

Accordingly, Mr. Annappareddy respectfully requests an extension until September 4 of the deadline for filing motions *in limine*.

ARGUMENT

I. ALL INDICATIONS ARE THAT THE LEAD PROSECUTOR INTENTIONALLY ORDERED THE DESTRUCTION OF CRITICAL EXCULPATORY EVIDENCE.

On the evening of Friday, August 19, the government newly disclosed an “**EVIDENCE REVIEW/DISPOSAL**” report dated March 11, 2015 (the “Evidence Disposal Memo”). (Ex. A (bold font, all capital letters, and underlining in original.) The report states: “[The lead prosecutor] determined that the following items were not used as exhibits in trial and would not be used in future proceedings *against* Annappareddy [sic]. [The lead prosecutor] ordered the following items destroyed and they were placed into locked shredding bins.” (*Id.* (emphasis added).) The items that the lead prosecutor ordered destroyed include FBI Evidence Numbers 1B141 and 1B163, which the report describes as “Box #13- Signature Logs 2011 & 2012” and “Box #35- Plumtree RX’s transferred to DC.” (*Id.*)

A separate document, which the government produced simultaneously on the evening of August 19, is a PDF file titled “Attachment to Evidence Disposal Memo.” (Ex. B, Screenshot of Email from Wilkinson to Greenberg, Aug. 19, 2016, 7:02 PM (showing attachments).) The attachment’s description of FBI Evidence Number 1B141 – “BOX #13 – SIGNATURE LOGS 2011 AND 2012 (Ex. C at 8) – mirrors the description in the evidence disposal memo. In contrast, the attachment’s description of FBI Evidence Number 1B163 provides significant information about that evidence that the evidence disposal memo omits: The attachment’s description reveals that FBI Evidence Number 1B163 includes not only the items described in the evidence disposal memo, but also “SIGN SHEETS BINDER,” “NUMEROUS OTHER BINDERS,” and “MEDICATION LOG BOOK,” among other items. (*Id.* at 1.)

The delivery signature logs and the other documents that the lead prosecutor ordered destroyed are critical exculpatory evidence. They are business records that Pharmacare used to confirm that patients received their prescriptions and that refills were filled. The government presented testimony about delivery signature logs, delivery-related binders, and refill log books at the first trial.

To our knowledge, the lead prosecutor ordered the aforementioned documents destroyed *without an order from this Court*. No order entered on the docket for this case authorizes the destruction of any documents. Further, the lead prosecutor *secretly* ordered the destruction of these documents – which are private property – *while Mr. Annappareddy’s motion for a new trial was pending and without giving notice or an opportunity to be heard* with respect to the destruction.

The government has not responded to multiple requests for additional information about the documents that the lead prosecutor ordered destroyed. (Ex. D, Email from Greenberg to Wilkinson, Aug. 20, 2016, 2:02 PM; *id.* Email from Greenberg to Wilkinson, Aug. 22, 2016, 1:48 PM.)

On September 9, 2015 and again on November 18, 2015, the case agent wrote that the government “has a court order for destruction of *only drug evidence not marked as trial exhibits.*” (Ex. E at 1, 4 (emphasis added).)

All indications are that the government intentionally and covertly destroyed critical exculpatory documents while Mr. Annappareddy’s motion for a new trial was pending. Mr. Annappareddy’s counsel believe that such destruction, standing alone, warrants dismissal of the Second Superseding Indictment with prejudice.

II. THE GOVERNMENT INTENTIONALLY PRESENTED FALSE INFORMATION ABOUT THE LAW TO THE GRAND JURY THAT RETURNED THE SECOND SUPERSEDING INDICTMENT.

On its face, the Second Superseding Indictment shows that the government presented false information to the grand jury that returned that indictment. Specifically, the Second Superseding Indictment alleges that “the pharmacy is *required* to ‘reverse’ the claim that was billed *within fourteen (14) days* of the claim” if the patient has not received the corresponding prescription within that timeframe. (Doc. 444 at 2 (emphases added).) The government is well aware that no such legal requirement existed at any point during the relevant period. Its own witness from the Maryland Medicaid program testified to this effect.

