UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA - v. - KEITH RANIERE, CLARE BRONFMAN, ALLISON MACK, KATHY RUSSELL, LAUREN SALZMAN, and NANCY SALZMAN, Defendants.	Case No. 1:18 Cr. 00204-NGG **AFFIRMATION** **Submitted on November 16, 2018**

1. I am Of Counsel to the law firm Brafman & Associates, P.C., and am licensed to practice law in the State of New York. I am also a member of the bar of this Court. As counsel for Keith Raniere, I make this affirmation in support of two of Raniere's Motions, specifically the Motion for Prompt Disclosure of Brady Materials and the Motion for Live Trial Testimony via Closed Circuit Television.

2. This affirmation is made upon information and belief, the sources of which are discovery material provided by the United States Attorney's Office for the Eastern District of New York ("EDNY"), conversations with the Assistant United States Attorneys assigned to this case, the result of investigative efforts undertaken by the defense to date, conversations with numerous individuals and other documents and materials comprising counsel's file in this matter.

Facts Supporting the Motion for Brady Material

3. In or about November 2017, the United States Attorney's Office for the EDNY began interviewing witnesses in this investigation. (Dkt. 4, Gov't Detention Letter at 4.) In February 2018, they filed a complaint against Keith Raniere (Dkt. 1, Complaint) and by March 26,

2018, the day of Raniere's arrest, they estimated that they had spoken to more than a dozen women whom the EDNY contends were Raniere's victims, as well as many other witnesses. (Id. at 7.) In April 2018, Raniere and Allison Mack were indicted on charges of Sex Trafficking, Sex Trafficking Conspiracy and Forced Labor charges. Since the date of Raniere's arrest and subsequent indictment, the EDNY have spoken to many more witnesses, several of whom, I believe, provided substantial Brady material to the Government.

4. Upon information and belief, the FBI and USAO-EDNY have interviewed witnesses who have provided information that directly contradicts, or at the very least substantially alters, the quantum of proof in defendant's favor regarding the following Government theories: (1) DOS members would not have joined the sorority if they knew that Keith Raniere created it (Superseding Indictment ("the Indictment") at ¶ 36); (2) DOS members joined DOS under the false pretense that it was a female-only mentorship group (Gov't Detention Letter at 1); (3) DOS members provided masters with additional collateral because they feared that their original collateral could be released if they did not (Complaint at ¶ 19); (4) DOS members performed "assignments" or "acts of care" because, if they did not, they risked their collateral being released (Id. at ¶ 21); (5) certain DOS members were given the "assignment" to have sex with Keith Raniere (Id. at ¶ 22); (6) DOS members feared that their collateral would be released if they left the group or refused to have sex with Keith Raniere (Id. at ¶ 23); and (7) Nxivm forced its students into debt (Id. at ¶ 6; Gov't Detention Letter at 3; Dkt. 51, Gov't Superseding Indictment Detention Letter at 3).

5. In short, I believe at least some of these witnesses have represented that the tenets of DOS—including collateral, acts of care and completion of assignments—was a *choice* they made on their own without any coercion, threats or manipulation. Similarly, I believe that at least

some of these witnesses have represented that if they engaged in a sexual relationship with Keith Raniere, that relationship was entirely consensual, unrelated to their involvement in DOS, and oftentimes kept secret from other members of DOS.

6. Additionally, in some instances, after witnesses provided an account of their experience in DOS, the Government subsequently attempted (and sometimes succeeded) to have these witnesses change their accounts, in whole or in part, by confronting these witnesses with purported statements by a defendant or the Government's opinions about the evidence.

A. Keith Raniere And Allison Mack's Prior Requests for Brady Material

7. Before the Superseding Indictment, in Raniere's June 5, 2018 Motion for Bond, the defense requested that the Government provide counsel with Brady materials including statements from the Government's witness interviews that contradicted the prosecution's sex trafficking theory. Specifically, after explaining the true meaning behind the sorority that form a basis of the sex trafficking charge, counsel noted:

> In a novel effort to fabricate the element of coercion as part of the sex trafficking count, the Government artificially links collateral to a requirement of sex with Keith Raniere. However, we expect that the Government has by now spoken with numerous women who have stated to the investigators and prosecutors that collateral was wholly unrelated to sex or an expectation of having sex with anyone, let alone Raniere. The evidence is overwhelming that the collateral was a function of a woman's membership in and commitment to DOS, and nothing more.

(Dkt. 43, Raniere Motion for Bond at 21.) Counsel requested that the Government turn over all such statements to that effect as soon as possible, as they were clear Brady material. (Id. at n.2.)

8. On July 18, 2018, counsel for Raniere and Ms. Mack reiterated this request by sending a letter to the Government requesting prompt production of any and all materials in the possession, custody and control of the Government pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, including Giglio v. United States, 405 U.S. 150 (1972), and United States v. Bagley, 473 U.S. 667 (1985), the Fifth and Sixth Amendments to the Constitution of the United

States and applicable law. (Exhibit 1: 7/18/18 Brady Request Letter.) Counsel included a non-exhaustive list of eighteen examples that constitute Brady material. (Id. at 3-4.) Counsel further requested production of these materials by Wednesday, July 25, 2018. (Id. at 2-3.) The Government did not respond to counsel's specifically itemized requests for exculpatory evidence. About a week later, the Government filed the instant Superseding Indictment.

9. Counsel for all defendants again requested all Brady material in a September 11, 2018, letter to this Court. (Exhibit 2: Dkt. 127, Letter re: Discovery, Trial Date, Particulars, and Brady at 1.) Counsel reiterated to the Government, and to this Court, that the Government's "failure to respond to a Brady letter raising significant specific issues [required] immediate attention." (Id.) Counsel asked this Court to direct the Government to provide an answer to our specific Brady request:

> We believe that the Government has been told by a number of people the Government considers "DOS slaves" during proffer sessions with the AUSAs and the FBI agents assigned that no sex trafficking or other illegal conduct took place. These witnesses provided information which contradicts the factual allegations and theory of the prosecution. Defense counsel believes, moreover, that when confronted with these accounts of alleged "DOS slaves" that no illegal conduct took place that the Government attempted to "convince" these witnesses to the contrary. The defense is concerned with the propriety of this investigation in light of this information. The defense is moreover concerned that the Government has ignored for close to two months a specific Brady letter on July 18, 2018.
>
> Simply put, if the Government has been told by someone it believes to be a "DOS slave" that nothing inappropriate happened, contradicts information alleged by any of its witnesses or that any defendant did not act with the requisite mental state required for the commission of the crime, that is the very definition of Brady material, and it must be disclosed immediately.

(Exhibit 2 at 6.)

