UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, v. KEITH MITSUYOSHI KANESHIRO (1), DENNIS KUNIYUKI MITSUNAGA (2), TERRI ANN OTANI (3), AARON SHUNICHI FUJII (4), CHAD MICHAEL MCDONALD (5), SHERI JEAN TANAKA (6), Defendants.	Case No. 1:22-cr-00048-TMB-NC ORDER ON DEFENDANTS TANAKA, MITSUNAGA, OTANI, FUJII & MCDONALD'S MOTION TO COMPEL DISCOVERY **(Dkt. 669)**

I. INTRODUCTION

Before the Court is Defendants Dennis Kuniyuki Mitsunaga, Terry Ann Otani, Aaron Shunichi Fujii, Chad Michael McDonald, and Sheri Jean Tanaka's (collectively, "Defendants") Motion to Compel Discovery (the "Motion to Compel").[1] Defendants seek to "compel[] the government to produce requested discovery relating principally to government witnesses JoAnn Aurello and Rudy Alivado" and "to other individuals on the government's witness list."[2] The United States opposes the Motion to Compel.[3] The matter

[1] Dkt. 669 (Defendant Tanaka, Mitsunaga, Otani, Fujii and McDonald's Motion to Compel Discovery).
[2] *Id.* at 2.
[3] Dkt. 681 (United States' Redacted Response in Opposition); Dkt. 686 (United States' Sealed Unredacted Response in Opposition).

is fully briefed. For the following reasons, the Court **DENIES as moot in part and DENIES in part** the Defendants' Motion to Compel.

II. BACKGROUND

Given the voluminous litigation in this matter, the Court assumes the Parties are familiar with the factual and procedural history of the case. The Court incorporates by reference the factual and procedural history included in its Order at Docket 484.

Relevant here, on March 27, 2024, the United States interviewed JoAnn Aurello ("Aurello"), a witness in this case.[4] During this interview, Aurello newly alleged that she had a previously unknown encounter with Defendant Sheri Jean Tanaka ("Tanaka") before Aurello's appearance before the grand jury investigating this case ("Aurello-Tanaka Encounter").[5] After this interview, the Federal Bureau of Investigations ("FBI") prepared a 302 Report ("FBI Report") and the United States disclosed the FBI Report and sent a notice letter to Defendants on March 28, 2024, regarding Aurello's new allegation.[6]

On April 2, 2024, Tanaka through counsel sent an email requesting the United States provide her with a copy of Aurello's grand jury subpoena and to "identify (1) the date that the FBI first contacted her about it; and (2) the date it was actually served on her, together with any supporting documents."[7]

[4] Dkt. 612 (United States' Motion *in Limine* No. 12) at 5.
[5] *Id.* at 2–3.
[6] *Id.* at 3, 5; Dkt. 669 at 3.
[7] Dkt. 669 at 3 (quoting Dkt. 669 at 11 (Cowan Email)).

On April 12, 2024, the United States responded with a letter via email disclosing: (1) a chart of telephone calls to and from Aurello;[8] (2) that on July 22, 2021, the FBI left three grand jury subpoenas in the residential mailboxes for Aurello, Rodney Aurello, and Jodee Haugh; and (3) that on July 26, 2021, Aurello and Rodney Aurello were emailed grand jury subpoenas.[9] Defendants note that the materials revealed at least eight telephone contacts and several email communications between the FBI and Aurello, but that the United States has not produced 302 reports, agent notes, the email communications, or the names of the FBI agents involved.[10]

On April 13, 2024, Tanaka's counsel sent a letter to the United States requesting its immediate production of: documents relating to Aurello's service efforts; FBI Reports for each of the phone and email contacts with Aurello; agent notes for these contacts; any email responses from Aurello, Rodney Aurello, and Jodee Haugh; and any FBI Reports, agent notes, and email correspondence from contacts with other witnesses for the United States or their counsel.[11] Counsel further requested a transcript of a sealed hearing relating to the United States' Motion to Compel witness Rudy Alivado's ("Alivado") grand jury testimony under the Jencks Act,[12] *Brady v. Maryland*,[13] and *Giglio v. United States*.[14]

[8] *See id.* at 16–19 (Phone Chart).
[9] *Id.* at 4; *id.* at 13–14 (Wheat Letter).
[10] *Id.* at 4–5.
[11] *Id.* at 21–22 (Mermelstein Letter).
[12] 18 U.S.C. § 3500 *et seq*.
[13] 373 U.S. 83 (1963).
[14] 405 U.S. 150 (1972); *see* Dkt. 669 at 22.

