

already prescribed the appropriate timetable for disclosure of materials discoverable pursuant to Brady and Giglio v. United States, 405 U.S. 150 (1972) in its Second Amended Pretrial Discovery Order (Doc. No. 152) ("Discovery Order") and the government has repeatedly affirmed its intention to comply with its obligations. Defendant presents no cogent justification for seeking reconsideration of the Discovery Order or compelling immediate disclosure.

A. The Brady/Giglio Doctrine

Brady v. Maryland, 373 U.S. 83 (1963), requires the government to provide to the defense any evidence favorable to the defendant and material to guilt or punishment, and a violation of this requirement is a denial of due process. In Giglio v. United States, 405 U.S. 150, 153-55 (1972), the Brady doctrine was extended to evidence affecting a government witness's credibility. The obligation exists when defense counsel makes a request, and also exists even without a specific request when the evidence is of "obviously substantial value to the defense." United States v. Agurs, 427 U.S. 97, 110 (1976). Legally speaking, the Brady doctrine is not a general right of discovery, but a constitutional due process guarantee of a fair trial. Cf. United States v. Ruiz, 536 U.S. 622, 629-30 (2002). "There is no general constitutional right to discovery in a criminal case." Weatherford v. Bursey, 429 U.S. 545, 559 (1977).

The Brady obligation placed on the government applies to the prosecutor(s) and law enforcement officers assigned to the case, and other prosecutors in the same office. Strickler v. Greene, 527 U.S. 263, 275 n.12 (1999); Giglio, 405 U.S. at 154. The obligation is also imposed on any government agencies over which the prosecutor

has authority. United States v. Spagnoulo, 960 F.2d 990, 994 (11th Cir. 1992). However, "the prosecutor has no duty to undertake a fishing expedition in other jurisdictions in an effort to find potentially impeaching evidence every time a criminal defendant makes a Brady request for information regarding a government witness." United States v. Meros, 866 F.2d 1304, 1309 (11th Cir.), cert. denied, 493 U.S. 932 (1989).

The Brady doctrine is limited to exculpatory information in the government's possession. "The government does not violate Brady by failing to disclose information it . . . doesn't know about." United States v. Boyd, 208 F.3d 638, 645 (7th Cir. 2000), judgment vacated on other grounds and cert. denied, 531 U.S. 1135 (2001). There is no affirmative duty to seek potentially exculpatory information not in its possession. United States v. Earnest, 129 F.3d 906, 910 (7th Cir. 1997). Moreover, the Brady doctrine does not impose a duty on the prosecutor to learn of information possessed by other government agencies that have no involvement in the investigation or prosecution at issue. United States v. Morris, 80 F.3d 1151, 1169 (7th Cir.), cert. denied, 519 U.S. 868 (1996).

While the prosecutor's obligation to look for and produce Brady material is independent of any defense request, the nature and content of such a request can impact the result. When a defendant makes only a general request for Brady material, the government decides what information must be disclosed. "Unless the defense counsel becomes aware that other exculpatory evidence was withheld and brings it to the court's attention, the prosecutor's decision is final." Pennsylvania v. Ritchie, 480

U.S. 39, 59 (1987). A general request for all Brady material does not help the prosecutor determine which information in the government's possession might constitute Brady material; it places an onerous burden on the prosecutor to identify correctly all "material" items. Jordan, 316 F.3d at 1252 n.81. So, to expect a complete and reliable response to a Brady demand, defense counsel must be willing to provide information to the prosecutor to assist in the prosecutor's evaluation. "The requests must be sufficiently clear and directed to give reasonable notice about what is sought and why the information may be material in the case." McVeigh, 954 F.Supp. at 1451.

With respect to defense requests, one built on "mere speculation" does not trigger a duty to produce information. United States v. Parks, 100 F.3d 1300, 1307 (7th Cir. 1996); United States v. Morris, 957 F.2d 1391, 1402-03 (7th Cir.), cert. denied, 506 U.S. 941 (1992). For example, in United States v. Polowichak, 783 F.2d 410, 414 (4th Cir. 1986), the Fourth Circuit affirmed the district court's decision to refuse to require the government to disclose the identity of a co-conspirator. The defendant had argued that such information might lead to the discovery of exculpatory evidence. The Court determined that the defendant's request under Brady was speculative and the prospect of discovering exculpatory information was too remote to justify requiring the government to disclose the identity of the co-conspirator.

Various types of information can be considered exculpatory. In general, however, "[m]aterials that must be disclosed are those that go to the heart of the defendant's guilt or innocence and materials that might affect the jury's judgment of the credibility of a crucial prosecution witness." United States v. Hill, 976 F.2d 132, 134-35

(3d Cir. 1992). Information tending to show involvement of persons other than (or in addition to) the defendant may be Brady. Kyles v. Whitley, 514 U.S. 419 (1995). Information undermining the prosecution theory is Brady. United States v. McVeigh, 954 F.Supp. 1441, 1449 (D. Colo. 1997). Information corroborating an alibi or an affirmative defense is Brady. Monroe v. Angelone, 323 F.3d 286, 300 (4th Cir. 2003). Information that could fundamentally alter defense strategy can be Brady. United States v. Spagnuolo, 960 F.2d 990, 995 (11th Cir. 1992).

