

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

**DEFENDANTS' JOINT
MOTION TO RETAIN
ROUGH NOTES AND
EVIDENCE**

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, pursuant to Title 18, United States Code, Section 3500 *et. seq.*, *Brady v. Maryland*, 375 U.S. 83 (1963), the due process clause of the Fifth Amendment to the United States Constitution, the confrontation clause of the Sixth Amendment, and Rule 16 of the Federal Rules of Criminal Procedure, for an order requiring any law enforcement agent, including any confidential reliable informants, to retain and preserve all rough notes taken as part of their investigation, whether or not the contents of such rough notes are incorporated in official records. In addition, defendants move for an order directing any and all officials

involved in this case to preserve the evidence seized in the course of their investigation.

Defendants so move on the following grounds:

1. Rough notes are considered statements within the meaning of the Jencks Act, Title 18, United States Code, Section 3500(e)(1); *United States v. Bernard*, 607 F.2d 1257 (9th Cir. 1979); *United States v. Gaston*, 608 F.2d 607 (5th Cir. 1979);
2. Destruction of rough notes by law enforcement officials usurps the judicial function of determining what evidence must be produced. *United States v. Harris*, 543 F.2d 1247 (9th Cir. 1976);
3. The rough notes may be deemed exculpatory evidence within the meaning of *Brady* and its progeny;
4. The evidence seized is directly relevant to issues ranging from defendant's guilt or innocence to sentencing considerations. Its inspection and use is provided for under Rule 16(c) of the Federal Rules of Criminal Procedure, will be rendered impossible if is altered or destroyed.
5. Courts require the Government to preserve rough notes and like materials pending a determination as to whether such materials must be disclosed to the defense under *Brady* and its progeny or under the Jencks Act. *United States v. Lujan*, 530 F. Supp. 2d 1224, 1265 (D.N.M. 2008); *United States v. Cooper*, 283 F. Supp. 2d 1215, 1238 (D. Kan. 2003); *United States v. Floyd*, 247 F. Supp. 2d 889, 899 (S.D. Ohio 2002).

6. Moreover, the defense is entitled to use rough notes and like materials for cross-examination. Preservation of rough notes and like materials is necessary to protect the defendants' right to effective assistance of counsel under the Sixth Amendment.

This motion is based on the indictment, the United States Constitution, the records and proceedings herein, such testimony as may be presented at the motion's hearing, which is hereby requested, and any briefing which the Court may require thereafter.

Respectfully submitted,

Dated: August 6, 2015

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