

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DEFENDANTS' JOINT
MOTION FOR EARLY
DISCLOSURE OF JENCKS ACT
MATERIALS**

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 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 to enter an order requiring the government to submit Jencks Act materials to said defendants at least three weeks prior to the commencement of the trial. This motion is based upon the United States Constitution, Fed. R. Crim. P. 26.2, the Jencks Act, 18 U.S.C. § 3500, and *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The defense further bases this motion on the following:

1. The Jencks Act contemplates “not only the furnishing of the statement of a witness but a reasonable opportunity to examine it and prepare for its use in the trial.” *United States v. Holmes*, 722 F.2d 37, 40 (4th Cir. 1983).
2. “[S]ound trial management . . . dictate[s] that Jencks Act material should be

transmitted prior to trial . . . so that those abhorrent lengthy pauses at trial to examine documents can be avoided.” *United States v. Percevault*, 490 F.2d 126, 132 (2d Cir. 1974). The interests of due process, effective assistance of counsel, and fair and efficient conduct of a criminal trial overshadow the time restrictions of the Jencks Act. *United States v. Narciso*, 446 F.Supp. 252, 271 (E.D. Mich. 1977); *see also United States v. Mocerri*, 359 F.Supp. 431, 439 (N.D. Ohio 1973) (if denial of pretrial discovery prejudices defendant’s fair trial, the application of the Jencks Act to those facts could be unconstitutional).

3. AUSAs in this district frequently disclose Jencks Act material early – a practice which is both prudent and encouraged by the federal bench. *See, e.g., United States v. Winningham*, 953 F.Supp. 1068, 1071 & n.4 (D. Minn. 1996).
4. Moreover, courts may and do order early disclosure of Jencks Act statements consisting of Brady material, *see, e.g., United States v. Grant*, 256 F.Supp.2d 236, 244 (D. Del. 2003), that could be admissible under the co-conspirator exception to the hearsay rule, *see, e.g., United States v. Murgas*, 967 F.Supp. 695, 713 (N.D.N.Y. 1997), or that could bind a defendant, *see, e.g., United States v. Chalmers*, 410 F.Supp.2d 278, 292 (S.D.N.Y. 2006).

Based on the foregoing, and to ensure an efficient disposition of the present case, the defendants jointly request the Court order the government disclose: all statements and reports in the possession of the United States which were made by government witnesses or prospective government witnesses and which relate to the subject matter about which those witnesses may testify, 18 U.S.C. § 3500, Fed. R. Crim. P. 26.2; and statements of any alleged

co-conspirator or informant particularly if the statement contains exculpatory material, if it is alleged that the declarant could bind a defendant, or if the statement is purportedly admissible under the co-conspirator exception to the hearsay rule.

Respectfully submitted,

Dated: August 6, 2015

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