

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Criminal Case No. 1:19-cr-257-WJM

UNITED STATES OF AMERICA,

Plaintiff

v.

Eric King,

Defendant

DEFENDANT'S MOTION TO REQUIRE CERTAIN DOCUMENTS

Defendant Eric King, through his counsel, Lauren C. Regan, Attorney at Law, respectfully moves this Court for Orders compelling the Government to forthwith disclose all the information described below. Undersigned counsel has conferred with AUSA Tietelbaum on the requests herein, except request J. At this time, the AUSA reserves taking a position on requested discovery regarding Lt. Wilcox's relevant job description on or about August 17, 2018, and objects to the remaining requests on the basis they exceed the scope of the government's discovery obligation. Given the current trial date, Mr. King needs this important discovery as soon as possible in order to adequately prepare his defenses.

I. BACKGROUND

Mr. King stands before this Court accused of one count of Assaulting or Obstructing a federal official in violation of 18 U.S.C §111. The indictment in this case

stems from an August 17, 2018 encounter in a prison storage room between Mr. King and an FCI Florence Administrative Lieutenant. Material provided in discovery shows that the matter was immediately investigated by BOP officials, and referred to the FBI and United States Attorney for potential prosecution within hours of the alleged offense. Exhibit A: August 17, 2018 2:31PM Robert Cordova email (INV024). Discovery further shows that the matter was accepted for prosecution the same day. Exhibit B: September 6, 2018 FBI Opening Electronic Communication at 2 (INV020). The FBI Special Agent in charge of the matter communicated with BOP officials throughout the months of September, October, and November 2019, and one time in December of that year.

Mr. King was transferred to USP Leavenworth on August 20, 2018, immediately following his *Miranda* interview with detectives at USP Florence. In early December 2018, corrections officials at USP Leavenworth told Mr. King that the government declined to prosecute the charges. This is corroborated by notes in a later Disciplinary Hearing Officer (“DHO”) Report related to the incident which shows “the FBI/AUSA did decline to prosecute on December 11, 2018, at which time it was released for administrative processing.” Exhibit C: February 21, 2019 Disciplinary Hearing Officer (“DHO”) Report, at 2 (INV00443-00446). On December 28, 2018, USP Leavenworth officials initiated administrative disciplinary proceedings against Mr. King relative to the alleged assault at FCI Florence on August 17. *Id* at 1. The DHO report reflects that Administrative Notice of the delay initiating administrative proceedings was provided to the Warden of Leavenworth, who found the delay in initiating disciplinary proceedings justified by the fact that the incident took place at another institution and was pending

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FBI release. *Id* at 2. The DHO considered Mr. King's admissions, statements, and silence, as well as medical records, and statements and memoranda submitted by FCI Florence staff. *Id* at 2-4. The disciplinary proceedings terminated with a finding of BOP rules violations entered against Mr. King. *Id.* at 1.

The assertion of self-defense and staff misconduct in the disciplinary proceedings prompted Disciplinary Hearing Officer Becky Bryant to send a memorandum to the Warden of USP Leavenworth advising that Mr. King admitted to striking the officer and also "made allegation of staff misconduct at FLF Florence." Exhibit D: February 21, 2019 DHO Memorandum for Warden (INV0442). The DHO Report and notice to the warden of Leavenworth were completed on February 21, 2019; it was provided to FCI Florence staff and forwarded to the FBI on the same date Exhibit E: February 21, 2019 Cordova FBI Memorandum, p.1 (INV0440-INV0441).

A grand jury returned an indictment against Mr. King on May 19, 2019. Mr. King was held continuously in solitary confinement, assaulted by other prisoner(s), and transported between six different notorious Bureau of Prison facilities (FCI Florence, USP Florence, USP Leavenworth, USP McCreary, USP Lee, USP Atlanta) between the date of the alleged offense on August 18, 2018, and his arrival at FCI Englewood on a writ immediately before his first appearance in this Court on August 27, 2019. Since that date he has remained in segregated housing without regular access to phone or email, and in the past 16 months has been prohibited from receiving mail.

Mr. King respectfully requests that the Government disclose the information described herein prior to trial to protect his Sixth Amendment rights to confront and

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cross-examine witnesses and present a defense, and his Fifth Amendment right to Due Process.

