

INDIVIDUAL RULES AND PRACTICES IN CRIMINAL CASES
Honorable Jeannette A. Vargas, United States District Judge

Chambers

United States District Court
Southern District of New York
500 Pearl Street, Room 703
New York, NY 10007
VargasNYSDChambers@nysd.uscourts.gov

1. Civility in All Proceedings

Parties must act with the highest degree of professionalism and courtesy in their dealings with other parties, the Court and Court staff, and anyone else involved in the litigation. Abusive conduct of any kind will not be tolerated and should promptly be brought to the Court's attention.

2. Guidelines for All Submissions

- A. Electronic Case Filing (“ECF”).** In accordance with the S.D.N.Y. Electronic Case Filing Rules and Instructions, except as otherwise expressly provided, all documents filed with the Court must be filed electronically. Counsel are required to register for Electronic Case Filing (ECF) promptly after being retained or assigned. Counsel can obtain instructions on how to register at <https://nysd.uscourts.gov/electronic-case-filing>.
- B. Text Searchable Submissions.** If feasible, every submission should be in text-searchable format created by converting the document electronically to PDF by computer (that is, not by scanning a printed document). If a PDF is created by scanning a printed document (for instance, in the case of a pre-existing documentary exhibit), the party should use software to make the document text searchable whenever possible.
- C. Submission of Large Electronic Files.** If a party needs to submit large files that cannot be uploaded to ECF due to size, the party should email the Court at VargasNYSDChambers@nysd.uscourts.gov. The e-mail should copy all other counsel in the case and include the name and docket number of the case and the nature and size of the materials to be submitted electronically.

D. No Courtesy Copies. Unless the Court orders otherwise, parties should not submit courtesy copies of any submissions.

3. Communications with Chambers

A. Initial Pretrial Conference.

- i. Upon assignment of a criminal case to Judge Vargas, the Assistant United States Attorney shall immediately email Chambers to arrange for a prompt conference/arraignment. In the e-mail, the Assistant United States Attorney shall include (1) the name of the defendant(s); (2) defense counsel's name and contact information; (2) whether the defendant(s) is/are detained (and, if so, the relevant defendant's Reg. No.) or bailed; (3) whether any defendant requires an interpreter (and, if so, the relevant language); (4) the parties' joint availability for a prompt conference/arraignment; (5) whether there is any reason a scheduling order should not be filed on the public docket; and (6) any other pertinent information. In addition, the Assistant United States Attorney shall attach to the e-mail PDFs of the indictment and any criminal complaint, if one exists.
- ii. **Brady Materials.** At the initial pretrial conference and all conferences thereafter, the Government shall be prepared to address its ongoing duty to comply with its obligations to timely disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, including as set forth in the standing order pursuant to Federal Rule of Criminal Procedure 5(f). Defense counsel may facilitate the Government's compliance with its *Brady* obligations by making specific requests that the Government seek out, review, and/or produce certain evidence or information that defense counsel reasonably believes may contain, or is reasonably likely to lead to the discovery of, *Brady* material.

B. Letters and Letter Motions.

- i. Except as provided herein or as otherwise ordered by the Court, communications with Chambers shall be by letter filed on ECF. Letters seeking relief (consistent with S.D.N.Y. Local Rules and the S.D.N.Y. Electronic Case Filing Rules and Instructions) should be filed as letter-motions on ECF, not ordinary letters.
- ii. Letters containing confidential or sensitive information that cannot be filed on ECF may be sent by e-mail as a .pdf attachment to the Court

(VargasNYSDChambers@nysd.uscourts.gov), with a copy simultaneously delivered to all counsel (unless the submission is being made *ex parte*). **Parties shall not include substantive communications in the body of the e-mail**, only in an attached letter. Any communications in the body of an e-mail will be disregarded. Any such e-mail shall state clearly in the subject line the caption of the case, including the lead party names and docket number.

- iii. Copies of correspondence between counsel shall not be sent to the Court or filed on ECF except as exhibits to an otherwise properly filed document.
- iv. Absent a request to file a letter under seal, the parties should assume that any substantive letter received by the Court, whether by regular mail, hand delivery, or e-mail, will be docketed by the Court.

C. Telephone Calls. Any other communications with Chambers, including requests for extensions or adjournments, shall be by letter or letter-motion filed on ECF in accordance with Section 3(B). For urgent matters, including to direct the Court's notice to an ECF filing that requires immediate attention, call Chambers. Parties should review these Individual Rules and Practices before calling with questions about the Court's rules and practices.

D. Requests for Adjournment or Extension of Time. All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions, not as ordinary letters. The letter-motion must state: (1) the original date and the new date requested; (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reason for the extension or adjournment; (5) whether the adversary consents and, if not, the reasons given by the adversary for refusal to consent; and (6) the date of the parties' next scheduled appearance before the Court.