10. In response to this letter, the Government, in a footnote, acknowledged for the first time the Brady request: "As to Keith Raniere's demand for Brady material, the Government is aware of and will continue to comply with its Brady obligations." (Exhibit 3: Dkt. 129, Gov't

Letter Requesting Complex Case Designation at n.3.) Notwithstanding assurances that it is aware of its ethical obligations, the Government has still not responded to counsel's original Brady request (filed five months ago), counsel's subsequent Brady demand (sent four months ago) or counsel's most recent demand for immediate disclosure of Brady materials (filed two months ago).[1]

B. Brady Materials and Information Related to Recruitment and Collateral

11. In the Complaint, the Government alleges that DOS "masters" "targeted" women within Nxivm who were "experiencing difficulties in their lives, including dissatisfaction with the pace of their advancement within Nxivm." (Complaint at ¶ 15.) According to the Complaint, DOS masters asked their prospective recruits if they would like to join an organization that would change their lives, and if so, they would need to provide collateral to ensure that the prospective member would keep the existence of the sorority secret. (Id.) DOS members and prospective slaves oftentimes worked with each other to develop ideas for collateral. (Id. at ¶ 16.) Collateral would typically be a personal secret that was meant to ensure that the prospective member would keep the existence of the sorority a secret. (Id.) In their pitch to prospective members, the Government contends that DOS "masters" told the woman about DOS's mission and internal structure, then gave her a choice as to whether or not she would want to join. (Id. at ¶¶ 17-18.) When informing prospective members about DOS, the Complaint alleges that "masters" told the women that the sorority's mission was to eradicate personal weaknesses in its members and that their respective relationships would be of masters and slaves. (Id.) The Government alleges that DOS masters

[1] Counsel reiterated its Brady demand in Raniere's Second Motion for Bond, filed November 14, 2018. (See Dkt. 191, Raniere Second Motion for Bond at 6.) This Court ordered the Government to respond to this bond motion by November 19, 2018.

concealed Raniere's role "as the highest master," instead referring to it as a women's only organization (Id.) Prospective members were also told that, as members, they would be required to perform "acts of care" for or pay "tribute" to the person who recruited them, which allegedly included bringing them coffee, buying them groceries, making them lunch, carrying their luggage, cleaning their house, and retrieving lost items. (Id. at ¶ 20.)

i. Keith Raniere's Role as the Conceptual Founder of DOS Neither Played a Role in the Witnesses Experience in the Sorority, Nor Was It a Material Omission That Caused Members to Give "Property" to Their Masters

12. The Government alleges that "women were recruited to be slaves *under the false pretense* of joining a women-only mentorship group" and that '[n]one of the slaves (except for those directly under the defendant) knew that the defendant was involved in the organization when they were recruited. (Gov't Detention Letter at 1-2.) This allegation is now a basis of the Wire Fraud Conspiracy in Count Three of the Indictment. (Indictment at ¶ 36.) During interviews and proffers, law enforcement personnel have told witnesses that Raniere was the "originator" of DOS and that DOS's purpose was to manipulate women.

13. Counsel has learned from directly and indirectly that multiple witnesses, *some prior to charging the wire fraud conspiracy count*, have told the Government that it was immaterial that DOS members may not have told them about Raniere's involvement in the sorority. Moreover, the witnesses have informed the Government that they did not feel manipulated. When asked if the witnesses knew that Raniere was involved in DOS (i.e., the originator, or the conceptual founder of many of the tenants of the sorority, as alleged in the Complaint) and whether his involvement would deter them from their participation, witnesses have stated that Raniere's involvement in the sorority was irrelevant to their participation. These members have stated that their participation in DOS was solely to overcome certain issues very personal to themselves, and not encumbered by

Raniere's involvement. Further, witnesses have stated that they knew Raniere inspired and developed the ideas and concepts of the sorority.

ii. DOS Members Have Told the Government That the Sorority Gave Them a Chance to Grow as a Person, Develop a Stronger Character, and Obtain the Female Mentorship They Sought

14. Several DOS witnesses have told the Government that the pitch DOS members gave them—that DOS would overcome their weaknesses and give them the opportunity to build character—was entirely true. Rather than feel manipulated or coerced, several witnesses feel that they joined a mentorship group that helped build their bond to women and gave them tools to overcome their current life's difficulties.

15. Several women have told the Government that the sorority sought to uphold honor, trust and respect for women. That this was a group of women who wanted to grow beyond petty attachments in the material world and become the best versions of themselves. These women understood that to accomplish that goal, they would need to commit to overcoming their fears and overcoming attachments to negative experiences that erode at their everyday life. Witnesses have told the Government that being part of a group of women who were also committed to achieving this goal was the true mission of DOS.

16. These witnesses have informed the Government that while DOS was not easy and while there were moments that they felt challenged, they still chose to join DOS, to invest in helping one another and to commit to building character in oneself.

iii. Despite the Fact That DOS Members Gave to Their Masters Potentially Damaging Collateral, Many Witnesses Did Not Fear Their Collateral Would Be Released

17. Witnesses have informed the Government that the purpose of continuing to give collateral was to build their word and build their commitment to each other, not out of fear that their collateral would be released. When law enforcement has asked witnesses, in sum and

substance, "weren't you afraid that other people had collateral over you?," witnesses have stated that they *trusted* that their "master" would not disclose it to anyone. Although a DOS member may have held a witness's collateral, she did not feel coerced, forced or threatened to complete an assignment out of fear that her collateral would be released.

C. Additional Collateral and "Assignments"

18. After women were presented with the tenets of DOS—acts of care for their master, master/slave relationship, and *voluntary* additional collateral to join the sorority—women were free to join or say no. (Complaint at ¶¶ 18-19.) Women who joined "were ultimately required to provide collateral beyond what had initially been described to them." (Id. at 19.) The Government alleges that women did provide additional collateral "fearing that otherwise, the collateral they had already provided would be used against them." (Gov't Detention Letter at 2.) Women apparently also understood that if they told anyone about DOS, left DOS or failed to complete assignments, they risked release of their collateral. (Id. at 2; Complaint at ¶ 28.)

i. Women Told Law Enforcement That They Did Not Provide Additional Collateral Fearing That Original Collateral Would Be Used Against Them

19. Contrary to the Government's allegations, witnesses have informed the Government that they did not provide additional collateral for fear that their original collateral could be used against them. When law enforcement asked witnesses whether more collateral was required if initial collateral was insufficient, witnesses have stated while more collateral was an "expectation," it *was not required* and they were *not forced* to give more collateral. DOS members have told the Government that they knew their masters were not going to do anything bad with their initial collateral and that they provided additional collateral to build character and strengthen their word to their masters.

