

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CR-60173-KMW

UNITED STATES OF AMERICA,) Fort Lauderdale, Florida
Plaintiff,) September 26, 2024
vs.)
CAROLYN DENISE WADE and)
TRACY D. WADE,)
Defendants.) Pages 1 to 66

TRANSCRIPT OF MOTIONS HEARING
HELD BEFORE THE HONORABLE PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

FOR THE GOVERNMENT:

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ADAM LOVE, AUSA
United States Attorney's Office

ON BEHALF OF THE DEFENDANTS:

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and
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Proceedings recorded by mechanical stenography from a digital
audio recording; transcript produced by computer-aided
transcription.

1 (Call to the Order of the Court.)

2 THE COURTROOM DEPUTY: Calling Case

3 No. 23-60173-CR-WILLIAMS/HUNT, United States v. Wade.

4 Counsel, please announce your appearances for the
5 record.

6 MR. SNIDER: Good afternoon, Your Honor. Assistant
7 US Attorney David Snider on behalf of the United States, and
8 I'm joined by Assistant US Attorney Adam Love.

9 MR. LOVE: Good afternoon, Your Honor.

10 MR. MCCRAY: Good afternoon, Judge. I'm Johnny
11 McCray Jr. on behalf of Carolyn Wade and Tracy Wade, and my
12 co-counsel, Mr. Daryl Wilcox, I believe, is on the call.

13 THE COURT: All right. Good afternoon.

14 MR. WILCOX: Good afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 All right. We're here for oral argument on multiple
17 motions. We're doing this via Zoom by mutual agreement, I
18 guess, because the courthouse is closed today, and there's a
19 deadline coming up for trial, so we have to get this done. So
20 thank you to the parties for accommodating each other and the
21 Court.

22 So we're here on three motions. Why don't we do the
23 motions to dismiss first and I guess in the order that they
24 were filed, if that's all right with you guys. So that will
25 be starting with the motion to dismiss counts, followed by the

1 motion to dismiss indictment based on Brady violations, and
2 then we'll address the motion for release of Brady material.

3 I can tell all of you that I've read everything
4 that's been filed, and so I'm familiar with the facts of the
5 case. So you don't have to start from scratch, but I'll leave
6 it up to you how you wish to address things.

7 MR. MCCRAY: Well, Judge -- Johnny McCray. I'll be
8 handling the first motion.

9 Judge, it's our position that Counts 4, 5, 8, and 9
10 of the superseding indictment should be dismissed because it's
11 our position that the Government's decision to file -- to file
12 those charges was motivated by vindictiveness. And it's our
13 position, Judge -- you're familiar with the facts of the case,
14 basically.

15 During the trial -- and it's important to understand
16 that this -- what we're saying, the acts that we're
17 complaining of occurred during trial, because some of the case
18 law differentiates between a pretrial setting and a
19 post-conviction setting. This is neither. This occurred
20 during the actual trial which ultimately resulted in a
21 mistrial.

22 Judge, during the trial, we had two key defense
23 witnesses who had agreed to testify. We had met with their
24 attorney in our office, and they agreed to testify -- and
25 these were material witnesses for the defense.

1 The young lady who -- and her husband, they were the
2 ones who -- especially the young lady, Ms. Haydee Granados.
3 She was the one that actually prepared the PPP loan
4 documentation. It was our theory -- of the defense -- that
5 was she was the one that basically unilaterally filed this
6 fraudulent information unbeknownst to Ms. Wade.

7 Mr. Wade testified during trial -- he was not a
8 defendant there. He testified during the trial, basically,
9 that he was the one that had a -- that knew of Ms. Granados.
10 He was really good friends with Ms. Granados -- her husband.
11 But they had approached him about doing a PPP loan. They did
12 a loan for him, which was successful. He had not been charged
13 on anything with that, but they eventually charged him with
14 the loan that she subsequently did with and for Ms. Wade.

15 During the trial, we wanted to call Ms. Granados,
16 who, as we said, prepared it. She had agreed. We met with
17 the lawyer in our office -- our defense team -- and they had
18 agreed.

19 On the day before the testimony -- they were
20 scheduled to testify -- we were notified by her counsel -- by
21 Ms. Granados and Mr. Rivero's counsel that they would not be
22 testifying. We learned that a -- they had received a call
23 from the Government -- the prosecutors, which included
24 Mr. Snider -- and we were told that basically Mr. Snider had
25 put fear in these two witnesses and now they were going to

1 take the Fifth Amendment privilege. We learned this the --
2 basically late in the day, before the next day.

3 So we filed a motion to dismiss based upon
4 prosecutorial misconduct that Mr. Snider had called -- had put
5 fear -- this was what we were told -- had called and put fear
6 in these people, and now they weren't going to testify.

7 After we filed the motion but before the motion was
8 heard, Judge -- Mr. Snider was very, very upset that we had
9 filed the motion accusing him of misconduct -- and it was
10 based upon what we were told. Mr. Snider approached me at
11 least three times -- and this was on the day that we were
12 supposed to have the hearing -- urging me to please withdraw
13 the motion.

14 Subsequent -- during that same day and after that, he
15 then went to a legal assistant, who is a part of the defense
16 team, and made the same request, asking that person if they --
17 if he would please talk to me about withdrawing this motion
18 that basically accused him of misconduct. In addition,
19 Mr. Wilcox -- which I didn't know at the time. I knew that
20 Mr. Snider had gone to my assistant, Mr. Hendrith Smith.

21 He went to Mr. Wilcox and made the same request,
22 asking him to urge me and the team to withdraw this motion
23 making the allegation against him. And each of us told him
24 that we believed that we had an ethical responsibility to
25 proceed with the motion because, Number 1, this is what we

1 were told by the witnesses and their attorney, and also, our
2 client wanted us to go forward with it.

3 So we had a hearing on the motion. The lawyer
4 testified. The witnesses did not testify. The judge denied
5 the motion, and so we proceeded to trial --

6 THE COURT: Mr. McCray, can you tell me -- when you
7 say that Mr. Snider put fear into them, did he threaten them?
8 Did he tell them, "You better not testify," or did he tell
9 them, "You better talk to your lawyers about Fifth Amendment
10 implications because you may be buying yourself an indictment
11 here," or -- what did the clients or -- what did the witnesses
12 or their attorneys tell you about the conversation?

13 MR. MCCRAY: The witnesses told us -- not the
14 witnesses. I'm sorry. We didn't talk to the witnesses. We
15 spoke to counsel when we spoke to her that evening from my
16 office. She was on the phone. We asked her when the
17 client -- I mean, when Mr. Snider called did he put fear, and
18 she said, "Yes, that's the gist of it." He put fear in them,
19 he scared them, and now they're going to take the Fifth. They
20 don't want, you know, to testify. They don't want to be a
21 part of it.

22 So, Judge, based upon that we -- and these people
23 were willing. We had been speaking with them, at least, for a
24 month or two before. Never had they invoked the Fifth. Their
25 attorneys had met with us in person, once in the office, and I

1 saw her at the Broward state courthouse once, and we talked,
2 and everything was on.

3 Mr. Snider learned subsequently that we were calling
4 them as a witness, and on the -- I believe on the day of, when
5 we learned this -- early that day is when he placed the phone
6 call. And so as a result, we filed the motion. He, my
7 understanding, told them that, you know, if they are lying
8 and, you know, he has reason to believe that they're not
9 telling the truth that he would be -- that they would file
10 perjury charges against these individuals. And basically,
11 Judge, that was the essence of our motion -- of that motion.

12 THE COURT: So, essentially, he said that if they
13 filed -- or that if they testified, he might file perjury
14 charges, or did he say that they might implicate themselves in
15 a PPP fraud or both?

16 MR. MCCRAY: No, I think that he -- my recollection
17 is that he was saying that based upon what he had heard in the
18 trial -- the evidence that he had heard was not consistent
19 with what they were possibly going to testify to and that if
20 they -- if he believed that they weren't telling the truth
21 that they would -- could possibly be charged with perjury.

22 THE COURT: Okay. And to be clear, you're asking --
23 you're not asking to dismiss the whole indictment. You're
24 asking to dismiss the new charges that were filed by
25 Mr. Snider that you think is in retaliation for that and also

1 for what happened with the hung jury; right?

