



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

NEIL K. ANAND *et al.*,

Defendants.

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CRIMINAL NO. 19-518 (CFK)

**GOVERNMENT’S MOTION TO COMPEL THE PRODUCTION OF  
DISCOVERY FROM DEFENDANTS NEIL K. ANAND,  
ASIF KUNDI, ATIF MAHMOOD MALIK, AND VIKTORIYA MAKAROVA**

The United States of America, by and through its undersigned counsel, hereby files its Motion to Compel the Production of Discovery from Defendants Neil K. Anand, Asif Kundi, Atif Mahmood Malik, and Viktoriya Makarova.

WHEREFORE, for the reasons stated in the accompanying memorandum of law, the United States respectfully requests that the Government’s motion be granted, and the Court enter an order directing Defendants Neil K. Anand, Asif Kundi, Atif Mahmood Malik, and Viktoriya Makarova to provide all discovery to the Government under Federal Rules of Criminal Procedure 16(b) and 26.2 no later than forty-five (45) days before the commencement of trial.

Dated: July 15, 2024

Respectfully Submitted,

JACQUELINE C. ROMERO  
United States Attorney

GLENN S. LEON  
Chief  
Criminal Division, Fraud Section  
U.S. Department of Justice

By: /s/ Hyungjoo Han \_\_\_\_\_  
Paul J. Koob  
Patrick J. Campbell  
Hyungjoo Han  
Trial Attorneys  
Criminal Division, Fraud Section  
U.S. Department of Justice

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MEMORANDUM OF LAW IN SUPPORT OF THE GOVERNMENT'S  
MOTION TO COMPEL THE PRODUCTION OF DISCOVERY  
FROM DEFENDANTS NEIL K. ANAND, ASIF KUNDI,  
ATIF MAHMOOD MALIK, AND VIKTORIYA MAKAROVA

The United States hereby moves to compel Defendants Neil K. Anand, Asif Kundi, Atif Mahmood Malik, and Viktoriya Makarova (collectively, "Defendants") to produce discovery under Federal Rule of Criminal Procedure 16(b). Specifically, the Government seeks to inspect and copy: (1) any books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items that are in the Defendants' possession, custody, or control and which Defendants intend to use in their respective cases-in-chief at trial; and (2) any results or reports of any physical or mental examination and of any scientific test or experiment that is in Defendants' possession or control and which Defendants intend to use in their respective cases-in-chief at trial or which was prepared by a witness whom Defendants intend to call at trial. Pursuant to Federal Rule of Criminal Procedure 26.2, the Government also moves to compel Defendants to disclose prior statements of witnesses Defendants will call to testify at trial.

Federal Rule of Criminal Procedure 16(b) imposes reciprocal disclosure obligations on a defendant where the defendant has requested and received discovery from the Government under Rule 16(a). Once a defendant's discovery obligations are triggered under Rule 16(b), the defendant

must produce all substantive evidence that the defendant intends to introduce for non-impeachment purposes, whether or not such evidence is offered during cross-examination or during the defendant's case-in-chief after the Government rests. *See, e.g., United States v. Napout*, No. 15-252, 2017 WL 6375729, at \*7 (E.D.N.Y. Dec. 12, 2017) ("Rule 16 requires Defendants to identify all non-impeachment exhibits they intend to use in their defense at trial, whether [or not] the exhibits will be introduced through a government witness."); *United States v. Aiyaswamy*, No. 15-568, 2017 WL 1365228, at \*5 (N.D. Cal. Apr. 14, 2017) ("Defendant must disclose and produce substantive, non-impeachment evidence under Rule 16(b), whether . . . [to be] introduce[d] during cross-examination or after the Government rests."). Likewise, Rule 26.2 requires "the defendant and the defendant's attorney to produce . . . any statement of the witness that is in their possession and that relates to the subject matter of the witness's testimony." Fed. R. Crim. P. 26.2(a). Here, Defendants have made numerous discovery requests, and the Government has complied with its discovery obligations under Rule 16(a). The Government also has produced prior statements of witnesses the Government intends to call to testify at trial on a rolling basis and the Court has directed the Government to produce "all available *Jencks* material" by December 9, 2024, *see* D.E. 384 at 3.

