

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

PAUL J. MANAFORT, JR.,

Defendant.

Crim. No. 17-cr-201-1 (ABJ)

JOINT PRETRIAL STATEMENT

Pursuant to the Court’s Scheduling Order entered March 1, 2018 (Doc. 217, at 2–3), the government hereby submits a joint pretrial statement. The defendant’s position was communicated by email to the government on the afternoon of August 24, 2018 and is set out in each respective portion of the submission.

a) Joint Statement of the Case

A proposed joint statement of the case for the Court to read to prospective jurors is attached to this submission as Exhibit A. The government transmitted the proposed joint statement of the case to defense counsel on July 23, 2018 as part of its proposed jury instructions and separately sent the proposed statement of the case to defense counsel in a standalone email on July 27, 2018.

- Defendant’s position: “Defendant objects to the description of the FARA violation (bullet point 3) and suggests that it should read: ‘Between approximately 2008 and 2014 failing to register as an agent of a foreign principal in violation of FARA (Count Three).’” The defendant agrees to the remainder of the proposed joint statement of the case.

b) Estimate of the Number of Trial Days

The government anticipates that its case-in-chief will last approximately ten to twelve trial days.

- Defendant's position: "Defendant has not determined whether he will present a defense case. Any defense case will require between three to four trial days."

c) List of Outstanding Motions in Limine

Both parties filed their motions in limine on July 9, 2018 (Doc. 341 & 343) and responses to the motions on July 23, 2018 (Doc. 360 & 361). The government has sought leave to supplement its motions in limine in light of proceedings in the Eastern District of Virginia. (Doc. 366, 381, and 382). The following motions in limine are outstanding:

Government's Motions

- (1) The government's motion in limine for an order precluding "argument or evidence at trial (1) concerning selective or vindictive prosecution or the motive and mandate of the Department of Justice office leading this prosecution, or (2) suggesting that any government investigation into Manafort that preceded the Special Counsel's appointment ended with a decision not to prosecute him." (Docs. 341 & 381).
- (2) The government's motion in limine for an order precluding the defendant from presenting argument at trial, or soliciting evidence concerning, (a) the absence of a civil Internal Revenue Service audit of Manafort or his companies or (b) the absence of any civil Foreign Agents Registration Act action against Manafort or his companies, or suggesting that such civil audits or actions were necessary or that the absence of such civil audits or actions was improper, indicative of a lack of evidence of a crime. (Doc. 366).

- (3) The government's motion in limine seeking to admit evidence that two U.S. businesses, Davis Manafort Partners, Inc. and DMP International, LLC, never filed FBARs for the foreign bank accounts identified in the superseding indictment. (Doc. 382).

Defendant's Motions

- (1) The defendant's motion in limine seeking to preclude evidence or argument concerning Mr. Manafort's role with the Trump campaign and allegations related to purported collusion with the Russian government. (Doc. 343, at 1–3). The government has raised a limited objection to the motion. (Doc. 360, at 2–4).
- (2) The defendant's motion in limine seeking to preclude evidence or argument about the charges brought in *United States v. Manafort*, No. 1:18-cr-83 (E.D.V.A.). (Doc. 343, at 3–5). The government has raised a limited objection to the motion. (Doc. 360, at 4–5). The government also notes below that it intends to introduce the defendant's convictions for purposes of impeachment, pursuant to Federal Rule of Evidence 609.
- (3) The defendant's motion in limine seeking to preclude evidence or argument about the defendant's remand to the custody of the U.S. Marshal Service pending trial. (Doc. 343, at 5). The government has no objection to the motion. (Doc. 360).
- (4) The defendant's motion in limine seeking to preclude testimony and evidence from attorneys who "provided Mr. Manafort with FARA related advice and represented him in interactions with the U.S. Department of Justice's FARA office." (Doc. 343, at 6). The government has set forth its objection, noting that the defendant's purported claim of privilege has been considered and rejected by Chief Judge Howell. (Doc. 360, at 5–8).

d) Proposed Jury Instructions

A copy of the government's proposed instructions (including instructions from the Standardized Criminal Jury Instructions for the District of Columbia) is attached to this submission as Exhibit B. A copy of the government's proposed instructions was sent to defense counsel on July 24, 2018. A copy of the government's proposed special jury instructions is attached to this submission as Exhibit C.¹ A copy of these proposed instructions was sent to defense counsel on July 23, 2018.

- Defendant's position: "Defendant objects to the instructions submitted by the government identified in the list below. Defendant will file a separate pleading as soon as possible addressing those objections and requesting changes or additional instructions:

Instruction No. 1	Instruction No. 26
Instruction No. 2	Instruction No. 27
Instruction No. 13	Instruction No. 28
Instruction No. 14	Instruction No. 29
Instruction No. 15	Instruction No. 32
Instruction No. 16	Instruction No. 33
Instruction No. 17	Instruction No. 34
Instruction No. 18	Instruction No. 46
Instruction No. 19	Special Instruction No. 1
Instruction No. 20	Special Instruction No. 2
Instruction No. 21	Special Instruction No. 3
Instruction No. 22	Special Instruction No. 4
Instruction No. 23	Special Instruction No. 5
Instruction No. 24	Special Instruction No. 6"
Instruction No. 25	

¹ These special instructions address certain legal requirements imposed by the Foreign Agent Registration Act ("FARA") (22 U.S.C. § 612 *et seq.*), the Lobbying Disclosure Act ("LDA") (2 U.S.C. § 1601 *et seq.*), and associated regulations issued pursuant to and implementing both federal laws.

The defendant indicated that he does not object to instructions 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 30, 31, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, and 57, as submitted in Exhibit B.

e) List of Expert Witnesses

The government's notice of expert testimony is attached as Exhibit D. The government gave this notice to the defendant on July 13, 2018.