2 MR. MCCRAY: Yes, Judge. And so that the Court would
3 understand these additional facts, Judge, the charges -- the
4 new charges that were brought, Mr. Snider was familiar with
5 the facts of this case long before. Those were charges that
6 could have been brought at the inception of this indictment.
7 Those are charges that were only brought after we brought that
8 motion. The jury came back -- it was a hung jury. Now he
9 adds these charges.

10 And I believe I cited some case law that basically
11 talks about that's something that the Court needs to look at
12 if the prosecution, upon retrial, brings charges that he could
13 have brought before. What else is interesting here, Judge,
14 there were either -- I think it was a total of 17 BSO
15 employees, most of whom were deputies as Mr. and Mrs. Wade
16 are.

17 The facts of those cases were essentially -- I'll say
18 substantially similar to the facts of this case. And none of
19 those persons were charged with this making a false statement
20 to a government agency, not one of them.

21 That didn't come, Judge, until we went to trial, got
22 the mistrial, which included us filing that motion against
23 Mr. Snider. The other thing I want to point out, Judge, there
24 was one other case that was tried. We tried the case --
25 Stephanie Smith -- which was before Judge Cahn. The facts are

1 very similar to this case, Judge.

2 We had a third person who had done a -- who had
3 filled out the PPP applications for my client, just as in this
4 case. No mention -- and Mr. Snider tried this case, by the
5 way. No mention whatsoever of filing a false statement to the
6 government agency. Substantially similar set of facts.

7 There was another case that went to trial that there
8 was a conviction. I didn't try the case. I think the lady's
9 name was Alex- -- I have it in my motion, Judge. Initially
10 she was charged with the same charges, but when she decided to
11 go to trial, that's when that one charge filing something
12 with -- a false statement against a government agency was
13 actually filed.

14 And so, Judge, again, it has been the pattern of this
15 office, the State Attorney's -- I'm sorry -- the US Attorney's
16 Office when they file these cases against these officers, they
17 have not been filing that one charge, which almost is a lesser
18 included. It's not a lesser included, but the facts -- the
19 same facts would almost always allow the Government to file
20 that charge, but they chose not to, only upon retrial in this
21 case when 16 other -- 15 other people had not been charged
22 with that.

23 Judge, the other thing I want to point out to you
24 before counsel takes over, Mr. Snider relies heavily upon the
25 case of United States versus Mays. Mays was the case that

1 basically dealt with a mistrial in the end -- a superseding
2 indictment after the mistrial. But that was a pretrial
3 matter. And if you look at Mays, Judge, on page 1190, Mays
4 brought something up that I thought was very interesting. It
5 said, "The case here does not fit neatly into either the
6 post-conviction or pretrial categories. The alleged
7 intimidation occurred after a mistrial. We must thus look to
8 the foundation of the prosecutorial discretion doctrine to
9 determine its applicability here."

10 My position, Judge, is that this is not a
11 post-conviction matter. It's not a pretrial matter, as
12 Mr. Snider basically or greatly emphasized in his response
13 that this was a pretrial matter. What he's doing is he's
14 starting with the superseding indictment as though the
15 egregious act occurred after the first trial or before the
16 second trial.

17 The acts that we've complained of actually occurred
18 during the trial. And, Judge, one of the things that we did,
19 we -- and, Judge, I want to indicate to the Court I didn't
20 have the transcript with me at the time when we were talking
21 about the Allen charge. The judge did not give the Allen
22 charge. He did not give the Allen charge. And what we
23 basically were complaining of is we didn't want the jury to go
24 back, and we didn't want them to be given any further
25 instructions, and the judge agreed not to give the Allen

1 charge.

2 What's interesting -- and I know in Mr. Snider's
3 response, he indicated that he consented to a mistrial, and
4 that's not the truth, Judge. When you get a chance, please
5 take a look at pages 21 through 24, specifically where
6 Mr. Snider objected to the Court's failure or refusal to give
7 the Allen charge. We were saying that no Allen charge should
8 be given because, as I cited in my motion, Judge, the other
9 circuits -- and the Eleventh hasn't said this, but I think
10 they cited a couple of cases that I cited.

11 The defendant has a right to an uncoerced verdict.
12 The attorney has a duty to object to what he or she believes
13 would be -- would constitute coercion, and that's what we were
14 arguing, if the judge were to read the Allen charge. He
15 didn't read the Allen charge. He modified the standard jury
16 verdict, I believe, the second time.

17 And after the second time -- a third time, the judge
18 indicated that he was not going to read the Allen charge.
19 What he was going to do is just let them go back and tell them
20 to try again. If you can deliberate and reach a verdict, you
21 can. If you can't, you can't. It's in the record and it's
22 clear that Mr. Snider indicated, "Judge, I want the record to
23 reflect that that's over the Government's objection."

24 The reason why that's important, Judge, is because a
25 couple of the cases that I cited talk about the fact that if

1 the Government and the defense agree, then, you know, you
2 really don't have anything to complain about.

3 Mr. Snider was not happy with the position that we
4 took asking the Court to not give the Allen charge when
5 Mr. Snider asked for the Allen charge at least a couple of
6 times in that particular case.

7 Judge, immediately after the verdict -- and
8 Mr. Snider wanted the jury to continue to deliberate. He
9 commented on one of the cases that, I think -- both he and I
10 cited the Rey case, where the jury was allowed to go back at
11 least four times. And I think there were some other cases
12 where the jury went back more than that.

13 Well, the judge said, after the third time -- because
14 I was able to find a recent case that came out in 2022 where
15 the Eleventh Circuit said that the trial judge can look at, in
16 a sense, the body language of the jury to determine whether or
17 not -- and use -- exercise, in his discretion, to send them
18 back again.

19 Mr. Snider was unhappy with that particular position.
20 He objected. When the verdict came back right after the judge
21 sent them back the last time -- I don't know if they were back
22 there 15 minutes the last time -- I did walk over to
23 Mr. Snider and I asked Mr. Snider, "You know, listen, if
24 we" -- and he was noticeably disappointed and upset. And I
25 asked him, "Is there any way that we can resolve this case?"

1 My client will pay whatever money they've alleged that is
2 owed," and his words to me were that he -- if she didn't
3 accept the offer -- and he did give me an offer at that
4 time -- if she didn't accept that, when we come back, he's
5 going to add the charge of filing a false statement to a -- a
6 false document to a government agency. And he said, "I
7 might" -- his words were, "I might even charge her with each
8 page that she signed in the DocuSign."

9 So I believe that DocuSign may have been 10 or
10 15 pages or so. So, Judge, he was noticeably upset. He was
11 basically upset for the reasons that I've said, Judge.

12 I do believe that the cases that he has cited, Judge,
13 are distinguishable. We talk about an increase in the
14 charges. Although the subsequent charges -- the new charges
15 that he's brought that I basically have alleged he could have
16 brought before, they're misdemeanor charges, Judge. It's more
17 than one. And it certainly adds points to my client's score
18 for sentencing purposes. I don't think that this Court is
19 bound to look at whether or not the charge is a greater charge
20 to a felony. We can look at -- if they bring 5, 10, or 15
21 misdemeanors, that affects the score, Judge. It increases
22 points.

23 So I would respectfully ask this Court to grant our
24 motion to dismiss for the reasons that I have asserted.

25 THE COURT: A couple things. Those false statement

1 charges are misdemeanors, Mr. McCray?

2 MR. MCCRAY: I'm sorry, Judge. No, no. There is
3 one, and we had talked about that, and that's the one that he
4 wouldn't agree to. They're felonies. I'm sorry, Judge. But
5 I'm saying that they do affect that. My mistake.

6 THE COURT: All right. I think that Mr. Snider --
7 and I'll ask him to address this in a minute. I think that he
8 said that they would not affect the guideline calculation.
9 They certainly do affect the statutory maximum, so they're, at
10 least, arguably serious, but they -- you referred to them
11 almost like lesser inclusions, which is frankly the way I was
12 looking at them as well. They would add to your statutory
13 maximum, but generally, they're less severe than what she was
14 already charged with; right?

15 MR. MCCRAY: I think that the charges are less
16 severe, but when you look at more than one, Judge, the fact
17 that it's more than one, I believe that it does increase, and
18 it makes it more serious.

19 THE COURT: Are you saying that, in fact, it would
20 increase her guideline range if she were convicted?

21 MR. MCCRAY: Judge, I'm not really -- I don't want to
22 say yes because that's something that I'm not sure of, but I
23 know it affects the max.