Consistent with these Rules, on December 3, 2019, January 7, 2020, February 20, 2020, March 12, 2020, July 30, 2020, December 12, 2022, July 12, 2023, October 18, 2023, and April 2, 2024, the Government included in the letter accompanying the Government's production of discovery to each Defendant a request for "reciprocal discovery under Rule 16(b) of the Federal Rules of Criminal Procedure and reciprocal disclosure of Jencks materials under Rule 26.2 and United States v. Nobles, 422 U.S. 225 (1975)." With the exception of Defendant Anand, who previously disclosed his purported experts under Rule 16(b)(1)(C), to date, the Government has

not received any reciprocal discovery from any of the Defendants. When a defendant requests and receives discovery, the prosecution's reciprocal discovery request must be granted. *See, e.g., United States v. Totoro*, Criminal Action No. 15-291, 2017 WL 3189216, at \*11-12 (E.D. Pa. July 27, 2017) (holding that "Rule 16(b) provides for reciprocal discovery—when a defendant requests disclosure from the government, the government may make a similar demand of the defendant"—and that a defendant "may not simply 'reserve the right' to introduce evidence at trial while flouting Rule 16(b)'s reciprocal discovery provisions").

An order directing Defendants to provide all discovery to the Government under Rules 16(b) and 26.2 is necessary to ensure Defendants' compliance with their discovery obligations and to protect against the possibility of any further delays in this matter caused by Defendants' last-minute disclosures on the eve of trial, or even *during* trial. This concern is particularly relevant since the Government understands that defendant Anand intends to admit documents in his defense during trial. For example, Anand was interviewed during a May 31, 2024, episode of "The Daily Remedy" podcast. *See* The Daily Remedy, "Talking with Dr. Neil Anand" premiered on May 31, 2024, <https://www.youtube.com/watch?v=fovP2jWlls> (accessed on July 11, 2024). During the interview, defendant Anand stated that he submitted requests under the Freedom of Information Act ("FOIA") for documents to defend against the criminal charges against him in this case. *See id.* at 6:45 ("You know for me, because I have an ongoing criminal case, you know I have higher priority because, you know, you're supposed to be innocent until proven guilty and you have a higher ability to obtain those documents. So I'm using my criminal case, as you know, because I need these documents for my liberty, I have a liberty interest."). Defendant Anand also stated that he submitted the FOIA requests to obtain information about the methodologies used by the Government in prosecuting health care fraud matters as a means of defending against the criminal

charges against him. Defendant Anand has yet to provide any of this discovery to the Government in compliance with his disclosure obligations.

WHEREFORE, the United States respectfully requests that the Court grant its Motion to Compel the Production of Discovery from Defendants Neil K. Anand, Asif Kundi, Atif Mahmood Malik, and Viktoriya Makarova and to enter an order directing Defendants to provide all discovery to the Government under Federal Rules of Criminal Procedure 16(b) and 26.2 no later than forty-five (45) days before the commencement of trial.

Dated: July 15, 2024

Respectfully Submitted,

JACQUELINE C. ROMERO  
United States Attorney

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Chief  
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Paul J. Koob  
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Trial Attorneys  
Criminal Division, Fraud Section  
U.S. Department of Justice

**CERTIFICATE OF SERVICE**

The undersigned counsel represents that the foregoing filing was served on all counsel of record pursuant to the Court's electronic filing system.

Dated: July 15, 2024

By: /s/ Hyungjoo Han  
Hyungjoo Han  
Trial Attorney  
Criminal Division, Fraud Section  
U.S. Department of Justice