

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

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

HATIM NAJI FARIZ
_____ /

**DEFENDANT HATIM NAJI FARIZ'S RESPONSE TO
THE GOVERNMENT'S MOTION FOR A RULE 16(d)(1) PROTECTIVE ORDER
AS TO SENSITIVE INFORMATION FROM THE ISRAELI GOVERNMENT**

Defendant, HATIM NAJI FARIZ, by and through undersigned counsel, hereby submits his response to the Government's Motion for a Rule 16(d)(1) Protective Order (Doc. 468). Mr. Fariz states as follows:

1. On January 21, 2004, this Court ordered the government, within 30 days, to "make available for inspection and copying all investigative materials related to the acts of violence in Israel alleged in the Indictment" or to show cause why the materials cannot be disclosed. (Doc. 428 at 6).

2. On March 1, 2004, the government submitted a motion for a protective order addressing certain information, deemed "sensitive information," involving "photographs, medical records and autopsy reports of victims of terrorist attacks committed by the Palestinian Islamic Jihad, reports prepared by bomb technicians who investigated such attacks, and any other material of a similar nature" received from the Israeli government pursuant to the Mutual Legal Assistance Treaty between the two countries. (Doc. 468, Proposed Protective Order at ¶ 1). At the request of the Israeli government, the U.S.

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government seeks to allow the defense to view but not photocopy and remove the “sensitive information” from the FBI Office.

3. During the discovery conference before this Court on March 10, 2004, the government indicated that the “sensitive information” is in the Hebrew language.

4. Accordingly, a Hebrew interpreter will be necessary for defense counsel to review these documents.

5. After the discovery conference, the government indicated that it would not oppose the Hebrew interpreter taking notes from the “sensitive information” and then taking the notes from the FBI Office.

6. Even with this understanding of the scope of the government’s proposed protective order, the government’s proposed order is unduly restrictive. Because the documents are in Hebrew, they may only be meaningfully reviewed once translated into English. Therefore, the government’s suggestion that defense counsel may view and then discuss the materials with their clients freely is inaccurate.

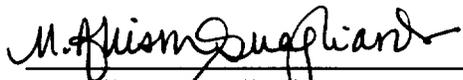
7. An alternative that would more appropriately protect the sensitive nature of the material and Mr. Fariz’s right to prepare his defense would be to restrict copies of the materials, like the FISA-intercepts, to those individuals listed in paragraph 2 of the proposed order and require that these materials be returned to the government at the conclusion of the case. The government has failed to meet its burden to demonstrate why this measure would not be adequate to prevent the dissemination of these materials.

8. A further alternative that the Court could consider would be to restrict access of the photographs to the FBI Office, but allow defense counsel to copy the reports and documents. The photographs obviously do not require translation and therefore do not present the same concern regarding meaningful review as do the reports and documents in the Hebrew language.

9. Should the Court enter a protective order, as with the Court's granting of the Protective Order entered on September 12, 2003, Mr. Fariz would ask leave of the Court to reconsider the provisions of the protective order should they prevent Mr. Fariz's ability to investigate the case and prepare his defense. The defense has not yet received the revised index of the foreign documents in this case (Index C) and therefore is not fully in a position to respond to the government's motion for a protective order.

Respectfully submitted,

R. FLETCHER PEACOCK
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CERTIFICATE OF SERVICE

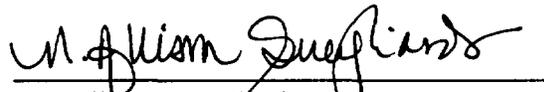
I hereby certify that on this 15th day of March, 2004, a copy of the foregoing has been furnished by hand delivery to Terry Zitek, Assistant United States Attorney, United States Attorney's Office, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602 and by U.S. Mail to the following:

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