Counsel requested the United States produce these documents by April 15, 2024, or Defendants would file a corresponding motion to compel.[15]

A. Defendants' Motion to Compel

On April 15, 2024, Defendants filed a Motion to Compel requesting "discovery that is essential for the cross-examination of Ms. Aurello and Mr. Alivado."[16] Specifically, Defendants request the following documents be produced "at least seven calendar days before it calls witnesses Aurello or Alivado to the stand":

1. All reports relating to any telephonic or email contact the government has had with JoAnn Aurello, Rudy Alivado, and any other government witness;

2. All agent notes relating to any telephonic or email contact the government has had with JoAnn Aurello, Rudy Alivado, and any other government witness;

3. The names of each FBI agent who had telephonic or email contact with these witnesses;

4. Copies of all emails sent to any government witness, or received by the government from any such witness;

5. The transcript of the sealed hearing related to the government's motion to compel the grand jury testimony of Rudy Alivado; and

6. Copies of all grand jury subpoenas served on JoAnn Aurello and any other government witness.[17]

[15] Dkt. 669 at 22.
[16] *Id.* at 2.
[17] *Id.* at 8–9.

Pointing to the United States' intent to call Aurello and Alivado to testify,[18] Defendants argue these materials are "essential for the defense to prepare fulsome and effective cross-examinations of these significant witnesses" because the materials are "likely impeaching and . . . may even be exculpatory," and that the United States is obligated to disclose them under *Brady*, *Giglio*, and the Jencks Act.[19]

Related to Aurello's requested discovery, Defendants argue that "Aurello's grand jury subpoenas, the precise timing of their service upon her, and the details of any telephonic or email contacts that she had with the FBI[] are critical impeachment materials that the government is required to produce."[20] They contend that these documents are "material," "specific," and "relevant to [Aurello's] cross-examination," but they decline to provide additional details to protect litigation strategy, and offer to "provide these details to the Court in an *in camera* filing if so requested."[21] They further submit, without citing to legal authority, that "the materiality requirement applies only to grand jury materials, but here the defense has also requested non-grand jury materials, specifically information related to the substance of all government telephone and email communications with its witnesses."[22] The disclosure of these documents is also not precluded, Defendants argue,

[18] *Id.*; *see* Dkt. 612; Dkt. 662 (United States' Emergency Motion for Enforcement of the Protective Order).
[19] Dkt. 669 at 2–3.
[20] *Id.* at 5 (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154–55 (1972); *United States v. Hanna*, 55 F.3d 1456, 1459 (9th Cir. 1995); *United States v. Sedaghaty*, 728 F.3d 885, 902 (9th Cir. 2013)).
[21] *Id.* at 6.
[22] *Id.* at 6–7.

by Judge Seabright's prior order denying a defense request for grand jury subpoenas[23] because that denial arose in response to Defendants' attempt to establish prosecutorial misconduct, whereas here, Defendants seek the requested materials for a "very different purpose: cross-examination of [Aurello], [Alivado], and other witnesses who received grand jury subpoenas."[24]

Related to Alivado's requested discovery, Defendants argue it is "similarly critical for an effective cross-examination" because his prior statements at the motion to compel hearing could be "impeachment material."[25] Defendants note that "it appears [Alivado] was not represented by counsel at the time, and it is therefore likely that he made statements to the presiding judge, which . . . constitute *Jencks* material."[26] Thus, Defendants assert, allowing "the government to be privy to this information and call [Alivado] as a witness while keeping the defense in the dark" would violate due process.[27]

B. United States' Response in Opposition

Opposing Defendants' Motion to Compel, the United States argues that "none of the categories of information sought are material to the defense[,] [n]or are they *Brady* or *Giglio* material."[28] Rather, the United States contends, the "Defendants' motion fails to

[23] Dkt. 260 (Motion Hearing).
[24] Dkt. 669 at 7.
[25] *Id.* at 7–8.
[26] *Id.* at 5.
[27] *Id.* at 8.
[28] Dkt. 681 at 9.

explain the linkage between their requested discovery and any relevant facts they believe their requested discovery would prove or disprove."[29]

