any potential involvement in this case or any other criminal investigation or prosecution;

(n) Disclosure of all criminal and/or immigration matters concerning which Ms. Tippawong has provided the government with information, all documents and materials concerning the information she provided, and all promises, benefits or rewards she received or was informed she could receive, including all documents and materials concerning any such promise, reward or benefit;

(o) All documents and materials concerning any decision by any governmental entity not to charge Ms. Tippawong with a crime;

(p) All Tec records.

6. All documents and materials concerning any communications between the government and the owner of the building that housed the Spa, or any

representative of the owner, including but not limited to Anthony Nardelli, concerning the Spa, and/or potential criminal liability.

7. All documents and materials concerning Ms. Jittaphol and/or the Spa provided to the government by Attorney Albert Li.

8. All documents and materials concerning any criminal investigation of Attorney Albert Li, including but not limited to any investigation concerning any application for governmental benefits or loans.

9. All investigative case file documents and materials concerning any investigation of Ms. Jittaphol, the Spa, the owner of the building housing the Spa, and/or any potential witness.

10. To the extent that any individuals were questioned by law enforcement and did not provide inculpatory information, such as Spa workers who denied performing sexual acts, or Spa customers who denied receiving sexual contact, any such communication is exculpatory, and disclosure of this information is required regardless of whether reports were prepared concerning any such communication. With respect to any individuals who were questioned by law enforcement concerning Ms. Jittaphol or the Spa, who provided statements that are not contained in any report already produced, the defendant requests disclosure of the identity of all such individuals, contact information, and a complete description of all statements made.

11. With respect to each potential witness, their criminal records, including all available information about the individual's arrest and conviction record, criminal activity and misconduct, including, but not limited to:

(a) the full record (including certified copies) of federal or state convictions, and any foreign convictions, whether misdemeanor or felony[2];

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[2] *See Davis v. Alaska*, 415 U.S. 308, 316 (1974); *Ouimette v. Moran*, 942 F.2d 1, 12 (1st Cir. 1991) (there is "no matter more material than a complete record of the State's star witness ... to be used for demonstrating the unworthiness of belief of his testimony ..."). The defendant requests that the court order the government to obtain such criminal records (other than for law enforcement witnesses, and witnesses such as record-keepers).

(b) all information known to the government of conduct that constitutes a crime under federal or state law for which any potential witness could be prosecuted[3];

(c) a full statement of all criminal prosecutions and investigations against the potential witness and of all civil or administrative actions or investigations against the individual, regardless of whether or not these cases are the subject of promises, rewards or inducements[4];

(d) a full statement of whether the potential witness was, at any time during the investigation or prosecution of this case, on probation, parole, supervised release or some other form of government supervision or had any criminal charges outstanding[5]; and

(e) the prison records of the individual if ever incarcerated in federal or state prison[6].

12. A complete statement of all promises, rewards, or inducements of any kind made to any potential witness in this case, whether made in connection with this case or in any other case, including, without limitation, the following:

(a) all information regarding assurances, express or implied, by the government that it will give or consider giving as to the charges, sentencing or other assistance, including immigration issues, to the person (or to a relative, friend, or associate) facing actual or possible criminal charges, deportation or non-criminal sanctions, and all

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[3] *See Osorio*, 929 F.2d at 756-58; *Owens*, 933 F. Supp. at 88.

[4] *See United States v. Bonanno*, 430 F.2d 1060, 1062 (2d Cir.) (requiring disclosure of indictment of witness so that defendant could investigate all promises), cert. denied, 400 U.S. 964 (1970).

[5] *See Davis*, 415 U.S. at 317.

[6] *See Kyles*, 115 S.Ct. at 1572; *Davis*, 415 U.S. at 316-17; *Osorio*, 929 F.2d at 758 (government should have disclosed information that key witness had engaged in extensive drug trafficking for which he had not been charged); *Alford v. United States*, 282 U.S. 687, 693 (1931) (prior criminal conduct is relevant where the witness may have been promised or believed that his cooperation would lead to immunity); *Devose v. Norris*, 867 F. Supp. 836, 849 (E.D. Ark. 1994) (conviction reversed where government failed to disclose prior disciplinary action against witness for theft and making false statements to supervisor and prosecuting attorney while employed as a police officer).

suggestions or recommendations that any state government or any other official agency do so; the information provided should include the nature of the offense and/or issue, the court, agency and/or governmental department in which the charge or issue is pending, the docket or case number, and a detailed description of the assistance given or proposed[7];

