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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF  
AMERICA,  
  
Plaintiff,  
  
v.  
  
[DEFENDANT], ET AL.,  
  
Defendant(s).

Case No. EDCV XX-XXXX-KK (XXx)

**CRIMINAL MOTION AND TRIAL  
ORDER**

Pretrial Conference: [DATE] at

Trial: [DATE] at

This case is set for trial before the Honorable Kenly Kiya Kato, 3470 12th Street, 3rd Floor, Courtroom 3, Riverside, CA 92501. The Courtroom Deputy Clerk for Judge Kato’s chambers is Noe Ponce. All documents referenced in this Order shall be emailed to Mr. Ponce at [KK\\_Chambers@cacd.uscourts.gov](mailto:KK_Chambers@cacd.uscourts.gov).

**I. MOTIONS**

Judge Kato hears motions in criminal cases on Thursdays at 1:30 p.m. All pretrial motions, including motions to suppress evidence, motions to bifurcate or sever, motions challenging introduction of Federal Rule of Evidence 404(b) evidence, and motions in limine, shall be filed and served on all other counsel in accordance with the requirements of Local Civil Rule 6-1, i.e., at least 28 days before the date set for hearing, if the motion is served electronically or personally on opposing counsel, and at least 31 days before the scheduled hearing date if not served electronically or personally. Opposition and reply memoranda shall be filed and served in compliance

1 with the requirements of Local Civil Rule 7-9, i.e., no later than 21 days and 14 days  
2 before the hearing date, respectively.

3 All motions in limine and other trial-related motions must be noticed properly  
4 for hearing no later than the date of the Pretrial Conference. Each side is limited to  
5 three (3) motions in limine, and these motions must be filed as one consolidated  
6 motion, as opposed to multiple separate motions. A party seeking to make more than  
7 three motions in limine must request leave of court to do so.

8 The Pretrial Conference will be conducted three weeks before the trial date, on  
9 Thursday at 1:30 p.m.

## 10 **II. DISCOVERY AND NOTICE**

11 Counsel for the government and for defense shall comply with discovery and  
12 notice matters pursuant to Federal Rules of Criminal Procedure 12, 12.1, 12.2, 12.3,  
13 15, and 16. Government counsel shall also comply with the notice requirements  
14 under Federal Rule of Evidence 404(b)(3).

15 Under federal law, including Rule 5(f) of the Federal Rules of Criminal  
16 Procedure, Brady v. Maryland, 373 U.S. 83 (1963), and all applicable decisions  
17 interpreting Brady, the government has a continuing obligation to produce all  
18 information or evidence known to the government that is relevant to the guilt or  
19 punishment of a defendant, including, but not limited to, exculpatory evidence.

20 Accordingly, the Court orders the government to produce to the defendant in a  
21 timely manner all information or evidence known to the government that is either:  
22 (1) relevant to the defendant's guilt or punishment; or (2) favorable to the defendant  
23 on the issue of guilt or punishment. This Order is entered under Rule 5(f) and does  
24 not relieve any party in this matter of any other discovery obligation. The  
25 consequences for violating either this Order or the government's obligations under  
26 Brady include, but are not limited to, the following: contempt, sanction, referral to a  
27 disciplinary authority, adverse jury instruction, exclusion of evidence, and dismissal of  
28 charges.

1 **III. CHANGE OF PLEA HEARINGS**

2 It shall be the joint responsibility of Counsel for the government and for  
3 defense to ensure that a copy of the plea agreement is emailed to the Courtroom  
4 Deputy Clerk at [KK\\_Chambers@cacd.uscourts.gov](mailto:KK_Chambers@cacd.uscourts.gov) one (1) week prior to the change  
5 of plea hearing.

6 **IV. PRETRIAL DEADLINES**

7 Counsel shall adhere to the following deadlines:

8 a. Counsel or parties appearing pro se must file any requests to  
9 continue the trial date or requests for a change of plea hearing at least three (3) weeks  
10 before the scheduled trial date.