We learned yesterday that at least one of the witnesses who appeared before the grand jury falsely testified that regulations require reversing a claim within 14 days if the patient has not yet received the prescription. This testimony was elicited by a leading question from the prosecutor who handled that witness’s grand jury appearance.

The government intentionally misled the grand jury that returned the Second Superseding Indictment by falsely informing it of a purported legal requirement for reversing claims within 14 days that does not exist. The government’s intentional presentation of this false information to the grand jury provides a separate and independently sufficient basis for dismissing the Second Superseding Indictment with prejudice.

III. THE GOVERNMENT IS EITHER UNWILLING OR UNABLE TO PRODUCE CRITICAL PHONE RECORDS.

The purported lack of a phone call to Jigar Patel from Mr. Annappareddy in response to an email from Jigar Patel on July 25, 2012 was a centerpiece of the government’s case at the first trial. Despite a number of requests by Mr. Annappareddy’s counsel, the government still has not produced phone records from September 23, 2011 through February 20, 2013 – a period that

includes July 25, 2012 – for *either* Mr. Annappareddy *or* Jigar Patel. (Ex. D.) The parties know at this point that Mr. Annappareddy *did* in fact call Jigar Patel in response to the latter’s email of July 25, 2012. To the extent that the government failed to obtain relevant phone records and thus recklessly or with willful blindness falsely represented to the jury and the Court that Mr. Annappareddy did not respond by phone to Jigar Patel’s email of July 25, 2012, that would provide another basis for dismissal.

IV. MOTIONS TO LIMIT THE GOVERNMENT’S EVIDENCE AND FOR *IN CAMERA* REVIEW OF CERTAIN GRAND JURY MATERIALS ARE PENDING.

On August 5, Mr. Annappareddy filed a motion to limit the government’s evidence at a second trial to the evidence admitted at the first trial. (Doc. 437.) The Court set an expedited briefing schedule. (Doc. 442.) The government missed its deadline to file a response. (Doc. 453.) Nevertheless, the Court granted the government’s after-the-fact request for an “extension” of that deadline that makes its response due today and Mr. Annappareddy’s reply due on August 26. (Doc. 456.) The Court’s ruling on the motion to limit the government’s evidence will substantially affect the motions *in limine* that we will file (if filing any such motions proves necessary). The Court should grant the motion to limit evidence. But if it is not, we would (for example) file a motion *in limine* to exclude the exhibits showing the government’s new loss calculations on the ground that it did not disclose its intent to potentially use those exhibits until August 8.

In addition, Mr. Annappareddy’s motion to compel the government to produce certain grand jury materials is pending. The grand jury materials that the government has produced and may in the future produce for *in camera* review in response to that motion may provide a basis for additional motions *in limine* and/or dismissal.

CONCLUSION

For the foregoing reasons, the Court should enter the attached proposed order, which extends the deadline for filing motions *in limine* until September 4.

August 23, 2016

Respectfully submitted,

/s/ Joshua D. Greenberg

Mark E. Schamel (Bar No. 15433)
Joshua D. Greenberg (Bar No. 18168)
Womble Carlyle Sandridge & Rice, LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, DC 20036
Telephone: (202) 857-4481
Facsimile: (202) 261-0098
Email: mschamel@wcsr.com
Email: jgreenberg@wcsr.com

Counsel for Reddy Vijay Annappareddy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2016, a true and correct copy of the foregoing document and any attachments thereto was served via the Court's CM/ECF system on the following:

Sandra Wilkinson
Assistant United States Attorney
35 South Charles Street, Fourth Floor
Baltimore, MD 21201
Email: sandra.wilkinson@usdoj.gov

Catherine Schuster Pascale
Office of the Attorney General
Medicaid Fraud Control Unit
200 St. Paul Place, Eigtheenth Floor
Baltimore, MD 21202
Email: CPascale@oag.state.md.us

/s/ Joshua D. Greenberg
Joshua D. Greenberg