



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 31, 2019

BY FEDEX

Montell Figgins, Esq.
Law Offices of Montell Figgins
17 Academy Street, Suite 305
Newark, NJ 07102

Re: *United States v. Michael Thomas*, No. 19 Cr. 830

Dear Counsel:

This letter provides discovery pursuant to Rule 16(a) of the Federal Rules of Criminal Procedure, and seeks reciprocal discovery. This letter and the materials identified herein are subject to the protective order entered in this case on December 16, 2019, and have been designated as "Protected Materials" as defined in the order where noted below. Accordingly, the materials and information identified herein shall not be disclosed to any third party except as set forth in the protective order.

I. Disclosure by the Government

Based on your request for discovery in this case, and pursuant to the Government's obligations under Rule 16(a), enclosed are copies of the following materials, which are being produced to all defendants and are stamped with the following control numbers:¹

Description	Bates Numbers	Classification Pursuant to Protective Order
MCC surveillance footage from 7/5/2019 to 8/12/2019 ²	SDNY_00000001	Protected Materials

¹ In addition to information provided herein, please note that this Office periodically posts content on social media platforms including Twitter, Facebook and YouTube. Members of the public may post comments in response to the Office's postings. We do not control these user-generated comments, nor do we monitor or regularly review such comments. You may directly access these social media platforms in the event you believe someone may have posted information relevant to this case.

² The Government is producing video surveillance footage of the common area of the Special Housing Unit for the above-referenced dates. On or about August 10, 2019, the Government seized

Commissary records for inmates at MCC	SDNY_00000002- SDNY_00000020	Protected Materials
Computer analysis for computers used by Noel and Thomas from 8/9/2019 to 8/10/2019	SDNY_00000021- SDNY_00000075	Protected Materials
Count slips for 7/23/2019 to 8/14/2019	SDNY_00000076- SDNY_000000795	Protected Materials
Death reports and photos	SDNY_000000796- SDNY_000000857	Protected Materials
Photographs of Jeffrey's Epstein's cell	SDNY_000000858- SDNY_000000898	Protected Materials
Epstein general BOP records	SDNY_000000899- SDNY_000000922	Protected Materials
Evidence custody documents	SDNY_000000923- SDNY_000000937	Protected Materials
Health records for Jeffrey Epstein	SDNY_000000938- SDNY_000001041	Protected Materials
Internal MCC phone records	SDNY_000001042- SDNY_000002124	Protected Materials
MCC logs for 7/23/2019 to 8/19/2019	SDNY_000002125- SDNY_000005010	Protected Materials
MCC regulations and training	SDNY_000005011- SDNY_000005796	Protected Materials
MCC staff roster	SDNY_000005797- SDNY_000005979	Protected Materials
Office of Chief Medical Examiner report	SDNY_000005980- SDNY_000006091	Protected Materials
Personnel records for Noel and Thomas	SDNY_000006092- SDNY_000006273	Protected Materials
Prior work schedule for Noel and Thomas	SDNY_000006274- SDNY_000006277	Protected Materials
Psych records for Jeffrey Epstein	SDNY_000006278- SDNY_000006471	Protected Materials

the contents of the MCC's video surveillance system. Certain cameras were not functioning, have not been processed, or are not available. The Government is producing the available surveillance footage that falls within Rule 16(a). However, to the extent you believe that certain additional footage would be relevant, please contact us promptly to request that footage.

Reports regarding the July 23 incident	SDNY_00006472- SDNY_00006594	Protected Materials
Special Housing Unit maps	SDNY_00006595- SDNY_00006596	Protected Materials
Special Housing Unit roster	SDNY_00006597- SDNY_00006977	Protected Materials
Materials returned from 4Chan	SDNY_00006978- SDNY_00006979	Protected Materials
Apple, Inc. subscriber records ³	SDNY_00006980- SDNY_00006984	Protected Materials
AT&T telephone records	SDNY_00006985- SDNY_00007079	Protected Materials
Comcast telephone records	SDNY_00007080- SDNY_00007084	Protected Materials
Sprint telephone records	SDNY_00007085- SDNY_00007103	Protected Materials
Verizon telephone records	SDNY_00007104- SDNY_00007108	Protected Materials
Thirty Minute Round reports for 7/1/2019 to 8/10/2019	SDNY_00007109- SDNY_00007548	Protected Materials
Email regarding cellmate	SDNY_00008119- SDNY_00008122	Protected Materials

Additionally, the Government is producing the following materials only to your client:

Description	Bates Numbers	Classification Pursuant to Protective Order
Materials produced by Equifax	SDNY_MT_00000001- SDNY_MT_00000015	
Materials produced by Experian	SDNY_MT_00000016- SDNY_MT_00000034	
BOP Emails for Michael Thomas	SDNY_MT_00000035	
Pre-trial services information for Michael Thomas	SDNY_MT_00000036- SDNY_MT_00000037	

³ Apple produces subscriber records in a read-only format. To review the records, open the file and when prompted for a password, click on “read only.”