24 THE COURT: Let me ask you this because -- well,
25 first, let me ask you about the Allen. So you agree that

1 there was no Allen charge given, and the only charge that was
2 read was Judge Graham rereading the duty to deliberate that
3 already had been read to them; correct?

4 MR. MCCRAY: I agreed to that, Judge, but again, the
5 fact that the Allen charge wasn't read -- I'm looking at not
6 so much the name of what was done. We did not want any
7 instruction to be given initially, but we agreed to one.

8 But we did not want the jury to be sent back again.
9 Mr. Snider wanted them to be sent back -- actually wanted them
10 to be sent back more than the one time that they went back.

11 So the Allen charge was not actually read, but the
12 defense was objecting to the jury being sent back again also.

13 THE COURT: All right. I definitely get your point
14 about the first issue. The second issue, though, with the
15 jury instruction, though -- I mean, I've been in your position
16 many times. It seems to me after the first time, the
17 Government always asks for an Allen charge. The defense
18 always objects to it. It sounded like Judge Graham, having
19 been a defense lawyer at some point, understands the course
20 and nature of an Allen charge. So if he did give one, it
21 would be a modified one, but ultimately, he didn't seem to
22 want to do it, and he seemed to be very receptive to your
23 argument about the body language of the jurors. It didn't
24 seem to me like there was any sort of heated argument about
25 getting an Allen charge. Mr. Snider requested it.

1 But then at the end, when Judge Graham said he was
2 sending them back a third time but not giving the Allen
3 charge, Mr. Snider simply said, "I want the record to be clear
4 that I requested one, obviously."

5 And subsequent to that, he -- I mean, before the jury
6 came back is when he first offered you a plea to a lesser --
7 what you kind of called a lesser included or that's
8 afterwards?

9 MR. MCCRAY: It was subsequent.

10 THE COURT: All right. So let me ask you about that.
11 If he -- all right. So a prosecutor who you think is being
12 vindictive comes back to you after the mistrial and offers you
13 the equivalent of a lesser included -- and I think that he put
14 in his motion that he was offering a plea to a false statement
15 charge where your client would get time served, no probation,
16 and only pay restitution. That doesn't sound like a
17 vindictive prosecutor to me, does it?

18 MR. MCCRAY: Well, Judge, first of all, I didn't
19 raise the argument where I was isolating that particular
20 incident where we -- because I think the case law kind of is
21 not in my favor on that. I mentioned that so that we can
22 factor it into the totality of the circumstances.

23 What to me sounded retaliatory, when he came back and
24 he said that -- "and what I'm going to do is" -- "if we go to
25 trial on this matter again, I'm going to add a count for each

1 page where her signature was -- each page."

2 And again, Judge, that had never been mentioned.

3 There were other cases that -- they've had other cases that
4 has not happened. And that's what made me, at least, factor
5 that into the equation. I wasn't really isolating that as an
6 argument by itself, but I believe when you look at the
7 totality of the circumstances, I believe that it demonstrates
8 enough, at least, to create a presumption of -- of
9 vindictiveness, and I think it even actually shows actual
10 vindictiveness, Judge.

11 THE COURT: All right.

12 Mr. Snider, [UNINTELLIGIBLE].

13 MR. SNIDER: Thank you, Your Honor -- what's that?

14 THE COURT: Why are you adding charges after a trial?

15 MR. SNIDER: Well, Judge, I can address that, if
16 that's the first part that you would like me to.

17 THE COURT: No. Go in whatever order you like.

18 MR. SNIDER: I think to start with, let's just look
19 at the framework under the well-settled Supreme Court and
20 Eleventh Circuit precedent, the framework that the Court needs
21 to start with, because there's really two types of cases that
22 are in this context, one in which a presumption applies and
23 one in which it doesn't. This is not a case where a
24 presumption of vindictiveness applies.

25 And the reason why it doesn't apply is because for a

1 presumption to apply -- what the Supreme Court has said is
2 that there needs to be a reasonable likelihood of
3 vindictiveness. And in the Eleventh Circuit, there has never
4 been found a reasonable likelihood of vindictiveness in a
5 preverdict posture. There's preverdict and post-verdict. And
6 all of the cases in the Eleventh Circuit in which the Court
7 has found a presumption or presumed a vindictive motive when
8 charges are later added is when, for example, a defendant
9 takes a successful appeal and the Government comes back and
10 adds more severe charges.

11 In this posture, which for all intents and purposes,
12 including Mays, is still pretrial because there hasn't been a
13 verdict yet. There is no case in the Eleventh Circuit where a
14 Court has presumed prosecutorial vindictiveness, and that
15 comes down from the line of cases starting with Bordenkircher,
16 Goodwin, Mays, and its progeny.

17 And the reason that the Supreme Court in Goodwin said
18 that it was hesitant to find a presumption is because it,
19 quote, "At this stage in the proceedings, the prosecutor's
20 assessment of the proper extent of prosecution may not have
21 crystalized." And is it theoretically possible? I guess you
22 could have left open this possibility that a presumption could
23 occur preverdict, but it hasn't happened in the Eleventh
24 Circuit.

25 And then in the two cases cited by the defendant in

1 the Sixth Circuit, which is LaDeau and Zakhari, those are
2 substantially distinguishable. In LaDeau, the Government
3 added additional charges that the Court granted a suppression
4 motion that in the Court's words eviscerated the Government's
5 case, and then the Government came back and added much more
6 harsher charges that increased the mandatory minimum.

7 And in Zahir, the Court -- the new count had
8 substantially increased defendant's mandatory minimum without
9 new evidence after vigorous motion practice. That's not at a
10 all what happened here.

11 Let's look, Judge, at the two grounds that the
12 defendant is asserting give rise to a presumption. I'll deal
13 first -- let me just dispense first with the Allen charge
14 basis, because here the defendant is wrong entirely on the
15 facts.

16 And for the record, the Government did file the
17 entire transcript of the proceedings during deliberations from
18 May 21. I filed that with my response, Docket Entry 145-1.
19 The defendant had that when she filed her reply. And her
20 reply continued to just make these statements about what
21 happened that were just entirely wrong, flatly contradicted by
22 the record.

23 So first off, I think it's now clear. The Court
24 never gave an Allen charge. And so -- in the reply at
25 paragraphs 2, 4, 11, 21, where the defendant is saying that

1 she was asking -- she was objecting to the Court's third
2 reading of an Allen charge, that just didn't happen, and I
3 think that's settled now. And I know that Judge Graham even
4 told the defendants in our status conference two days ago,
5 "Stop filing things where you're saying things that are just
6 not at all consistent with the record. Let's keep the record
7 clean. Stop saying there was an Allen charge. There wasn't."

8 Second, the Government, as a matter of sort of
9 routine practice, asked for the -- once -- one and only --
10 Allen charge after the second time the jury came back and said
11 that it was deadlocked. And it asked for it. The Court said,
12 "I'm not going to do that. I'm just going to tell them to go
13 back one more time, give it one more shot." And that's what
14 happened.

15 And I think what the defendant is conflating here is
16 that that objection somehow to -- I'm sorry -- that the
17 defense -- the Government's request for an Allen charge is --
18 is equivalent to the Government objecting to the mistrial.
19 That's a conflation that is just wrong. There's nothing in
20 the record that shows the Government objected to the Court
21 declaring a mistrial.

22 If you read the Court's order -- order declaring
23 mistrial, Docket Entry 72, filed May 22, 2024. "In light of
24 the jury failing to reach a unanimous verdict and with the
25 parties' consent, it is ordered and adjudged that this Court

1 declares a mistrial." And if you look at the transcript, it
2 says very clearly, when the Court said that it was going to
3 declare the mistrial after the third note, my exact words
4 were, "Very well." There was no objection. The mistrial was
5 upon the parties' consent.

6 This assertion that the defendant makes at page 4 of
7 her reply that the defendant's objection to a third reading of
8 the Allen charge, which again just didn't happen, was in
9 essence an appeal against the verdict being attained by
10 coercive means. That's as baseless as it is logic. I think
11 he's really grasping at straws trying to somehow bootstrap,
12 you know, an objection to a third reading of an Allen charge,
13 which is not what happened, as somehow that's the equivalent
14 of an appeal.

