

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CRIM. NO. 15-CR-49 (MJD/FLN)

United States of America,

Plaintiff,

v.

Hamza Naj Ahmed (1),
Adnan Abdihamid Farah (3),
Abdurahman Yasin Daud (4),
Zacharia Yusuf Abdurahman (5),
Hanad Mustofe Musse (6),
Guled Ali Omar (7),

Defendants.

**DEFENDANTS' JOINT MOTION FOR
DISCLOSURE OF GOVERNMENT FILES
AND OTHER INFORMATION REGARDING
INFORMANTS AND/OR CONFIDENTIAL
HUMAN SOURCES UNDER ATTORNEY
GENERAL'S GUIDELINES**

Defendants Hamza Naj Ahmed, Adnan Abdihamid Farah, Abdurahman Yasin Daud, Zacharia Yusuf Abdurahman, Hanad Mustofe Musse and Guled Ali Omar, by and through their undersigned counsel, hereby move the Court for an order compelling the Government to disclose the following:

1. The names and addresses of any individuals that constitute informants and/or "Confidential Human Sources" as defined by the December 13, 2006 Attorney General's Guidelines Regarding the Use of FBI Confidential Sources dated December 13, 2006, or any later guidelines, who are or were working with and/or were utilized by law enforcement officials in the above-captioned case;

2. Whether such individuals were alleged to have been active participants in the offenses charged in the indictment;

3. Whether such individuals are witnesses to the offenses charged in the indictment;

4. Whether law enforcement officials followed The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources in assessing, engaging, and monitoring said individuals;

5. Internal documentation regarding the propriety of using said individuals as informants and/or cooperating witnesses; and

6. All information described below which the government is required to maintain by the Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources, December 13, 2006, or any later guidelines.

The undersigned also move that the Government be required to make such informants and/or cooperating witnesses available for interview. This motion is based upon Rule 16, Federal Rules of Criminal Procedure, the United States Constitution, Brady v. Maryland, 375 U.S. 83 (1963) and its progeny.

The defense further bases this motion on the following:

1. The use of confidential informants and/or cooperating witnesses ("CIs") in criminal actions is fraught with peril. They have an incentive to lie. Banks v. Dretke, 540 U.S. 668, 701 (2004) ("This Court has long recognized the 'serious questions of credibility' informers pose.").

2. For this reason, the Department of Justice has promulgated The Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (December

13, 2006).

3. In Roviaro v. United States, 353 U.S. 53, 60-61 (1957), the Supreme Court held that the Government must identify and produce the informant “[w]here the disclosure of an informer’s identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause.” See also United States v. Barnes, 486 F.2d 776, 780 (8th Cir. 1973).

4. Our Circuit has held: “[I]f the informant is an active participant in the conduct charged, the informant’s identity is ‘almost always’ material and thus the government must ‘make every reasonable effort to have the informant made available to the defendant.’” United States v. Sanchez, 429 F.3d 753, 756 (8th Cir. 2005).

5. Our Circuit has further held: “Special problems associated with locating and protecting informants may sometimes require the government to produce an informant, even if the defendant already knows the informant’s identity.” Id. (internal punctuation omitted).

6. The December 13, 2006 Attorney General’s Guidelines Regarding the Use of FBI Confidential Human Sources require among other things:

- a. The FBI conduct an “Initial Evaluation Process,” gathering the person’s true identity, a photograph, a criminal history, the present motivation, whether the person is under investigation, consideration sought from the government, and promises or benefits given the person. Sec. II, Validation.

