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.
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UNITED STATES' RESPONSE IN OPPOSITION TO
DEFENDANT CAROLYN DENISE WADE'S MOTION
TO DISMISS THE SUPERSEDING INDICTMENT [DE 134]

Introduction

The United States of America, by and through its undersigned counsel, hereby responds in opposition to the "Motion to Dismiss Superseding Indictment Due to Brady Violation Prior to the Trial on the Original Indictment and Request for Evidentiary Hearing," which Defendant Carolyn Denise Wade ("Defendant") filed on August 21, 2024, at docket entry ("DE") 134 (the "Motion" or "Mot.").[1] In sum, the Motion seeks dismissal of the Superseding Indictment (DE 88), as to Carolyn Wade only, based upon Defendant's assertion that the government failed "to disclose evidence favorable to Ms. Wade prior to the trial on the original indictment." (Mot. at 1). The claimed "evidence favorable to Ms. Wade" are records of 20 Paycheck Protection Program (PPP) loan applications of other individuals (the "Third-Party PPP Applications"). Yet, as Defendant rightly concedes, the Third-Party PPP Applications "had nothing to do with Carolyn Wade." (Mot.

[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 134) to U.S. Magistrate Judge Patrick M. Hunt for a report and recommendation.

at 4). Furthermore, the government produced the Third-Party PPP Applications to Defendant on May 1, 2024, approximately two weeks before the commencement of the first trial, under an unopposed Protective Order entered by the Court on May 1, 2024 (DE 49).

As explained herein, the Motion wholly fails for two primary reasons. First, the Third-Party PPP Applications do not fall within the ambit of *Brady* and its progeny because, among other things, these records are neither favorable to Defendant nor material. Second, despite having no disclosure obligation under *Brady*, the government nevertheless produced the Third-Party PPP Applications as a courtesy to Defendant on May 1, 2024 (approximately two weeks before trial on the original indictment). Additionally, Defendant has not established any prejudice.

Accordingly, the United States respectfully asks the Court to deny the Motion (DE 134) in its entirety. The United States further submits that Defendant is not entitled to an evidentiary hearing.

Procedural and Factual Background

1. Original Indictment

On September 14, 2023, a grand jury sitting in the Fort Lauderdale Division of this Court (the "Grand Jury") returned an indictment (DE 3) (the "Indictment") charging Defendant with one count of wire fraud, in violation of Tile 18, United States Code, Section 1343. The Indictment alleged that, from May 2021 through August 2021, Carolyn Wade, then employed by the Broward County Sheriff's Office (BSO) as a Deputy Sherriff in the Detention Department, participated in a scheme to defraud in which she obtained a loan through the Small Business Administration (SBA)'s Paycheck Protection Program ("PPP") based upon materially false information. Such materially false information allegedly included, among other things, that a sole proprietorship having the business legal name "Carolyn Wade" earned "$113,560" of gross income in 2019.

2. Government's First Response to the Standing Discovery Order

On October 19, 2023, Defendant was arraigned on the Indictment and the Court entered the Standing Discovery Order ("SDO") (DE 11). The government filed its response to the SDO and produced discovery to Defendant on November 3, 2023 (DE 13). On November 29, 2023, the Court granted an unopposed motion to continue the trial until March 25, 2024. Thereafter, government counsel engaged in plea discussions with Defendant's prior counsel. On or about February 14, 2024, the government was advised that Ms. Wade had retained new counsel (Mr. McCray) and would proceed to trial.

3. Government's Receipt of the Third-Party PPP Applications from Womply

In early March 2024, as it was preparing for Defendant's trial, the government learned for the first time that Defendant applied for her PPP loan online through a service provider named Womply.[2] On March 7, the government served on Womply a subpoena to testify at Defendant's criminal trial (then set for April 8, 2024), and to bring documents or electronically stored information requested on an attachment thereto. The attachment requested all records related to Carolyn Wade's PPP loan (number 6697269001).[3]

On Saturday, March 16, Womply produced to the government records responsive to the subpoena via the government's file sharing platform, USAFx. In its production, Womply

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[2] Before this, the government had only been aware of the lender for Defendant's PPP loan. As it turned out, many lenders participating in the PPP, including the lender of Defendant's PPP loan, outsourced the application processes (including application intake) to third party service providers, such as Womply.

