

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

**Case No. 19-CR-151**

FRANCISCO MARTINEZ,

Defendants.

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**MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO  
COMPEL EXCULPATORY AND IMPEACHMENT INFORMATION AS  
TO ALL CONFIDENTIAL INFORMANTS AND COOPERATING  
WITNESSES TO BE CALLED AT TRIAL AS WITNESSES**

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**INTRODUCTION**

Francisco Martinez., by Attorney Edward J. Hunt, The Hunt Law Group, S.C., filesthis motion to compel the government to disclose the following necessary exculpatory and impeachment information as to all government witnesses and informants who will be witnesses in the trial of this case.

**On February 28, 2020 , pursuant to United States District Court for the Eastern District of Wisconsin Criminal Local Rule 16 (b), the government, by Assistant United States Attorney William J. Roach, and defendant, by Attorney**

**Edward J. Hunt, have conferred regarding this motion. And the government will comply with this request thirty days prior to trial. The defendant, however, files this motion because he believes such information should be disclosed at least ninety days before trial. And so there is a dispute for the Court to decide in terms of the timing of release of exculpatory and impeachment information under the teaching of *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972) and *Kyles v. Whitley*, 514 U.S. 419, 432-33 (1995).**

### **ARGUMENT**

The government has an obligation to provide Martinez the information listed below as to all of the individuals who are referenced in the police reports and will be testifying at trial. He cannot adequately prepare his defense without investigating and examining the evidence against him, evidence which is almost exclusively derived from confidential informants and cooperating witnesses. In support of this claim, Martinez sets forth below the material he needs to investigate and gather in order to do an effective cross-examination of the Cooperating Witness and Confidential Informant witnesses in this case:

#### **A. Bias or Motive of Cooperating Witness and Confidential Informant**

- 1) Any “Expected” Benefits or Concessions in Cooperating Witness and Confidential Informant’s Pending Case(s)  
*(what the Cooperating Witness and Confidential Informant is hoping for is what counts instead of what he really gets)*

- a) potential rewards that Cooperating Witness and Confidential Informant could obtain
  - i) dismissed or reduced charges
  - ii) sentence concessions
  - iii) consolidation or concurrent sentences
- b) formal or informal deals
- c) about pending charges or probation revocations
- d) Federal “substantial assistance” motions for downward departure
- e) promises made by police officers
- f) potential penalties for all possible crimes faced by Cooperating Witness and Confidential Informant

## 2) Protection from Future Prosecution

*(consider any criminal acts that could be prosecuted)*

- a) Immunity
- b) promises not to prosecute the Cooperating Witness and Confidential Informant or family member/significant other
- c) such promises may include other jurisdictions and federal government
- d) such promises may be formal or informal
- e) such promises may be made by prosecutors or by law enforcement agents
- f) Agreement that State/Government not to seek forfeiture of property

## 3) Other Incentives to Cooperate with the Government

- a) payment of cash for cooperation and method for determining payment
- b) promises regarding bond reduction or pretrial release
- c) whether Cooperating Witness and Confidential Informant on probation or in prison at time of deal-cutting or testimony
- d) prison privileges or protections, and special recommendations
- e) threats to file additional charges or charge family members
- f) deportation or immigration issues

## 4) Circumstances of Cooperating Witness and Confidential Informant’s Cooperation

- a) timing of agreement...When and how did Cooperating Witness and Confidential Informant decide to become Cooperating Witness and Confidential Informant?
  - i) after claims of innocence or coerced statements
  - ii) after talking to other inmates and/or reading discovery
  - iii) after learning of potential lengthy jail sentence
- b) prior Cooperating Witness and Confidential Informant experience
  - i) involvement in other cases where deals cut (state or federal)

- ii) prior experience as confidential informant or “Third Party Cooperator”
- iii) incidents where Cooperating Witness and Confidential Informant was not prosecuted in past and reasons why not
- iv) produce all written contracts and agreements where Cooperating Witness and Confidential Informant agreed to act as a confidential informant or “Third Party Cooperator”
- v) produce reports regarding incidents where the Cooperating Witness and Confidential Informant violated the terms of his cooperation agreement
- vi) produce reports regarding violations of the Cooperating Witness and Confidential Informant’s cooperation agreement in this case, including drug use and continued law violations while under supervision
- vii) produce CI numbers for each of the cooperating witnesses and confidential informants listed above