11 b. Counsel or parties appearing pro se shall file a brief joint  
12 statement of the case, no longer than one-half page, to be read to prospective jurors at  
13 the time of jury selection. Counsel must provide a copy of the same in Microsoft  
14 Word format to chambers, by email to the Courtroom Deputy Clerk at  
15 [KK\\_Chambers@cacd.uscourts.gov](mailto:KK_Chambers@cacd.uscourts.gov).

16 c. Government counsel shall file a trial brief one (1) week before  
17 trial. Trial briefs shall include the theory of the case, statements of all witnesses to be  
18 called, and any legal issues that counsel anticipates may arise. Defense counsel or  
19 parties appearing pro se may, but are not required to, file a trial brief. Defense  
20 counsel's trial brief may be filed ex parte and under seal, but it shall be unsealed and  
21 served upon the government prior to the defense commencing its case-in-chief.

22 d. Counsel or parties appearing pro se shall file exhibit and witness  
23 lists one (1) week before trial. Defense counsel may file exhibit and witness lists ex  
24 parte and under seal, but shall provide government counsel copies prior to the  
25 defense commencing its case-in-chief.

26 e. Counsel or parties appearing pro se shall file all suggested voir  
27 dire questions to be asked of the jury panel by the Court and a list of voir dire  
28 questions that counsel intends to ask during attorney-conducted voir dire one (1)

1 week before trial. Counsel must provide a copy of the same in Microsoft Word  
2 format to chambers by email to the Courtroom Deputy Clerk at  
3 [KK\\_Chambers@cacd.uscourts.gov](mailto:KK_Chambers@cacd.uscourts.gov). The initial voir dire examination is done by the  
4 Court, utilizing the Court's general voir dire questions, and may include the suggested  
5 voir dire questions provided by counsel. When the Court has finished asking  
6 questions of the entire panel, the Court may, in limited circumstances, provide an  
7 opportunity for voir dire by the lawyers.

8           f.       The parties shall submit proposed joint jury instructions one (1)  
9 week before trial. In order to produce the instructions, the parties shall meet and  
10 confer sufficiently in advance of the required submission date with the goal of  
11 agreeing upon instructions and verdict forms. The jury instructions shall be  
12 submitted as follows: (1) joint jury instructions, i.e., those instructions to which all  
13 parties agree; and (2) disputed jury instructions, i.e., those instructions propounded by  
14 a party to which another party objects. The party objecting to the disputed  
15 instructions must state the reasons for the objection and, if appropriate, provide a  
16 proposed alternative instruction with supporting authority, or explain why no  
17 instruction on that point is needed. Each requested jury instruction shall be  
18 numbered and set forth in full on a separate page, citing the authority for or source of  
19 the requested instruction except on the "jury copy" described below.

20           An index page shall accompany all jury instructions that are submitted to the  
21 Court. The index page shall indicate the following:

- 22           1.       The number of the instruction;
  - 23           2.       A brief title of the instruction;
  - 24           3.       The source of the instruction; and
  - 25           4.       The page number of the instruction.
- 26  
27  
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1 EXAMPLE:

2 <u>Number</u>	<u>Title</u>	<u>Source</u>	<u>Page Number</u>
3 1	Duty of the Jury	9th Cir. 1.01	1

4  
5 Counsel need only submit proposed substantive instructions. The Court will  
6 formulate general instructions based primarily on the format set out in the most  
7 recent edition of the Manual of Model Criminal Jury Instructions for the District  
8 Courts of the Ninth Circuit.

9 If either side seeks a special verdict, counsel shall follow the procedure set forth  
10 for joint proposed jury instructions above, in order to formulate a joint proposed  
11 special verdict form. Counsel shall submit the proposed special verdict form with the  
12 proposed jury instructions.

13 Counsel shall submit electronic versions of the proposed jury instructions and  
14 the proposed special verdict form (in Word format) to chambers by email to the  
15 Courtroom Deputy Clerk at [KK\\_Chambers@cacd.uscourts.gov](mailto:KK_Chambers@cacd.uscourts.gov).

16 The Court will send a copy of the final jury instructions into the jury room for  
17 use by the jury during deliberations (the “jury copy”). Accordingly, in addition to the  
18 filed copies, an extra set of the proposed instructions shall be submitted to the Court  
19 with only the text of the instruction on each page (i.e., no titles, supporting authority,  
20 indication of party proposing, etc.). The Court strongly prefers counsel use the  
21 instructions from the Manual of Model Criminal Jury Instructions for District Courts  
22 in the Ninth Circuit.