Regarding Defendants' first request for FBI Reports related to Aurello's[30] grand jury subpoena, the United States argues it is "untethered to any discovery rule" and "not supported by [Federal Rule of Criminal Procedure ("Rule")] 16, *Brady, Giglio,* or the Jencks Act."[31] United States notes it "has no obligation to report every time it has a contact with a witness, . . . much less produce any such reports to the defense," and that, moreover, "Defendants have made no showing of materiality for their request" and instead "try to simply erase [Rule 16's materiality requirement]."[32] Nonetheless, the United States indicates that, by April 16, 2024 (the date of filing), it "will provide [to Defendants] the subpoenas, reports, and associated documents demonstrating the efforts to serve [Aurello] and her family," which it expects will "moot the core of the defense motion."[33]

Regarding Defendants' second request for FBI agent notes, the United States argues that this request also "is not countenanced by any discovery rule" and that agent notes "are not usually discoverable under the Jencks Act."[34] Further, the United States observes that

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[29] *Id.* at 10.
[30] Although the United States redacted Aurello's and family members' names in the redacted version of its Response in Opposition, the Defendants named JoAnn Aurello, Rodney Aurello, and Jodee Haugh in their publicly filed Motion to Compel. *See* Dkt. 669; Dkt. 681; Dkt. 686. The Court therefore proceeds without name redactions for this Order.
[31] Dkt. 681 at 10.
[32] *Id.*
[33] *Id.* at 2, 11.
[34] *Id.* at 11 (citing *United States v. Griffin*, 659 F.2d 932, 937 (9th Cir. 1981); *United States v. Bobadilla-Lopez*, 954 F.2d 519, 522 (9th Cir. 1992); *United States v. Spencer*, 618 F.2d 605, 606 (9th Cir. 1980); *United States v. Michaels*, 796 F.2d 1112, 1116 (9th Cir. 1986)).

"it is not the FBI's practice to create reports each time they have contact with a possible witness."[35] Thus, it asserts that Defendants' request for documentation of "every time any agent potentially [made notes] in relation to *any* interaction with *any* witness" should be denied.[36]

Regarding Defendants' third request for the names of FBI agents, the United States notes Defendants do not offer legal authority for this "immaterial request" and that it constitutes an effective "civil interrogatory . . . which is not permitted under the [Criminal Rules]."[37] Regardless, the United States indicates the documents it will produce by the date of filing will contain the names of FBI agents relevant to Aurello's service of her grand jury subpoena and observes that her own prior grand jury testimony identifies the agent with whom she conferred over the phone.[38] Thus, the United States maintains "the defense has been provided the information they seek."[39]

Regarding Defendants' fourth request for all emails to and from "any government witness," the United States argues "[t]his request lacks materiality and is a classic fishing expedition" and "is not supported by the criminal discovery rules."[40]

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[35] *Id.* at 12 n.3.
[36] *Id.* at 11–12.
[37] *Id.* at 12.
[38] *Id.*
[39] *Id.*
[40] *Id.* at 13 (citing *United States v. Bagley*, 473 U.S. 667, 674 (1985); *United States v. Salyer*, 271 F.R.D. 148, 179 (E.D. Cal. 2010), *opinion adhered to as modified on reconsideration*, No. CR. S-10-0061 LKK (G, 2010 WL 3036444 (E.D. Cal. Aug. 2, 2010))).

Regarding Defendants' fifth request for Rudy Alivado's sealed hearing transcript, the United States clarifies that "[it] does not have a transcript of Alivado's motion to compel [hearing]," and moreover, Defendants could have taken steps to obtain the transcript independently in the two years since they became aware of the hearing.[41] It further asserts that Defendants' suggestion that Alivado provided material testimony during that hearing is "pure speculation."[42]

Regarding Defendants' sixth request for copies of all grand jury subpoenas, the United States argues Defendants offer no factual or legal authority to support this request and that the United States has already "produced the fruits of the grand jury subpoenas, including records obtained and testimony secured."[43] Nonetheless, the United States indicates that it will produce the subpoenas for the Aurellos.[44]

Regarding Defendants' request that the United States produce these materials "at least seven calendar days before it calls witnesses [Aurello] or Alivado to the stand," the United States contends this is a tactic to "delay trial and cause further disjointed presentation of the United States' evidence."[45] It observes that "the witnesses Defendants seek to delay are the very witnesses whose testimony they have previously attempted to wrongfully influence."[46] It further notes that, although the anticipated testimony from

[41] *Id.* at 13.
[42] *Id.*
[43] *Id.* at 14.
[44] *Id.*
[45] *Id.* at 14–15 (quoting Dkt. 669 at 9).
[46] *Id.* at 15.

