

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA	:
	:
-v.-	: Case No. 22-cr-7-TSC
	:
THOMAS UBERTO,	:
	:
Defendant.	:
-----X	

**MOTION FOR RULE 5(f) ORDER**

The Defendant hereby moves for a written order in compliance with the Due Process Protections Act codified as Fed. R. Crim. P. 5(f). The Rule requires the issuance of an oral and written order to the prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and the possible consequences for violating such order under applicable law. The government opposes this motion on the grounds Magistrate Judge G. Michael Harvey’s January 13, 2022 order, entered as a Minute Order on January 14, 2022, is sufficient. That order directs the government “to produce all exculpatory evidence to the defendant pursuant to *Brady v. Maryland* and its progeny” but says nothing about “favorable” information.

The government also wrote, “To the extent the Court nevertheless prefers to issue an order, we oppose the inclusion of the last sentence in paragraph 6 (“The government has an affirmative obligation to seek from such sources all information subject to disclosure under this Order”), but have no opposition to the remaining language as proposed.”

The defense contends government's opposition is without merit. "The prosecution has an affirmative obligation to learn of potentially favorable evidence and provide it to the defense." *United States v. Bundy*, 968 F.3d 1019, 1038 (9th Cir. 2020) citing *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995) (explaining that a "prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case").

The attached proposed order is copied directly from a form routinely used by the United States District Court in the Southern District of New York.

Dated: January 19, 2022  
White Plains, New York

Respectfully submitted,

/s/ Richard Willstatter  
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### **CERTIFICATE OF SERVICE**

I hereby certify that the instant Motion was served on all counsel of record this 19th day of January, 2022 via ECF.

/s/ Richard Willstatter  
RICHARD D. WILLSTATTER (PHV)