II. LEGAL AUTHORITY

The right to effective cross-examination is the foundation of Due Process in criminal proceedings. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall...be deprived of life, liberty, or property, without due process of law." U.S. Const. Amend. V. In criminal prosecutions, the primary guarantee protects the right to a fundamentally fair trial. See *United States v. Bagley*, 473 U.S. 667, 675-76 (1985); see also *Pennsylvania v. Ritchie*, 480 U.S. 39, 56-58 (1987); *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *United States v. Robinson*, 583 F.3d 1265, 1270-1271 (10th Cir. Kan. 2009).

The Sixth Amendment guarantees the right of a defendant to be confronted with the witnesses against him. U.S. Const. Amend. VI. One of the primary interests secured by the Sixth Amendment's confrontation clause is the right of cross-examination. *Davis v. Alaska*, 415 U.S. 308, 315 (1974). Cross-examination is the "principal means by which the believability of a witness and the truth of his testimony are tested." *Id.* at 316. When "the defendant is prohibited from engaging in otherwise appropriate cross-examination that, as a result, precludes him from eliciting information from which jurors could draw vital inferences in his favor," a violation occurs. *United States v. Montelongo*, 420 F.3d 1169, 1175 (10th Cir. 2005).

Challenging the credibility of a government witness is a cornerstone of cross-examination and includes questioning a witness about specific instances of conduct. Where the testimony of a witness is critical to the Government's case, the defendant

has a right to attack the witness's credibility by wide ranging cross-examination. *United States v. Dennis*, 625 F.2d 782, 798 (8th Cir. 1980). Pursuant to Fed. R. Evid. 608(b), a defendant may impeach a government witness by cross-examining him about specific instances of conduct not resulting in conviction if such conduct is probative of the witness's character for truthfulness or untruthfulness. Such inquiry is within the discretion of the trial court subject to Rule 403. *United States v. Girdner*, 773 F.2d 257, 261 (10th Cir. 1985); *United States v. Atwell*, 766 F.2d 416 (10th Cir. 1985). Finally, cross-examination of a witness regarding specific instances of conduct which are probative to show any incentive a witness may have to falsify his testimony is also proper. See *Cloud v. Thomas*, 627 F.2d 742, 744 (5th Cir. 1980); *United States v. Salsedo*, 607 F.2d 318, 321 (9th Cir. 1979); *United States v. Morales-Quinones*, 812 F.2d 604, 613-614 (10th Cir. 1987).

Access to evidence that is material to cross-examination, including both exculpatory and impeachment evidence, is essential to a defendant's ability to engage his Sixth Amendment right to confront and cross-examine witnesses offered against him. The requested material need not be admissible to be relevant. For discovery purposes, the material need not contain information that is admissible, so long as its content is relevant to defense. It need only be shown that the evidence is favorable to the defendant and material to guilt or punishment. *United States v. Bagley*, 473 U.S. at 674; *United States v. Agurs*, 427 U.S. 97, 104 (1976); *Brady v. Maryland*, 373 U.S. at 87.

The due process basis for requiring discovery of favorable or exculpatory material under *Brady* and impeachment material under *Giglio* is well settled. *Giglio v. U.S.* (1972)

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405 U.S. 150 [92 S.Ct. 763, 31 L.Ed.2d 104]. It is incumbent upon the court to assure faith in the adversarial process and not simply allow the Government to be in charge of disclosing material information without court supervision. Questions of witness credibility are properly for the jury, not for the prosecution, and the defense should be entitled to its own judgment of the utility of any exculpatory information. See *Buehl v. Vaughn*, 166 F.3d 163, 181 (3d Cir. 1999) (concluding in *Brady* context, Government's argument the witness's withheld statement could not be verified "misses the point"); *United States v. Nichols*, 38 Fed. Appx. 534, 539 (10th Cir. 2002).

III. SPECIFIC REQUESTS FOR DISCLOSURE

The information requested that the government has refused or withheld is as follows:

A. Lt. Wilcox's job description on or about August 17, 2018.

An element of Assaulting or Obstructing a federal official, 18 U.S.C §111, is whether the officer was engaged in the performance of his official duties. Criminal Pattern Jury Instruction 2.09 (10th Cir. 2021). A federal officer is "engaged in the performance of his official duties" if he is acting within the scope of what he is employed to do, rather than engaging in a personal frolic of his own. *United States v. Young*, 614 F.2d 243, 244 (10th Cir. 1980) (Internal Revenue Service agent was engaged in the performance of his official duties even if summons he was serving was invalid). Lt. Wilcox's job description, detailing his official duties at the time he assaulted Mr. King in a storage closet, and whether Lt. Wilcox was acting within the scope of what he was employed to do, is directly material to Mr. King's defense at trial because it is an element of the crime the government must prove to the jury beyond a reasonable

doubt. Lt. Wilcox informed FBI investigators he is an “administrative lieutenant,” but it is unclear what those duties objectively entail and there is no other evidence offered that provide information about his position or whether he was tasked with “interviewing” inmates regarding emails (arguably an SIS duty) in a storage closet. (April 15, 2019 Interview).

