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15 IN THE UNITED STATES DISTRICT COURT  
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 17 WESTERN DIVISION  
 18

19 UNITED STATES OF AMERICA,  
 20 Plaintiff,  
 21 v.  
 22 MARK RIDLEY-THOMAS, et al.,  
 23 Defendants.  
 24

Case No. 2:21-cr-00485-DSF

**DEFENDANT MARK  
 RIDLEY-THOMAS'S  
 OPPOSITION TO  
 GOVERNMENT'S MOTION  
 FOR ORDER REQUIRING  
 PRODUCTION OF  
 DEFENDANT'S WITNESS  
 LIST**

Trial Date: March 7, 2023  
 Time: 8:30 a.m.  
 Courtroom: 7D  
 Judge: Hon. Dale S. Fischer

1 On Friday, March 17, 2023, after the government rested its case and  
2 requested a defense witness list, defense counsel stated, “If there’s any authority  
3 requiring us to do that, I would ask the government provide it to us so that we can  
4 assess it.” Trial Tr. 2115:3-6. The court replied: “[Y]ou should both look at the  
5 rule and follow the rule.” Trial Tr. 2115:8-9.

6 Here, “the rule” is plain—the defense is not required to disclose its witness  
7 list to the government. Accordingly, the Court should not compel the defense to  
8 provide its witness list to the government.

9 Federal Rule of Criminal Procedure 16 does not require the defense to  
10 disclose its witness list. Nor does Federal Rule of Criminal Procedure 57. Nor  
11 does Federal Rule of Criminal Procedure 2. (The government relies on each Rule  
12 for its argument.) Further, there is nothing in the local rules for the Central District  
13 of California requiring the defense to disclose its witness list in a criminal case.  
14 And this Court’s Criminal Standing Order describes only the court’s *preference*  
15 that the defense disclose its witness list *to the Court*—not to the government.  
16 Order p. 5, ¶ 3 (requiring the government to disclose its witness and exhibit list to  
17 the Court), Order p. 6, ¶ 5 (“The Court *prefers* that defense counsel email witness  
18 and exhibit lists *to the Chambers email box* by noon on the Monday before trial  
19 and provide defense exhibits to the CRD on the first day of trial, *but counsel are*  
20 *not required to do so unless these witness names and exhibits have previously*  
21 *been provided to the government.*” (emphasis added)).

22 Notably absent from the government’s brief is any authority indicating the  
23 defense is required to provide the government with its witness list.

24 The government’s authority is in fact inapposite. The ruling of *United States*  
25 *v. W.R. Grace*, 526 F.3d 499, 508-11 (9th Cir. 2008) was limited to the district  
26 court’s decision concerning the *government’s* witness list—not that of the  
27 defendant. Moreover, the authorities cited in *W.R. Grace* are each cited for the  
28 proposition that a court may require the government—not the defense—to disclose

1 its witness list. *See id.* at 508. The issue of whether the defense should be required  
2 to disclose its witness list was not before the court in *W.R. Grace*.

3 Whether to require the defense to disclose its witness list is within the  
4 Court’s discretion, but the Court should decline to do so. Contrary to the  
5 government’s position, the defense’s declining to provide its witness list is not  
6 “gamesmanship.” *See* ECF No. 245 at 3. Nor is it the case that “there is no sound  
7 legal or practical basis not to order a defendant to produce his witness list now[.]”  
8 ECF No. 245 at 1.

9 In fact, there is Constitutional justification for treating the disclosure of  
10 government and defense witnesses differently because the government has the  
11 burden of proof, and the defense has the right to not call any witnesses nor present  
12 any evidence. U.S. Const. amend V.

13 For all the reasons articulated above, this Court should decline to compel the  
14 defense to disclose its witness list to the government.

15 Dated: March 19, 2023

MORRISON & FOERSTER LLP

17 By: /s/ Daralyn J. Durie

18 DARALYN J. DURIE

19 Attorneys for Defendant  
20 MARK RIDLEY-THOMAS

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 19, 2023 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

*/s/ Daralyn J. Durie*  
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DARALYN J. DURIE