15 So those are the facts -- why factually this Allen
16 charge basis does not give rise to a presumption of
17 vindictiveness. On the law, this too does not give rise. An
18 Allen charge is routine. Under Mays, the Eleventh Circuit
19 said the new charges after a mistrial does not give rise to a
20 presumption of vindictiveness. And the reason why is because
21 a mistrial follows as a matter of course from the jury's
22 inability to reach a verdict.

23 The defense tries to distinguish Mays and the fact --
24 tries to distinguish Mays by asserting that the Government
25 opposed the declaration of the mistrial, and that's just not

1 what happened. And there's a line of cases that I cite in my
2 response, pages 10 through 11, United States versus Kendrick.
3 There was no presumption when new charges were added after
4 acquittal. United States versus South, there was no
5 presumption when new charges were added after a defendant
6 withdrew his guilty plea. The United States versus Barner,
7 there was no presumption when the Government filed a fifth
8 superseding indictment after the defendant had filed several
9 pretrial motions, including a motion to dismiss based on
10 prosecutorial misconduct.

11 And again, you know, this idea of an Allen charge
12 here -- that that objection was an exercise of a protected
13 right. First of all, it's inconsistent with the facts. It's
14 not an exercise of a protected right. So the Allen charge
15 basis does not give rise to a presumption.

16 Let's talk now about the motion to dismiss based on
17 prosecutorial misconduct. So, again, as I just cited in the
18 Barner case, the case law is clear that a defendant filing a
19 motion for prosecutorial misconduct does not give rise to a
20 presumption of vindictiveness when additional charges follow.
21 That's clear from Barner. It's an Eleventh Circuit case, 441
22 F.3d at 1320.

23 And the genesis of that is the Goodwin -- is the
24 Supreme Court saying in Goodwin, "It is unrealistic to assume
25 that a prosecutor's probable response to such motions is to

1 seek to penalize and to deter.

2 Just like in the Barner case, in this case, the Court
3 denied this motion for prosecutorial misconduct. And there is
4 nothing in the motion itself or the Government's response to
5 it -- and I didn't get a chance to file a response. But what
6 counsel is describing, nothing about that conduct gives rise
7 to a presumption.

8 I mean, we're not here to relitigate a motion that
9 was denied after an evidentiary hearing, but just so the Court
10 is clear -- and this is what the Court found too. The
11 Government -- the United States Government -- me, FBI, the
12 entire United States Government had no contact with these two
13 prospective witnesses directly. There were conversations that
14 I had with the defendant's attorney and only the defendant's
15 attorney.

16 So there was no -- in no way, shape, or form did the
17 Government -- and that was a finding that Judge Graham made.
18 And if you read, which I attached an excerpt of the transcript
19 to my response in which he says, "I find there was no
20 Governmental interference here. And quite frankly, if -- the
21 Government did the right thing here by reaching out to their
22 lawyers and saying they may have some Fifth Amendment issues
23 here based on what has gone on in this trial."

24 And the judge said, on the record, "If the Government
25 hadn't done that and these two witnesses had come into court,

1 I would have stopped the proceedings and warned them of their
2 Fifth Amendment right not to incriminate themselves."

3 So that dispenses of that issue. It never came up
4 again. And, you know, their allegations that I was upset -- I
5 mean, as I've said in my motion, quite understandably, it had
6 been three days of trial. These motions were filed in the
7 middle of the night. And I woke up at 7:00 AM on the fourth
8 day of trial to -- you know, a motion to dismiss accusing me
9 of misconduct, which was clearly based on the defense's
10 misunderstanding and misconception of what happened between me
11 and the lawyers for this witness.

12 So the first opportunity I had to discuss with them
13 what had happened was in, you know, court the next morning,
14 filed in the middle of the night, without discussing any of it
15 with me first. And so, you know, I approached them. I said,
16 "I think you're wrong. I don't think there's any basis for
17 this. I did -- I was trying to do the right thing by either
18 not having these witnesses perjure themselves or come into
19 court and incriminate themselves" -- because one of the two
20 things was going to happen. I tried ethically to do the right
21 thing by, you know, speaking to their lawyer, and they went
22 forward with the motion anyway.

23 But the bottom line, Judge, is that that motion does
24 not give rise to a presumption. Now, say for the sake of
25 argument, even if there was a presumption -- and there is not

1 in this case under the well-settled precedent -- the
2 Government has rebutted that presumption -- and this gets to
3 the Court's first question here about, you know, why did the
4 Government supersede. Well, I put in my response the
5 objective legitimate basis for the new counts, which was kind
6 of twofold.

7 One, we included a charge that required, you know,
8 less -- less of a measure of proof. We included we wanted a
9 charge that did not have intent to defraud because, in the
10 Government's view -- which it was allowed to do -- sort of
11 reassess why the jury wasn't able to reach a verdict. We
12 believe that case hung on intent to defraud. So we were
13 looking for an alternative charge, and we found one that
14 didn't have that.

15 And because it is a lesser -- it is a less severe
16 charge -- it also doesn't have the element of materiality.
17 And the reason that the Government didn't bring it originally
18 was because we believed we were going to get a conviction on
19 the wire fraud, and it would not have changed the guidelines
20 at all.

21 So we didn't believe it was necessary. And that was
22 consistent with -- you know, this was part -- yes, this was
23 part of a larger operation, which a number of indictments were
24 sought around the same time, and that we charged consistently.

25 And there is another case that went to trial --

1 against Ms. Acosta -- and when that case went to trial, the
2 Government had superseded before that trial and added the same
3 charge.

4 The other reason for additional charges is that we
5 had additional evidence, and this relates to the conspiracy.
6 Prior to the first trial, which -- and the conspiracy is
7 Count 4. That's the only conspiracy count that's subject to
8 this motion to dismiss. There's also a new conspiracy in
9 Count 1, but that's not part of this motion.

10 The Government had not developed sufficient evidence
11 of a conspiracy prior to the first trial. In its reply, the
12 defendant asserts that the Government knew that its theory of
13 defense was that Haydee Granados played a role in this and
14 therefore, you know, we had enough to bring it.

15 Well, I'll just say the Government does not decide to
16 bring charges based on defense theories. We bring charges
17 based on evidence. And the Government had had no contact with
18 Haydee Granados prior to the first trial. And the Government
19 did some additional investigation, including of Mr. Wade and
20 Haydee Granados, after the mistrial, and it wasn't until that
21 happened, in June, that the Government believed that it was in
22 a position to bring conspiracy charges. It was just simply
23 not in that position when the original indictment was returned
24 in September of 2023.

25 And the defense also makes reference to the

1 Government having these applications from third parties, which
2 we'll get to when we get to the second motion. The Government
3 didn't have that evidence until March of 2024 when it was
4 preparing for the first trial. It didn't have those six
5 months earlier when the first indictment was returned.

6 So that is the reason that the Government brought
7 these new charges. It was looking for an alternative charge
8 that had less proof and did not have intent to defraud, and it
9 also had new evidence now. And that was perfectly within the
10 Government's discretion to do that.

11 So now having -- to the extent there is a
12 presumption -- and there isn't -- having rebutted that
13 presumption, this motion only survives if the defendant can
14 establish with objective evidence actual vindictiveness. And
15 that requires the defendant to prove not only animus, which
16 she hasn't done, but causation. Animus is that the prosecutor
17 acted with genuine animus towards the defendant, and causation
18 is the defendant would not have been prosecuted but for that
19 animus. And that's cited in Barner, an Eleventh Circuit case.

20 I think the defendant's argument about animus just
21 leaps to the conclusion that because of this motion to dismiss
22 based on prosecutorial misconduct, that the Government, you
23 know, was holding a grudge against her. That is conjecture
24 and that is, again, deduced from the defense thinking that I
25 was upset by the fact that they had brought a motion that was

1 ultimately denied.

2 Again, that doesn't show animus. That shows a
3 prosecutor, who was, while caught off guard, trying in good
4 faith to resolve a misunderstanding about what had happened
5 between myself and the attorney for those witnesses. There's
6 no animus with respect to the Allen charge because, again,
7 their whole basis there is just based on a wrong set of facts,
8 which I think we've now cleared up.

9 And I wanted to bring to the Court's attention -- I
10 want to focus on the Government's conduct after the mistrial
11 because that shows, Judge, the opposite of animus. Again, to
12 clear the record, there was no plea offer made in the
13 courtroom following this mistrial. There was some casual
14 discussions that I had with counsel that, you know, we
15 basically ended with we'll talk. And within three days of
16 that mistrial, I initiated plea discussions -- formal plea
17 discussions with Mr. McCray.