## 23 **V. PRETRIAL CONFERENCE**

24 Counsel shall be prepared to discuss the following matters with the Court at  
25 the Pretrial Conference:

- 26 a. The witnesses the government expects to call in its case-in-chief
- 27 and the amount of time necessary for direct and cross examination for each witness;
- 28 b. Any anticipated problems in scheduling the witnesses;

1 c. Any evidentiary issues, including problems related to Federal Rule  
2 of Evidence 404(b), anticipated objections under Federal Rule of Evidence 403, and  
3 objections to exhibits;

4 d. Jury selections procedures;

5 e. All pretrial motions not heard and decided previously;

6 f. Any disputed jury instructions and the form of the instructions  
7 which will be given to the jury at the outset of the case, i.e., before opening statements  
8 and presentation of evidence;

9 g. Whether any counsel intends to use any evidence or  
10 demonstrative aid in opening statement; and

11 h. Motions to exclude witnesses from the courtroom during trial  
12 testimony.

13 If counsel for any party needs to arrange for the installation of its own  
14 equipment, such as video monitors, tape or compact disk players, notebooks, or  
15 overhead projectors, counsel shall notify the Courtroom Deputy Clerk no later than  
16 4:00 p.m. five business days before trial so that the necessary arrangements can be  
17 made.

## 18 **VI. REQUIREMENTS FOR TRIAL**

19 Counsel, and any parties appearing pro se, shall immediately subpoena all  
20 witnesses for the time and trial date as listed above. Failure to do so may result in  
21 exclusion.

22 On the first day of trial, counsel for the government shall deliver to the  
23 Courtroom Deputy Clerk the following documents:

24 a. Three copies of the government's witness list;

25 b. Three copies of the government's exhibit list in the form specified  
26 by Local Civil Rule 16-6.1;

27 c. All of the government's exhibits, with official exhibit tags affixed,  
28 bearing the same number as that shown on the exhibit list. Defense counsel need not

1 deliver their exhibits to the Courtroom Deputy Clerk on the first day of trial;  
2 however, defense counsel is responsible for affixing exhibit tags, complete with the  
3 case name and number, to each exhibit to be used in the defense case. Exhibits shall  
4 be numbered 1, 2, 3, 4, etc. If an enlargement of an existing exhibit is to be used,  
5 counsel shall designate it with the number of the original exhibit followed by an “A.”  
6 Templates for exhibit tags are available on the Court’s website, using form G-014.  
7 Counsel for the government is notified that the Court will order exhibits such as  
8 firearms, narcotics, etc. to remain in the custody of the case agent during the  
9 pendency of the trial. The case agent will be required to sign the appropriate form to  
10 take custody of the exhibits. It shall be the responsibility of the case agent to produce  
11 the items for court, secure them at night, and guard them while in the courtroom; and  
12 d. A bench book containing a copy of all exhibits that can be  
13 reproduced. Counsel for the government shall mark each exhibit with tabs indicating  
14 the exhibit number. Defense counsel shall provide the Court and government  
15 counsel with a copy of the defense exhibits if introduced.

16 **VII. COURTROOM PROCEDURES**

17 The Court sets firm trial dates. Counsel or any parties appearing pro se shall  
18 arrive at the courtroom *not later than half an hour before the start of trial* each  
19 day of trial. The Court reserves that time to handle legal and administrative matters  
20 outside the presence of the jury. Counsel shall anticipate matters that may need  
21 discussion or hearing outside the presence of the jury and to raise them during this  
22 period.

23 Trials are generally conducted Monday through Friday. The Court will adopt a  
24 particular time schedule on a case-by-case basis. In general, the schedule will be: (i)  
25 from 8:30 a.m. to 2:30 p.m. with two or three 20-minute breaks; or (ii) from 9:00 a.m.  
26 to 4:30 p.m., with a 15-minute break in both the morning and the afternoon, and a  
27 one-hour lunch break. In most cases, jury selection is completed on the first morning  
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1 of trial, and counsel should be prepared to give opening statements and begin  
2 presentation of evidence immediately thereafter.