Aurello and Alivado may have substantial bearing on alleged "wrongful[] influenc[ing]" of witnesses, the discovery related to Aurello is "scant and insignificant." Moreover, the United States observes that it has produced Aurello's Jencks statements and Alivado's grand jury testimony and additional interview statements.[47] Although it expects it may have "additional discovery to produce pertaining to Alivado," it indicates it "will continue to comply with its statutory and constitutional discovery obligations."[48]

III. LEGAL STANDARD

A. Motions to Compel

Rule 16 provides that a defendant is entitled to evidence that is material to the preparation of their defense.[49] "A defendant must make a threshold showing of materiality, which requires a presentation of facts which would tend to show that the Government is in possession of information helpful to the defense."[50] Yet "[m]ateriality is a low threshold."[51] Information that is helpful to the defense can include evidence that "simply causes a defendant to 'completely abandon' a planned defense."[52] But "[n]either a general description of the information sought nor conclusory allegations of materiality suffice."[53]

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[47] *Id.*
[48] *Id.*
[49] Fed. R. Crim. P. 16(a)(1)(E).
[50] *United States v. Stever*, 603 F.3d 747, 752 (9th Cir. 2010) (quoting *United States v. Santiago,* 46 F.3d 885, 894 (9th Cir. 1995)).
[51] *United States v. Hernandez-Meza*, 720 F.3d 760, 768 (9th Cir. 2013) (citing *United States v. Doe*, 705 F.3d 1134, 1151 (9th Cir. 2013)).
[52] *Id.*
[53] *United States v. Mandel*, 914 F.2d 1215, 1219 (9th Cir. 1990).

Under *Brady v. Maryland*,[54] the government "may not suppress exculpatory evidence that is material to the issue of guilt or punishment."[55] "[W]here a general request for exculpatory evidence is made, "the test for materiality is whether the suppressed evidence 'creates a reasonable doubt that did not otherwise exist.'"[56]

B. Discovery Obligations

Under *Brady v. Maryland*,[57] the United States Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."[58] *Giglio v. United States*[59] extended this disclosure obligation to evidence relevant to the credibility of a witness where such credibility is "an important issue in the case."[60]

Further, under the Jencks Act,[61] after direct examination of a witness, "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.[62] The Jencks Act defines "statement" as:

1. a written statement made by said witness and signed or otherwise adopted or approved by him;

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[54] 373 U.S. 83 (1963).
[55] *United States v. Little*, 753 F.2d 1420, 1440–41 (9th Cir. 1984) (citing *Brady,* 373 U.S. at 87).
[56] *Id.* (quoting *United States v. Gardner*, 611 F.2d 770, 774 (9th Cir.1980)).
[57] 373 U.S. 83 (1963).
[58] *Id.* at 87.
[59] 405 U.S. 150 (1972).
[60] *Id.* at 154–55.
[61] 18 U.S.C. § 3500.
[62] 18 U.S.C. § 3500(b).

2. a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

3. a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.[63]

IV. DISCUSSION

A. The Defendants' Motion to Compel is DENIED as moot in part and DENIED in part, such that Defendants' request to compel materials related to Aurello's grand jury subpoena is mooted, and Defendants' remaining requests to compel are denied.

The Court finds that, to the extent the United States has now provided Defendants with requested materials regarding Aurello's grand jury subpoena and related information as indicated in their Response,[64] this portion of the Defendants' Motion to Compel is mooted. Regarding Defendants' remaining requests, the Court finds that Defendants have not established at this time that these materials are either material to the defense or are *Brady* or *Giglio* materials subject to disclosure.

1. Defendants' requests for the FBI reports, FBI agent names, grand jury subpoenas, and associated documentation related to service of Aurello, Rodney Aurello, and Jodee Haugh are denied as moot.

The United States indicated to the Court that it would provide Defendants with a list of documents related to service of the grand jury subpoenas for Aurello, Rodney Aurello, and Jodee Haugh, including initial and updated grand jury subpoenas, FBI reports, proof

[63] 18 U.S.C. § 3500(e).
[64] Dkt. 681 at 11–12, 14.

of service forms, and emails documenting time of service and FBI agent names, by April 16, 2024.[65] Thus, the Court finds this portion of Defendants' Motion to Compel moot. Further, noting that Defendants have now had these documents in their possession for seven days,[66] and that Joann Aurello has not yet been called to testify, the Court finds that Defendants have had a reasonable time to prepare for her cross-examination. For these reasons, the Court also declines Defendants' offer to review *in camera* filings to determine how such documents are "material," "specific," and "relevant to [Aurello's] cross-examination."[67] Thus, the Court DENIES as moot this portion of Defendants' Motion to Compel.