[3] Specifically, the subpoena requested "the entire content of any electronic or physical file related to [Carolyn Wade's PPP loan number]," which included, among other records, "other applications with the same IP addresses as [Carolyn Wade's PPP loan number]."

segregated the PPP application records into 21 folders identified by the full name of the individual applicant. The production contained only one folder named "Carolyn Wade." The remaining 20 folders contained the Third-Party PPP Applications that are the subject of this Motion.

On the next business day, Monday, March 18, the government produced to Defendant all records in the Womply folder named "Carolyn Wade." At the time of that production, the government had not reviewed the content of the other 20 folders (i.e., the Third-Party PPP Applications), and did not then produce those records, since it was clear from the face of the folders that they contained PPP applications of third persons that had nothing to do with Carolyn Wade (a fact Defendant concedes in the Motion).[4] Although the government assumed that Womply produced the additional 20 Third-Party PPP Applications in response to the subpoena because of a common IP address appearing in the records, at that time, the government did not have confirmation of that fact, nor had the government identified any common IP address.[5] Moreover, in the government's view, the supposed commonality of an unidentified IP address did not provide a basis to produce 20 PPP loan applications for individuals that were not charged, not under investigation, and had no connection to Defendant and the allegations in the Indictment.

[4] One of the folders was named "Tracy Wade," Defendant's husband. However, as of March 18, 2024, Tracy Wade had not been charged in this case and was not then under investigation.

[5] Indeed, the purpose of including in its subpoena to Womply a request for "other applications with same IP addresses as PPP loan number 6697269001" (Defendant's PPP loan) was to determine whether Defendant had applied through Womply for any other PPP loan that the government was not aware of. On its face, Womply's production confirmed that Defendant had not.

4. Government's Production of the Third-Party PPP Applications

On April 29, 2024, the government received a phone call from a legal assistant to Defendant's counsel of record, Mr. McCray. The legal assistant advised that the purpose of the call was to obtain the government's position on a proposed motion the defense wanted to file for the issuance of a subpoena duces tecum upon two non-party entities, one of which was the Small Business Administration (SBA).[6] The government responded that it did not expect to object to such motion, but asked to review the proposed motion and subpoena before providing its position. The legal assistant thereafter provided a copy of the proposed motion and subpoena.

Upon review of Defendant's proposed motion and subpoena later that day (April 29), the government noted that Defendant was seeking from the SBA records of PPP loan applications for Haydee Rivero, f/k/a Haydee Granados ("Granados"), Eduardo Rivero ("Rivero"), who was Granados' husband, and certain businesses associated with the Rivero family. Although the government did not have such records from the SBA, one of the 20 Third-Party PPP Applications folders from Womply was named "Haydee Granados." Government counsel had not reviewed that folder, or any of the other Third-Party PPP Applications folder, but nevertheless immediately contacted defense counsel. During a phone call that afternoon (April 29), government counsel advised defense counsel of the following: 1) the government had, in response to a trial subpoena, received from Womply PPP applications of certain third parties (*i.e.*, the Third-Party PPP Applications), and one folder in that production was named "Haydee Granados"; 2) the government counsel had not reviewed the "Haydee Granados" folder, or any of the Third-Party

[6] The legal assistant further advised that the defense had served such a subpoena on the SBA, and that the SBA was requiring a separate court order before producing the records due to privacy concerns (because the individuals whose records were requested were not a party to this case).

PPP Applications, and could not speak to their content; however, given the general nature of Womply's records as a PPP service provider, the "Haydee Granados" folder may contain records that Defendant was seeking from the SBA; 3) the government believed it had no obligation to disclose the Third-Party PPP Applications to Defendant; and 4) notwithstanding the above, based on Defendant's subpoena to the SBA, the government was willing as a courtesy to Defendant to provide the Third-Party Applications subject to the entry of a Protective Order.