20. Contrary to the Government's theory that DOS women feared that the collateral they had already provided would be released, at least one DOS "slave" told the Government that they provided additional collateral *to strengthen their word* and not because they were in fear that their initial collateral would be released. These complete statements should be turned over to the defense immediately.

ii. The "Assignments" That Many Women Were Given Did Not Include an Assignment to Have Sex With Raniere; Even If Women Were Given an Assignment to Seduce Raniere, They Did Not Fear Release of Collateral If They Did Not Complete the Assignment

21. I believe that law enforcement has asked witnesses whether having sex with Raniere is a requirement of joining the sorority and witnesses have resoundingly answered "no." Law enforcement then asks whether having sex with Raniere is part of the assignment that masters gave slaves. Witnesses have answered that that is *not* part of the assignment and that, if given a sexual assignment, the assignment is incredibly vague and personal to each person—for some, it is to challenge certain fears (such as rejection or self-esteem issues). Moreover, witnesses who have been given an "assignment" have told law enforcement that they did not feel forced or coerced to do it. And, when law enforcement asked what happened during the supposed "assignment to have sex with Raniere," witnesses have told the Government that Raniere did not try to have sex with the women and instead asked how he could help the women.

22. I also believe that at least one witness who was apparently given an assignment to seduce Raniere has spoken to the Government and told them that she did not fear the release of their collateral if she did not complete this assignment. Notably, she has informed law enforcement that this "assignment" did not actually result in seducing Raniere.

23. In addition, I believe that another witness has informed law enforcement that Jane Doe 5[2] told the witness about the sexual experience referred to in the Complaint. (See Complaint at ¶ 45.)[3] This witness told law enforcement that Jane Doe 5 told the witness that she (Jane Doe 5) was into "kinky" stuff, like the rendezvous described in the Complaint. Jane Doe 5 went on to tell the witness that she apparently "fantasized" about having an experience such as this and *wanted to participate in it*.

24. I believe it is also very possible that Jane Doe 5 has said similar things to the Government during their many proffer sessions. This would be clear Brady material if said. Moreover, it goes without saying that such information would be Brady material regardless of whether it was reduced to a note or report.

iii. Women Have Told the Government That They Did Not Feel They Risked Release of Their Collateral If They Failed to Perform "Acts of Care"

25. The Government claims that the slaves were manipulated, coerced or forced to perform "acts of care" because their masters had collateral. (See Complaint at ¶ 21 ("[s]laves were chastised and punished for not performing sufficient acts of care, and slaves believed that if they repeatedly failed at acts of care they risked release of their collateral")). Witnesses have outright told law enforcement their theory of "forced labor" is untrue. Rather, women joined DOS to be

[2] Jane Doe 5 in the Indictment is Jane Doe 1 in the Complaint.

[3] As the only enumerated example of sexual activity within DOS, Ms. Mack allegedly assigned Jane Doe 5, as she is referred in the Indictment) to meet Raniere. Raniere allegedly led her to a house across the street, directed her to remove all her clothes, blindfolded her, led her through trees to a shack, where she was tied on a table. Another woman then began performing oral sex on her. (Complaint at ¶ 45.) "Jane Doe 5 did not want to participate in this sexual activity, but believed it was part of her commitment to DOS and that if she broke her commitment to DOS her collateral could be released." (Id.)

kinder people who would be more giving to others and did not feel manipulated, coerced or forced to perform kind acts because their masters had collateral. Hence, the term, "acts of *care*."

26. Additionally, women have told law enforcement that they did not get chastised or punished for not performing acts of care. Instead, they performed these acts to be kinder to others.

D. Witnesses Have Told the Government that Nxivm Does Not Force Students Into Debt

27. I believe that in response to questions about whether Nxivm "forces" students into debt thereby not enabling them to move on from the organization, witnesses have told the Government flatly "no." Witnesses have stated that Nxivm provides ways for students to defer payments and live in Albany affordably, but that many students abuse that and "get lazy."

28. Additionally, the Government has asked DOS witnesses whether they ever felt forced to take more Nxivm curricula and those DOS witnesses have stated "no." Witnesses have not felt that their "success in the Nxivm ranking system depended on their successfully completing DOS assignments." (Complaint at ¶ 28.)

29. Above, counsel has provided numerous examples of witness statements to law enforcement that directly contradicted the Government's theories. Yet, in the eight months since Raniere's expulsion from Mexico and subsequent arrest, the Government has still failed to provide these exculpatory statement, clearly within the purview of Brady and its progeny.[4]

[4] While counsel is aware of some of these witnesses' statements, this does not relieve the Government of its ethical obligations under Brady. Counsel were not present at these witness interviews and therefore do not know exactly what these witnesses told law enforcement. Moreover, while counsel know that some witnesses provided exculpatory information, we do not know how many other witnesses have provided similar information. Only the Government knows the full extent of the exculpatory information.

Facts Supporting the Motion for Live Trial Testimony Via CCTV

30. There are a number of defense witnesses with relevant testimony who are Mexican natives and currently reside in Mexico. Defendant's preference and that of his counsel is that these witnesses appear in court and provide live testimony. However, as set forth below, many of these witnesses have reason to fear that the Government may arrest or detain them if they travel to the United States to testify. Counsel is currently in discussions with the Government regarding whether the Government will agree to grant safe passage to these witnesses. As of the filing of this motion, the Government has not reached a final decision.

31. Upon information and belief, racketeering acts one, two, four and six all involve Jane Doe 4. Upon information and belief, racketeering acts seven, eight and nine, Count Three, Count Four, Count Five and Count Six all involve the DOS defendants. Upon information and belief, Count Seven involves a witness who resides in Mexico.

32. Counsel has asked the Government to refrain from arresting, detaining, or threatening to arrest or detain the following categories of defense witnesses: (1) members of Jane Doe 4's family; (2) "first-line DOS masters;" and (3) DOS slaves. As noted below, these witnesses are currently unavailable to the defense because the Government has not yet confirmed whether they will offer safe passage for these witnesses. Therefore, as it stands now, the Government may arrest and/or detain these witnesses if they come to the United States to testify in this trial. Even if the witnesses were willing to enter the country without safe passage, several of these witnesses do not have a visa that will allow them to enter the United States. Accordingly, we would need the Government to grant them parole to gain their appearance.

A. Jane Doe Four's Family Members Are Material Witnesses and They Are Currently Unavailable to Travel to the United States to Testify at the Trial

33. Racketeering Act Six alleges trafficking Jane Doe 4 for labor and services and document servitude. The Government alleges that these acts "stem from years of abuse of an illegal alien living in Clifton Park, New York who was at one time a member of Raniere's inner circle and a sexual partner of Raniere's, in part to extract work from her." (Dkt. 51, Gov't Superseding Indictment Detention Letter at 3.) The Government's theory is that "the victim was confined to a room as punishment after she developed romantic feelings for a man who was not Raniere" and that she only had "sporadic visitors, including Lauren Salzman." (Id.)

34. As counsel has stated in previous memoranda:

> [t]he thousands of emails and handwritten notes from this adult woman show that this woman willingly stayed in her *unlocked* bedroom for a year and a half to work on many issues, such as the fact that she would constantly steal from people in the community. In addition, she lived in the house *with her family*, who bought her fresh food and prepared her meals for her. Incredibly, and what the Government conveniently leaves out, is that her mother stayed in the room next door to the woman for nearly a year, also entirely of her own volition.