B. Medical Records regarding Lt. Wilcox’s alleged injuries.

The government has provided some medical records of Lt. Wilcox’s visit to St. Thomas More hospital after this incident. These documents provide information regarding the injury to Lt. Wilcox’s nose, and document his return to St. Thomas More Hospital for an x-ray of his swollen ring finger on his left hand. However, the joint which was injured was not specified. Lt. Wilcox subsequently visited Dr. Lance Farmsworth at the Pueblo Bone and Joint Clinic, but these records were not provided. Exhibit F: Wilcox FBI interview, October 3, 2018, p. 3 (INV0115-0117). No records were provided regarding any examination or documentation regarding swelling, bruising or any other injuries to his right hand.

During an April 15, 2019 FBI interview, Wilcox offered information regarding the specific site of his injury stating, “Wilcox knows the injury to his finger was the result of grappling with King in an attempt to control King... the injury to his left ring finger was to the first joint of his finger, which was a grappling injury. The injury was not to his knuckles, which would be the result of a punch.” Exhibit G: Wilcox FBI Interview, April 15, 2019, p. 2 (INV0429-0430). Inherent in this statement is the assertion that Wilcox did not punch Mr. King (with his left hand). Wilcox’s credibility, or lack of credibility,

regarding his own injuries sustained on the job is highly relevant to appropriate cross-examination and has been placed at issue based on Lt. Wilcox's assertions. Further, any evidence that indicates that Lt. Wilcox punched Mr. King so hard that he injured his hand is exculpatory to Mr. King, and corroborates his claim of self-defense. As Dr. Farmsworth is a doctor working at a "Bone and Joint Clinic" it is likely he noted which of the Lt.'s joints were injured, took x-rays, and may have included an examination of both hands. Finally, the requested additional medical records are clearly within the government's scope of discovery as partial medical records from St. Thomas More hospital were already acquired and provided to the defense.

C. All documentation of any/all investigation(s) and findings from internal BOP and/or DOJ investigations regarding Mr. King's allegations of misconduct against Lt. Wilcox

In Mr. King's January 2019 DHO hearing, he again asserted that he acted in self-defense because Lt. Wilcox assaulted him. After the hearing, it is clear that the DHO notified USP Leavenworth staff, which was memorialized in a February 21, 2019, memoranda by FCI Florence Lt. Robert Cordova. Exhibit E, p. 1. The entire email correspondence referenced in the memo is redacted. *Id.* at 2. This communication occurred after the government had already communicated the decision to decline to prosecute Mr. King for the alleged assault.

BOP maintains an entire program statement detailing how and when an investigation into staff misconduct may take place. Program Statement 1210.04.¹ Instances of physical abuse of an inmate by a BOP employee are considered a

¹ (https://www.bop.gov/policy/progstat/1210_024.pdf).

“Classification 1” violation, the most serious allegation of misconduct. Program Statement 1210.04(7), p. 4. BOP staff who become aware of any violation or alleged violation of the Standards of Employee Conduct must report them to management (the CEO² or OIA³) or to the OIG⁴ at the Department of Justice. Program Statement 1210.04(8), p. 7. “A copy of all investigative and disciplinary documents on Classification 1 and 2 cases must be forwarded to OIA.” *Id.* . At the conclusion of an internal investigation “an investigative report will be prepared.” Program Statement 1210.04 (12), p. 14.