18 I offered for his client to plead to this lesser
19 charge that has a two-year max, no min -- and a two-year max,
20 that is, making a single false statement to the SBA. I put it
21 in my written offer that we would recommend in a plea
22 agreement no jail time, no probation to follow, no fine, no
23 forfeiture, and she rejected that.

24 And I think it's interesting that none of defendant's
25 papers mention that, that I had made this offer to them to,

1 you know, resolve this case, no jail, single felony, less
2 serious than what she had just gone to trial on, and they
3 didn't want to do that, which is fine. But they didn't even
4 acknowledge sort of my good faith effort to resolve this case
5 without a second trial.

6 And then what they also don't mention is that on
7 June 18, the Court had a status conference, and the Government
8 disclosed to the Court that it expected the grand jury to
9 return a superseding indictment the following week. And the
10 Government disclosed that there would be additional charges
11 and likely an additional defendant, and the Court, Judge
12 Williams, who held that conference, thanked the Government for
13 its candor, thanked the Government for letting it know that
14 this was coming.

15 So the Government has carried itself not only in good
16 faith, not only the opposite of animus, but in a transparent
17 way to try to resolve this case without the need for a new
18 trial.

19 And for those reasons, Judge, there is -- you know,
20 this motion fails entirely to establish vindictive
21 prosecution. It fails because there is no presumption. It
22 fails because even if there is a presumption, the Government
23 has rebutted it. And it fails because there is zero evidence
24 of actual animus and causation.

25 THE COURT: All right. Thank you, Mr. Snider.

1 Any brief response, Mr. McCray? Brief, unmuted
2 response?

3 MR. MCCRAY: Yeah, Judge, very briefly.

4 This was a situation where Ms. Wade exercised a Fifth
5 Amendment right to file that motion based upon the information
6 that we were given. I believe that the judge's finding is not
7 the determining factor here. I think what's more important is
8 the effect it had on the prosecutor at the time and the
9 perception of the prosecutor based upon that motion having
10 been filed.

11 The fact that the judge denied that motion, I don't
12 think that that is -- I really don't even know if it is
13 relevant, but if it is, Judge, I believe that minimal credit
14 should be given to it.

15 Judge, when the prosecutor said in that discussion
16 that we had right after the judge had declared a mistrial that
17 if this case is refiled, we're going to add charges and we're
18 going to charge her for each page that she signed. Judge,
19 that, to me, that manifests clearly animus on his particular
20 part.

21 Judge, again, this was not a pretrial setting. This
22 was a trial setting. This was not a post-conviction setting.
23 This was a trial setting.

24 And, Judge, it's our position that the objective
25 explanation that Mr. Snider purports to have given is not an

1 objective explanation. Clearly, being a prosecutor as long as
2 he's been a prosecutor, he knew that when this case was first
3 filed that it would have been easier perhaps to get a
4 conviction for those subsequent charges -- the charges that
5 were added.

6 Those charges were added, Judge, because we were
7 going to trial and because we had accused him of misconduct.
8 And, Judge, I have not verified this, but a local US attorney
9 actually mentioned to me recently that whenever a misconduct
10 motion or letter or something challenging the ethics or the
11 integrity of a prosecutor's file that a memorandum has to be
12 sent to the Department of Justice. I didn't know that at the
13 time and I don't know if that's the case now, but perhaps the
14 Court does because I know you've been in the legal system.

15 But Mr. Snider was visibly upset, and he mentioned
16 the fact that we filed a motion at midnight. The reason why
17 that happened, Judge, we learned of this at the close of the
18 day pretty much -- what I told you happened between Mr. Snider
19 and Ms. Granados' attorney. We stayed up and we finished a
20 motion about 4 o'clock in the morning, and we filed it. I
21 think it was actually filed on PACER about 4:00 or 5:00 in the
22 morning. So that's why we filed it in that manner. But,
23 Judge, I believe that we have established at least with
24 respect to the misconduct allegation that Ms. Wade felt
25 necessary because she was really bothered by the fact that

1 these two critical witnesses now, after their attorney having
2 spoken to Mr. Snider, have said that they're not going to
3 testify. And the attorney told us what we told you, Judge.
4 So we ask, respectfully, that the motion be granted.

5 THE COURT: All right. Thank you.

6 Let's move on to the second motion.

7 Mr. Wilcox, are you going to argue that one?

8 MR. WILCOX: Good afternoon, Your Honor. How are
9 you?

10 THE COURT: Good. How are you?

11 MR. WILCOX: Good, good.

12 Well, Your Honor, I kind of thought you would ask
13 questions about it. I knew that you read the pleading, but
14 I'll go forward. I've got -- first of all, the 20 files that
15 are at issue, they are Brady. The Government has admitted in
16 an information that they filed against Haydee Rivero, formerly
17 known as Haydee Granados, that she has filed applications --
18 PPP applications containing false information.

19 They had these files -- they had these files as early
20 as March 7 -- I'm sorry -- March 16 of 2024. Prior to that,
21 Mr. McCray, as soon as he got the case -- or shortly after he
22 came onto the case replacing former counsel, he advised the
23 Government that this woman that -- that it was the theory of
24 the defense that this woman, Haydee Granados, had uploaded a
25 Schedule C and has otherwise prepared this PPP application.

1 And Mr. McCray asked the Government had they interviewed
2 Haydee Granados.

3 The Government advised that they had no intention of
4 interviewing Haydee Granados and didn't think that her conduct
5 in this matter was relevant at all.

6 The defense team -- Mr. McCray issued a subpoena to
7 the SBA asking for information concerning Haydee Granados.
8 After that, Mr. Snider called the defense team and advises
9 that the Government may have the information that Mr. McCray
10 is seeking. However, the Government characterizes this as
11 non-Brady and a courtesy submission. And I stated earlier,
12 the Government had received about 20 files -- I'm sorry --
13 just -- I may have the date wrong. Okay, yeah, so March --
14 around March 16, and that subpoena that they issued to this
15 technology company that was processing the application, they
16 had -- among the items they had asked for was all information
17 or all -- all IP addresses associated with Carolyn Wade's PPP
18 loan application number.

19 Now, between the Government receiving this
20 information -- receiving the actual files and them providing
21 the files to the defense team on about May 20th, there were
22 several conversations between Mr. McCray and the Government,
23 and at all times the Government indicated that they had no
24 obligation. They didn't think it was Brady and they were
25 doing this as a courtesy.

1 The Government repeatedly argues that we concede that
2 the files at issue had nothing to do -- yeah, I'm sorry -- the
3 defense didn't receive the files until May 2, 2024. That was
4 approximately 12 days before the trial started. That's an
5 approximation, but I'm pretty sure that's close.

6 But I want to address that the Government repeatedly
7 argued that the defense concedes that the files at issue had
8 nothing to do with Carolyn Wade. At best, this argument
9 misses the point, and at worst, it's blatantly disingenuous.

10 The Government was aware that we were -- our theory
11 of defense was that Haydee Granados included information in
12 Carolyn Wade's PPP loan application that was false, and she
13 did that without Carolyn Wade's knowledge. And if there were
14 files where Carolyn Wade did the same thing -- I'm sorry --
15 Haydee Granados did the same thing, that's clearly 404(b)
16 evidence. It's clearly favorable to Ms. Wade.

17 So for the Government to suggest that somehow, you
18 know, it had nothing to do with Ms. Wade and it's not Brady, I
19 just think that's a very faulty argument.

20 THE COURT: Let me ask you two things, Mr. Wilcox.
21 First, when you talk about it being Brady -- I know we throw
22 around Brady as just largely anything that in any way is
23 favorable. Did anything in these documents directly support
24 the theory of defense? In other words, was there anything in
25 there that showed that Ms. Granados had falsely filed

1 applications for other people and not told them about it? Or
2 is this more in the nature of, I guess, Giglio material where
3 if Mr. Snider had called her as a witness, this would have
4 been impeachment because she's been a crook 20 times in other
5 cases?