(Raniere Second Motion for Bond at 12) (emphasis in original); see also Dkt. 43, Raniere Motion for Bond at 9). If allowed to travel to the United States and testify, Jane Doe 4's family members would testify in court and provide firsthand knowledge that prove the falsity of the Government's allegation and establishing that Jane Doe 4 was not "confined" in any sense of the word.

35. Members of Jane Doe 4's family currently reside in Mexico. Given the Government's allegations related to Jane Doe 4 which implicate her family members,[5] they have

[5] The Government alleges that Jane Doe 4 "was told that if she left the room she would be sent to Mexico without any identification papers." (Gov't Superseding Indictment Detention Letter at 3.) When Jane Doe 4 decided to leave the room, her father drove her to Mexico. (Raniere Second Motion for Bond at 12.) While in Mexico, without identification papers, the Government alleges that Jane Doe 4 sent an email to her father asking for her papers and that he forwarded it "to Lauren

a legitimate fear of being arrested in the United States.[6] Therefore, we have asked the Government to provide both family members with safe passage into the country.

36. In the event that the Government does not grant these requests, counsel asks this Court to allow us to conduct live, two-way videoconferencing with the witnesses during trial.

B. Prospective DOS Witnesses at the Trial Are Material Witnesses to the DOS Defendants and Currently Unavailable to Testify at the Trial

37. Counsel intends to call two categories of DOS witnesses to testify at this trial: (1) "first-line DOS masters," meaning that they are directly under Raniere in the "DOS pyramid" (Ind. at ¶ 2), and "DOS slaves" to impeach the Government's witnesses. The "first-line DOS masters" are essential to the factual defense because each of them played a role in developing and implementing the principles of the sorority: the name, collateral (and what it should be), assignments, acts of care, readiness, and branding.

38. These "first-line" DOS women will testify that DOS was a goals program meant to strengthen loyalty to one another, to grow and to empower each other. Moreover, they will testify that branding was a choice and that slaves could opt out if they chose. They will also testify that they never threatened any of their slaves with release of collateral.

39. The first-line DOS women will further testify that the concept of collateral was not created in DOS as it was first used in a Nxivm entity called "Society of Protectors." Therefore, these women will testify that a majority of the women in DOS, who were allegedly "mostly from within Nxivm's ranks" (Complaint at ¶ 15), knew of and had used this as a tool in the past. "First-

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Salzman and *other co-conspirators*." (Gov't Superseding Indictment Detention Letter at 7) (emphasis added).

[6] Additionally, Jane Doe 4's sister does not have the immigration papers necessary to enter the United States and testify at the trial.

line" DOS masters will also testify that many DOS slaves stated that they did not want to give collateral and received no negative consequences.

40. Accordingly, Raniere, Mack and Lauren Salzman have legitimate defenses, which, if credited by the jury, would negate the *mens rea* of the charges against them (sex trafficking, sex trafficking conspiracy, forced labor, wire fraud conspiracy and a RICO conspiracy predicated on state law extortion). However, in order to promote these defenses, counsel must call the "first-line" DOS masters who developed the tenets of the sorority. Upon information and belief, all but one of the unindicted first-line DOS masters reside in Mexico.

41. In addition, counsel intends to call the DOS "slaves" who reside in Mexico who can impeach the testimony of the Government's witnesses as to key aspects of the branding ceremonies. [redacted] There are several witnesses who reside in Mexico who have material information to contradict and impeach this false testimony. This is just one example. Therefore, testimony from "DOS slaves" is essential to rebut Count Three (the wire fraud conspiracy) and Count One (the RICO conspiracy).

42. As counsel has reiterated on numerous occasions, Raniere proclaims his innocence. Not only did women willingly join DOS but they also willingly gave collateral to their prospective masters *after learning about the requirements of DOS*, willingly got branded, and the ones who engaged in sexual activity with Raniere did so consensually.

43. These witnesses are located in Mexico, however, and are indisputably beyond the reach of U.S. legal process. Accordingly, the defense is unable to legally subpoena these witnesses

to appear in court. Nevertheless, these witnesses would be willing to come to the United States if they can do so safely without being arrested, detained and/or charged by the Government. Counsel has spoken to these witnesses[7] who indicate they would testify truthfully about DOS and the events surrounding its creation and existence.

44. If the Government does not grant safe passage to these witnesses, the witnesses will not come to the United States out of fear that they will be arrested. Indeed, the Government has already charged two other first-line DOS masters—Allison Mack and Lauren Salzman—under a legal theory that could similarly implicate our witnesses.

45. Accordingly, as with Jane Doe 4's family members, if the Government does not grant these witnesses safe passage to the United States to testify live in the courtroom, we request that the Court order live, two-way teleconferencing for their testimony at the trial. In the alternative, counsel asks this Court to order Rule 15 depositions in Mexico.

Dated: November 16, 2018
New York, New York

Respectfully submitted,

Marc Agnifilo, Esq.

[7] While we have indicated the names of Jane Doe 4's family members to the Government, we have not indicated the names of the "first-line" DOS masters and other DOS members that we propose to the Government. Counsel does not believe that Raniere, Mack and Lauren Salzman should be required to lay bare our proposed defense witness testimony to the Government, when we only have limited information as to who the Government witnesses are from reading search warrant affidavits, the indictment and the Complaint. Also, because several witnesses have expressed concern that if they were identified to the USAO-EDNY that they may be charged with an offense and extradited in a manner similar to Raniere's arrest, counsel requests that any further disclosures concerning the identity of DOS witnesses and the materiality of their testimony be provided to the Court *in camera*.

EXHIBIT 1

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July 18, 2018

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Re: United States v. Keith Raniere and Allison Mack, 18 Cr. 204 (NGG)

Dear AUSAs Penza and Hajjar:

We represent Keith Raniere in the above-captioned case and write jointly with Kobre & Kim LLP, counsel for co-defendant Allison Mack, to request prompt production of any and all materials in the possession, custody and control of the government pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, including Giglio v. United States, 405 U.S. 150 (1972), and United States v. Bagley, 473 U.S. 667 (1985), the Fifth and Sixth Amendments to the Constitution of the United States and applicable law.

Set forth below are specific examples of documents or information that would constitute materials and information in the possession, custody and control of the government which it is obligated to disclose. We seek prompt production of any and all Brady, Giglio and Bagley materials, including but not limited to the specific examples below in order to (i) have sufficient time to conduct any necessary investigation; (ii) enable the defense to determine what motions are necessary; and (iii) enable counsel to prepare for trial, including the identification of relevant witnesses. We respectfully ask you to produce any and all Brady,

Giglio and Bagley materials, including but not limited to our specific examples below, by Wednesday, July 25, 2018.

