

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK

-----  
**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**RICHARD PETIX,**

Defendant.  
-----

**NOTICE OF MOTION**

Case No.: 15-CR-227-A

**PLEASE TAKE NOTICE** that the Defendant, **RICHARD PETIX**, upon the annexed affidavit of his attorney, **STEPHEN M. LEONARDO, ESQ.**, sworn to on the 23rd day of February, 2016 and upon all proceedings, papers, and pleadings to date, respectfully moves this Court on the 25<sup>th</sup> day of February, 2016 or such later date as the Court may direct, pursuant to Federal Rules of Criminal Procedure (F.R.Cr.P.) Rule 12 for a pre-trial order granting the following pre-trial relief:

- A. An order of pre-trial Discovery and Inspection (F.R.C.P. Rule 16).
- B. An order for a Bill of Particulars (F.R.C.P. Rule 7 (f)).
- C. An order for all favorable or potentially favorable evidence, directly, collaterally or derivatively as may relate to any count of the instant indictment severally, and/or jointly (5th and 14th Amendments to the U.S. Constitution, due process and equal protection before the law; *Brady v. Maryland*, 373 U.S. 83; *U.S. v. Agurs*, 427 U.S. 97; *Giglio v. U.S.*, 405 U.S. 150).
- D. An order pursuant to F.R.C.P. Rule 12 (d) (2) requiring the Government to disclose with specificity its intention to utilize as part of its case in chief any evidence which the defendant is entitled to discover pursuant to F.R.C.P. Rule 16 or which may otherwise provide the basis for a pre-trial application, fact-finding hearing or order of suppression per F.R.C.P. Rule 12 (b) (3) and including but not limited to the following:

1. Tangible property obtained by means of an unlawful, trespassory, constitutionally or statutorily repugnant search and seizure.
  2. Any record or potential testimony reciting or describing a statement of this defendant involuntarily made as a matter of fact and/or law as violative in general of the 5th, 6th and 14th Amendments of the U.S. Constitution.
  3. Any record or potential testimony reciting or describing declarations or conversations overheard or recorded by means of eavesdropping, wiretapping, mechanical or electrical voice monitoring and/or reproduction as may have been court--ordered or otherwise; body wire; monitored telephone conversation or concealed recordation device.
  4. Any record or potential testimony reciting or describing persons and actions recorded on videotape.
  5. Any derivative evidence obtained as a result of predicate evidence obtained in a manner described in Nos. 1-3 supra.
  6. Any identification evidence, encompassing any and all forms of same, which potential evidence and/or testimony would not be admissible at trial owing to an improperly made previous identification of the defendant by the prospective witness.
- E. An order *in limine* compelling the prosecution to notify the defendant of all specific instances of this defendant's prior convictions, uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for purposes of impeaching the credibility of the defendant or to utilize in any manner pursuant to F.R. Evid. 609 and 404 (b) together with a judicial ruling regarding the admissibility of co-conspirator declarations.
- F. An order suppressing statements made by Defendant to law enforcement.
- G. An order suppressing evidence recovered during a search of Defendant's person by

law enforcement on or about December 3, 2015.

H. An order requiring the Government to preserve all investigative rough notes.

I. An order reserving Defendant's right to bring such other and further relief as is derivative of the relief requested herein, just, reasonable or necessary in the interests of justice and within the Court's inherent discretion.

Dated: February 23, 2016  
Rochester, New York

/s/Stephen M. Leonardo, Esq.  
STEPHEN M. LEONARDO, ESQ.  
Attorney for Defendant Richard Petix  
30 West Broad Street, Suite 500  
Rochester, New York 14614  
Telephone: (585) 546-6680  
Facsimile: (585) 546-4783  
Email: sml@frontiernet.net

TO: **Wei Xiang, AUSA**  
United States Attorney's Office  
138 Delaware Avenue  
Buffalo, New York 14202  
Telephone: (716) 843-5700  
Email: wei.xiang@usdoj.gov