The next day, April 30, the parties appeared telephonically for a scheduled calendar call and briefed the Court on the anticipated motion for a protective order needed to produce any Third-Party PPP Applications to Defendant (DE 46). Immediately after calendar call, government counsel emailed defense counsel a list of the folder names of the 20 Third-Party PPP Applications and asked the defense to advise which folders it wanted to receive. The government also sent defense counsel the proposed motion for a protective order and protective order. That evening, defense counsel responded that it had no objection to the protective order and requested all 20 of the Third-Party PPP Applications folders. This correspondence is filed herewith as Exhibit 1.[7]

The next day, May 1, the government filed the unopposed motion for the protective order (DE 48), the Court granted the motion and entered the protective order (DE 49), and the government produced to Defendant, via USAFx, the 20 Third-Party PPP Applications exactly in the form in which Womply had provided the records to the government.[8] In its cover letter, a

[7] The names of the 20 Third-Party PPP Applications folders are redacted for their privacy, with the exception of Haydee Granados and Tracy Wade (who have since been charged),.

[8] For sake of completeness, the government included in this production all communications and other records related to the Third-Party PPP Applications that the government received from Womply. At defense counsel's request, the government also sent, via FedEx on May 2, 2024, a CD containing only the 20 Third-Party PPP Applications.

copy of which is filed herewith as Exhibit 2, the government expressly stated that it was producing the 20 Third-Party PPP Applications (defined therein as the "Confidential Records") to Defendant voluntarily and as a courtesy based on its understanding that the records may fall within the scope of a subpoena that Defendant had served on an entity (i.e., the SBA) seeking similar records. Before filing the instant Motion, Defendant never complained, nor sought any relief from the Court, based upon the manner or the timing of its receipt of the 20 Third-Party PPP Applications.

5. First Trial

Trial commenced on May 13, 2024, in the Miami Division before Senior United States District Judge Donald L. Graham. In its case in chief, the government called 10 witnesses and introduced 90 exhibits into evidence. Government Exhibit 002 was a written stipulation, pursuant to which the parties stipulated and agreed that the IP address "76.110.183.125" was an IP address with usage attributable to Granados (GX 002). The government never listed Granados as a government witness, did not subpoena Granados to testify, did not call Granados as a witness, and had no contact with Granados until June 2024 (weeks after the mistrial).

The defense called one witness (Defendant's husband, Tracy Wade) and introduced a handful of exhibits. The defense did not offer at trial any evidence from the 20 Third-Party PPP Applications produced by the government on May 1, 2024. Although the defense subpoenaed Granados and Rivero, and had previously met with them, they both invoked their Fifth Amendment right against self-incrimination.[9] In closing arguments, both sides argued that Granados was

[9] During trial, the defense filed a motion to dismiss the Indictment, accusing the government of improperly interfering with the defense's right to call these witnesses. Following an evidentiary hearing on the matter, the Court immediately denied the motion and noted the following:

Footnote continued...

responsible for uploading a fraudulent IRS Form Schedule C tax document to Defendant's PPP application, and that Granados had used the .125 IP address to do so. The case was submitted to the jury on May 20, 2024. After two days of deliberations, the Court declared a mistrial based upon the jury's failure to reach a unanimous verdict (DE 72).

6. Superseding Indictment

On June 27, 2024, the Grand Jury returned the Superseding Indictment (DE 188), which charged Defendants Carolyn Wade and Tracy Wade with one or more of the following offenses: conspiracy to commit wire fraud, in violation of Tile 18, United States Code, Section 1349 (Count 1); wire fraud, in violation of Tile 18, United States Code, Section 1343 (Counts 2-3); conspiracy to make false statements to the SBA, in violation of Tile 18, United States Code, Section 371 (Count 4); and false statements to the SBA, in violation of Title 15, Untied States Code, Section 645(a) (Counts 5-10).

With respect to the conspiracy to commit wire fraud (Count 1), the Superseding Indictment alleged that, from May 2021 through August 2021, Defendants agreed with each other, with Granados, and with others, to obtain PPP loans based upon materially false and fraudulent information, including fictitious tax documents.[10] The substantive wire fraud counts alleged that,

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> Based on the evidence, I don't see any improper governmental inference. Frankly, based on what I have heard in this case, if the witnesses had taken the stand and questions had begun, I likely would have stopped the proceeding and advised them exactly as their counsel did, that you understand that you potentially have some liability and are you taking advantage of your Fifth Amendment privilege. And based upon what I have heard, there was certainly cause for those individuals [Granados and Rivero] to be concerned.

Ex. 3 hereto, 5/17/24 Tr. at 22.