6 MR. WILCOX: No. I would say that it is both, Your
7 Honor. And let me just tell you, what happened at trial is
8 that we were able to confront the agent and show that this
9 woman, Haydee Granados -- not only was it disclosed at trial
10 that Haydee Granados filed a false Schedule C application,
11 that that Schedule C -- that's a tax form that shows what your
12 business earned. That information was fraudulently created.
13 It came from Haydee Granados's IP address.

14 THE COURT: Right.

15 MR. WILCOX: And during the trial, we were able to
16 show that Haydee Granados had been involved in the preparation
17 of at least another 20 PPP applications.

18 THE COURT: Right, but that's consistent with the
19 Government's theory of the case -- right? -- that your client
20 committed fraud and Haydee Granados helped her with it, but
21 it's also --

22 MR. WILCOX: That wasn't the Government's theory at
23 trial, Your Honor, that Haydee Granados had helped them.

24 THE COURT: I thought that she's the one that filed
25 them.

1 MR. WILCOX: Haydee Granados?

2 THE COURT: Yeah.

3 MR. WILCOX: What was discovered during trial was
4 that Haydee Granados uploaded a false Schedule C application.

5 THE COURT: Sure, but that's still not inconsistent
6 with their argument. I mean, in all of these cases, there
7 generally was someone who signed the papers and someone else
8 who prepared them. As I said, that's consistent with guilt.
9 It's also consistent with your theory of defense.

10 But my question is was there anything in any of those
11 files that directly supported your theory of defense that
12 Ms. Granados was filing false paperwork without the knowledge
13 of the people who were requesting the loans?

14 MR. WILCOX: Your Honor, the file -- the Government
15 has conceded in the information -- in the recent information
16 that they filed against Haydee Granados that she filed false
17 information and she filed PPP applications that contained
18 false information not only for Carolyn Wade but for others.

19 Your Honor, the file shows that other Schedule Cs --
20 those files show that Haydee Granados submitted -- that other
21 Schedule Cs came from Haydee Granados's IP address.

22 THE COURT: Sure.

23 MR. WILCOX: So --

24 THE COURT: Even if this is directly Brady or even
25 Giglio that you were going to try to bring in, even if

1 Granados didn't testify -- even on your timeline you had this
2 10, 12 days before trial; right?

3 MR. WILCOX: Yes, Your Honor. I understand that that
4 is a hurdle that we have to overcome. But the thing is, Your
5 Honor, is that the Government was aware -- and I'm
6 suggesting -- let me just say this. The Government was aware
7 that this was our theory of defense. They were specifically
8 aware that we were saying that Haydee Granados submitted the
9 Schedule C -- the false Schedule C unbeknownst to Carolyn
10 Wade.

11 It seems to me at the very least, once they received
12 these files in March, that they had an obligation to say,
13 well, let's see if Haydee Granados filed any other
14 Schedule Cs. They just turned a blind eye. They try to
15 characterize turning over these files as if they were doing us
16 a favor that we wouldn't have to subpoena the SBA. I just
17 have a problem with that, Your Honor, and think the Government
18 should be held to a higher standard.

19 THE COURT: Well, let's go to the remedy, then,
20 because if that's true and you had that evidence two weeks and
21 you thought that it was the tip of the iceberg and you needed
22 more time, isn't your remedy to go to the trial judge and say,
23 "Look what I got. It's delayed. It's late. I need more
24 time." And you could have asked either Judge Williams or
25 Judge Graham for more time. If that had been denied, maybe

1 you have an appellate issue, but you're in the unique posture
2 here that Mr. McCray has talked about where there was a
3 mistrial, so you're back to square one. So even if you only
4 had ten days to two weeks to prepare before the first trial,
5 haven't you had about four months with this information?

6 MR. WILCOX: Yes. We've had this information now,
7 Your Honor, but it doesn't -- the thing is if we had had the
8 information prior to -- that we had had information that
9 Haydee Granados had submitted other false Schedule Cs in the
10 preparation of other PPP applications, and I believe that
11 information was certainly in possession of the Government,
12 Ms. Wade may have been acquitted.

13 THE COURT: But, again, why didn't you raise that
14 with the trial judge when the trial judge would have had an
15 ability to do something about it back in May?

16 MR. WILCOX: One moment, Your Honor.

17 THE COURT: Sure.

18 MR. WILCOX: Your Honor, again, I can only say that
19 once the Government was on notice that Haydee Granados had
20 submitted the Schedule C in our case and they had files --
21 they had 20 other files connected to Haydee Granados, that at
22 the very least they had an obligation to determine whether or
23 not those Schedule Cs that were submitted with those other PPP
24 applications -- whether those contained false -- whether that
25 contained false information or not. I just -- I don't think

1 the Court should condone the Government turning a blind eye
2 to -- well, they haven't now. They've charged Haydee Granados
3 and she's a cooperating witness now. But prior to that,
4 they -- the Government made no effort to determine whether or
5 not she had engaged in any wrongdoing as they were put on
6 notice by the defense.

7 And I believe that that conduct is egregious and
8 warrants a dismissal of the indictment against Ms. Wade.

9 THE COURT: All right. Thank you.

10 Mr. Snider.

11 MR. SNIDER: Thank you, Your Honor. So let me
12 summarize here.

13 The reason that this motion fails, Number 1, is
14 because the evidence that's raised -- at issue here, these
15 third-party PPP applications, that is not Brady evidence.
16 That does not fall within the ambit of Brady because it is not
17 favorable to the defendant. It's not material, in fact. It
18 is helpful to the Government's case -- and I'll get into that
19 in a second.

20 Number 2, I think there's no dispute here that the
21 defendants -- the defendant, Carolyn Wade -- this relates to
22 Carolyn Wade because she was the only one indicted in the
23 first case -- had this evidence approximately two weeks before
24 it started, the first trial. They've had it since, you know,
25 May 1, and it was reproduced again in connection with the

1 superseding indictment.

2 And Number 3, of course, the defendant has not
3 established any prejudice. To establish a Brady violation,
4 this is what the defendant must show: Number 1, the
5 cumulative effect of evidence was favorable because it was
6 exculpatory or impeaching.

7 Number 2, the evidence was willfully or inadvertently
8 suppressed by the prosecution.

9 Number 3, the evidence was material.

10 And Number 4, the failure to disclose the evidence
11 was prejudicial.

12 All right. So let's look first at these PPP
13 third-party applications. As I think the Court has picked up
14 on, the Government and the defendant both posited the theory
15 that Haydee Granados submitted a fake Schedule C for Carolyn
16 Wade's PPP application. And at trial, the Government offered
17 evidence and argument that Carolyn Wade had paid Haydee
18 Granados \$5,000 from the proceeds of her loan immediately upon
19 receipt of her loan because Granados had uploaded a fake
20 Schedule C.

21 Any evidence in these third-party applications that
22 Haydee Granados was doing the exact same thing for others,
23 that is, submitting fake documents, which is not clear --
24 which, by the way, you know, in itself, you cannot tell from
25 the face of the documents at all. That only reinforces the

1 Government's theory. It bolsters our theory. Here's an
2 analogy.

3 Evidence that a drug dealer is selling drugs to other
4 people is not helpful evidence to a defendant who is charged
5 with possession of drugs from that drug dealer.

6 Here, Haydee Granados's creation of this fake -- of
7 the fake Schedule C for other people, if that is true -- and
8 none of that was established before the first trial -- that is
9 incriminating evidence against the defendant, that the
10 defendant went to Granados and paid her to upload a fake
11 Schedule C because she knew that Granados was doing that for
12 other people. That was the go-to person.

13 The evidence is actually incriminating, not
14 exculpatory. In no way could such evidence in the eyes -- and
15 this is from the case law -- of a neutral and objective
16 observer alter the outcome of the proceedings in defendant's
17 favor.

18 THE COURT: You would agree that it would be
19 impeachment evidence if you were calling Ms. Granados as a
20 witness; right?

21 MR. SNIDER: Yes. And that's my next point.

22 It's not impeachment evidence -- actually, let me
23 back up.

24 I think what defense -- defense counsel's argument is
25 essentially that the Government should have done some --

1 should have been investigating Granados, you know, before the
2 first trial, and we hadn't. We were aware that there was a
3 fraudulent Schedule C uploaded, and we were aware -- we never
4 actually even knew the identity of that 125 IP address, but we
5 suspected that it was Granados.