- Defendant's position: "To the extent the defendant decides to present a defense case, defendant anticipates presenting the testimony of expert witnesses in the following areas: (1) money laundering and (2) the Foreign Agent's Registration Act. Defendant is still in the process of identifying and retaining experts. Defendant will provide additional information when it becomes available."

f) List of Prior Convictions

Pursuant to Federal Rule of Evidence 609(a)(2), should the defendant testify in the upcoming trial, the government intends to offer for purpose of impeachment the defendant's prior convictions in the case *United States v. Manafort*, No. 1:18-cr-83 (E.D. Va.), including his convictions on five counts of filing of false individual income tax returns (in violation of 26 U.S.C. § 7206(1)); one count of failing to file a report of a foreign bank and financial account (in violation of 31 U.S.C. §§ 5314 and 5322(a)); and two counts of bank fraud (in violation of 18 U.S.C. § 1344). The government hereby gives notice as required under Federal Rule of Evidence 609(b)(2).

g) List of Exhibits

A copy of the government's exhibit list is attached to this submission as Exhibit E, and the government has delivered copies of the exhibits to the Court's chambers as directed in the

Scheduling Order. Given the voluminous nature of the exhibits, the government has included draft summary exhibits that it intends to offer pursuant to Federal Rule of Evidence 1006. The government will submit to the Court revised summary exhibits at a later date in advance of trial. The government requests the Court's permission to amend its exhibits in advance of trial as needed during the course of trial preparation. The summary exhibits are Government Exhibits 81, 90, 304, 308, 318, 319, 325, 335, and 400-46.

Beginning in mid-July 2018, the government identified its trial exhibits to defense counsel on a rolling basis.² The government identified its trial exhibits (from previously produced documents) in six tranches, which were sent to defense counsel on July 19, 2018; July 20, 2018; July 23, 2018; July 24, 2018; July 28, 2018, all in anticipation of an August 1, 2018 submission of the Joint Pretrial Statement. For ease of reference, an August 21, 2018 transmission combined the prior transmissions into a single exhibit list with relevant updates, including eliminating various exhibits pursuant to the Court's Minute Order.

On the evening of August 23, 2018, the defendant requested that the government reproduce all of its exhibits in electronic format. The government arranged for defense counsel to pick up an electronic copy of the exhibits at 8:45 AM on August 24, 2018.

- Defendant's Position: On the afternoon of August 24, 2018, the defendant wrote to the government:

The defendant received the government's most recent exhibit list containing more than 1500 marked exhibits on August 22, 2018. In order to assist the defendant in reviewing the proposed exhibits, at the defendant's request, the government provided electronic copies of the exhibits on August 24, 2018. Defendant and his counsel

² In each correspondence, the government identified the exhibits by Bates number, date of the document, and the source of the exhibit. The government also provided a short description of the exhibit to counsel, and, where applicable, a cross-reference to the equivalent Eastern District of Virginia exhibit number.

require additional time to review the government's proposed exhibits in order to lodge appropriate objections. At this time, defendant objects to all of the government's proposed exhibits as to authenticity and admissibility. Defendant will provide the Court with a more detailed recitation of objections by exhibit as soon as possible.

[. . .]

The defense has not yet identified exhibits that may be used in cross-examination and will not be able to identify exhibits that may be used in any defense case-in-chief until after the government presents its case-in-chief.

h) Stipulations

A copy of the government's proposed stipulations are attached as Exhibit F. The government transmitted the first of these stipulations on July 23, 2018. The government notes that many of these stipulations are the same in substance to those agreed to by the defendant and the government in *United States v. Manafort*, No. 1:18-cr-083 (E.D.V.A.).

- Defendant's Position: "The government has provided the defendant with approximately 23 proposed stipulations for review. At this time, there are no agreed upon stipulations."

i) Judicial Notice

As described above, the government has submitted a proposed series of special jury instructions, attached to this submission as Exhibit C. These special instructions address certain legal requirements imposed by FARA, the LDA, and associated regulations implementing both federal laws.

Alternatively, the Court could take judicial notice of the same legal and regulatory requirements pursuant to Federal Rule of Evidence 201. *See, e.g., United States v. Titus*, 475 F. App'x 826, 834–35 (4th Cir. 2012) (affirming, in a federal fraud case, district court taking judicial notice of "certain Virginia rules and statutes," including the Virginia Consumer Real Estate

Settlement Protection Act and “associated state regulations, which imposed duties on Titus”); *see also United States v. Montgomery*, 896 F.3d 875, 879 (8th Cir. 2018) (noting, with respect to the fact that U.S. Food and Drug Administration regulations prohibit sale of health foods with hemp seeds and hemp oil containing THC, that “if challenged, the government could have established this regulatory fact by judicial notice”); *Staeher v. Hartford Fin. Servs. Group, Inc.*, 547 F.3d 406, 425 (2d Cir. 2008) (“[I]t is proper to take judicial notice of the fact that . . . regulatory filings contained certain information, without regard to the truth of their contents”); *United States v. Knauer*, 707 F. Supp. 2d 379, 400 (E.D.N.Y. 2010) (“It is undoubtedly within this Court’s authority to take judicial notice of agency regulations, including those issued by an administrative subunit.”).

- Defendant’s Position: The defendant objects to these special jury instructions (or, alternatively, the Court’s taking judicial notice). *See supra* Section (d) (position on Special Instructions 1–6).

j) Proposed Verdict Form

A copy of the government’s proposed verdict form is attached as Exhibit G.

- Defendant’s Position: No proposed verdict form given.

Respectfully submitted,

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Special Counsel

Dated: August 24, 2018

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