- b. The Confidential Human Source be provided strict written instructions of the requirements of truthfulness and voluntariness, of the prohibition against action independent of the instructions, and of the prohibition against criminal activity. Sec. II, B, Instructions.
- c. An annual review of the above. Sec. II, C, Annual Validation Review.
- d. If the Confidential Human Source is a “Senior Leadership Source,” special enhanced review provisions are required. Sec. III, A.3.
- e. Special Approvals for sources who are federal prisoners or parolee, or current or former participants in the Federal Witness Security Program, U.S.A.M. §9-12.800, Sec. III B and C.
- f. Strict monitoring, documentation, and accounting of monetary payments made to Confidential Human Sources. Sec. IV, C.
- g. Written Limits on authorizations of any illegal activity by the Confidential Human Sources, especially in international terrorism and national security investigations, including written findings as to the necessity for authorizing illegal activity. Sec. VI, Special Notification Requirements.
- h. Disclosure to the prosecutor of “information that is exculpatory to a target of a[n] . . . investigation, or as to a defendant . . . in a federal, state, or local case.” Sec. VI, D, Exculpatory Information.

7. The DOJ's Office of Inspector General has determined that there have been many failures by law enforcement officials to adhere to these DOJ procedures, as well as other internal procedures with respect to the use of informants. Office of Inspector General, The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines (Sept. 2005).

8. Evidence of law enforcement deviations from established procedures is relevant and admissible. United States v. Andreas, 23 F. Supp. 2d 835, 850 (N.D. Ill. 1998) ("The FBI 'suitability' and 'taping' guidelines are relevant because they show how far the investigation deviated from procedures which are intended to insure the integrity of evidence which is always relevant.").

9. The defense believes law enforcement officials failed to adhere to Government investigation guidelines in the use of CI in the present case. The above-listed information must be disclosed.

Respectfully submitted,

Dated: August 6, 2015

GASKINS, BENNETT, BIRRELL, SCHUPP,
LLP

By: s/Andrew S. Birrell

Andrew S. Birrell, #133760

Paul C. Dworak, # 391070

Ian S. Birrell, #0396379

333 South Seventh Street, Suite 3000

Minneapolis, Minnesota 55402

Telephone: (612) 333-9500

Facsimile: (612) 333-9579

abirrell@gaskinsbennett.com

pdworak@gaskinsbennett.com

**ATTORNEYS FOR HANAD MUSTOFE
MUSSE**

Dated: August 6, 2015

MURRAY LAW, LLC

By: s/JaneAnne Murray

JaneAnne Murray, #384887

The Flour Exchange Building

310 Fourth Avenue South, Suite 5010

Minneapolis, Minnesota 55415

Telephone: (612) 339-5160

jm@mlawllc.com

ATTORNEY FOR HAMZA NAJ AHMED

Dated: August 6, 2015

PAUL ENGH LAW OFFICE

By: s/Paul C. Engh

Paul C. Engh, #134685

220 South Sixth Street, Suite 1225

Minneapolis, Minnesota 55402

Telephone: (612) 252-1100

engh4@aol.com

**ATTORNEY FOR ADNAN ABDIHAMID
FARAH**

Dated: August 6, 2015

DELEON & NESTOR, LLC

By: s/Bruce D. Nestor

Bruce D. Nestor, #0318024

3547 Cedar Avenue South

Minneapolis, Minnesota 55407

Telephone: (612) 659-9019

Facsimile: (612) 436-3664

nestor@dnestlaw.com

**ATTORNEY FOR ABDURAHMAN YASIN
DAUD**

Dated: August 6, 2015

FELHABER LARSON

By: s/Jon M. Hopeman

Jon M. Hopeman, #47065

Marnie E. Fearon, #305078

220 South Sixth Street, Suite 2200

Minneapolis, Minnesota 55402

Telephone: (612) 339-6321

Facsimile: (612) 338-0535

jhopeman@felhaber.com

mfearon@felhaber.com

**ATTORNEYS FOR ZACHARIA YUSUF
ABDURAHMAN**

Dated: August 6, 2015

MITCHELL, BRUDER & JOHNSON

By: s/Glenn P. Bruder

Glenn P. Bruder, #148878

7505 Metro Boulevard, Suite 325

Edina, Minnesota 55439

Telephone: (952) 831-3174

Facsimile: (951) 831-3176

gbruder@bruderlaw.com

ATTORNEY FOR GULED ALI OMAR