

IN THE UNITED STATES DISTRICT COURT

FOR [REDACTED]

UNITED STATES OF AMERICA,

Plaintiff,

No. CR [REDACTED]

Vs.

[REDACTED]

Defendant

**DEFENDANT'S OPPOSED MOTION TO DISCLOSE ANY PRIOR
INFORMATION IN THE POSSESSION OF
THE [REDACTED] SHERIFF'S OFFICE AND
THE DEPARTMENT OF HOMELAND SECURITY**

COMES NOW the Defendant [REDACTED] (by and through her
counsel of record Assistant Federal Public Defender [REDACTED]), and pursuant
to the Fifth and Sixth Amendments of the United States Constitution, to
respectfully request that this Honorable Court enter an Order directing the
Government to disclose any information concerning [REDACTED] which was in the
possession of the [REDACTED] Office of the Department of Homeland Security or
the [REDACTED] Sheriff's Office prior to the traffic stop of [REDACTED] on [REDACTED]
[REDACTED] 2016. [REDACTED] also respectfully requests that the Government be ordered to
disclose all relevant *Brady* information, including any impeachment material and

other information concerning the reasons for the traffic stop. In support of this Opposed Motion, counsel for [REDACTED] states:

1. Defendant [REDACTED] has been charged in an Indictment, returned on [REDACTED] 2016, with possession of a firearm by an undocumented immigrant (in violation of 18 U.S.C. §§ 922(g)(5) and 924(a)(2)) and with illegal re-entry after deportation (in violation of 8 U.S.C. § 1326, subd. (a) and (b).) Doc. 13.

2. The arrest in this case arose out of a traffic stop of [REDACTED] on [REDACTED] 2016, purportedly for making an unsafe lane change.¹ The officer who stopped [REDACTED] was a [REDACTED] Sheriff's Deputy K-9 Officer who was working as a Task Force Agent assigned to the Department of Homeland Security. During the course of the stop, other officers from the Sheriff's Department and Homeland Security arrived on the scene.

3. The traffic stop of [REDACTED] ultimately led to a search of her vehicle. Before the search, the Deputy who made the stop initially asked [REDACTED] if she was carrying any firearms in the vehicle. During the search, the Deputy repeatedly asked [REDACTED] where "*if*" was located and insisted that [REDACTED] knew what he

¹ Because the stop was initiated by a Sheriff's Deputy, there is no dash board camera recording of the stop.

was talking about. After repeated badgering by multiple officers [REDACTED] ultimately admitted that there was, in fact, a firearm in the vehicle.

4. Under the totality of the circumstances, it appears that Sheriff's Deputies and Agents of the Department of Homeland Security were somehow in possession of prior information that [REDACTED] was an undocumented immigrant who would be traveling through [REDACTED] with a firearm. If so, this information could impeach the Deputy's claim that the traffic stop was justified at its inception.²

4. [REDACTED] contends that, like a request to disclose a confidential informant, disclosure of any information in the possession of the arresting Agencies prior to the traffic stop on [REDACTED] could be relevant and tend to show that the stop was not, in fact, supported by probable cause; therefore, disclosure of that information is essential to a fair determination of this cause. *Rovario v. United States*, 353 U.S. 53, 61-62 (1957); *United States v. Gordon*, 173 F.3d 761, 767-68 (10th Cir. 1999). In addition, [REDACTED] submits that her right to prepare for a pending evidentiary hearing in this matter and to establish with all available evidence that the stop was not justified at its inception outweighs any interest in

² [REDACTED] does not allege that the stop in this case was pretextual but instead challenges the probable cause for the traffic stop. As a result *Whren v. United States*, 517 U.S. 806 (1996) does not apply to this case.

shielding the arresting Agencies' possession of any prior information which they had concerning ██████████, 353 U.S. at 62; *U.S. v. Sinclair*, 109 F.3d 127, 1538 (10th Cir. 1997).

5. In addition, the Government has an obligation to provide the defense with any material exculpatory evidence or impeachment evidence. *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. U.S.* 405 U.S. 150 (1972); *U.S. v. Bagley*, 43 U.S. 67 (1985). The Government's *Brady* obligation extends to information in the possession of any government agent. *Kyles v. Whitley*, 514 U.S. 419 (1995). Therefore, disclosure of this material, exculpatory evidence or impeachment information is essential to safeguard ██████████ Sixth Amendment rights by protecting her right to compulsory process, to confront and cross examine the witnesses against her and to present a defense. *Washington v. Texas*, 388 U.S. 14 (1967); *Davis v. Alaska*, 415 U.S. 308 (1974).

6. A court must be wary of any attempt by law enforcement officers to stop a vehicle without a probable cause in order to pursue another investigation which is unrelated to the purpose of the stop. Cf. *Florida v. Wells*, 495 U.S. 1, 4 (1990) [an inventory search must not be a ruse to discover incriminating evidence]. In addition, the Court should seriously consider any allegation that the officers who initiated a traffic stop "acted in bad faith or for the sole purpose of investigation." *Colorado v. Bertine*, 479 U.S. 367, 372 (1987) [discussing inventory searches].

7. [REDACTED] contends that she was not stopped for a violation of the New [REDACTED] traffic code but was instead stopped without probable cause in order to pursue an investigation of an undocumented immigrant in possession of a firearm. In light of this allegation she submits that, prior to the commencement of the scheduled evidentiary hearing in this case, the Government is obligated to produce any information concerning [REDACTED] her immigrant status, or her travel through [REDACTED] which was in the possession of the [REDACTED] Sheriff's Office or the [REDACTED] Office of the Department of Homeland Security prior to [REDACTED] 2016, including without limitation any tips from confidential informants, any reports from any other federal, state or local law enforcement or National Security Agency, any intercepted telephone conversations, text messages, social media messages or emails (or reports of any such communications), and any telephone records (including cellular telephone tower records or interceptions).

8. Assistant United States Attorney [REDACTED], counsel of record for the United States, has been informed of this Motion and [REDACTED] represents that the Government opposes the Motion.

WHEREFORE, for all of the foregoing reasons, Defendant [REDACTED] [REDACTED] respectfully requests that this Honorable Court enter an Order directing the Government to disclose any information of any kind concerning [REDACTED] her

immigrant status or her travel through [REDACTED] in the possession of the arresting agencies prior to the traffic stop on [REDACTED] 2016 and also Order the Government to disclose any material, exculpatory *Brady* information or impeachment information surrounding the events of [REDACTED] 2016.

Respectfully Submitted,

/s/ [REDACTED] filed electronically -/-/

Assistant Federal Public Defender

[REDACTED]
[telephone]

Counsel for [REDACTED]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this -th day of [REDACTED] 2017, I filed the foregoing Defendant's Opposed Motion electronically through the CMIECF system, which caused a copy of the pleading to be served electronically on opposing counsel of record addressed as follows:

[REDACTED]
Assistant United States Attorney
[REDACTED]

/s/ [REDACTED] filed electronically -/-/