[10] Granados was charged by way of information filed on July 1, 2024, in case number 24-60124-CR-Smith. The information charges Granados with one count of conspiracy to commit wire fraud and make false statements to the SBA, in violation of Title 18, United States Code, Section 371.

from May 2021 through August 2021, Defendants participated in a scheme to defraud in which they obtained PPP loans based upon materially false and fraudulent information, including fictitious tax documents. Count 2 charged Tracy Wade with causing the execution of a wire communication in interstate commerce related a fraudulent PPP loan in his name, and Count 3 charged both Defendants with causing the execution of a wire communication in interstate commerce related to a fraudulent PPP loan in Carolyn Wade's name.[11]

The conspiracy to make false statements to the SBA (Count 4) alleged that, from May 2021 through August 2021, Defendants agreed with each other, with Granados, and with others, to make false statements to the SBA in PPP loan applications (using SBA Form 2483-C) and SBA PPP loan forgiveness applications (using SBA Form 3508S). Additionally, Carolyn Wade and Tracy Wade were each charged individually with three counts of making false statements to the SBA in their respective PPP loan applications and forgiveness applications (Counts 5, 8, and 9 as to Carolyn Wade and Counts 6, 7, and 10 as to Tracy Wade).

On July 15, 2024, Defendants Carolyn Wade and Tracy Wade were arraigned on the Superseding Indictment and the Court entered the standing discovery order. On July 24, the government filed its response to the SDO, which included reproducing to Defendants all prior discovery in this case, including the Third-Party PPP Applications previously produced to Carolyn Wade on May 1, 2024.

[11] The execution of the wire alleged in Count 3 was the same unit of prosecution for the sole count of wire fraud alleged in the original indictment.

Discussion of Applicable Law

1. Standard for a Brady Claim

As established in *Brady v. Maryland*, the prosecution must 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). This does not mean all evidence, or even all favorable evidence. Accordingly, under *Brady*, the government need only disclose during pretrial discovery (or later, at the trial) evidence which, in the eyes of a neutral and objective observer, could alter the outcome of the proceedings. *United States v. Jordan*, 316 F.3d 1215, 1251-52 (11th Cir. 2003). The government does not, however, have an obligation to seek evidence of which it has no knowledge or which is not in its possession. *United States v. Luis-Gonzalez*, 719 F.2d 1539, 1548 (11th Cir. 1983).

To establish a *Brady* violation, a defendant must show that: 1) the cumulative effect of evidence was favorable because it was exculpatory or impeaching; 2) the evidence was willfully or inadvertently suppressed by the prosecution; 3) the evidence was material; and 4) that the failure to disclose the evidence was prejudicial. *Bradley v. Nagle*, 212 F.3d 559, 566 (11th Cir. 2000) (citation omitted). The prosecution need not provide its entire file to the defense, but must disclose "material" evidence. *Stephens v. Hall*, 407 F.3d 1195, 1203 (11th Cir. 2005) (citing *United States v. Bagley*, 473 U.S. 667, 675 (1985)). Evidence is material "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Bagley*, 473 U.S. at 682.

Finally, there is no suppression by the government of exculpatory evidence, and thus no *Brady* violation, if either the defendant or the defense attorney knows before trial of the allegedly exculpatory information. *Felker v. Thomas*, 52 F.3d 907 (11th Cir. 1995), modified, 62 F.3d 342 (11th Cir. 1995); *Wright v. Hopper*, 169 F.3d 695 (11th Cir. 1999); *Maharaj v. Secretary for the Dep't of Corrs.*, 432 F.3d 1292, 1315 (11th Cir. 2006).

2. Standard for Dismissal or Sanctions

Actual prejudice to the defendant is a necessary element when a defendant seeks to dismiss an indictment for prosecutorial misconduct. *United States v. Accetturo*, 858 F.2d 679, 681 (11th Cir. 1988) ("[D]ismissal of an indictment for prosecutorial misconduct is an extreme sanction which should be infrequently utilized") (citations omitted). The Supreme Court has made clear that dismissing an indictment for misconduct that did not prejudice the defendant is inappropriate. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255 (1988) ("a district court exceeds its powers in dismissing an indictment for prosecutorial misconduct not prejudicial to the defendant"). Even when misconduct and prejudice can be shown, courts first determine whether a less severe remedy could address the constitutional violation. *United States v O'Keefe*, 825 F.2d 314, 318 (11th Cir. 1987) ("dismissal of an indictment for prosecutorial misconduct is an extreme sanction which should be infrequently utilized.")!