"Documents or Information" means all documents, objections, communications, statements of witnesses, and any other evidence and information (written or unwritten) and/or notes or recordings related thereto in the possession, custody or control of the United States Department of Justice and/or the United States Attorney's Office for the Eastern District of New York. It includes all Documents or Information in the possession, custody or control of the Federal Bureau of Investigation ("FBI") and thus requires a search of the FBI's emails, text messages and documents, including the emails of the case agent and any other agent working on the matter. It also includes Documents or Information in the possession, custody and control of the Internal Revenue Service, Department of Homeland Security, Customs and Border Protection, Immigration and Customs Enforcement, the Mexican authorities, the New York State Police or any other agency considered to be an arm of the prosecution. Each request is of a continuing nature, and we request prompt notice in the event that responsive Documents or Information comes to the government's attention at any point in the future.

Each of the examples enumerated below specifically includes all statements made by witnesses to law enforcement officials, whether such statements were memorialized or not. See United States v. Rodriguez, 496 F.3d 221 (2d Cir. 2007) (when prosecution is in possession of material information that impeaches its witnesses or exculpates the defendant, it may not avoid its Brady, Giglio and Bagley obligation to disclose such information by not writing it down).

Reserving our rights to provide you with additional examples, we seek all Brady, Giglio and Bagley material, including the following specific examples:

(i) Documents or Information refuting the government's contention that DOS is a sex cult or that sexual activity played a role in DOS;

(ii) Documents or Information indicating that even if women were tasked to "seduce" Raniere, there was nonetheless no requirement or expectation that sexual intercourse or sexual activity would take place;

(iii) Documents or Information indicating that DOS members and former DOS members did not believe collateral would be released if they left DOS;

(iv) Documents or Information indicating that sexual intercourse or sexual activity with Raniere was not a tenet or requirement of membership in DOS;

(v) Documents or Information indicating that collateral was never released nor threatened to be released if a DOS member or former DOS member failed or refused to perform a task assigned by a "master" within DOS;

(vi) Documents or Information indicating that having sexual intercourse or engaging in sexual activity with Raniere or anyone else was not a requirement to join or remain in DOS;

(vii) Documents or Information indicating that no one asked for, expected to, and/or actually received anything of value or otherwise benefited, or expected to benefit, financially in exchange for sexual intercourse or sexual activity with Raniere or anyone else;

(viii) Documents or Information regarding the voluntariness of branding in connection with DOS and/or the fact that DOS members and former members were permitted to decline to be branded and still remain in DOS;

(ix) Documents or Information indicating an understanding that refusal to be branded would not result in the release of one's collateral;

(x) Documents or Information indicating that DOS members or former members recruited additional members to DOS after being branded, receiving the seduction assignment, and/or engaging in sexual intercourse/activity with Raniere;

(xi) Documents or Information regarding discussions between Raniere and a witness about keeping sexual relationship secret from other members of DOS;

(xii) Documents or Information of efforts by a member of DOS or former members of DOS to engage in sexual relations with Raniere and being rebuffed by Raniere;

(xiii) Documents or Information regarding DOS members or former DOS members coming up with/developing/having discretion over what "acts of kindness" and/or penance should consist of;

(xiv) Documents or Information indicating that a witness was informed of Raniere's connection to DOS when she joined DOS;

(xv) Documents or Information from women who left DOS and their collateral was never released, and/or their understanding that collateral would not be released if/when they left DOS;

(xvi) Documents or Information that any member of law enforcement stated or suggested to a witness that law enforcement knows facts that the witness does not

know as a way of compelling, coercing or procuring that witness's testimony for the government;

(xvii) Documents or Information that any member of law enforcement stated or suggested to a witness that such witness was a victim of some offense as a way of compelling, coercing or procuring that witness's testimony for the government; and

(xviii) Documents or Information that any member of law enforcement stated or suggested to a witness that such witness was lied to, deceived or otherwise misled by Raniere or someone else as a way of compelling, coercing or procuring that witness's testimony for the Government.

To the extent any witness provided a certain account to the government and then, after being confronted with purported statements of fact or opinion by government personnel, or shown a document by government personnel, changed that account in whole or in part, we request all such statements of that person. In addition, we request all information relative to (xv) through (xvii) above.

In addition, if the government is aware of Documents or Information that would or may be Brady, Giglio and/or Bagley material but believes the material can be obtained by subpoenas duces tecum, please so advise us. Furthermore, if the government declines to provide any of the information we have requested or denies that any of the aforementioned categories of Documents and Information exist, please let us know promptly so that Mr. Raniere and Ms. Mack can make any appropriate motions.

Thank you for your consideration.

/s/

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Jacob Kaplan
Teny Geragos
Brafman & Associates, PC
Attorney for Defendant
Keith Raniere

Paul DerOhannesian II
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/s/

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EXHIBIT 2

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September 11, 2018

BY HAND AND ECF

Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Keith Raniere, et al., 18 Cr. 204 (NGG)

Dear Judge Garaufis:

We represent Keith Raniere in the above-captioned case and write in advance of the status conference on September 13, 2018 to address issues of concern, including: (1) the government's progress in producing discovery and its repeated refusal to schedule a meet and confer with counsel pursuant to this Court's July 26, 2018 Minute Order; (2) the importance of keeping the January 7, 2019 trial date; (3) the government's failure to identify the Jane and John Does in the Superseding Indictment, as well as failing to respond to the Defendants' request for a Bill of Particulars; and (4) the government's failure to respond to a Brady letter raising significant specific issues requiring immediate attention. These issues will be addressed in turn below.

Discovery

To date, very little substantive discovery has been produced to all defendants and since Mr. Raniere and Ms. Mack's arrest, the government has refused to (a) state what discovery exists, or (b) provide a timetable for when it intends to produce the remaining discovery.

Materials Produced to the Defendants:

On August 3, 2018, the government produced to defendants Raniere, Mack, Bronfman, Nancy Salzman and Lauren Salzman eight discs containing 39 gigabytes of data.[1] (See Exhibit 1: 8/03/18 Discovery Letter.)[2] The government produced this discovery to Kathy Russell on August 28, 2018. The majority of this discovery had already been produced to Mr. Raniere and Ms. Mack. Therefore, much of this material is not new discovery for defendants Raniere or Mack.

Just last night at 11:07 p.m. on September 10, 2018, the government sent a discovery letter stating that seven categories of documents, emails, and/or videos would be available for the defendants to obtain. (Exhibit 2: 9/10/18 Discovery Letter.)

Materials Not Produced to the Defendants:

At the July 25, 2018 status conference, the government stated it has "approximately 60 electronic devices and/or accounts." (7/25/18 Transcript at 11.) The prosecutors represented that they "have produced substantial portions of that, but [] have a lot more to go." (Id.) In their August 3rd discovery letter, the government stated they are in possession of two email accounts, two iCloud accounts, a cell phone, a Dropbox account, and electronic devices obtained through the execution of two search warrants. (Ex. 1 at 4-5.) At Ms. Bronfman's hearing on August 21, 2018, the government stated that they "now have an estimate that is approximately 12 terabytes worth of data." (8/21/18 Transcript "Tr." at 39.)

