

FILED
Clerk
District Court

APR 22 2021

for the Northern Mariana Islands
By 
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 SERVILLANA SORIANO and HALIM KHAN,

7 Defendants.

Criminal Case No. 1:20-cr-00007

**AMENDED MEMORANDUM
DECISION DENYING DEFENDANTS'
MOTION IN LIMINE¹**

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9 On March 2, 2021, Defendants Servillana Soriano and Halim Khan (collectively “Defendants”) filed their motions in limine to exclude testimony of the Government’s proposed expert witness. (ECF Nos. 72, 73.) The Government filed its Opposition (ECF Nos. 79, 80), to which Defendants replied (ECF Nos. 83, 84). The Court held a hearing on the matter on March 30, 2021 (ECF No. 89). Having reviewed the filings, considered the applicable law, and hearing arguments from counsel, the Court denied Defendants’ motions in limine. The Court sets forth its reasoning below.

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15 **I. FACTUAL BACKGROUND**

16 Each Defendant is charged by a Second Superseding Indictment with one count of Conspiracy to Defraud the United States in violation of 18 U.S.C. § 371. (ECF Nos. 85, 87.) The indictment alleges that between August 1, 2018 and February 11, 2019, the two Defendants conspired with at least two other known individuals to defraud the United States by obstructing the functions of U.S. Citizenship

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22 ¹ The amendment is to address the Government’s motion for clarification regarding the instructions in this Decision. (See ECF No. 103.) The Court clarifies its decision in footnote 2.

1 and Immigration Services (“USCIS”) “in the fair and objective evaluation of petitions to classify aliens
2 as CW-1 workers.” (Second Superseding Indictment, ECF Nos. 85 at 2, 87 at 2.) To do this, the
3 Government alleges that a company, RES International, LLC, would submit CW-1 classification
4 petitions “that would falsely and fraudulently represent that an employer-employee relationship would
5 exist between RES and its beneficiaries under the employment terms set forth in the petition.” (ECF
6 Nos. 85 at 2, 87 at 2.) Defendants pleaded not guilty to the charged offense and a jury trial is scheduled
7 for June 29, 2021 for both. (Mins., ECF No. 89, 100.)

8 In December 2020, the Government sent its notice to Defendants that it would be calling
9 USCIS Immigration Services Officer III Monica Verma (“Officer Verma”) as an expert witness.
10 (Gov’t Notice, ECF Nos. 72-1, 73-1.) The Government’s notice revealed that Officer Verma “is
11 expected to provide testimony regarding the procedures and requirements for CW-1 visas.” (ECF Nos.
12 72-1 at 1, 73-1 at 1.) Specifically, Officer Verma was expected to testify as to the “paperwork involved
13 in submitting” a CW-1 visa application, the importance of supporting employment documentation in
14 the “CW-1 approval process,” “the meaning of various terms and acronyms associated with” the
15 process, “the criteria in analyzing eligibility for a “CW-1 visa,” the “proof requirements” to qualify
16 for a “CW-1 visa,” and the “circumstances” USCIS adjudicators may request additional evidence from
17 applicants. (ECF Nos. 72-1 at 1, 73-1 at 1.) The Government also stated that Officer Verma’s expert
18 testimony would be based on her training and experience (ECF Nos. 72-1 at 2, 72-3 at 2); Officer
19 Verma’s *curriculum vitae* was provided (ECF Nos. 72-2, 72-3) as well as a transcript of proceedings
20 from a previous trial at which Officer Verma testified on similar matters. (ECF Nos. 72-3, 73-3.)
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23 Defendants filed their motions in limine to exclude or limit the expert testimony based on
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1 inadequate notice as required by Rule 16 of the Federal Rules of Criminal Procedure and based on the
2 Federal Rules of Evidence.