2. Defendants' request for the motion to compel Alivado's grand jury testimony hearing transcript is denied.

The United States indicated to the Court that it does not have a transcript of the sealed hearing related to the United States' motion to compel the grand jury testimony of Rudy Alivado to produce to Defendants.[68] Moreover, the Court notes that, given the hearing at issue occurred in 2022 and is a matter of public record, the Defendants could have taken affirmative steps to obtain it. Thus, this portion of Defendants' Motion to Compel is DENIED.

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[65] *Id.* at 11.
[66] The Court notes this is in line with Defendants' request that the United States produce these requested materials "at least seven calendar days" before Aurello is called to provide testimony to ensure Defendants have sufficient "time to review the materials and prepare corresponding cross-examination." Dkt. 669 at 5, 9.
[67] *Id.* at 6.
[68] Dkt. 681 at 13, 15.

3. Defendants' general requests for reports, agent notes, FBI names, and emails related to any telegraphic or email contact between the United States and Alivado, and his grand jury subpoena, are denied.

At this time, the Court is not persuaded that Defendants have established that "[a]ll reports" and "[a]ll agent notes" "relating to any telephonic or email contact the government has had with . . . Rudy Alivado," "the names of each FBI agent who had telephone or email contact with [him]," "emails sent to . . . or received by [Alivado]," and "all grand jury subpoenas served on [him]" are material to the defense.[69] First, the Court disagrees with Defendants' assertion that "the materiality requirement applies only to grand jury materials."[70] The plain language of Rule 16(a)(1)(E), referring generally to "[d]ocuments and objects," states that:

> Upon a defendants' request, the government must permit the defendant to inspect and to copy or photograph *books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items*, if the item is within the government's possession, custody, or control and:
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> (i) the item is material to preparing the defense;
> (ii) the government intends to use the item in its case-in-chief at trial; or
> (iii) the item was obtained from or belongs to the defendant.[71]

[69] Dkt. 669 at 8.
[70] *Id.* at 6.
[71] Fed. R. Crim. P. 16(a)(1)(E) (emphasis added); *see United States v. Soto-Zuniga*, 837 F.3d 992, 1000 (9th Cir. 2016) ("Under Federal Rule of Criminal Procedure 16(a)(1)(E), the government is required to produce, *inter alia*, *documents or data* 'if the item is within the government's possession, custody, or control and . . . the item is material to preparing the defense.'" (second emphasis added)).

Second, although "[m]ateriality is a low threshold,"[72] neither "general description[s] of the information sought nor conclusory allegations of materiality suffice."[73] Defendants have pointed to the United States' assertion "that Alivado 'will be a damaging witness to the defense,'"[74] but they have not explained how each of these materials "would tend to show that the [United States] is in possession of information helpful to the defense."[75]

Further, the Court is not convinced that such materials are subject to disclosure under *Brady* or *Giglio* at this time. While Defendants obliquely suggest the requested documents are "impeachment materials," they do not explain how such materials would serve to impeach Alivado's credibility or are otherwise "material and favorable to the defense" such as to require their disclosure.[76] Nor is the Court convinced that the Jencks Act requires the disclosure of documentation of every interaction the FBI has with a witness.[77] Moreover, the United States has indicated that it has produced Alivado's grand jury testimony and "several additional interview statements" pursuant to its discovery obligations.[78] Therefore, at this time, the Court is not persuaded that the Defendants have

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[72] *United States v. Hernandez-Meza*, 720 F.3d 760, 768 (9th Cir. 2013) (citing *United States v. Doe*, 705 F.3d 1134, 1151 (9th Cir. 2013)).
[73] *United States v. Mandel*, 914 F.2d 1215, 1219 (9th Cir. 1990); *see also United States v. Wong*, 886 F.2d 252, 256 (9th Cir. 1989) ("The mere suspicion that information will prove helpful is insufficient to require disclosure.").
[74] Dkt. 669 at 2 (citing Dkt. 662).
[75] *Doe*, 705 F.3d at 1150; *United States v. Michaels*, 796 F.2d 1112, 1116 (9th Cir. 1986) ("[M]ere speculation about materials in the government's files does not require the district court under *Brady* to make the materials available for Defendants' inspection.").
[76] Dkt. 669 at 9; *Woods v. Sinclair*, 764 F.3d 1109, 1127 (9th Cir. 2014).
[77] *See United States v. Griffin*, 659 F.2d 932, 937 (9th Cir. 1981) ("[A]n agent's rough notes usually are considered too cryptic and incomplete to constitute the full statement envisioned by the Jencks Act").
[78] Dkt. 681 at 15.

established these documents are material to the defense or otherwise require disclosure, and these requests are DENIED without prejudice.