8x10 photo	SDNY_MT_00000038	
Paystubs	SDNY_MT_00000039- SDNY_MT_00000064	
Arrest photo for Michael Thomas	SDNY_MT_00000065	
CLEAR record	SDNY_MT_00000066- SDNY_MT_00000171	
Phone report for Michael Thomas	SDNY_MT_00000172- SDNY_MT_00000176	

Without conceding that these materials constitute discoverable materials pursuant to Rule 16(a) or Jencks Act materials, the Government is producing the following materials out of an abundance of caution in order to assist with your trial preparation.

Description	Bates Numbers	Classification Pursuant to Protective Order
302s and notes for witnesses ⁴	SDNY_00007549- SDNY_00007660 & SDNY_00007666- SDNY_00008118	Protected Materials
Anonymized Index (Produced Under Separate Cover)	SDNY_00008123	Attorney's Eyes' Only

The Government recognizes its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The Government wishes to bring your attention to the following statements, which could constitute *Brady* material:

- Inmate-4 stated that on the night of August 9, 2019, the corrections officers performed “a few rounds that night” but Inmate-4 could not recall what time.
- Inmate-5 stated that Noel came by “around 10 to do the count” on the evening of August 9, 2019.
- Inmate-7 stated that on the evening of August 9, 2019, the corrections officers “did [a] count around 10ish but not after that.” Inmate-7 further stated that Inmate-7 was not really awake for the 3:00 a.m. count on August 10, 2019, “but hear[d] [the] gate open.”

⁴ This range excludes SDNY_00007661-SDNY_00007665, which the court has directed the Government to withhold.

- Inmate-11 stated that on the evening of August 9, 2019 into the morning of August 10, 2019, the “last check was made sometime between 12:30Am – 1:00AM. The male black stayed by the door and the female black walked through the tier but did not walk all the way in.”

In addition, materials from Inmate-2 include a statement which could constitute *Brady*, however, the Court has directed the Government to withhold these materials from production due to pending *ex parte* litigation. The Government will produce these materials if and when the Court orders their production. Beyond the above materials, to date, the Government is unaware of any other *Brady* material regarding your client, but will provide timely disclosure if any such material comes to light. The Government will provide material under *Giglio v. United States*, 405 U.S. 150, 154 (1972), and its progeny, to the extent it has not already been produced, in a timely manner prior to trial.

II. Materials Not Disclosed

In addition to the materials identified above, the Government is in possession of additional records that are not discovery materials under Rule 16(a). Nonetheless, in an abundance of caution, the Government is providing the following inventory of those materials that have not been produced:

- Financial records produced by Bank of America for accounts in the names of [REDACTED]
- Financial records produced by Citibank for accounts in the names of [REDACTED] and [REDACTED].
- Credit report records produced by Equifax in the names of [REDACTED]
- Financial records produced by JPMorgan Chase Bank for accounts in the names of [REDACTED]
- Financial records produced by Municipal Credit Union for accounts in the names of [REDACTED]
- Financial records produced by Navy Federal Credit Union for accounts in the names of [REDACTED]
- Financial records produced by TD Bank for accounts in the names of J [REDACTED], [REDACTED]
- Financial records produced by Wells Fargo Bank for an account in the name of [REDACTED]

If at any time you believe that any of the foregoing materials should be produced as Rule 16(a) materials, please promptly notify the Government.

III. Disclosure by the Defendant

In light of your request for the foregoing discovery, the Government hereby requests reciprocal discovery under Fed. R. Crim. P. 16(b). Specifically, we request that you allow inspection and copying of: (1) any books, or copies or portions thereof, which are in the defendant's possession, custody or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial; and (2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, which are in the defendant's possession or control, and which the defendant intends to introduce as evidence or otherwise rely on at trial or which were prepared by a witness whom the defendant intends to call at trial.

The Government also requests that the defendant disclose prior statements of witnesses he will call to testify. See Fed. R. Crim. P. 26.2; *United States v. Nobles*, 422 U.S. 225 (1975). We request that such material be provided on the same basis upon which we agree to supply the defendant with 3500 material relating to Government witnesses.

We also wish to remind you that Fed. R. Crim. P. 12.3(a) requires you to provide the Government with written notice if the defendant intends to claim a defense of actual or believed exercise of public authority on behalf of a law enforcement or Federal intelligence agency at the time of the alleged crime.

The Government requests a response to our Rule 12.3 demand within the time period allowed by the Court for the filing of motions.

IV. Sentence Reduction for Acceptance of Responsibility

Please contact us at your earliest convenience concerning the possible disposition of this matter or any further discovery which you may request. This Office will oppose the additional one-point reduction under the Sentencing Guidelines available for defendants who plead prior to the Government's initiation of trial preparations pursuant to U.S.S.G. § 3E1.1(b), in the event your client has not entered a plea of guilty four weeks prior to trial. We will follow this policy whether or not suppression or other pretrial motions remain outstanding after this date and even if the trial date has not been announced by the Court four weeks in advance of the trial.

Please be advised, however, that pursuant to the policy of the Office concerning plea offers, no plea offer is effective unless and until made in writing and signed by authorized representatives of the Office. In particular, discussions regarding the pretrial disposition of a matter that are not reduced to writing and signed by authorized representatives of the Office cannot and do not constitute a “formal offer” or a “plea offer,” as those terms are used in *Lafler v. Cooper*, 132 S.Ct. 1376 (2012); *Missouri v. Frye*, 132 S.Ct. 1399 (2012).

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: _____ /s/

Assistant United States Attorneys