

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 21-cr-00165-RM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RUSSELL FOREMAN and
2. CHANDLER SIMBECK,

Defendants.

GOVERNMENT'S MOTION TO DISCLOSE
GRAND JURY MATERIALS UNDER SPECIFIED
CONDITIONS TO THE ATTORNEYS FOR DEFENDANTS
PURSUANT TO FED. R. CRIM. P. 6(e)(3)(E)(i)

The UNITED STATES OF AMERICA, by and through Robert Brown, Assistant United States Attorney, respectfully moves this Court for an Order allowing the government to disclose copies of the transcripts of testimony given by witnesses before a grand jury during the investigation of this case, and the accompanying exhibits, to the attorneys for the defendants and the United States Probation Office under the conditions specified below. As grounds for this motion, the government states:

1. During the course of the investigation which resulted in the indictment in this case, one or more witnesses testified before the grand jury.
2. 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"

3. This case is a "judicial proceeding", and the requested disclosure is "in connection with" the proceeding.

4. The Government's understanding is that the usual practice of defense counsel in this district is not to provide the defendants with copies of grand jury materials, but instead to orally review the contents of such materials with them. As the government understands it, this practice flows from the concern, shared by the government and based on past events in the district, that grand jury materials might otherwise be improperly distributed by defendants. See *United States v. Jimenez*, 928 F.2d 356, 359-61 (10th Cir. 1991).

5. Because of the nature of the materials sought to be disclosed, the timing of the contemplated disclosure, and the possibility of loss or dissemination of copies of the grand jury materials, the government would request that the Court further order that:

a. Defense counsel make only such copies as are necessary to prepare a defense of the criminal case;

b. Defense counsel keep a written record concerning how many copies were made, to whom those copies were delivered, and the date of delivery, and that defense counsel deliver a copy of any Order allowing disclosure with the materials;

c. Defense counsel provide the defendants with reasonable access to the grand jury materials, but that defense counsel not allow the defendants to retain copies of any grand jury materials;

d. No person, other than defense counsel, make any copy of the

grand jury materials for any purpose; and

e. At the conclusion of the case in this Court, by entry of the Court's judgment, defense counsel collect all such copies and return them to the government within ten days.

6. The Government requests authorization to provide the above referenced grand jury materials to the United States Probation Office (USPO) for the limited purpose of preparing a presentence investigation report which will be filed under restriction. The government would request that the Court further order that:

a. The USPO make only such copies as are necessary to prepare a restricted presentence investigation report in this case; and

b. At the conclusion of the case in this Court, by entry of the Court's judgment, the USPO will destroy all grand jury materials in a manner that will ensure that they are not further disseminated.

THEREFORE, the Government requests that the Court enter an Order pursuant to Rule 6(e)(3)(E)(i) allowing disclosure of a copy of the transcripts of testimony given by any witnesses before the grand jury, and accompanying exhibits, to the attorneys for

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the defendants and the USPO on the conditions described above.

Dated this 27th day of August, 2021.

MATTHEW T. KIRSCH
Acting United States Attorney

By: s/Robert Brown
ROBERT BROWN
Assistant U.S. Attorney
U.S. Attorney's Office
1801 California St., Ste. 1600
Denver, CO 80202
Telephone: 303-454-0100
Fax: 303-454-0401
E-mail: robert.brown5@usdoj.gov
Attorney for Government