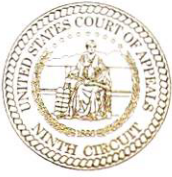


UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT



CHAMBERS OF  
SALVADOR MENDOZA, JR.  
U.S. CIRCUIT JUDGE

April 22, 2026

Via Electronic mail: [RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov)  
Carolyn A. Dubay, Secretary  
Committee on Rules of Practice and Procedure  
Administrative Office of the United States Courts  
One Columbus Circle, NE, Room 7-300  
Washington, D.C. 20544

RE: Proposal to Amend Fed. R. Crim. P. 15

Ms. Dubay and the Committee on Rules of Practice and Procedure:

I write in support of amending Rule 15 of the Federal Rules of Criminal Procedure to permit limited discovery depositions in federal criminal cases.

In 2022 I began service as a circuit judge on the United States Court of Appeals for the Ninth Circuit. I previously served as a district court judge on the United States District Court for the Eastern District of Washington from 2014 to 2022 and as a Washington state superior court judge from 2013 to 2014. I started my career as assistant deputy prosecutor and assistant attorney general in Franklin County and Yakima County respectively before moving on to private practice. While in private practice I worked as a state and federal criminal defense attorney as well as taking Criminal Justice Act (“CJA”) appointments. These experiences inform my perspective on the proposed amendment.

Allowing limited discovery depositions may mitigate recurring problems associated with disclosure obligations. I have been exposed to numerous cases involving *Brady* and related disclosure issues. One multi-count homicide case I presided over as a district judge, in particular, illustrates the potential value that allowing pre-trial depositions under Rule 15 could serve. In *United States v. Cloud*, 590 F. Supp. 3d 1364, (E.D. Wash. 2022), *aff’d*, 102 F.4th 968 (9th Cir.

2024), I sanctioned the government for failing to disclose that a key witness sought financial benefits in exchange for testimony and expressed a willingness to fabricate testimony. *Id.* at 1370–73. That information, which was plainly impeaching, was neither disclosed to the defendant nor to the court. Instead, by pure happenstance, it emerged via a third party. *Id.* at 1367–68.

Discovery depositions would help address these issues. First, my experience tells me that many *Brady* concerns stem from the government frequently being the sole conduit of exculpatory or otherwise favorable information. Allowing a defendant to examine critical witnesses directly would create an independent pathway for uncovering favorable evidence, which could reduce informational asymmetry and the risk of nondisclosure. Limited depositions could therefore narrow the gap between what the defense investigator *knows* and what the government *discloses*.

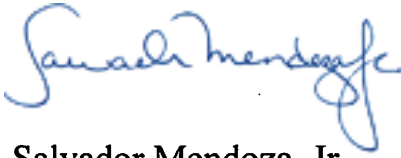
Depositions would also have the related benefit of assisting defendants in identifying other key pieces of undisclosed information. Direct examination of witnesses may reveal the existence of important documents, communications, or individuals not previously disclosed, enabling more targeted and timely requests for discovery prior to trial. As a trial judge, I observed that criminal proceedings were often delayed because the defense was unaware of key evidence or witnesses until the eve of trial. Earlier access to information for criminal defendants via depositions would reduce such disruptions and lead to more efficient and quicker trial processes.

Finally, deposition transcripts would, of course, create a more contemporaneous record of witness accounts. Early articulation of facts, timelines, and observations would help reduce the likelihood that favorable evidence is forgotten over time. Such a record would simultaneously reduce the likelihood that information is wrongfully retained by the government while also increasing accountability for failure to disclose.

Limitations and guidelines would, of course, remain necessary to assist all parties in navigating proper procedural requirements. Moreover, I believe that the district court judge must retain ultimate authority to determine, on a case-by-case basis, whether limited use of discovery depositions is warranted. But when a defendant is prevented from accessing certain “favorable” evidence, due process is inherently implicated. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963). Because I believe that allowing pre-trial depositions under Rule 15 may help reduce such due process issues, I endorse the proposed amendment with the proper careful tailoring.

I welcome the opportunity to speak about this proposal further and am grateful to the committee for its work.

Sincerely,

A handwritten signature in blue ink that reads "Salvador Mendoza, Jr." The signature is written in a cursive style with a large, stylized initial 'S'.

Salvador Mendoza, Jr.  
Circuit Judge, United States Court of Appeals for the Ninth Circuit

cc: The Honorable James C. Dever III  
United States District Judge  
Chair, Advisory Committee on Criminal Rules

Professor Catherine T. Struve  
University of Pennsylvania Law School  
Reporter, Advisory Committee on Criminal Rules