Given BOP’s own reporting requirements for instances of serious misconduct and that BOP staff were aware and notified employees of Wilcox’s alleged misconduct, it is very likely that an internal investigation was actually conducted in this case. Such an investigation is relevant and probative to Mr. King’s preparation for trial. The documents (or lack thereof), including the entirely redacted email⁵ in Exhibit E, are relevant exculpatory evidence if Lt. Wilcox was found to have committed a violation. This discovery also presents relevant impeachment evidence in numerous ways: 1) if an investigation was not conducted BOP staff failed to comply with their own regulations regarding Mr. King’s allegations of serious officer misconduct; 2) the allegations and investigation into misconduct provide Lt. Wilcox a motive to lie about the assault in order to avoid employment repercussions (including a denial of worker’s compensation); and

² Chief Executive Officer

³ Office of Internal Affairs

⁴ Office of Inspector General

⁵ The government has declined to offer an explanation for this wholesale redaction.

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3) additional statements made by the Lt. regarding the incident may have been inconsistent, and are relevant under the Jencks Act.

The defendant bears the initial burden of showing that particular materials qualify under the Jencks Act, but the defendant's burden is not heavy. See *United States v. Smaldone*, 544 F.2d 456, 460 (10th Cir. 1976) (defendant must show that particular materials qualify as 'Statements' and that they relate to the subject matter of the testimony of the witness"). To satisfy this burden, the defendant need not prove that particular materials are within the scope of the Jencks Act. Rather, the defendant "must plainly tender to the Court the question of the producibility of the document at a time when it is possible for the Court to order it produced, or to make an appropriate inquiry." *United States v. Smith*, 984 F.2d 1084, 1086 (10th Cir. 1993) (quoting *Ogden v. United States*, 303 F.2d 724, 733 (9th Cir. 1962)).

18 U.S.C. §3500 and Fed.R.Cr.P. 26.2 provide in pertinent part that, "[a]fter a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified." However, if an earlier disclosure would create a reasonable doubt of a defendant's guilt, then the United States must produce such evidence before the witness testifies at trial. See *United States v. Burke*, 571 F.3d 1048, 1054 (10th Cir. 2009) (holding that the "belated disclosure of impeachment or exculpatory information favorable to the accused violates due process when an earlier disclosure would have created a reasonable doubt of guilt").

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Here, a late disclosure during trial forecloses potential follow-up investigation and rigorous cross-examination. Further, the evidence is material because it likely contains exculpatory and impeachment information.

D. Documentation of Lt. Wilcox’s training and experience regarding “one of his posts working with mentally ill offenders.”

Here, Lt. Wilcox placed his previous training and experience regarding ‘working with mentally ill offenders’ at issue by claiming in FBI interviews that he relied on his training and experience when determining how and where to interview Mr. King. Exhibit G: Wilcox FBI Interview, April 15, 2019 (INV0429-0430). Wilcox chose to conduct an unrecorded interview, told the other Lt. present to leave the closet, thus leaving Wilcox and Mr. King alone, in a storage room without a camera, desk and chairs, notepad, pens, computers or any other accoutrements of a legitimate investigative interview by federal employees, but instead with mops, buckets, and other cleaning supplies scattered throughout the small space. It is highly questionable that Lt. Wilcox’s training would guide him to take these actions with an inmate he characterized as “waffling” between emotional states. *Id.* at 2. Should these decisions be inconsistent with Lt. Wilcox’s training, it is highly relevant impeachment information.

E. Documentation regarding Lt. Wilcox’s August 2018 Workers Compensation claim, and Workers Compensation claims prior to August 17, 2018.

The government has produced documents which demonstrate that Lt. Wilcox sought Workers Compensation for his injuries, however the documents produced are limited, and are “pending review by Supv[sic].” Exhibit H: Federal Employee’s Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation; OSHA Injury and

Illness Incident Report (INV00730-0734. Lt. Wilcox placed his previous injuries on the job at issue by claiming in FBI interviews that he had never been seriously injured on the job prior to his allegations against Mr. King. Exhibit G, p. 2.

Lt. Wilcox's testimony is critical to the government's case because he is one of two people who can testify to who was the initial aggressor during this incident. Wilcox's credibility, or lack of credibility regarding whether, or if, he was previously injured on the job (potentially during an inmate interaction) is highly relevant to appropriate cross-examination. Precluding evidence that would allow jurors to draw vital inferences in Mr. King's favor would be in violation of Mr. King's Sixth Amendment right to confrontation.

