

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



IN RE: INTERIM ORDER REGARDING THE
“DUE PROCESS PROTECTIONS ACT,”
P.L. NO. 116-182, 134 STAT. ANN. 894
(OCT. 21, 2020), AMENDING FEDERAL RULE
OF CRIMINAL PROCEDURE 5

INTERIM GENERAL ORDER

By virtue of the “Due Process Protections Act,” P.L. No. 116-182, 134 Stat. Ann. 894 (Oct. 21, 2020), Federal Rule of Criminal Procedure 5 has been amended effective immediately to add subsection (f), providing in relevant part as follows:

(f)(1) In general

In all criminal proceedings, on the first scheduled court date when both prosecutor and defense counsel are present, the judge shall issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and the possible consequences of violating such order under applicable law.

Subsection (f)(2) of amended Federal Rule of Criminal Procedure 5 provides that the judicial council of each Circuit shall prepare and promulgate for the use of each Court in the Circuit a model form of Order to implement the provisions of subsection (f)(1).

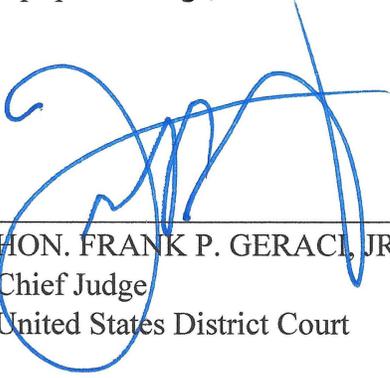
Pending the promulgation of such model form of Order by the Judicial Council of this Circuit and the adoption of an Order for use in this Court, it is ORDERED that, pending further Order, language in substantially the following form shall be incorporated into an oral Order stated on the record, and a written Order entered on the docket, in each proceeding in this Court as to which subsection (f)(1) of Federal Rule of Criminal Procedure 5 applies:

As required by the Due Process Protections Act [Pub. L. 116-182, 134 Stat. 894] and Fed. R. Crim. P. 5(f)(1), the Court confirms the United States’ obligation to produce all exculpatory evidence to the defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and orders it to do so. The government must make these “disclosures in sufficient time that the defendant will have reasonable opportunity to act upon the information efficaciously.” *United States v. Rodriguez*,

496 F.3d 221, 226 (2d Cir. 2007); *Leka v. Portuondo*, 257 F.3d 89, 98 (2d Cir. 2001); *United States v. Coppa*, 267 F.3d 132 (2d Cir. 2001). Failure to do so may result in consequences, including, but not limited to, exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, or sanctions by the Court.

IT IS SO ORDERED.

Dated: November 5, 2020
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court