The United States also indicated that, pursuant to "recent developments," it "may have additional discovery to produce pertaining to Alivado" and that it "will continue to comply with its . . . discovery obligations."[79] The United States remains required to comply with its obligations under *Brady*, *Giglio*, and the Jencks Act.

4. Defendants' general requests for reports, agent notes, FBI names, and emails related to any telephonic or email contact between the United States and any other government witness, and their grand jury subpoenas, are denied.

At this time, the Court is also not persuaded that Defendants have established the materiality of its broad requests for "[a]ll reports" and "[a]ll agent notes" "relating to any telephonic or email contact the government has had with . . . any other government witness," "the names of each FBI agent who had telephone or email contact with . . . any other government witness," "emails sent to any government witness, or received by the government from any witness," and "all grand jury subpoenas served on . . . any other government witness."[80] Defendants have not explained how these broad categories of documents related to a multitude of potential witnesses "would tend to show that the [United States] is in possession of information helpful to the defense."[81] Rather,

[79] *Id.* at 15.
[80] Dkt. 669 at 8.
[81] *United States v. Doe*, 705 F.3d 1134, 1150 (9th Cir. 2013); *United States v. Michaels*, 796 F.2d 1112, 1116 (9th Cir. 1986) ("[M]ere speculation about materials in the government's files does not require the district court under *Brady* to make the materials available for Defendants' inspection.").

Defendants' requests appear to be "general description[s] of the documents sought" supported by "conclusory argument[s] that the requested information [is] material," which is insufficient to demonstrate materiality under Rule 16.[82]

Nor can the Court determine, based on Defendants' broad request, whether these materials are required disclosures under *Brady*, *Giglio*, or the Jencks Act. Defendants do not demonstrate whether and to what extent these materials might contain "evidence a reasonable prosecutor would perceive at the time as being material and favorable to the defense."[83] Rather, their requests appear to be grounded in "mere speculation" about the existence of possibly exculpatory or impeaching information contained in the United States' files, which is insufficient to warrant disclosure.[84] Moreover, "*Brady* does not permit a defendant to sift through information held by the government to determine materiality," nor is the "[t]he prosecutor . . . required to deliver his entire file to defense counsel, but only to disclose evidence favorable to the accused that, if suppressed, would deprive the defendant of a fair trial[.]"[85] The Court agrees that the broad requests for internal prosecution materials here would amount to a "fishing expedition."[86] Therefore, at

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[82] *United States v. Little*, 753 F.2d 1420, 1445 (9th Cir. 1984).
[83] *Woods v. Sinclair*, 764 F.3d 1109, 1127 (9th Cir. 2014)
[84] *Michaels*, 796 F.2d at 1116.
[85] *United States v. Lucas*, 841 F.3d 796, 807 (9th Cir. 2016); *United States v. Bagley*, 473 U.S. 667, 675 (1985).
[86] Dkt. 681 at 13; *see United States v. Motta*, No. CR 06-00080 SOM, 2012 WL 6569284, at *3 (D. Haw. Dec. 17, 2012) ("[Defendant's] argument that he needs discovery to prove that the Government violated *Brady* demonstrates that [Defendant] is truly going on a 'fishing expedition' in hopes of 'landing' some evidence that will support his contention that the Government failed to disclose impeachment and/or exculpatory evidence and that this 'new evidence' justifies a new trial. . . . [T]he limited discovery in criminal cases does not allow for such 'fishing expeditions[.]'"

this time, the Court is not persuaded that the Defendants have established these documents are material to the defense or otherwise require disclosure, and these requests are DENIED without prejudice.

V. CONCLUSION

For the foregoing reasons, the Court DENIES in part as moot and DENIES in part without prejudice the Defendants' Motion to Compel at Docket 669.

IT IS SO ORDERED.

Dated this 23rd day of April, 2024.

/s/ *Timothy M. Burgess*
TIMOTHY M. BURGESS
UNITED STATES DISTRICT JUDGE

(citing *United States v. Carvajal*, 989 F.2d 170, 170 (5th Cir. 1993); *Munoz v. Keane*, 777 F. Supp. 282, 287 (S.D.N.Y. 1991))).