Argument

As addressed in turn below, the Motion fails to establish a *Brady* violation in all respects. First, the evidence Defendant alleges as the basis for the *Brady* violation (the Third-Party PPP Applications and Granados' involvement therewith) is not favorable to Defendant and not material. Second, the government voluntarily produced the Third-Party PPP Applications to Defendant almost two weeks before trial started. Furthermore, Defendant has failed to show that the government willfully or inadvertently suppressed any evidence, or that Defendant was prejudiced.

1. The Third-Party PPP Applications are neither favorable to Defendant nor material.

Defendant "contends," without offering any evidence, that "the government knew that the 20 [Third-Party PPP Applications] contained false or fraudulent information, and the government failed to disclose this information to the defense" (Mot. at 4). Defendant further contends that, if this was disclosed, "there was a reasonable possibility that Mrs. Wade would have been acquitted" (Mot. at 5). Defendant's unsupported assertions concerning the government's knowledge and disclosure, and the favorability and materiality of the evidence, are mistaken in all respects.

First, as an initial matter (before addressing the issues of favorability, materiality, and disclosure), Defendant has not demonstrated that, at any point before or during Defendant's trial, the government knew that the Third-Party PPP Applications contained false and fraudulent information. Indeed, Granados was not under investigation by the government before Defendant's trial. The government did not interview Granados and did not otherwise make any contact with her before or during trial. Furthermore, before Defendant's trial, the government did not investigate or contact *any* of the 20 individual applicants for the Third-Party PPP Applications, much less develop any evidence that those records contained false or fraudulent information. The government would only have known whether the Third-Party Applications contained false or fraudulent information if the government had independently investigated the 20 applicants, and the government had no obligation to do that. *Luis-Gonzalez*, 719 F.2d at 1548. Only *after* the mistrial did the government open an investigation of Granados and begin to develop evidence of fraudulent misrepresentations in the Third-Party PPP Loan Applications.[12]

Second, any evidence that Granados was involved with other PPP loan applications that contained false statements is certainly not favorable to Defendant or material to her defense. To the contrary, it is incriminating evidence of Defendant's guilt. At trial, the government introduced evidence in its case in chief, and argued in summation, the Defendant intentionally paid Granados the sum of $5,000 (in the form of a $1,000 Zelle transfer and a $4,000 check) for uploading a fraudulent Schedule C (for the tax year 2019) with Defendant's PPP application. Indeed, the government's evidence showed that Defendant had filed a Schedule C with the IRS for the year 2019, but did not use that one (and never sent it to Granados). The government expressly argued that paying Granados thousands of dollars to create and upload a fake Schedule C (when Defendant had a real one) was evidence of Defendant acting knowingly and with intent to defraud. Any evidence that Granados was doing this for other individuals only bolsters the government's theory that Defendant paid Granados to create a fake document (because Granados was doing the same for others). In no way could such evidence, in the eyes of a neutral and objective observer, alter the outcome of the proceedings in Defendant's favor. *Jordan*, 316 F.3d at 1251-52. The fact that Defendant had the Third-Party PPP Applications before trial, and did not offer even one page

[12] The government interviewed Granados for the first time on June 14, 2024. In response to the SDO entered for the superseding indictment, the government produced to Defendants on July 25, 2024, the FBI-302 of that interview (Bates number 23-60173-CR-009053-61).

of those records into evidence, further belies the notion that this evidence was material.

Third, the Third-Party PPP Applications were not discoverable as impeachment evidence because Granados was not a government witness. Granados was never listed on a government witness list (DE 33, 52, 61), and the government expressly told Defendant it had never contacted Granados and she would not be a government witness. As such, even if the Third-Party PPP Applications could be used as impeachment of Granados if she testified for the government, the government had no disclosure obligation in this regard because she was not named as a government witness (and never testified). If Defendant wanted to do her own investigation of Granados, to develop "404(b) evidence" or otherwise, she was free to do that. In fact, Defendant apparently did try to do just that with her subpoena to the SBA. However, Defendant cannot force the government to investigate a person Defendant intends to call as a witness to develop evidence of "other bad acts" against that witness for Defendant's benefit.

