

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 09-cr-00266-CMA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

1. DAVID A. BANKS
2. DEMETRIUS K. HARPER,  
a/k/a Ken Harper,
3. GARY L. WALKER,
4. CLINTON A. STEWART,  
a/k/a C. Alfred Stewart,
5. DAVID A. ZIRPOLO,  
and,
6. KENDRICK BARNES,

Defendants.

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**JOINT MOTION TO DISCLOSE COPIES OF GRAND JURY SUBPOENAS  
FOR BANK RECORDS PURSUANT TO FED. R. CRIM. P. 6(e)(3)(E)(i)**

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Defendants David A. Banks, Demetrius K. Harper, Gary L. Walker, Clinton A. Stewart, David A. Zirpolo, and Kendrick Barnes jointly move this Court to order disclosure of grand jury subpoenas for bank records, stating the following grounds:

**I. The Indictment and Grand Jury Proceedings**

Grand Jury 09-1 returned the Indictment on June 9, 2009. Grand Jury 06-1 issued subpoenas for records and heard testimony on February 6, 2007 and March 14, 2007. Apparently, the United States Attorney did not request an indictment at that time. On June 8, 2009 FBI agent Robert Moen appeared before Grand Jury 09-1. He submitted the transcripts of the 2007 grand jury

sessions and testified to educate the new grand jury about the case. The government did not submit any materially significant evidence to the 09-1 grand jury other than the evidence from the 06-1 grand jury. The indictment was returned on June 9, 2009.

## **II. The Investigation**

The government has furnished discovery to the defendants that contains approximately 8200 pages of bank records involving more than 37 of the defendants, their friends, their families, their church, and their associates. These records were used to pursue the investigation and obtain the indictment against these defendants. The investigation commenced during March of 2004 after a complaint was made to the United States Attorney's Office in Denver. On Monday, February 7, 2005 FBI Agent John Smith applied for and received a warrant to search the defendants' office in Suite 200 at 7350 Campus Drive, Colorado Springs. The affidavit reveals that some of the information contained therein was obtained by grand jury subpoena prior to the date of the affidavit. The warrant was executed on Wednesday, February 9, 2005 by twenty-two officers at 9 a.m. and was completed at 10 pm that evening. In response to inquiries from defense counsel, AUSA Matthew Kirsch has advised that these records were all obtained by subpoenas issued by grand juries starting in September of 2004. These records, however, as supplied in the discovery by the government, do not show how and when they were received by the government investigation. Disclosure of copies of the subpoenas and the cover letters producing the records will supply this information. Specifically, the subpoenas for

and production of the bank records may be relevant evidence in the motions hearings scheduled for July 9, 2010 and August 12-13, 2010. There is no need to maintain grand jury secrecy regarding the subpoenas since the government has already revealed that the financial institutions produced them as directed by the grand jury subpoena.

### **III. The Law Permitting Disclosure of Grand Jury Subpoenas**

The United States Supreme Court has held that “the proper functioning of our grand jury system depends upon secrecy of grand jury proceedings”. *Douglas Oil Co. v. Petrol Stops Northwest*, 441U.S. 211, 218 (1979). The Court went on to state, “Secrecy, however, is not absolute, citing Rule 6 (e).

Disclosure of grand jury material may be authorized pursuant to Rule 6(e)(3)(E)(i) of the Federal Rules of Criminal Procedure, which provides that, “The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter: (i) preliminarily to or in connection with a judicial proceeding . . .” This case is a “judicial proceeding” and the requested disclosure is “in connection with” a judicial proceeding.

In accordance with that rule, this court has previously ordered the release of transcripts of grand jury witness testimony and exhibits with restrictions on dissemination of the information beyond the defendants and their counsel. [7/1/09, doc 47 and 8/14/09, doc 72] Counsel has discussed this motion with AUSA Matthew Kirsch. Mr. Kirsch advises that the government opposes the requested disclosure.

THEREFORE, Defendants respectfully move for an Order pursuant to Rule 6(e)(3)(E)(i) allowing disclosure of a copy of the subpoenas issued and the witnesses' production for bank records before grand juries 09-1 and 06-1 and any other grand juries, to the attorneys for the defendants with the conditions previously imposed regarding grand jury material.

Dated this 30<sup>th</sup> day of June, 2010.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on Wednesday, June 30, 2010, I electronically filed the foregoing **JOINT MOTION TO DISCLOSE COPIES OF GRAND JURY SUBPOENAS FOR BANK RECORDS PURSUANT TO FED. R. CRIM. P. 6(e)(3)(E)(i)** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all opposing counsel of record.

By: s/ Robert S. Berger  
Robert S. Berger