

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CR. NO. 11-20044

CHASTAIN MONTGOMERY,

Defendant.

BILL OF PARTICULARS REGARDING VICTIM IMPACT

COMES NOW the Defendant, Chastain Montgomery, by and through his attorneys, Michael E. Scholl and C. Anne Tipton, and moves this Honorable Court pursuant to Rule 7 (c) of Federal Rules of Criminal Procedure to require the United States Government to file a bill of particulars concerning the victim impact evidence they wish to present and file said response under seal.

The Defendant has filed a Motion to Dismiss/Strike the Non-Statutory Aggravating Factor Concerning Victim Impact Evidence or in the Alternative, to Limit Victim Impact Testimony. The Defendant hereby incorporates that motion and its case law in support of this request for a bill of particulars as if copied herein verbatim.

The government has filed and seeks to prove non-statutory aggravating factors surrounding victim impact. More particularly they list characteristics of the victims, impact of the offense on the families of the victims, and impact of the offense on the employer and colleagues of the victims. Each of these headings contain conclusory, vague and open-ended language which provide the defense with no notice of exactly what victim impact evidence the government intends to use.

The Defendant is entitled to be provided a constitutionally sufficient notice pursuant *United States v. Bin Laden*, 126 F. Supp. 2d. 290 (S.D.N.Y., 2001), *United States v. Glover*, 43 F.Supp.2d 1217, 1236 (D. Kan. 1999) and *United States v. Cooper*, 91 F.Supp.2d 90, 110 (D. Col. 2000). (See legal argument in Defendant's Motion to Dismiss/Strike the Non-Statutory Aggravating Factor Concerning Victim Impact Evidence or in the Alternative, to Limit Victim Impact Testimony.)

The Defendant moves the Court to require the Government to list the names of every individual from whom the Government intends to obtain victim impact evidence and an outline of the proposed victim impact evidence for each witness along with the evidence to be presented by said witness. This outline should specify the particular categories of injury, harm and loss (See *Bin Laden*, *Cooper* and *Glover*.)

By requiring the Government to do so, it will give sufficient notice to allow the Defendant to prepare for a potential penalty phase. It will also allow this Court the opportunity to review to proposed statements in order to ensure that the victim impact evidence complies with the Due Process Clause and that the probative value of the proposed victim impact evidence is not outweighed by the danger of unfair prejudice. 18 U.S.C. § 3593(c).

WHEREFORE, Defendant prays that this Honorable Court grant his motion for a bill of particulars and for said response to be placed under seal and for such further general relief as this Court deems necessary.

Respectfully submitted,

s/ Michael E. Scholl
MICHAEL E. SCHOLL (16284)
Attorney for Defendant
8 South Third Street, Fourth Floor
Memphis, Tennessee 38103
(901) 529-8500

s/ C. Anne Tipton
C. ANNE TIPTON (16284)
Attorney for Defendant
8 South Third Street, Fourth Floor
Memphis, Tennessee 38103
(901) 529-8500

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and exact copy of the foregoing document has been served upon United States Attorney, Edward L. Stanton and Assistant United States Attorneys, Tony Arvin and Lorraine at 167 North Main, Suite 800, Memphis, Tennessee 38103, via electronic delivery, on this the 6th day of May, 2013.

s/ Michael E. Scholl
MICHAEL E. SCHOLL