2. The government produced the Third-Party PPP Applications 12 days before trial commenced.

In the penultimate paragraph of the Motion, Defendant finally concedes that the government produced the Third-Party PPP Applications before trial (Mot. at 9). Although Defendant characterizes this production as occurring at the "eleventh hour," it is undisputable that the government made this production on May 1, 2024—12 days before trial commenced. Defendant never objected to the timeliness of this production, nor sought additional time to prepare for trial. Indeed, courts have held that disclosures even closer to the start of trial (or during trial) did not violate *Brady*. *See e.g.*, *United States v. Simms*, 385 F.3d 1347, 1358 (11th Cir. 2004) (affirming no violation where *Brady* information was disclosed on the day of trial); *United States v. Bueno-Sierra*, 99 F.3d 375, 379-80 (11th Cir. 1996) (affirming that defendants were not prejudiced by mid-trial *Brady* disclosure where recess allowed defense time to consider new material); *United States v. Jeri*, 869 F.3d 1247, 1258 (11th Cir. 2017) (affirming conviction notwithstanding district court's denial of continuance after late disclosure); *United States v. McGhee*, 553 F. App'x 895, 900 (11th Cir. 2014) (affirming conviction despite government's mid-trial disclosure where court took remedial measures).

3. The government did not willfully or inadvertently suppress the Third-Party PPP Applications.

The government at no point willfully or inadvertently suppressed the Third-Party PPP Applications. Rather, the government did not initially produce the records upon receipt from Womply because, as Defendant concedes in the Motion, the Third-Party PPP Applications "had nothing to do with Carolyn Wade" (Mot. at 4), and the unconfirmed commonality of an unidentified IP address did not provide a basis to produce 20 PPP loan applications for individuals that were not charged and not under investigation. Nevertheless, when the government learned through Defendant's proposed subpoena that Defendant was seeking similar records from the SBA, the government immediately went above and beyond its discovery obligations and offered the Third-Party PPP Applications to Defendant as a courtesy. Furthermore, the government acted expeditiously, producing the records to Defendant within 48 hours of learning Defendant was seeking similar documents from the SBA, and immediately upon entry of the necessary Protective Order (which the government had applied for within 48 hours). No *Brady* violation exists when evidence is not actually suppressed. *See, e.g., Felker v. Thomas*, 52 F.3d 907, 910 (11th Cir. 1995) ("[w]e have held numerous times that there is no suppression, and thus no Brady violation, if either the defendant or his attorney knows before trial of the allegedly exculpatory information.")

4. Defendant has not established actual prejudice.

Finally, "the law of this circuit establishes that prejudice to the defendant is required when dismissal of an indictment is sought based on violations of the constitution." *O'Keefe*, 825 F.2d at 318. There was no *Brady* violation here for the reasons addressed above, and it is also unequivocally clear from the record that Defendant suffered no actual prejudice.

At trial, the government and Defendant agreed that Granados had uploaded a fraudulent IRS Form Schedule to Defendant's online PPP application. A Womply spreadsheet the government produced to Defendant on March 19, 2024 (received in evidence without objection as Government Exhibits 102e), and additional Womply spreadsheets produced by the government before trial (received in evidence without objection as Government Exhibits 102.1e and 102.2e) all showed that the IP address ending in .125 was used to upload the fraudulent Schedule C in Defendant's application. Moreover, the government and Defendant *stipulated* during trial that the IP address ending in .125 "was an IP address with usage attributable Haydee Granados" (stipulation received as Government Exhibit 002). Indeed, this was a fact that both sides argued in summation. Because Defendant had all 20 records of the Third-Party PPP Applications two weeks before trial, Defendant had the opportunity to review for herself which of these applications, if any, also had online activity associated with the .125 IP address. The government had no obligation to do that for her, and by no means caused her any prejudice.

Conclusion

In sum, the Motion wholly fails to establish a *Brady* violation because: 1) the evidence at issue (the Third-Party PPP Applications and Granados' involvement therewith) is not favorable to Defendant and is not material; 2) the government voluntarily produced the Third-Party PPP Applications to Defendant almost two weeks before trial started; 3) Defendant has failed to show that government willfully or inadvertently suppressed any evidence; and 4) Defendant has not established actual prejudice required for the extreme sanction of dismissal of the Superseding Indictment. Accordingly, the United States respectfully asks the Court to enter an Order denying the Motion (DE 134) in its entirety without the need for an evidentiary hearing.

Respectfully submitted,

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