3 The Government filed its Opposition (ECF Nos. 79, 80), supported by a supplemental notice
4 to Defendants. (ECF Nos. 79-1, 80-1.) The notice read: “As you are aware, the Government initially
5 provided notice identifying [Officer] Verma as a proposed expert witness” in December 2020. (ECF
6 Nos. 79-1 at 1, 80-1 at 1.) “At that time, the Government identified the general topics that would be
7 the subject of her expert testimony[.]” (ECF Nos. 79-1 at 1, 80-1 at 1.) “The purpose of this letter is
8 to augment the Government’s disclosure by providing a summary of Ms. Verma’s factual testimony,
9 her expert testimony, and additional details regarding the bases and reasons for her opinions.” (ECF
10 Nos. 79-1 at 1, 80-1 at 1.) An email exchange between Officer Verma and the Government was also
11 included as an attachment. (ECF Nos. 79-2, 80-2.) Both Defendants filed their reply arguing that the
12 additional notice and information do not cure the deficiencies. (ECF Nos. 83, 84.)
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14 II. LEGAL STANDARD

15 Although courts may preliminarily rule on the admissibility of evidence before trial, “evidence
16 shall be excluded in limine only when it is shown that the evidence is ‘inadmissible on all potential
17 grounds.’” *Speaks v. Mazda Motor Corp.*, 118 F. Supp. 3d 1212, 1217 (D. Mont. 2015) (citation
18 omitted). If the moving party is unable to meet this “high standard,” courts should defer ruling on the
19 matter “so that questions of foundation, relevancy and potential prejudice” are “resolved in proper
20 context.” *Id.* (internal quotation marks omitted). “This is because although rulings on motions in limine
21 may save time, costs, effort and preparation, a court is almost always better situated during the actual
22 trial to assess the value and utility of evidence.” *Id.* (internal quotation marks omitted). Nevertheless,
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1 where a court submits a provisional ruling, it may “always change [its] mind during the course of
2 trial.” *Id.* (internal quotation marks omitted).

3 Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure provides that where a defendant
4 so requests, “the government must give to the defendant a written summary of any testimony that the
5 government intends to use under Rules 702, 703, or 705 of the Federal Rules of Evidence during its
6 case-in-chief at trial. . . . The summary provided . . . must describe the witness’s opinions, the bases
7 and reasons for those opinions, and the witness’s qualifications.” This aids in ““minimiz[ing] surprise
8 from the unexpected expert testimony and to provide Defendant with a fair opportunity to test the
9 merits of the expert’s testimony through focused cross-examination.”” *United States v. Babichenko*,
10 2021 WL 780902, at *2 (D. Idaho Mar. 1, 2021) (quoting *United States v. Baras*, 2014 WL 129606,
11 at *3 (N.D. Cal. Jan. 14, 2014)). Where the Government fails to comply with Rule 16, ““the district
12 court may order disclosure, grant a continuance, prohibit the government from offering the evidence
13 at trial, or grant whatever relief the district court deems just under the circumstances.”” *Id.* (quoting
14 *United States v. Mendoza*, 244 F.3d 1037, 1046 (9th Cir. 2001)). But, it is recommended that courts
15 not impose ““a sanction harsher than necessary to accomplish the goals of Rule 16.”” *Id.* (quoting
16 *United States v. Gee*, 695 F.2d 1165, 1169 (9th Cir. 1983)).

18 III. DISCUSSION

19 Defendants maintain that the Government’s second Rule 16 notice of Officer Verma’s
20 proposed expert testimony is inadequate, especially given the complexity of immigration law. The
21 Government argues that Officer Verma’s testimony is really, for all intents and purposes, a means for
22 the jury to have a better understanding on the CW-1 application process. In other words, the notice
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1 functions as a precautionary measure in the event her testimony needed to be converted to expert
2 testimony. At the hearing, the Government conceded it would be willing to amend its notice. It also
3 informed the Court that if Officer Verma did not have a basis for particular opinions, the Government
4 would withdraw its intent to elicit testimony on those subjects.