(b) all statements made during negotiations as to what the government might or might not do depending upon the person's cooperation;

(c) all requests for payment or promises, rewards and inducements, or favorable treatment of any kind, made by any potential witness, whether or not such requests were agreed to by the government;

(d) all statements in the possession, custody or control of the government regarding
promises, rewards and inducements or favorable treatment of any kind, that any potential witness expects to receive or is trying to obtain, whether or not the government has agreed to provide such promises, rewards, inducements and treatment;

(e) a full description of each occasion when any government agent accompanied a potential witness to a criminal court appearance and spoke to any prosecutor, probation officer, clerk or judge concerning the person; and

(f) all information regarding threats or promises made to the potential witness or their family to motivate their cooperation[8].

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[7] *See Kyles*, supra; *Brady*, supra; and *Giglio*, supra. *See also United States v. Drougas*, 748 F.2d 8, 23 (1st Cir. (1984) ("[e]vidence relating to the impeachment of prosecution witnesses and immunity or other preferential treatment ... is deemed to be exculpatory within the meaning of the *Brady* rule"); *Owens*, 933 F. Supp. at 87 ("[t]he government has to reveal all promises, rewards and inducements to include the quid for the quo[;] [a]nd if the quid pro quo involves other sovereigns, of course that must be revealed"); *Snell*, 899 F. Supp. at 22 ("promises, rewards and inducements – is both classic *Brady* and is specifically mentioned in the Local Rules").
[8] *See United States v. Partin*, 493 F.2d 750, 757-60 (5th Cir. 1974) (it is proper impeachment to question a witness about dropped charges or other preferential treatment given to his family).

13. All past, anticipated, and foreseeable payments by the government or any law enforcement agency of money or other things of value to a potential witness – other than routine witness fees – given in exchange for information or other assistance provided to the government or other such agency, and all written records of same. Specifically, defendant requests all ledgers, receipts, vouchers, and other documents which describe the sums paid in any form to or for the benefit of the person or their family in this and any other case in which the person assisted any federal, state or local agency[9].

14. All special arrangements made or facilitated by the government, including but not limited to any special treatment or assistance given to a potential witness while incarcerated or in connection with or during all debriefings by government investigators and attorneys.

15. All information bearing upon the credibility of any potential witness, including, without limitation:

(a) all inconsistent statements[10];

(b) all false statements (or omissions of material facts) made during the course of interviews by law enforcement officials[11];

(c) all bias, prejudice, hostility, personal interest, financial interest or special relationship that could cause the person to testify in favor of the government or against the defendant[12];

(d) all evidence of poor memory, in general or with respect to the events

[9] *See United States v. Cervantes-Pacheco*, 826 F.2d 310, 315-16 (5th Cir. 1987) ("[t]he government must also make a complete and timely disclosure to the accused of the fee arrangement it has made with the informant"), cert. denied, 484 U.S. 1026 (1988). *United States v. Williams*, 954 F.2d 668, 671-72 (11th Cir. 1992) ("jury has a right to know what may be motivating a witness" even if "the amount [of money] paid an informant is felt by the government to be too prejudicial").
[10] *See Kyles*, 115 S. Ct. at 1569-71; *Owens*, 933 F. Supp. at 87; *United States v. Pellulo*, 14 F.3d 881, 886 (3d Cir. 1994) ("an IRS memorandum detailing an interview with [a witness] which set forth facts inconsistent with the testimony of [the witness] ... qualifies as *Brady* evidence).
[11] *See Kyles*, 115 S.Ct. at 1571-73.
[12] *See id.* at 1571-72; *Owens*, 933 F. Supp. at 87; *Snell*, 899 F. Supp. at 23; *United States v. Cooper*, 662 F. Supp. 913, 919 (D.R.I. 1987).

in question, including any statements by the potential witness concerning same;

(e) all physical, mental, visual, or psychiatric treatments and/or impairments and treatment (including legal or illegal use of drugs and excessive use of alcohol) that could affect the potential witness's accuracy, and full details concerning same[13];

(f) all results of scientific or quasi-scientific tests, such as polygraphs, that fail to conclude that the potential witness has been completely truthful with respect to any statement[14];

(g) all evidence that the potential witness has a poor reputation for telling the truth or has engaged in any conduct probative of untruthfulness[15];

(h) all information tending to show a motive for the potential witness to curry favor with the government; and

(i) all information tending to show that the potential witness has a relationship with any other witness, informant or agent of the government.

16. All inconsistent statements[16] between different potential witnesses concerning any facts material to the investigation, defense or prosecution[17].

