

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
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MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

Case No. 8:03-cr-77-T-30TBM

HATIM NAJI FARIZ

ORDER

This cause came on for consideration without oral argument upon Defendant Fariz's Motion for Reconsideration of the Magistrate Judge's Order Denying in Part Fariz's Motion to Compel Production of English-Language Transcripts (Dkt. #459). After close consideration of the Magistrate's Order (Dkt. #437), the transcript of the oral argument, this Court concludes that Fariz's motion should be denied because the Order (Dkt. #437) is not clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A).

This appeal is one of a series of appeals from orders entered by the Magistrate taken by Defendant Fariz. In the Order appealed in this motion, Fariz sought to require the government to translate, transcribe, and turnover twenty thousand hours of FISA intercepted communications because Fariz's counsel, the Federal Public Defender, was unable to secure extraordinary funding to fund a team of translators. While denying this request, the Magistrate ordered the government to produce a list of the eight hundred communications the government deemed relevant and the written analyses made by the FISA interpreters of the FISA intercepts.

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As an initial matter, this Court would compliment the Magistrate for his handling and organization of discovery in this complex case. While clearly not reversible, this Court likely would not have exercised the same amount of discretion had it been placed in the Magistrate's shoes. The Magistrate has already granted Defendants more discovery than Rule 16, the Fifth or Sixth Amendment require in this Court's opinion.

The weakness of Fariz's argument is exposed by his motion's abrasive tone and lack of citation to any authority allowing for such expansive relief. Equally telling, Fariz and his co-defendants have repeatedly taken the position that the government's translations of materials cannot be trusted. It would be of little or no use for this Court to order the government to do something that Defendants are going to just disregard. At best, this appears to be an attempt to further delay trial in this matter as two parties consecutively translate the same materials. While Fariz is at liberty on pre-trial release, two of his co-defendants are not, this Court will not delay this proceeding unnecessarily.

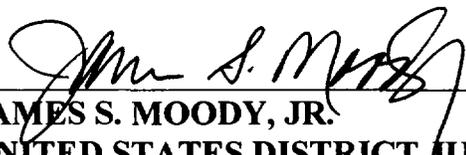
The Magistrate's approach allows for a more directed review and investigation by the Defendants of the intercepted communications.¹ This Court would note that such materials

¹Under the Magistrate's approach, the Defendants have been provided all 20,000 hours of conversations in date and time sequence. Of that 20,000 hours of conversations, Defendants will also receive with written analyses by the government's FISA interpreters of some unknown subset of the 20,000 hours of conversations. Of that subset of conversations to which there are written analyses, Defendants will also receive from the government a list of eight hundred conversations that it has deemed relevant to the criminal investigation of the PIJ, which is broader than the investigation of these Defendants. Of those eight hundred conversations, Defendants have already been provided and Fariz purportedly reviewed and translated the approximately two hundred calls and faxes that support the Indictment. In short, Fariz and whatever interpreters his counsel hires can work
(continued...)

are not required to be provided by Brady v. Maryland or its progeny (unless favorable to an accused) or any other authority. See, e.g. Strickler v. Greene, 527 U.S 263, 280-81 (1999) (containing the state of Brady obligations on a United States Attorney). However, the Magistrate utilized his discretion and in effect given Defendants a map to prevent them from becoming overwhelmed and allow them to effectively and adequately prepare their case for trial.

It is therefore **ORDERED** and **ADJUDGED** that Defendant Fariz's Motion for Reconsideration of the Magistrate Judge's Order Denying in Part Fariz's Motion to Compel Production of English-Language Transcripts (Dkt. #459) is **DENIED**.

DONE and **ORDERED** in Tampa, Florida on this 3 day of March, 2004.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
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¹(...continued)
backward to prepare his case more efficiently than reviewing all 20,000 hours of conversations.

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