E. Speedy Trial Act Exclusions. If a party seeks an exclusion of time under the Speedy Trial Act, 18 U.S.C. § 3161, the party seeking exclusion of time must confer with the opposing party and indicate in the letter-motion whether the opposing party consents. At the time of filing the letter-motion, the party seeking exclusion of time should additionally submit to the Court by **e-mail** a proposed order in Microsoft Word format.

Absent an emergency, any request for extension or adjournment shall be made as early as possible, and *at least 48 hours* prior to the deadline or scheduled appearance and any request for adjournment of sentencing shall be made *at least 72 hours* prior to the scheduled proceeding. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.

F. Hand-Deliveries. Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan United States District Courthouse, 200 Worth Street, New York, NY 10007. If the hand delivered letter is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.

G. Faxes. Faxes to Chambers are not permitted without express prior permission, and only in cases of unforeseeable emergencies.

4. Defense Counsel

A. Benefactor Payments. Whenever defense counsel has received, or is receiving, a benefactor payment that subjects counsel to a conflict of interest, said counsel must inform the Court and request a *Curcio* hearing at the first conference.

B. Other Conflicts. Counsel have an obligation to promptly inform the Court upon learning of any other conflict of interest, whether a potential or an actual conflict, and to request a *Curcio* hearing if appropriate.

C. Substitution of Counsel. When there is a substitution of defense counsel, counsel of record must file a letter-motion on ECF to request that a conference be scheduled as soon as possible. At the conference, the Court will address the application by defense counsel to be relieved. Counsel of record (*i.e.*, current counsel), the defendant, replacement counsel, and the Assistant United States Attorney must also attend the conference.

5. Bail Modification or Appeal

A. Any written request for a bail modification by a defendant shall be filed on ECF as a letter-motion and shall indicate whether the Government and Pretrial Services Officer consent to the request.

B. A party who wishes to appeal an adverse bail determination by the Magistrate Judge should contact Chambers to arrange a conference for

that purpose. The party that brings the appeal is directed to provide the Court no fewer than 24 hours before the conference with the transcript of argument on bail before the Magistrate Judge, any written submissions below as to bail and Pretrial Services' report as to the defendant.

6. Guilty Pleas

A. Plea Agreements and *Pimentel* Letters. When a defendant is pleading guilty pursuant to a plea agreement or a cooperation agreement, a copy of the agreement, signed or unsigned, ordinarily must be received by Chambers at least two business days before the scheduled plea. Where the Government is providing a *Pimentel* letter, a copy of the *Pimentel* letter must be received by Chambers no fewer than two business days before the scheduled plea. These documents should be e-mailed to the Court at VargasNYSDChambers@nysd.uscourts.gov.

B. Preparation for Allocution. Prior to the date set for the plea, defense counsel is expected to have reviewed with the defendant — if necessary, with the assistance of an interpreter — any *Pimentel* letter or plea agreement. Defense counsel and the defendant should execute any plea or cooperation agreement, prior to the time set for the plea. The defendant should also be prepared in advance of a guilty plea to give narrative allocutions that incorporate all of the elements of the offense(s) to which the defendant is pleading guilty. In the interest of clarity and efficiency, counsel is encouraged to assist the defendant in writing an allocution that can be read in open court during the plea proceeding.

The Court further expects that defense counsel will have determined whether detention of the defendant is required upon entry of a guilty plea pursuant to 18 U.S.C. § 3143(a)(2) and other provisions of the Bail Reform Act, and to prepare the defendant for the possibility of detention commencing at the end of the plea proceeding.

7. Motions

A. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. All memoranda of law shall be in twelve-point font or larger, double spaced, and text-searchable. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Surreply memoranda are not

allowed (unless specifically permitted in extraordinary situations for good cause). All appendices to memoranda of law must be indexed.

- B. Discovery Motions.** In making discovery motions, counsel must comply with Southern District Local Criminal Rule 16.1. Any discovery motion must contain the Rule 16.1 affidavit.

8. Pre-Trial Submissions

- A. Pre-Trial Deadlines and Submissions.** The Court will enter an order scheduling a final pretrial conference and setting deadlines for the submission of proposed jury *voir dire* questions, proposed requests to charge, proposed verdict forms, and any motions *in limine*.
- B. Proposed Voir Dire, Jury Instructions, and Verdict Forms.** The parties shall each file via ECF case-specific proposed *voir dire* questions, case-specific proposed requests to charge, and a proposed verdict form. If multiple defendants will be tried, all defendants must, unless otherwise ordered, submit a single request to charge and a single set of proposed *voir dire* questions. In their proposed *voir dire*, parties should include a brief description of the case and a list of names and places likely to be mentioned at trial, both to be read to prospective jurors during jury selection. In their proposed jury instructions, the parties are not required to submit proposed language for standard instructions—for example, the role of the Court and the jury, the standard of proof, etc.—but may do so if they desire. At the time of filing, each party should e-mail these documents in Microsoft Word format to Chambers at VargasNYSDChambers@nysd.uscourts.gov.