17. All information about whether any law-enforcement agent participating in the investigation or trial of this case, whether employed by the United States or by the Commonwealth of Massachusetts or by any municipality of the Commonwealth, have been the subject of disciplinary

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[13] *See Pennsylvania v. Ritchie*, 480 U.S. at 60-61 (evidence of a witness emotional impairment is discoverable); *United States v. Barrett*, 766 F.2d 609, 615-16 (1st Cir.) (evidence of psychiatric treatment), cert. denied, 411 U.S. 983 (1973); *United States v. Fowler*, 465 F.2d 664, 665-66 (D.C. Cir. 1972) (same).
[14] *See Jacobs v. Singletary*, 952 F.2d 1282 (11th Cir. 1992) (government's failure to disclose witness' polygraph testimony which significantly clashed with his testimony at trial was *Brady* violation).
[15] *See Kyles*, 115 S. Ct. at 1572.
[16] As used throughout this letter, the term "statements" includes written statements, electronic statements, such as emails and text messages, and oral statements, recorded or otherwise.
[17] *See id.* at 1569-71; *Owens*, 933 F. Supp. at 87.

investigation or criminal prosecution, or the subject of disciplinary action or criminal prosecution, any of which were for conduct allegedly involving false statements, perjury, obstruction of justice, receipt of gratuities or violation of rights of a criminal suspect or defendant[18].

18. All information tending to undercut in any way the credibility of the government's evidence or allegations.

19. Any information tending to diminish the defendant's culpability under the United States Sentencing Guidelines.

20. Pursuant to Fed. R. Crim. P. 16(a)(1)(G), the defendant requests that the government disclose, no later than 45 days before trial, all testimony it intends to offer under Fed. R. Evid. 702, 703 or 705 in its case-in-chief at trial, including but not limited to the witnesses' opinions, the bases and reasons for those opinions, and the witnesses' qualifications[19].

21. The defendant requests that the government preserve all contemporaneous notes, memoranda, statements, reports, surveillance log, tape recordings and other documents memorializing matters relevant to the charges made by or in the custody of any law enforcement officer whose agency at the time was formally participating in an investigation, intended to result in a criminal indictment, including all raw notes whether or not the substance of such notes is incorporated in a written report, and all rough drafts of reports. This request includes, but is not limited to, all notes relating to any alleged communications involving the defendant. The defendant requests the production of all notes described in Local Rule 116.9 and herein to the extent such notes constitute Jencks Act or Brady material[20].

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[18] *See United States v. Garrett*, 542 F.2d 23 (6th Cir. 1976) (error to foreclose discovery of undercover agent's disciplinary records relating to his use of narcotics and failure to submit to urinalysis); *Brooks*, 966 F.2d at 1503 (government's duty to produce exculpatory material extended to local police department's homicide and Internal Affairs Division files); *United States v. Henthorn*, 931 F.2d at 31 (government's failure to examine personnel files upon a defendant's request for production of exculpatory material was reversible error).

[19] *See United States v. Richmond*, 153 F.R.D. 7 (D. Mass 1994) ("[I]n order to serve the purposes of the Rule, the expert's written summary must be disclosed to defendant's counsel not less than forty-five calendar days before trial").

[20] *See* 18 U.S.C. § 3500; *United States v. Harris*, 543 F.2d 1247, 1253 (9th Cir. 1976) (requiring law enforcement agents to preserve original notes taken during interviews

22. The defendant requests that the government produce Jencks Act material not later than 21 days before trial. This request pertains only to Jencks Act material that is not exculpatory. Exculpatory witness statements, including those that cast doubt on the credibility of a government witness, *see* Rule 116.2(A)(2), should be turned over as part of automatic discovery[21].

Very truly yours,

Keith Halpern

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 4, 2022.

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with prospective government witnesses or with an accused in order "to permit courts to play their proper role in determining what evidence must be produced pursuant to the Jencks Act or other applicable law"); *Brady*, supra.

[21] *Snell*, 799 F. Supp. at 24 ("nothing in the statute, preempts the court's ability, consistent with its obligations over case management, to order earlier disclosure than required by the Act"); *United States v. Campagnuolo*, 592 F.2d 852, 859 n. 3 (5th Cir. 1979) (early release is "salutary practice"); *United States v. Hubbard*, 474 F. Supp. 64 (D.D.C. 1979) (holding government to promise of early Jencks production); *United States v. Narcisco*, 446 F. Supp. 252, 270-71 (E.D. Mich. 1977) (ordering pretrial disclosure to promote efficiency and fairness).