It does not appear that the majority of these 12 terabytes have been produced. Nor has the government identified the nature of the discovery material constituting these terabytes.[3] Until last night, the government had not produced any information responsive to the search warrants executed on any of these devices. [redacted]

[1] The government has also provided the full return of Mr. Raniere's Yahoo email account to Mr. Raniere.

[2] While it is the United States Attorney's Office for the Eastern District of New York's practice to file Rule 16 Discovery Letters on the public docket, the government has not done so in this case. For this reason and to not run afoul of the Protective Order signed August 2, 2018 (see Dkt. No. 85: Protective Order), we have redacted the discovery letters cited in the public filing and are providing the Court with unredacted copies.

[3] As is true of virtually all warrants for electronically stored information, the warrants obtained in this investigation anticipate a two-step process for executing the warrants – first, the government obtains the entirety of the hard drive or email account within a certain date range from the searched premises or the email provider; then the government must undertake a search to identify items that fall within the scope of the warrant's terms. Accordingly, the search warrant that the government has produced only authorizes the seizure of items that "constitute evidence, fruits and instrumentalities of the Subject Offenses," not the seizure of entire accounts and devices. (See, e.g., Ex. B to Search Warrant on Oregon Trail.)

[redacted] Therefore, the fact that the government has only just turned over information [redacted] is simply unreasonable.

Indeed, it appears that despite seizing a majority of the devices and accounts in March 2018 or even earlier, the government has either not yet searched many of these accounts and devices for items responsive to the warrant, or seeks to avoid producing to the defense the results of any searches performed. In the government's August 3rd letter, it stated that absent an objection from defendants, it would produce "full discovery copies" of electronic devices to all defendants. (Id.) Each defendant responded, through counsel, that he or she does not waive his Fourth Amendment rights and does not consent to the government seizing from his or her electronic devices or email accounts and producing to other parties personal and private materials as to which the government did not have a valid warrant authorizing seizure. In other words, material on electronic devices or in email accounts that is not responsive to the warrant may not be seized by the government, and may not be shared with other parties.

In sum, each defendant declined to waive his or her Fourth Amendment right to privacy and insisted that the government follow the law and execute the search warrants and seize from the electronic devices and email accounts only the items which a Court authorized the government to seize.

The Government's Failure to Comply with This Court's Order, Failure to Engage in Discussions with Defense Counsel and Failure to Produce Discovery

On July 26, 2018, this Court ordered the parties to meet and confer regarding discovery. (See 7/26/18 Minute Order). On July 26th, Ms. Bronfman's counsel proposed a date for a meet and confer. (Ex. 3: Emails Between Defense Counsel and Government at 3.) The government responded that the first step is to produce discovery and if a meet and confer is necessary, "we'll be available." (Id. at 2.) Once all counsel signed the protective order, counsel for Ms. Mack again reached out for a date to meet and confer regarding discovery. (Id.) Again, the government responded that "it will be more productive and practical to meet and confer to address issues relating to discovery, should that prove necessary, after some productions of discovery have gone out…." (Id. at 1.)

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[4] [redacted]

[5] The government has designated the [redacted] as "Victim Discovery Material," and therefore, we are redacting these sentences in the public filing consistent with our obligations in the Protective Order.

After the first discovery production, Ms. Bronfman's counsel sent the government a letter laying out the issues that defense counsel would like to discuss with the government. (Ex. 4: Bronfman 8/07/18 Letter.) Among other things, Ms. Bronfman asked the following questions:

- Please identify the 60 devices and/or accounts that will be produced and where they were seized or obtained from.
- When do you anticipate completing your review for responsive materials for each of the 60 devices and/or accounts?
- What other materials of significant volume outside of the 60 devices/accounts do you anticipate producing and what is the anticipated timetable for production?

(Id. at 2.) Ms. Bronfman and the other defense counsel have not received a response to this letter.

Instead, on August 28, 2018, the government sent a discovery letter to all counsel that thirteen devices seized from 3 Oregon Trail were being made available to all defendants. (See Ex. 5: 8/28/18 Discovery Letter.) Two days later, on August 30, 2018, the government wrote to inform us that "due to an objection by counsel for another defendant, discovery copies of the materials identified in the government's August 28, 2018 letter to you are being held from production to all defendants" and blaming the delay in producing this discovery on the defendant's objection. (Ex. 6: 8/30/18 Letter to Defendants at 1.)

Based on the government's August 30th letter, it thus appears the government has not complied with its legal obligations and executed the search warrants, even though many of the materials were seized more than five months ago and the government has an obligation to execute search warrants of electronic storage devices promptly. As a result of this failure, the government has sought to force the defendants to waive their Fourth Amendment rights and, failing that, has simply not produced discovery to the defendants.

Following this, on September 3, 2018, Ms. Bronfman's counsel again wrote to the government, noting the government's failure to produce discovery and requesting once again that the government provide information about what Rule 16 discovery the government will be producing and when. (Ex. 7: Bronfman 9/03/18 Letter.) Specifically, the defense requested answers to the following questions:

- Is any discovery ready to be produced? If so, what does it consist of and what is the size of the production? When will it be produced?
- For which seized materials (from any warrants executed in the course of the investigation) has the government not completed the review process to identify items responsive to search warrants? What is the timetable for finishing that review process? What is the anticipated volume of that data?
- For which seized materials (from any warrants executed in the course of the investigation) is the government undertaking a privilege review process? How long do you anticipate that process will take? What is the anticipated volume of that data?

(Id. at 2.)

The government did not respond to either of Ms. Bronfman's letters, has not provided answers to these questions. Thus, five months after the arrest of Keith Raniere and Allison Mack, and more than six weeks after the arrest of the other defendants, the government still has not begun to produce the bulk of the discovery in this case.

Trial Date

Next, we write to reiterate that Mr. Raniere has not waived and does not waive his right to a speedy trial and requests that this Court keep the January 7, 2019 trial date. As we have stated previously, Mr. Raniere was forcibly seized in Mexico at the behest of United States authorities in the absence of an international, or provisional, arrest warrant on March 26, 2018. (See Dkt. No. 43, Raniere Motion for Bond at 8.) Since the inception of this case, the government has maintained that Mr. Raniere must be remanded pending a trial and, yet, has employed every basis available to avoid a trial. As the Court will recall, on May 4, 2018, Mr. Raniere requested a trial date of mid-July 2018. (See 5/04/18 Transcript at 14.) Because Ms. Allison Mack had been arrested in advance of the arraignment date, the Court set a trial date of October 1, 2018. So as to avoid the October 1, 2018 trial date, the government superseded the Indictment on July 24, 2018, adding four defendants. Defendant Raniere continued to press the Court for the October 1, 2018 trial date. (See 7/25/18 Transcript at 9.) However, in light of the additional defendants, the Court set a January 7, 2019 trial date. (Id. at 16-17.)

