

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 DENNISE D. WILLETT
 Assistant United States Attorney
 3 Chief, Santa Ana Branch
 LAWRENCE E. KOLE (Cal. Bar No. 141582)
 4 Assistant United States Attorney
 411 West Fourth Street, Suite 8000
 5 Santa Ana, California 92701
 Telephone: (714) 338-3594
 6 Facsimile: (714) 338-3564
 Email: larry.kole@usdoj.gov

7 Attorneys for Plaintiff
 8 United States of America

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 SOUTHERN DIVISION

12 UNITED STATES OF AMERICA,	)	Case No. SA CR 08-180-DOC
)	
13 Plaintiff,	)	EX PARTE APPLICATION FOR
	)	ORDER PERMITTING RELEASE OF
14 v.	)	GRAND JURY TESTIMONY;
	)	MEMORANDUM OF POINTS AND
15 MOSES ONCIU, BEATA GIZELLA	)	AUTHORITIES AND DECLARATION OF
16 PRIORE, and IRENE PEMKOVA,	)	LAWRENCE E. KOLE IN SUPPORT
	)	THEREOF [F.R.Crim.P. 6(e)]
17 Defendants.)	

18 Plaintiff, United States of America, by and through its
 19 counsel of record, the United States Attorney for the Central
 20 District of California, hereby applies ex parte for an order
 21 pursuant to Rule 6(e)(3)(E)(i) of the Federal Rules of Criminal
 22 Procedure, authorizing the government to provide defendants'
 23 counsel of record with a copy of the grand jury testimony of a
 24 witness whom the government may call at trial.

25 The government makes this application because of defendants'
 26 need to prepare for trial and the disclosure requirements of the
 27 Jencks Act, 18 U.S.C. § 3500. This application is based on the
 28

1 who have information with respect to the commission of
2 crimes; [and] (5) to protect [an] innocent accused who
3 is exonerated from disclosure of the fact that he has
4 been under investigation, and from the expense of
5 standing trial where there was no probability of guilt.

6 United States v. Procter & Gamble Co., 356 U.S. 677, 681, n.6
7 (1958) (internal quotations omitted); see also United States v.
8 Dynavac, Inc., 6 F.3d 1407, 1411 (9th Cir. 1993) (citing Procter
9 & Gamble, and Douglas Oil Co. of Calif. v. Petrol Stops
10 Northwest, 441 U.S. 211, 219 (1979), for the same proposition).
11 In United States Industries, Inc. v. United States District
12 Court, the Ninth Circuit reasoned that a determination of whether
13 disclosure of grand jury material should be made under Rule 6(e)
14 depends on the need of the party seeking disclosure and on the
15 "policy considerations for grand jury secrecy as they apply to
16 the request for disclosure under consideration." 345 F.2d 18, 21
17 (9th Cir. 1965). The court held: "[I]f the reasons for
18 maintaining secrecy do not apply at all in a given situation, or
19 apply to only an insignificant degree, the party seeking the
20 disclosures should not be required to demonstrate a large
21 compelling need." Id.

22 In this instance, the policy considerations requiring
23 secrecy are inapplicable with respect to any witness who will
24 testify at trial because the case has been indicted. See
25 Dynavac, 6 F.3d at 1412 ("When the grand jury investigation is
26 already terminated and an indictment has been issued, only
27 'institutional' concerns are implicated by the documentary
28 disclosure.") (citation omitted). Moreover, disclosure of the

1 grand jury testimony to defense counsel, who has requested such
2 disclosure, would be in the interest of justice and allow defense
3 counsel material in advance of trial that is necessary to the
4 defense and is required to be disclosed by the Jencks Act, 18
5 U.S.C. § 3500.

6 For the foregoing reasons, the government respectfully
7 requests that this Court issue an order authorizing the
8 government to provide defense counsel with a copy of the grand
9 jury testimony of a witness the government may call at trial.

10 The government also requests that defense counsel be ordered
11 not to disclose such grand jury testimony to any other person or
12 persons, except as necessary in preparation of the defense,
13 without prior authorization from this Court, and that the copy of
14 the testimony provided to defense counsel (and any reproductions
15 or copies made of the produced copy) shall be returned to the
16 government at the conclusion of the proceedings in this case.

1 ANDRÉ BIROTTE JR.
 United States Attorney
 2 DENNISE D. WILLETT
 Assistant United States Attorney
 3 Chief, Santa Ana Branch
 LAWRENCE E. KOLE (Cal. Bar No. 141582)
 4 Assistant United States Attorney
 411 West Fourth Street, Suite 8000
 5 Santa Ana, California 92701
 Telephone: (714) 338-3594
 6 Facsimile: (714) 338-3564
 Email: larry.kole@usdoj.gov

7 Attorneys for Plaintiff
 8 United States of America

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 SOUTHERN DIVISION

12	UNITED STATES OF AMERICA,	)	Case No. SA CR 08-180-DOC
13	Plaintiff,	)	[PROPOSED] ORDER ALLOWING
14	v.	)	DISCLOSURE OF GRAND JURY
15	MOSES ONCIU, BEATA GIZELLA	)	TESTIMONY
16	PRIORE, and IRENE PEMKOVA,)	
17	Defendants.)	

18 For good cause shown, IT IS HEREBY ORDERED that plaintiff,
 19 United States of America, may supply defense counsel of record
 20 with a copy of the grand jury testimony of any witness whom the
 21 government may call at trial. The purpose of this order is to
 22 enable defendant to prepare his defense and to permit compliance
 23 with the disclosure provisions of the Jencks Act, 18 U.S.C.
 24 § 3500.

25 IT IS FURTHER ORDERED that defense counsel shall not
 26 disclose such grand jury testimony to any other person or
 27 persons, except as necessary in preparation of the defense,
 28 without prior authorization from this Court, and that the copy of

1 the testimony provided to defense counsel (and any reproductions
2 or copies made of the produced copy) shall be returned to the
3 government at the conclusion of the proceedings in this case.

4 IT IS SO ORDERED.

5

6 Dated: _____.

7

8

9

Honorable David O. Carter
United States District Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28