3 All counsel shall observe the following practices:

4 a. All counsel, defendants, and designated case agents shall rise  
5 when the jury enters and leaves the Courtroom;

6 b. Counsel shall stand when addressing the Court, including when  
7 objecting to opposing counsel's questions;

8 c. When objecting, counsel should state only "objection" and the  
9 legal ground for the objection (e.g., hearsay, irrelevant, etc.). Counsel should refrain  
10 from arguing the legal basis for the objection unless permission is granted to do so;

11 d. Counsel must seek leave to approach the Courtroom Deputy  
12 Clerk or the witness and should question witnesses while standing at the lectern;

13 e. Counsel must address and refer to all witnesses, including their  
14 clients, by the witness's surname. Young witnesses, i.e., children younger than age 15  
15 may be addressed by first names;

16 f. The Court may establish reasonable time limits for opening  
17 statements and closing arguments and the presentation of each party's case.

18 g. Counsel shall not discuss the law or argue the case in opening  
19 statements;

20 h. Counsel shall address all remarks to the Court and should not  
21 address directly the Courtroom Deputy Clerk, the Court Reporter, or opposing  
22 counsel. Counsel must ask the Court for permission to talk off the record in order to  
23 speak with opposing counsel;

24 i. Counsel shall not make an offer or stipulation unless he or she  
25 has conferred with opposing counsel and believes that the stipulation will be accepted.  
26 Any stipulation of fact will require the defendant's (or defendants') personal  
27 concurrence and shall be submitted to the Court in writing for approval. A proposed  
28 stipulation should be explained to the defendant(s) in advance;



1           j.       While Court is in session, counsel may not leave the counsel table  
2 to confer with investigators, assistants, or witnesses in the back of the Courtroom  
3 unless the Court grants permission to do so in advance;

4           k.       When a party has more than one lawyer, only one of the lawyers  
5 may conduct the examination of a given witness and only that same lawyer may  
6 handle objections during the testimony of that witness;

7           l.       If a witness was on the stand before a recess or adjournment,  
8 counsel shall have the witness back on the stand and ready to proceed when Court  
9 resumes;

10          m.       If there is more than a brief delay between witnesses, the Court  
11 may deem that the party has rested;

12          n.       The Court attempts to cooperate with witnesses and will, except  
13 in extraordinary circumstances, accommodate them by permitting them to be  
14 examined out of sequence. Counsel should discuss any scheduling issues with  
15 opposing counsel. If there is an objection, confer with the Court in advance.

16          o.       Counsel shall not make facial expressions, nod, or shake their  
17 heads, or comment or otherwise exhibit in any way any agreement, disagreement, or  
18 other opinion or belief concerning the testimony of a witness. Counsel shall  
19 admonish their clients and witnesses not to engage in such conduct;

20          p.       Counsel should not talk to jurors at all, and should not talk to co-  
21 counsel, opposing counsel, witnesses, or clients where the conversation may be  
22 overheard by jurors. Each counsel should admonish counsel's own clients and  
23 witnesses to avoid such conduct. Counsel should not speak with courthouse  
24 personnel regarding the trial, jury deliberations, or where the jury stands. Each  
25 counsel should admonish counsel's clients, witnesses, and agents not to engage in  
26 such conduct. If any team should inadvertently become aware of jury information,  
27 including where the jury stands during deliberations, such information, shall not be  
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1 repeated to anyone without permission of the Court. The parties should immediately  
2 notify the Court of such disclosure; and

3 q. Counsel must notify the Courtroom Deputy Clerk in advance if  
4 any witness should be accommodated based on the Americans with Disabilities Act or  
5 for other reasons.

6 **VIII. SANCTIONS**

7 The Court will consider the imposition of sanctions against any attorney who:  
8 (1) fails to timely file trial briefs, suggested voir dire questions, proposed jury  
9 instructions, and any other filings as prescribed by this Order or any order extending  
10 the time for such filings; or (2) fails to comply with any provision of this order.

11 **IT IS SO ORDERED.**

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13 Dated:

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HONORABLE KENLY KIYA KATO  
United States District Judge

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