#### 5) Personal Motives, Bias, or Bad Feelings

- a) toward defendant (or family/friends)
- b) history of hostility or disagreements toward defendant (or family/friends)
- c) acts of intimidation by Cooperating Witness and Confidential Informant toward other witnesses
- d) gang/group membership or rivalry
- e) relationships with other state’s witnesses or police officers

#### B. Prior Convictions (Federal Rule of Evidence 609)

- 1) Felonies or Misdemeanors (any crime involving a dishonest act or false statement)
- 2) Convictions Outside 10-Year Time Limit Pertaining to Credibility
- 3) Juvenile Adjudications Relating to Credibility or Important Issue
- 4) Obtaining All Details of Prior Crimes (including transcripts of pleas and sentencing hearings)

#### C. Specific Instances of Conduct Relating to Untruthfulness (Federal Rule of Evidence 608(b))

- 1) Lies, False Statements, and Dishonesty
- 2) Examples of Such Conduct

- a) false statements (about anything oral or written)
- b) use of false names or identity
- c) false information on indigency affidavits
- d) letters in court file often contain false claims
- e) false information in applications, leases, contracts, business dealings
- f) untrue information to prison or jail officials

- g) false testimony in any matter
- h) false information to employers or supervisors

3) False or Broken Promises to Judicial Officials Such As:

- a) violating plea agreement by failing to appear, drug use, or incurring new charges
- b) probation violations/revocations
- c) failures to appear based upon written “promise to appear”

D. Inconsistent Case-Related Statements about the Case

*...i.e., anything said or written by the Cooperating Witness and Confidential Informant to anyone*

E. Other Matters Including Anything Relevant to Credibility (Federal Rule of Evidence 611(b))

1) Personal Problems Affecting Credibility, Memory, Observation, or Perception

- i) mental health history
- ii) drug and alcohol abuse history
- iii) medical problems

F. Case-related Documents Under Government’s Control:

- a) Cooperating Witness and Confidential Informant’s prior “statements” or memoranda of interviews
- b) Officers’ and ADA’s notes of all contacts with Cooperating Witness and Confidential Informant
- c) Notes of contact or letters from Cooperating Witness and Confidential Informant’s attorney or Cooperating Witness and Confidential Informant’s family
- d) Grand Jury testimony
- e) Polygraph test answers
- f) Prior experience as Cooperating Witness and Confidential Informant. Some jurisdictions have written contracts; some agencies keep a personnel file for informants
- g) Records of monetary payments
- h) Deals or promises made by DA’s Office or Law Enforcement or United States Attorney’s Office
- i) Any “proffers” or disclosures of cooperation made to State or Federal Law Enforcement or proffer agreements with United States Attorney’s Office
- j) Immigration status of Cooperating Witness and Confidential Informant
- k) Recorded jail telephone calls

The outline submitted above regarding the materials which are necessary to investigate the credibility of Cooperating Witness and Confidential Informant witnesses is not exhaustive or meant to be a complete list. The outline above is submitted to demonstrate to the Court that the government should provide this information in a sufficient amount of time for the defendant to be prepared to cross examine the witnesses against him. Good cross-examinations are built on legwork and dogged investigation far in advance of a trial. “Cross-examination is the principle means by which the believability of a witness and the truth of his testimony are tested....[T]he cross-examiner is not only permitted to delve into the witness’ story to test the witness’ perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness. . .” *Davis v. Alaska*, 415 U.S. 308, 316 (1974). Here Martinez would be facing a trial wholly unprepared if he’s not provided this information early.

Government disclosure of material exculpatory and impeachment evidence is part of the constitutional guarantee to a fair trial. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972). The law requires the disclosure of exculpatory and impeachment evidence when such evidence is material to guilt or punishment. *Brady*, 373 U.S. at 87; *Giglio*, 405 U.S. at 154. Because they

are constitutional obligations, *Brady* and *Giglio* evidence must be disclosed regardless of whether the defendant makes a request for exculpatory or impeachment evidence. *Kyles v. Whitley*, 514 U.S. 419, 432-33 (1995).

### **CONCLUSION**

Francisco Martinez respectfully asks the government to disclose the information requested above no later than ninety days before the commencement of the trial.

Dated this 28th day of February, 2020.

Respectfully submitted:

s/Edward J. Hunt  
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