

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 V. ) CR00-S-422-S Superceding  
 )  
 ERIC ROBERT RUDOLPH, )  
 )  
 Defendant. )

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**DEFENDANT’S REQUEST FOR NOTICE OF  
GOVERNMENT’S INTENT TO USE EVIDENCE**

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COMES NOW defendant, Eric Robert Rudolph, by and through counsel, and requests notice of the specific evidence the government intends to use in its evidence-in-chief at trial.

1. This motion is filed pursuant to Rule 12(b)(4)(B), FRCrP.
2. Defendant, “in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(c), request[s] notice of the government’s intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.” Rule 12(b)(4)(B).
3. “Rule 12(d)(2) allows defendants to request notice of the government's intent to use evidence 'in order to afford an opportunity to move to suppress evidence under subdivision (b)(3) of this rule.' Fed. R. Crim. P. 12(d)(2).” United States v. De La Cruz Paulino, 61 F.3d 986, 993 (1<sup>st</sup> Cir. 1995). “Rule 12(d) provides a mechanism for insuring that a defendant knows of the government’s intention to use evidence to which the defendant may want to object so that the defendant may avoid the necessity of moving to suppress evidence which the government

does not intend to use.” Id. at 964.

4. Under Rule 12(b), the government, upon request, is required to specifically identify which items of evidence it intends to use at trial. *See, United States v. Kelley*, 120 F.R.D. 103, 106-07 (E.D. Wis. 1988). *See also, United States v. Brock*, 863 F. Supp. 851, 868 (E.D. Wis. 1994). *United States v. Bernard*, [Ms. 92-558, April 14, 1993; 1993 U.S. Dist. LEXIS 4844] (E.D. La., 1993)(“An 'open-file policy' does not suffice to particularize the evidence for Rule 12(d)(2) purposes when such policy does not show exactly what evidence, discoverable under Rule 16, the government intends to rely upon in its case in chief. *United States v. Kelley*, 120 F.R.D. 103, 107 (E.D. Wis. 1988)”).

5. “The Rule does not state either explicitly or implicitly that the Court is involved in the notification process; that is, the notification is effective upon the government's receipt of it whether or not followed by order of the district court.” *United States v. Garcia-Meza*, [Ms. Case No. 1:02-CR-56, May 6, 2003; 2003 U.S. Dist. LEXIS 8318] (W.D. Mich. 2003). In an abundance of caution, defendant requests this Court to grant his request.

### **Conclusion**

THEREFORE, defendant requests this Court to grant his request and direct the government to provide notice of the specific evidence the government intends to use in its evidence-in-chief at trial.

Respectfully submitted,

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Counsel for Eric Robert Rudolph

March 15, 2004

### CERTIFICATE OF SERVICE

I hereby certify that on this the 15<sup>TH</sup> day of March, 2004 a copy of the foregoing was served upon the following by facsimile and by placing a copy of same in the United States mail, postage prepaid and properly addressed:

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