We anticipate the possibility that the government will continue to deny Mr. Raniere a speedy trial while continuing to demand his pretrial incarceration. Therefore, Mr. Raniere requests that the Court keep the January 7, 2019 trial date, and that the government be directed to meet its discovery obligations immediately. At Ms. Bronfman's bail hearing on August 21, 2018, the government stated that "[w]e may be seeking to have the case designated as a complex case officially, given how much data that there is in this case." (8/21/18 Tr. at 41.) As detailed above, the fact that the government has not met their discovery obligations does not make this case complex. It should be noted that the search warrant on 3 Oregon Trail was executed on March 27, 2018 – one day after Mr. Raniere's arrest. The government should have provided this material a long time ago. The fact that the government has failed to promptly fulfill its discovery obligations does not transform an eminently manageable case into a complex one. Moreover, the government cannot now use its neglect as a basis to delay the trial date and keep Mr. Raniere in jail. Mr. Raniere asserts his complete innocence and he desires a trial immediately. Failing that, he asks only that the January 7, 2019 trial date be kept.

In terms of the mechanics of a January 7, 2019 trial date, we offer a proposal. Given the notoriety and length of this trial, we believe that the use of juror questionnaires is appropriate. We also believe that the Court may want to summon between 500 and 700 jurors. Therefore, we humbly propose that on January 7th, the Court orders the jurors and ask them to fill out juror questionnaires that will be agreed-upon ahead of time. We expect that all counsel will need time to go through the completed questionnaires and agree upon strikes for cause. Once that process is completed, the Court can bring the non-struck jurors to court for the continuation of jury selection

and preemptory challenges. This would cause opening statements to be toward the end of January or early February 2019.

Identity of Jane and John Does

As noted above, the defense has repeatedly asked the government to disclose to all defense counsel the identities of the Jane and John Does named in Counts One through Seven of the Superseding Indictment. On August 14, 2018, counsel served the government with a Bill of Particulars letter on behalf of all defendants, asking for this information, among other things. It is now four weeks since the defendants sent the Bill of Particulars letter and the government has still not provided this information. As the government is obviously aware of these identities, this is a task that should take a few minutes to complete. Yet, the government still has not responded, leaving all counsel to conclude that this refusal to provide the names is another way that the government is seeking to delay the trial date and frustrating the defendants' efforts to prepare for this trial.

Defendants Raniere's and Mack's Specific Brady Demand

On July 18, 2018, prior to the superseding indictment adding defendants Bronfman, Russell, Nancy Salzman and Lauren Salzman, defendants Raniere and Mack provided the government with a specific Brady request in the form of a letter. (See Ex. 8: Brady Letter). We believe that the government has been told by a number of people the government considers "DOS slaves" during proffer sessions with the AUSAs and the FBI agents assigned that no sex trafficking or other illegal conduct took place. These witnesses provided information which contradicts the factual allegations and theory of the prosecution. Defense counsel believes, moreover, that when confronted with these accounts of alleged "DOS slaves" that no illegal conduct took place that the government attempted to "convince" these witnesses to the contrary. The defense is concerned with the propriety of this investigation in light of this information. The defense is moreover concerned that the government has ignored for close to two months a specific Brady letter on July 18, 2018.

Simply put, if the government has been told by someone it believes to be a "DOS slave" that nothing inappropriate happened, contradicts information alleged by any of its witnesses or that any defendant did not act with the requisite mental state required for the commission of the crime, that is the very definition of Brady material, and it must be disclosed immediately. Therefore, in light of the fact that the government has ignored our July 18, 2018 letter, we ask the Court to direct the government to provide an answer to our specific Brady request.

Conclusion

In sum, the government has taken an aggressive position – we believe unreasonably so – in this case. It has caused the forcible seizure of a U.S. citizen in another country in the absence of an arrest warrant justifying that action and it has sought highly restrictive conditions for several peaceable citizens who lack any criminal record and have no history of violence. This is exacerbated by the fact that the government is objectively deficient in timely providing discovery,

providing Brady disclosures and basic particulars, such as the identities of the John and Jane Does. Rather than moving this case forward toward a trial in a legal and responsible fashion, the government seems far more intent on finding ways to avoid a trial.

We ask that the Court keep the January 7, 2019 trial date and that it order the government to do the things it is required to do in order to make that trial fair and in conformity with the law and the established procedures.

Thank you for your consideration.

Sincerely,

Brafman & Associates, PC
By: Marc Agnifilo
Teny Geragos
Jacob Kaplan

DerOhannesian & DerOhannesian
By: Paul DerOhannesian II
Danielle R. Smith

cc: All Counsel (via ECF and email)

EXHIBIT 3

U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

MKM:TH/MKP
F. #2017R01840

September 11, 2018

By Hand and ECF

The Honorable Nicholas G. Garaufis
United States District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Keith Raniere, et al.
Criminal Docket No. 18-204 (NGG) (S-1)

Dear Judge Garaufis:

The government respectfully submits this letter to provide the Court and defendants with a status update in advance of the status conference scheduled for September 13, 2018.

I. Status of Discovery and Privilege Review

a. Overview

Since the defendants' arraignment on the superseding indictment in July, the government has produced approximately 410 gigabytes of discovery to all defendants, an additional approximately 6.64 terabytes of discovery to individual defendants,[1] and has made significant efforts to streamline the process of production. However, due to the volume of discovery and the necessity of conducting a privilege review on certain materials, the government anticipates that the provision of Rule 16 discovery currently in its possession will take several more months.

By letter dated August 3, 2018, the government notified defendants that it was in possession of certain electronic evidence, including electronic devices obtained through the execution of search warrants at two properties in Clifton Park, New York. One of these

[1] For the reasons discussed herein, the majority of this data has been produced only to defendant Nancy Salzman.

properties is the residence of the defendant Nancy Salzman (the "Salzman Residence"), where she stored many Nxivm files. The other property is 8 Hale Drive, Halfmoon, New York, which was referred to as the "Library" by Nxivm members. Within days of the execution of the warrants on these properties, the Federal Bureau of Investigation's Computer Analysis and Response Team (CART) began the time-consuming process of imaging, indexing, processing, and searching the data that was seized. The government estimates that it is in possession of approximately 10 to 12 terabytes of electronic data. The Second Circuit has compared the capacity of one terabyte of data to that of 12 library floors' worth of books. See United States v. Ganias, 824 F.3d 199, 215 (2d Cir. 2016). The government has engaged a third-party vendor to manage searches of this electronic data as directed by the government and to facilitate production of electronic data in accessible, searchable formats to allow defense counsel the same ability to review the data. Certain defendants have specifically requested that discovery material be produced in this format, and the government believes that accommodating this request will substantially assist the defendants in preparing for trial.