5 With the advent of technology and increased dependency on expert testimony, the Advisory
6 Committee for the Federal Rules of Criminal Procedure acknowledged the developing need for access
7 to discovery for a proposed expert's testimony. *See* Fed. R. Crim. P. 16 advisory committee's note to
8 1993 amendment ("With increased use of both scientific and nonscientific expert testimony, one of
9 counsel's most basic discovery needs is to learn that an expert is expected to testify."). As a result,
10 amendments were implemented in 1993, and although these did not extend to lay witness testimony
11 under Federal Rule of Evidence 701, Rule 16 was amended for parties' greater access to expert witness
12 discovery.
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14 Today, Rule 16 mandates the Government to provide a summary of the proposed expert
15 witness's testimony. That summary must include at least three critical components : (1) the witness's
16 opinions, (2) the bases and reasons for those opinions, and (3) the witness's qualifications. Fed. R.
17 Crim. P. 16(a)(1)(G). The expert's opinion must be explicit—not a list of general topics or subject
18 matters. *See United States v. Duvall*, 272 F.3d 825, 828-29 (7th Cir. 2001) (describing that "the manner
19 in which meth is distributed" in a Government notice "does not in any way identify the particular
20 opinion that [the expert] offered at trial"); *United States v. Francis*, 2009 WL 1444930, at *2 (C.D.
21 Cal. May 20, 2009) (finding that the Government's notice sufficiently stated the expert witness's
22 opinions). Supporting documents may supplement an expert's "bases and reasons" for their opinion.
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1 See *United States v. Naegele*, 468 F. Supp. 2d 175, 176-77 (D.D.C. 2007) (failing to provide any
2 documents supporting a laboratory report does not establish the “bases and reasons” for the expert’s
3 opinion). Nevertheless, while providing detailed information is judicious, “[t]he Ninth Circuit has
4 observed that ‘minimal notice’ is required under Rule 16.” *Babichenko*, 2021 WL 780902, at *2 (citing
5 *United States v. Jimenez*, 525 Fed. App’x 565, 567 (9th Cir. 2013)) (emphasis added). Thus, “Rule
6 16(a)(1)(G) does not require a chapter-and-verse recitation of the expert’s opinion, bases, and
7 reasons.” *Id.* at *5.

8 In some circumstances, the information required in a Rule 16 notice need not be re-introduced
9 if earlier or other filings have already included such information. In *United States v. Illegbameh*, the
10 defendant argued that he did not receive adequate notice of the expert witness’s proposed testimony
11 per Rule 16. 2013 WL 12171602, at *2 (C.D. Cal. Nov. 13, 2013). Similar to here, the proposed expert
12 would testify as a USCIS immigration officer on background related to processing immigration
13 applications. At the initiation of *Illegbameh*, the immigration officer provided a description of the
14 immigration system and his opinions in the Government’s Complaint. *Id.* The Government also
15 provided defendant with the officer’s previous testimony in a case involving similar charges, and his
16 resume. *Id.* Thus, the court disagreed with the defendant and instead concluded that the Government
17 provided sufficient notice of the officer’s anticipated testimony pursuant to Rule 16(a)(1)(G). *Id.*

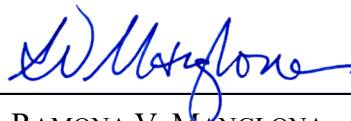
18 Here, the Government’s disclosure of its proposed questions to the expert witness, taken
19 together with the previously provided transcript of her testimony from the prior criminal trial, cures
20 only part of the problem. At the March 30 hearing, the Government conceded it was willing to produce
21 a copy of relevant documents informing Defendants on the instructions in effect at the time the relevant
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1 CW-1 petitions were submitted. These, in conjunction with the exhibits provided at the March 30
2 hearing bolsters the Government's Rule 16 notice. (*See* ECF Nos. 89-1.) Absent these documents, the
3 Government would need to provide more specificity on Officer Verma's opinion and include her bases
4 and reasons for determining so. Given the Government's willingness to remedy the deficiencies by
5 providing a more particularized notice with additional supporting information, the Court will deny
6 Defendants' motions in limine. This ruling shall be provisional, and the parties are reminded that the
7 Court may modify its decision at trial.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court DENIES Defendants' motions in limine, and the
10 Government is ORDERED to amend and supplement its notices with more sufficient detail on Officer
11 Verma's expert opinion to meet the standards of Rule 16(a)(1)(G) of the Federal Rules of Criminal
12 Procedure.²

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14 IT IS SO ORDERED this 22nd day of April, 2021.

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17 RAMONA V. MIANGLONA
18 Chief Judge

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20 ² Subsequent to the hearing held on March 30, 2021, the Government filed its Notices Regarding Supplementary Expert
21 Witness Disclosures in response to the Court's oral ruling at that hearing. (ECF Nos. 94, 96.) This Memorandum Decision
22 is only intended to provide the Court's reasons for the ruling made at that March 30 hearing. The Government's
23 supplementary information does provide more detail on Officer Verma's anticipated expert testimony. Thus, the Court
24 finds that the notices and other documents collectively satisfy Rule 16's mandates. Any further objections Defendants may
have concerning that testimony may be entertained by the Court at trial.