6 If Granados was a Government witness and there was
7 evidence that she had committed other fraud, then yes, that
8 absolutely would have been -- we would have had to have turned
9 that over. First of all, we hadn't established -- first, she
10 wasn't a witness. And we hadn't established that she had
11 committed these other acts. So we had no obligation to
12 disclose this to the defense because it was not favorable and
13 it was not impeachment evidence, notwithstanding the fact
14 that we did not have a disclosure obligation. The
15 Government's response here lays out in great detail the
16 sequence of events that led the Government to produce these
17 third-party PPP applications. And the bottom line is that
18 they had it almost two weeks before the start of trial.

19 And as we explained in the response, the reason -- we
20 got the sort of -- this dump from the loan processor, Womply,
21 in March in response to one of our trial subpoenas. The
22 reason that the other files weren't turned over was because on
23 its face they had nothing to do with Carolyn Wade. And I
24 certainly didn't look at them because I was preparing for
25 trial against Carolyn Wade.

1 And as I say in the motion, the unconfirmed
2 commonality of an unidentified IP address does not suddenly
3 trigger some obligation to produce 20 PPP application files
4 for other individuals that were not under investigation and
5 had not been charged. But when on -- I think it was
6 April 30th. As soon as the defense had brought to the
7 Government's attention that it was seeking similar records
8 from the SBA to prepare for its defense, immediately -- and
9 when I say immediately, within two hours I was on the phone
10 with Mr. McCray saying, "You asked for my position on the
11 subpoena" -- because apparently they needed an order to the
12 SBA or the SBA wasn't going to respond to it.

13 So they asked for my position on a motion -- on their
14 motion for an order regarding the subpoena, and I asked them
15 to send me their motion and the subpoena, and they did, and I
16 reviewed it. And as soon as I reviewed it, I called
17 Mr. McCray and I said, "Look, I've read your motion and your
18 subpoena. I don't have any of these records from the SBA, but
19 I feel obligated to say I have -- knowing what Womply did in
20 this whole process -- you know, some of the records I have
21 from Womply, which I haven't looked at, they may be covered by
22 your subpoena."

23 So as a courtesy, I'm happy to turn these over.
24 You've asked the SBA for records for two people. I have a
25 list here of 19. I gave them the list. I said, "Do you want

1 any of these?" And they said, "Yes." So I said, "Okay.
2 Well, these are third persons. We need a protective order."
3 They are on board with the protective order. I brought it to
4 the Court's attention that we were going to do this, ask for
5 the protective order.

6 The Court blessed it, the defendants blessed it, and
7 then within 48 hours of having seen what they were asking the
8 SBA for, I, above and beyond my discovery obligations, had
9 given them everything -- all these 19 other files.

10 And they never raised an issue then about the timing.
11 They never asked the Court for more time. They -- and as I'll
12 get into in a second, they never even introduced a single one
13 of these records at trial.

14 So a Brady violation simply does not exist if the
15 evidence is not suppressed. And courts have found, you know,
16 that there was no Brady violation. There was no suppression
17 when evidence was disclosed much sooner to the start of trial
18 if not during trial.

19 And I cite the Simms case when the evidence was
20 disclosed the day of trial, the Bueno-Sierra case where the
21 evidence was disclosed mid-trial and, you know, the parties or
22 the defense was allowed time for recess, and then the Jerry
23 (phonetic) case where there was late disclosure, there was no
24 continuance, and the conviction was nonetheless affirmed.

25 I say that these third-party PPP applications were

1 not material because, again, they had nothing to do with
2 Carolyn Wade. And I think there's no greater indication that
3 they weren't material than the fact that the defense didn't
4 use them at all in the first trial. They had them two weeks
5 before. They had plenty of time to look at them. I don't
6 think you can come back and say, "It was material to my
7 defense" when you had them and you didn't use them.

8 And lastly, there is no, in any way, shape, or form,
9 prejudice here to the defendant. She fails to articulate a
10 basis -- and by the way, Judge, I'll note that there was no
11 reply filed by the defense to the Government's response here.
12 I'm not sure why that is, but none of the arguments that were
13 made in my response were addressed in any reply.

14 There was no constitutional violation here. There
15 was no prejudice. The -- to ask the Government to go out and
16 investigate 20 other people and then come back and disclose
17 that to the defense is just -- I mean, that -- that's not what
18 Brady requires. And, you know, there was no prejudice to the
19 defendant by the Government not going out of its way to try to
20 identify which of these applications were tied to Haydee
21 Granados.

22 The Government had no obligation to do that. The
23 defense has not established a prejudice, and for all of those
24 reasons, the Court should deny the motion.

25 THE COURT: All right. Thank you.

1 Mr. Wilcox, a brief reply? Unmuted.

2 MR. WILCOX: Your Honor, first of all, we weren't
3 asking them to investigate 20 other people. We were asking
4 them to investigate Haydee Granados. In two of the files that
5 he identified or provided to defense, one was Tracy Wade, the
6 codefendant in the instant case, and one was Haydee Granados.
7 Once he saw Haydee Granados's name on one of those files, that
8 should have prompted some kind of investigation.

9 Your Honor, we don't have the resources that the
10 Government has to determine whether or not these -- that
11 Haydee Granados had included false information on them.
12 Apparently, the Government, in their new information -- they
13 admit that Haydee Granados filed PPP applications on behalf of
14 Mr. Wade, Mrs. Wade, and others.

15 So now they know if they had been -- and it's my
16 position that if they were concerned about justice, they would
17 have known back in April of last year when Mr. McCray was
18 telling them, "Look, you need to look at this woman, Haydee
19 Granados."

20 Also, Your Honor, I believe that -- I do not have
21 it -- I do not have it in the record, but I believe that once
22 those 20 files were identified by the Government and provided
23 to the defense as some type of courtesy that Mr. McCray did
24 ask for additional time. Maybe Mr. McCray can address that.
25 I don't have anything in the record. I actually filed a

1 notice of appearance on the first trial ten days before the
2 trial began.

3 But my position, broadly stated, Your Honor, is that
4 the Government knew that the theory of defense was that Haydee
5 Granados included false information, including a fraudulent
6 Schedule C in Ms. Wade's PPP application, unbeknownst to
7 Ms. Wade. Once the Government was apprised of that and once
8 they received 20 files associated with Haydee Granados, I will
9 submit to the Court that that imposes some obligation.
10 They're supposed to seek justice. That imposes some
11 obligation to see whether or not there was some merit to the
12 defense.

13 And I will go -- with respect to the -- I'm going to
14 wrap it up. I have a different hypothetical. I have a client
15 that's charged with murder, and I say, "Look, Government,
16 there was another guy on the scene, and he's killed a whole
17 lot of people." I think the Government has an obligation to
18 investigate whether that person may have been the person that
19 committed the murder. I mean, evidence that someone else may
20 have committed the crime is always extremely relevant.

21 And if the Government has some knowledge about that,
22 I think they have an obligation to investigate it and disclose
23 that to the defense.

24 THE COURT: All right. Thank you.

25 I'm looking at the docket. I don't see any motion

1 for a continuance.

2 Mr. McCray, just really quickly, did you bring this
3 to Judge Graham's or Judge Williams' attention and ask for
4 more time to track down Brady information based on what was
5 disclosed to you in early May? Unmuted.

6 MR. MCCRAY: Quite frankly, I don't recall. I do
7 know that we had some teleconferences. I really don't recall
8 if I did or not. I don't want to say I did and I don't want
9 to say I didn't because I'm really not sure.

10 But I know Judge Graham is a stickler for moving
11 forward, and he's tough to get a continuance from.

12 THE COURT: I've been there. I'm not suggesting he
13 would have granted it. I just don't see any --

14 MR. MCCRAY: I understand.

15 THE COURT: All right. Thank you both.

16 Let me ask you. It seems to me that the last motion,
17 the motion for release of Brady material, is somewhat wrapped
18 up in what we've already talked about.

19 But, Mr. Wilcox, it seems like Mr. Snider had been
20 ordered multiple times in this case and many others to turn
21 over Brady. He seems to have a pretty solid understanding of
22 what Brady is. We've discussed the specifics of what needed
23 to be turned over in this case. Other than granting that
24 motion within the scope of the previously entered Due Process
25 Protections Act and standing discovery order -- or as

1 Mr. Snider is asking, denying it as moot because all of this
2 has already been ordered -- what do you want me to do with
3 respect to Brady? Is there something in particular that you
4 think is Brady that he doesn't that you want me to decide
5 about? Unmuted. Go ahead and unmute, Daryl.