9. Sentencing

- A. Sentencing Adjournments.** Any request for an adjournment of a sentencing should be made as early as possible, and *no later than 72 hours* before the sentencing proceeding, in accordance with Section 3(D).
- B. Sentencing Submissions.** Unless otherwise ordered by the Court, a defendant's sentencing submission shall be served two weeks in advance of the date set for sentencing. The Government's sentencing submission shall be served one week in advance of the date set for sentencing. If a party does not intend to file a substantive sentencing submission, the party shall file and serve a letter to that effect on the date the sentencing submission is due.

- C. ECF Filing.** Except for submissions to be filed under seal or in redacted form, every document in a sentencing submission, including letters, must be filed on ECF. Letters should be grouped and filed together as attachments to a single document marked SENTENCING SUBMISSION with the caption and docket number clearly indicated. The defendant is responsible for filing all letters submitted on behalf of the defendant, including those from friends and relatives. The Government is responsible for filing all letters from victims.

10.Redactions and Filing Under Seal

- A. Privacy Policy.** The parties are referred to the E-Government Act of 2002 and the Southern District’s ECF Privacy Policy (“Privacy Policy”). The parties should not include, unless necessary, the five categories of “sensitive information” in their submissions (*i.e.*, social security numbers, names of minor children [use the initials only], dates of birth [use the year only], financial account numbers and home addresses [use only the City and State]).
- B. Redactions Not Requiring Court Approval.** Without Court approval, parties may redact the five categories of “sensitive information” and the six categories of information requiring caution (*i.e.*, personal identifying number, medical records, treatment and diagnosis, employment history, individual financial information, proprietary or trade secret information and information regarding an individual’s cooperation with the government), as described in the Privacy Policy.
- C. Redactions and Sealed Filings Requiring Court Approval.** Except for redactions permitted by the previous Paragraph, all redactions or sealing of public court filings require Court approval. The Court will review each proposed redaction individually. To be approved, redactions must be narrowly tailored to serve whatever purpose justifies them and otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). In general, the parties’ consent or the fact that information is subject to a confidentiality agreement (or protective order) between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. *See, e.g., In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543 (JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015).

D. Procedures for Filing Documents with Redactions. Any party seeking to file a document with partial redactions should proceed as follows:

- i. **ECF Filing of the Redacted Document(s).** The party should file the redacted version of the document on ECF.
- ii. **Filing a Letter-Motion Seeking Leave to File with Redactions.** If the party is seeking leave of the Court to redact the document (*i.e.*, if the redactions are not among the categories of redactions that can be made without Court approval), the party should simultaneously file on ECF a letter-motion seeking leave to file the document with those redactions. The letter-motion must explain the purpose of the redactions, and why the redactions are consistent with the standards set forth in Section 10(C) above.
- iii. **Emailing of Documents to Chambers.** At the same time, the party should email to VargasNYSDChambers@nysd.uscourts.gov: (1) a clean (*i.e.*, unredacted) copy of the document; (2) a copy of the document highlighting the information that has been redacted in the ECF filing; and (3) an unredacted copy of the letter-motion described in Section 10(D)(ii), should the party also be seeking leave to file that letter-motion with redactions or under seal.

E. Procedure for Filing Sealed Documents.

- i. **Sealing Exhibits.** Any party seeking leave to file an unsealed or redacted document with a fully sealed exhibit attached thereto should file the main document (in accordance with the procedures above, if the party seeks to do so with redactions) on ECF, accompanied by a single page marked “SEALED” in place of any exhibit that the party seeks leave to file under seal, regardless of the actual length of such exhibit. The party should simultaneously file a letter-motion seeking leave to file in that manner.
- ii. **Sealing Entire Documents.** Any party seeking leave to file under seal an entire submission (with or without exhibits) should not file anything on ECF in the first instance. Instead, the party should email an unredacted copy of the submission to VargasNYSDChambers@nysd.uscourts.gov and should include as an attachment to the e-mail a letter-motion seeking leave to file the document under seal. The letter-motion must explain

why sealing is justified in light of the standards discussed in Section 10(C) above. If the party believes that the letter-motion itself should be sealed or redacted, the letter-motion should so state and should provide the justification therefor. The Court will include instructions for filing sealed or redacted versions of the document and accompanying letter-motion, if necessary, in any order disposing of the motion to seal.

11. Use of Electronics

- A. Electronic Devices in the Courtroom.** Attorneys' use of personal electronic devices (including mobile phones) and general purpose computing devices (such as laptops and tablets) within the Courthouse and its environs is governed by [Standing Order M10-468](#). When Court permission is required under the Standing Order, attorneys seeking to bring electronic devices to the Court should email a completed [Model Court Order](#) to VargasNYSDChambers@nysd.uscourts.gov. Chambers will coordinate with the District Executive's Office to issue the Order and forward a copy to counsel. The Order must be shown upon bringing the equipment into the Courthouse.
- B. Mobile Phones.** Attorneys in compliance with the Standing Order may bring mobile phones into the Courtroom, but the phones **MUST** be kept turned off at all times. Non-compliance with this rule will result in forfeiture of the device for the remainder of the proceedings.