Further, Workers Compensation claims can be denied if a worker's injury "was proximately caused by the employee's willful misconduct, intent to bring about injury or death to self or another person, or intoxication." Exhibit H, p. 3. As such, Lt. Wilcox may have possessed a motive to lie about who initiated the assault. The prosecution must disclose known sources of a witness's bias, motive or interest. *Douglas v. Workman*, 560 F.3d 1156, 1172-73 (10th Cir. 2009) ("[N]o distinction is recognized between evidence that exculpates a defendant and 'evidence that the defense might have used to impeach the [State's] witnesses by showing bias and interest.'" (quoting *United States v. Bagley*, 473 U.S. at 676); *Pennsylvania v. Ritchie*, 480 U. S. 39 (1987); *United States v. Striffler*, 851 F.2d 1197 (9th Cir. 1988). Specific instances of conduct which are probative to show any incentive a witness may have to falsify his testimony are proper. See *Cloud v. Thomas*, 627 F.2d 742, 744 (5th Cir. 1980); *United States v. Salsedo*, 607

F.2d 318, 321 (9th Cir. 1979); *United States v. Morales-Quinones*, 812 F.2d 604, 613-614 (10th Cir. 1987).

The constitutional right to cross-examine one's accusers for such bias and motive would be hollow indeed if the Government possesses such information concerning its own witnesses and does not disclose it. *Davis v. Alaska*, 415 U.S. 308, 315 (1974); *United States v. Ray*, 731 F.2d 1361, 1364 (9th Cir. 1984); *Chipman v. Mercer*, 628 F.2d 528 (9th Cir. 1980); *Patterson v. McCarthy*, 581 F.2d 220 (9th Cir. 1978). All of Wilcox's Workers Compensation documents should be produced for the defense to prepare and investigate any motive to lie on his part.

F. Lt. Wilcox's disciplinary and personnel history/file, any and all documents, writings, memoranda, data, notes, previous complaints, reports, correspondence, or the like, which pertain to past performance, employment reviews, evaluations, and conduct of Lt. Wilcox in connection with the performance of his duties as a corrections officer and/or employee of BOP.

Mr. King has exculpatory interest in Lt. Wilcox's personnel and disciplinary history while employed by BOP. Here, Mr. King is charged with assaulting the Lt. where the Lt. and Mr. King are the only material fact witnesses—the Lt.'s credibility, motives, and biases are directly at issue and necessary for the defense to prepare for cross examination. This is clearly established by 10th circuit case law. See *Denver Policemen's Protective Ass'n v. Lichtenstein* (10th Cir. 1981) 660 F.2d 432, 436 (holding Defendant arrested for assaulting a police officer was entitled to discovery of internal police investigative files). This is also within the State's own interest to provide Mr. King a fair trial and right to exculpatory information. *Id.* Finally, objections to personal

information, such as addresses or social security numbers, can easily be mitigated with in camera review or redaction.

G. The incident report regarding Lt. Wilcox's involvement in the restraint and use of force against another inmate, Maurice Wilson, on November 2, 2013, at USP Florence, in addition to any other reports in the last 5 years where Lt. Wilcox was involved in a documented use of force situation.

Here, Lt. Wilcox placed his previous use of force, specifically striking inmates, at issue by claiming in an FBI interview that he "...has never struck an inmate during his career." Exhibit G, p. 2. However, it appears at least one previous lawsuit has been filed against Lt. Wilcox regarding his use of force against an inmate. In the District of Colorado case from 2014, Lt. Wilcox is alleged to have struck Mr. Wilson repeatedly. Exhibit I: Wilson v. Wilcox, 14-CV-0421-MSK, p. 2, 4 (D.Ct CO 2014).

Lt. Wilcox's testimony is critical to the government's case because he is one of two people who can testify to who was the initial aggressor during this incident. The Lt.'s credibility, or lack of credibility, regarding his previous use of force is highly relevant to appropriate cross-examination. Should Lt. Wilcox's record of striking inmates be inconsistent with what Lt. Wilcox told the FBI, it is highly relevant impeachment information, especially given the Lt.'s claim he has "never" previously struck an inmate during his 20-year stint at the BOP. Exhibit G, p. 2. Additionally, previous incidents could establish 404(b) evidence: a pattern of assaultive behavior by Lt. Wilcox against inmates. Precluding evidence that could allow jurors to draw vital inferences in Mr. King's favor would be in violation of Mr. King's Sixth Amendment right to confrontation.

H. Any written communication, notes, or memorandum from Lt. Cordova to Lt. Wilcox regarding the Estrada assault incident and/or investigation of Mr. King's email pertaining to said alleged assault.