6 MR. WILCOX: Your Honor, we don't have -- well, we
7 don't have all -- any PPP loan -- I'm not -- loan application
8 associated with Haydee Granados' IP address. We don't have --
9 we don't specifically have any PPP application associated with
10 Haydee Granados' IP address that contains false information.

11 What we've been given is the 20 files that we asked
12 for before. The Government has made no attempt to identify
13 any specific files that contain false information.

14 THE COURT: Given you information about --

15 MR. WILCOX: Not only that, we don't have contact
16 information for the 20 people -- one second, Your Honor --
17 names and addresses for the 20 -- for the persons that those
18 applications -- we can't talk to these people and determine
19 whether or not the information contained false information or
20 what kind of conversation they had with Haydee Granados with
21 respect to what was going to be put in the applications.

22 All they gave us was the files, Your Honor.

23 THE COURT: And the file has names and other
24 identifying information; right?

25 MR. WILCOX: Not all of them, Your Honor. Some of

1 them didn't even have the applications.

2 THE COURT: Mr. Snider.

3 MR. SNIDER: Your Honor, I will represent to the
4 Court that the United States, in this case, has turned over
5 everything that it has in its custody and control, possession,
6 that could fall within the scope of what they're asking.

7 The files are what they are. I mean, I can't --
8 they're asking me to go out and get their contact -- I mean,
9 that's just ludicrous. We have what we have. We turned it
10 over. There's nothing that they're asking for that I have
11 that I haven't turned over. So if I have it, it's been turned
12 over.

13 THE COURT: All right. And you --

14 MR. SNIDER: And I'm aware of my obligations. I
15 recited them in my response. All the different, you know,
16 statutory case law, local rules, Due Process Protections Act
17 that we are governed by, including, you know, department
18 policy and my obligation to ensure a fair trial. And I have
19 met those -- met or exceeded those obligations.

20 And, you know, they have investigators too. There's
21 nothing that I have that I'm holding back. The files are what
22 they are. As far as these PPP applications, they received
23 them when I produced them on May 1, 2024. They received them
24 when I produced them again on July 25, 2024, and they have,
25 you know -- they have everything that -- that I am obligated

1 to turn over.

2 THE COURT: All right. Let me just remind you of two
3 things that I know you're already aware of, but your
4 obligation doesn't end. It's a continuing obligation to turn
5 over anything that comes into your custody, care, or control
6 or possession as we go along, including during trial. And
7 secondly, in your possession, custody, and control doesn't
8 mean on your desk. That means in possession of your case
9 agents, et cetera, as well.

10 So --

11 MR. SNIDER: Very good.

12 THE COURT: All right.

13 MR. SNIDER: It does not include other Government
14 agencies -- if the Small Business Administration has records
15 that I haven't subpoenaed them for, that's not in my
16 possession, custody, or control.

17 THE COURT: That does not require you to institute
18 new investigations in order to help the defendant track down
19 witnesses.

20 Mr. Wilcox, anything else? Unmuted. Unmute it,
21 Mr. Wilcox.

22 MR. WILCOX: I'm unmuted, Judge.

23 Your Honor, the Government -- the 21 files that the
24 Government -- shoot. One moment, Your Honor. Okay. So of
25 the files that the Government had provided to us that --

1 they're calling it a courtesy production -- many of them don't
2 contain the PPP -- the actual PPP application. They don't --
3 they don't -- and without the actual PPP application, we can't
4 really determine what numbers were put in the application. We
5 can't effectively cross-examine Haydee Granados about certain
6 people that she -- that her IP number was associated with.

7 All of these files that they provided us with, they
8 produced 21 files, and they purport to be connected to Haydee
9 Granados, but the information that we received in these files
10 don't have the PPP applications. In some of the files, we
11 don't have the DocuSign information. I guess we'll just have
12 to file something, Your Honor, just outlining this with Judge
13 Graham. It may be futile at this point, but --

14 THE COURT: Mr. Wilcox, it's been referred to me. So
15 if you have specifics -- if you give it to Judge Graham, he's
16 going to refer it to me, so I'm asking you for specifics.

17 MR. SNIDER: Can I just respond? I want to put
18 something on the record, Judge.

19 THE COURT: Sure.

20 MR. SNIDER: Okay. So whatever the Government --
21 these -- again, these 21 files were received -- the Government
22 received from Womply. The Government has turned those over in
23 the exact format and content in which it was received. It was
24 a direct handover. The Government didn't go through them and
25 say, "I'll give them this, I'll give them that, no."

1 It was just, "This is what we got. I'm handing it
2 over." I handed it over in two ways. It came to the
3 Government through the USAfx, and I literally gave the
4 defendants access to the same folder that it was received in
5 so that they could see exactly how it was received. And then
6 they -- you know, this was back in May.

7 And they said, "Well, we don't know how to use USAfx.
8 This is confusing." So I said, "Fine."

9 So I took the content of USAfx, I burned it to a
10 disk, and I sent them a disk. This was in May. And then in
11 July, when I reproduced, I took exactly what had been sent to
12 them in May, it got put onto -- I believe it was a flash
13 drive, and it was sent over.

14 So if something is missing from a folder, Judge, it's
15 not because the Government took it out. It's because perhaps
16 it doesn't exist in the first place. I can just say,
17 generally speaking, that, you know, if you apply for a PPP
18 loan and it doesn't go through, there may not be a copy of it
19 in there. That is a total hypothetical.

20 But it's like they're asking for things to magically
21 appear. If it's not there, it's because the Government didn't
22 receive it --

23 THE COURT: Mr. Snider --

24 MR. SNIDER: -- because what I turned over was a
25 straight -- there was no -- I didn't even review it. I said,

1 "This is what we got. Here it is."

2 MR. WILCOX: Your Honor, I --

3 THE COURT: Is Ms. Granados going to be a witness?

4 MR. SNIDER: Yes, she is a witness now. The
5 circumstances have changed since then. The Government made
6 contact with her after the first trial. She agreed to
7 cooperate. She has been charged. She has pled guilty. And
8 the Government has -- so to the extent that there's any Giglio
9 or Brady related to Ms. Haydee Granados -- formerly known as
10 Haydee Granados -- Haydee Rivero now -- she's been disclosed.

11 MR. WILCOX: Your Honor, he gave us everything he got
12 from Womply. But if that woman is filling out PPP
13 applications and she's included false information, then they
14 need to ask her about that and provide that to us. They've
15 already alleged that she did that in the information that
16 they're charging her with.

17 THE COURT: He's indicating that he's turned over
18 what he's got as far as Brady and Giglio with respect to that
19 particular witness. And I think you acknowledged that you
20 received copies of her debriefing, et cetera; correct?

21 MR. WILCOX: Yes, we did receive a copy of her
22 debriefing.

23 THE COURT: All right. All right. Anything else?

24 MR. WILCOX: No, Your Honor.

25 MR. SNIDER: Not from the Government.

1 THE COURT: All right. Thank you.

2 I'll be getting an order on that motion and R and Rs
3 on the others. You're going to be on a short turnaround time
4 on those R and Rs because I understand you just filed a
5 continuance motion that was denied. So I told Judge Graham's
6 chambers that I expect and hope to have all of this entered
7 before your calendar call, but you're going to have a quick
8 turnaround on any objections either side might want to file.
9 All right?

10 MR. WILCOX: Thank you, Your Honor. You have a good
11 afternoon.

12 MR. SNIDER: Thank you, Judge.

13 THE COURT: Thank you.

14 MR. MCCRAY: Thank you, Judge.

15 THE COURT: Can we go off the record a minute and ask
16 you to stay here?

17 MR. SNIDER: Yes.

18 THE COURT: Meredith, no recording.

19 THE COURTROOM DEPUTY: I'm sorry. Your microphone
20 cut out or I didn't hear it. Can you repeat that?

21 THE COURT: No recording. We're finished.

22 (Recording ended.)

23

24

25

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2 I certify that the foregoing is a correct transcript
3 of the record of proceedings in the above-entitled matter.
4 The transcript was prepared to the best of my ability from a
5 digital audio recording of the proceedings provided by the
6 Court.

7 DATE: 10th of July, 2025

/s/Lance W. Steinbeisser

Transcriber

United States District Court
Southern District of Florida
Miami, Florida

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