In the interest of expediting the defendants' access to the voluminous electronic evidence in its possession, by letter dated August 3, 2018, the government notified all defendants of the searches conducted on the two properties and disclosed the applications for both search warrants, as well as photographs of the execution of the search warrants, including photographs of the devices seized during the course of the searches. The government requested that, to the extent any defendant objected to the disclosure of full discovery copies of such materials to all defendants, that it notify the government "as soon as possible and no later than August 8, 2018." Having received no objection, the government notified defense counsel on August 28, 2018 that discovery copies of certain materials, amounting to approximately three terabytes of data, were being made available to them. Several hours later, the government received an email by counsel for Nancy Salzman that raised an objection to the "distribution of items seized from our client—or places attributable to her—to anyone but us, unless such items are within the scope of the warrant and are established to not contain irrelevant, privileged, or otherwise confidential materials." Upon receipt of the email, the government halted production of any of these materials to any defendant other than Nancy Salzman. On September 6, 2018, counsel for Nancy Salzman for the first time clarified that she objected only to the disclosure of materials seized from the Salzman Residence and asserted no privacy interest in materials seized from the Library. Accordingly, the government intends to make available full discovery copies of devices seized from the Library to all defendants over the next several weeks or as soon as practicable, which is estimated to amount to several terabytes of data. In the meantime, the government will continue its searches of the non-privileged materials in its possession and produce the results of those searches on a rolling basis to all defendants. The material seized from the Salzman Residence will be reviewed for privilege as described below.

The government also continues to receive records from a variety of sources, including witnesses and entities located overseas. The government will continually review such records to determine whether they contain Rule 16 material (or otherwise give rise to disclosure obligations) and, if they do, disclose the records promptly.

b. Privilege Review

The government has engaged a privilege review team separate from the prosecutors and agents responsible for the instant prosecution and investigation (the "prosecution team") to review potentially privileged materials. To date, three defendants — Keith Raniere, Clare Bronfman and Nancy Salzman — have asserted that certain material seized by the government may contain potentially privileged communications.[2]

In response to requests by the government, defendants Raniere and Bronfman have provided lists of attorneys and law firms with whom these defendants assert they had privileged communications. Raniere has identified over 26 attorneys, Bronfman has identified over 42, and Nancy Salzman has yet to provide such a list but has indicated she may do so. The government has been in communication with counsel for each of these defendants to attempt to understand the scope of, and prepare to address, potential privilege issues, including whether the asserted privilege is the defendant's or Nxivm's.

The privilege review team is in the process of segregating potentially privileged communications, based on the lists provided to the government. The remaining material will be provided to the prosecution team to be searched and produced in discovery to all defendants. Simultaneously, the privilege review team will conduct its own review of the potentially privileged communications and coordinate with counsel for the defendants to determine if any of the materials identified as potentially privileged are in fact privileged.

II. Complex Case Designation

The government anticipates moving the Court, at the September 13, 2018 status conference, to designate this case as complex.

Under the Speedy Trial Act, any "period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the government" is excludable "if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial," and the court "sets forth, in the record of the case, either orally or in writing, its reasons for [that] finding." 18 U.S.C. § 3161(h)(7)(A).

In determining whether a continuance serves the ends of justice, courts are to consider whether the case is so complex that, absent a continuance, it would be unreasonable to expect adequate preparation for trial or pretrial proceedings. See id. § 3161(h)(7)(B)(ii).

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[2] Defendant Mack is still assessing whether there are certain materials as to which she will raise a privilege claim; however, the amount of data over which she might claim a privilege is substantially less than that of the other defendants.

In making that determination, courts consider "the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law." Id.

Here, each of these factors weighs in favor of a determination that complex case designation is warranted. The superseding indictment charges six defendants in a variety of crimes including a racketeering conspiracy spanning 15 years. The crimes alleged in the indictment relate to over a dozen separate schemes, including schemes involving sex trafficking, forced labor, document servitude, illegal entry, identity theft, obstruction of justice, money laundering and wire fraud. The government anticipates that the Rule 16 discovery in this case will be varied, as described above, and voluminous. Moreover, a significant portion of the discovery is in Spanish and/or consists of video or audio recordings, which requires time to review, transcribe and translate.

Accordingly, the government respectfully submits that this case is properly designated complex. See, e.g., United States v. Beech-Nut Nutrition Corp., 871 F.2d 1181, 1197-98 (2d Cir. 1989) (district court did not abuse its broad discretion in designating complex an eight defendant, 470-count case); United States v. Hernandez, 862 F.2d 17, 24 n.3 (2d Cir. 1988) ("It was hardly an abuse of discretion to hold a nineteen-defendant case complex."); United States v. Naseer, 38 F. Supp. 3d 269, 276 (E.D.N.Y. 2014) ("[T]he continued exclusion for purposes of the Speedy Trial Act is justified by the nature of the case, the significant amount of discovery that the government is in the process of providing to the defendant, and the importance of ensuring that both parties have time to sufficiently prepare for a fair trial."); United States v. Astra Motor Cars, 352 F. Supp. 2d 367, 369 (E.D.N.Y. 2005) ("The reason this case is designated as complex is not grounded solely on the relatively large number of defendants, but also the extraordinary volume of discovery."); see also United States v. Curanovic, 17-CR-404 (KAM), Docket Entry, October 2, 2017 (minute entry designating ten-defendant, non-racketeering case complex over one defendant's objection noting "the nature of the charges" and "the voluminous discovery"); United States v. Webb, 15-CR-252 (PKC), Docket No. 61, August 14, 2015 (minute entry designating FIFA racketeering case complex and noting "that discovery is voluminous and underway").

III. Defendant Raniere's September 11, 2018 Letter

The government has received the defendant Raniere's September 11, 2018 letter, which raises a number of issues regarding discovery that are addressed by this letter. The government has invited counsel for each of the defendants to raise particularized questions regarding discovery, and remains available to discuss any such questions going forward.[3]

[3] As the government already informed defense counsel, it will provide the true names of the John and Jane Does identified in the Superseding Indictment. As to Keith Raniere's demand for Brady material, the government is aware of and will continue to comply with its Brady obligations.

Although Keith Raniere seeks to keep the January 7, 2019 trial date and has not consented to the exclusion of speedy trial time, the other defendants in this case have each previously consented to the exclusion of time for the purpose of plea negotiations, discovery production and review and preparation for trial. The government has been notified that at least one co-defendant intends to do the same at this status conference. Applying Title 18, United States Code, Section 3171(h)(6), the Second Circuit has repeatedly held that "in the absence of severance, any excludable delay as to one defendant applies to all co-defendants, such that the case is governed by a unitary speedy trial clock." United States v. Curanovic, 2017 WL 4402452, 17-CR-404 (KAM), at *2 (citing United States v. Pena, 793 F.2d 486, 489 (2d Cir. 1986)). Moreover, the government notes that Keith Raniere's lead attorney is engaged on a trial that is scheduled to last from October 15, 2018 through January 1, 2019 and has informed the government and the Court's deputy that he may need a short adjournment because of the possibility that the other trial may extend into 2019.

Respectfully submitted,

RICHARD P. DONOGHUE
United States Attorney

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(718) 254-7000

cc: Clerk of Court (NGG) (by ECF)
Counsel of Record (by ECF)