Allegedly, Lt. Wilcox was told by Lt. Cordova to investigate Mr. King to determine if Mr. King was “threatening staff and/or posed a threat to staff” after Mr. King sent an “inflammatory” email regarding an incident wherein Lt. Estrada was allegedly assaulted by an inmate earlier that day. Lt. Wilcox was not present during Lt. Estrada’s assault; nor was Mr. King. It does not appear from the provided discovery that Lt. Wilcox was ever forwarded Mr. King’s email at issue. All the information possessed by Lt. Wilcox regarding both Lt. Estrada’s assault and Mr. King’s email would have been provided through his communications with Lt. Cordova. Depending on the information provided by Lt. Cordova, Lt. Wilcox could have formed a bias or motive against Mr. King prior to the interview. For example, Lt. Wilcox conveyed to FBI investigators that Mr. King stated in his email that “officer assaults needed to happen more often”(Exhibit F, p. 1), but that email does not actually contain such a statement. Exhibit A. And in the alternative, if Wilcox was not provided the email or other communications belying a legitimate investigation by Cordova, that would lend credence to the argument that Wilcox was not performing an employment duty, but was potentially exacting punitive revenge upon Mr. King instead.

As such, any written communication to Lt. Wilcox about Lt. Estrada’s assault and Mr. King’s email are highly relevant to Mr. King’s trial preparation for cross-examination of bias and motive.

I. The incident report or any/all documentation regarding Lt. Estrada’s assault on August 17, 2018, that contains the details of the assault, where and when it happened, who was involved in the incident, the

author of the incident report and the date and time said report was written.

Lt. Kammrad accompanied Lt. Wilcox into the storage closet to “interview” Mr. King. At some point after Wilcox begins to aggressively question Mr. King, Lt. Kammrad leaves Lt. Wilcox alone in the closet with Mr. King (at Wilcox’s request). Shortly thereafter, both King and Wilcox received punches to the face and head. After the fact, Lt. Kammrad states (under penalty of perjury) that he was “working” on the incident report related to Lt. Estrada’s assault while Wilcox was threatening and assaulting Mr. King, and thus was not present to witness what actually occurred within the storage closet that day. Whether Lt. Kammrad was actually on his computer drafting an incident report at the exact same time Mr. King was assaulted in the storage closet is material to his preparation of the examination of Lt. Kammrad, and potentially the cross of Lt. Wilcox as well.

J. Disciplinary Hearing Documents and Audio/Visual Recordings

The Government indicated to defense counsel that the United States intends to introduce evidence of prior disciplinary citations and sanctions pursuant to FRE 404(b), however Defense has not specifically conferred with the government regarding this motion. Mr. King has been imprisoned in the Bureau of Prisons since 2016, and the prosecution has thus far disclosed documents regarding various disciplinary citations against Mr. King throughout his imprisonment. One such disclosure included a “DHO Packet” cover sheet indicating multiple documents pertaining to BOP disciplinary hearings. Exhibit J: BOP Cover Sheet (INV01007). Pursuant to Rule 16 and FRE

404(b), Counsel now moves this Court to compel the United States to disclose (1) which disciplinary proceeding(s)/rules violations the government seeks to introduce evidence of, as well as (2) the entirety of the DHO Packet for each disciplinary proceeding/BOP rules violation the United States may seek to introduce or refer to in these proceedings, and (3) all audio/visual recording of such disciplinary proceedings. Prisoners' silence at disciplinary proceedings can be used against them, and BOP policy contemplates that prisoners will provide a statement, and that an adverse inference can be drawn from silence during such proceedings. 28 C.F.R. 541.5(b). Given the government's statement that they reserve the right to seek introduction of prior words/acts of Mr. King relative to the proceedings, the documents regarding such proceedings and audio/visual recordings of Mr. King's statements and behavior therein are discoverable pursuant to Rule 16 and should be provided.

WHEREFORE, based on the forgoing, it is respectfully requested that the Court enter an order directing the Government to make inquiry and disclose all the materials which are delineated in this Motion and for such further relief as the Court may deem just and proper.

Should the Court enter the requested Orders, Mr. King requests the Court impose a deadline for when the government is required to disclose such discovery to defense counsel in order to facilitate adequate trial preparation.

Respectfully submitted September 13, 2021,

/s/ Lauren C. Regan

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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to all other counsel of record.

/s/ Lauren C. Regan
Lauren C. Regan, Attorney at Law
The Civil Liberties Defense Center