Neutral, irrelevant, speculative or inculpatory information is not Brady. See, e.g., Wood v. Bartholomew, 516 U.S. 1, 8 (1995) (undisclosed polygraph test inadmissible); United States v. Benjamin, 252 F.3d 1, 11-12 (1st Cir. 2001) (undisclosed handwriting exemplar irrelevant); United States v. Amiel, 95 F.3d 135, 145 (2d Cir. 1996) (undisclosed derogatory information about witness was speculative); United States v. Boone, 279 F.3d 163, 189-91 (3d Cir.), cert. denied, 535 U.S. 1089 (2002) (undisclosed witness statement was inculpatory); United States v. Reyes, 270 F.3d 1158, 1167 (7th Cir. 2001) (undisclosed witness information about defendant was neutral); Gonzales v. McKune, 247 F.3d 1066, 1077 (10th Cir. 2001), aff'd in part, vacated in part, 279 F.3d 922 (en banc), cert denied, 537 U.S. 838 (2002) (undisclosed forensic test was irrelevant).

The scope of disclosure requested by Brady is limited to exculpatory information that is "material." The "touchstone of materiality is a 'reasonable probability' of a different result." Kyles v. Whitley, 514 U.S. 419, 434 (1995). Thus, under Brady, "the government need only disclose during pretrial discovery . . . evidence which, in the

eyes of a neutral and objective observer, could alter the outcome of the trial." Jordan, 316 F.3d at 1252. "[F]or prejudice to exist, we must find that the evidence -- although itself inadmissible -- would have led the defense to some admissible evidence."

Williamson v. Moore, 221 F.3d 1177, 1183 (11th Cir.), cert. denied, 534 U.S. 903

(2001). In the pretrial setting, one court has described the Brady "materiality" standard as follows:

In the pretrial context, the government is obligated to disclose all evidence relating to guilt or punishment which might reasonably be considered favorable to the defendant's case, with doubt as to usefulness resolved in favor of disclosure (citations omitted). Disclosure, however, is still limited to exculpatory or impeachment evidence that would likely be admissible at trial or be likely to lead to admissible evidence (citations omitted). There is no obligation to disclose information solely because it would be helpful in preparing the defense in the case; it must be potential exculpatory or impeachment evidence (citation omitted).

United States v. Peitz, 2002 WL 226865 (N.D. Ill. 2002). "[T]he Constitution does not require the prosecutor to share all useful information with the defendant." Ruiz, 536 U.S. at 629. Thus, the standard is admissible "potential exculpatory or impeachment evidence," and not merely information "helpful in preparing the defense in the case."

The defendant's right to disclosure of favorable evidence does not create a broad, constitutionally-derived right of discovery nor an unsupervised right to search through the government's files. United States v. Jordan, 316 F.3d 1215, 1251 (11th Cir. 2003). There is no constitutional requirement that the prosecution make a complete and detailed accounting to the defense of all police investigatory work on a case. Moore v. Illinois, 408 U.S. 786, 795 (1972). Brady does not require a prosecutor to divulge every scintilla of evidence that might conceivably inure to a defendant's

benefit. United States v. Reyes, 270 F.3d 1158, 1166 (7th Cir. 2001). Brady does not require the prosecution team to defend against evidence they present or to take affirmative action to prepare a defense for the defendant. McVeigh, 954 F.2d at 1449. A defendant has no right under the Brady doctrine to have the government construct his defense for him. United States v. Griggs, 713 F.2d 672, 673 (11th Cir. 1983).

The Brady doctrine does not require that disclosures be made immediately upon a defendant's request, see United States v. Coppa, 267 F.3d 132, 143-44 (2d Cir. 132), or even on a specific timetable. See United States v. Montes-Cardenas, 746 F.2d 771, 781 (11th Cir. 1984). Rather, to comply with its obligations under Brady, Giglio and their progeny, the government must disclose the information at an appropriate or sufficient time for the defendant to use it effectively in the preparation and presentation of his case. See Coppa, 267 F.3d at 142; United States v. Bailey, 123 F.3d 1381, 1398 (11th Cir. 1997); United States v. Pollack, 534 F.2d 964, 973 (D.C. Cir. 1976); W. LaFave & J. Israel, Criminal Procedure § 19.5(e) at 760 (1985). Determination of the appropriate time for disclosure depends on the nature of the material at issue. See United States v. Aiken, 76 F. Supp. 2d 1339, 1345 n.8 (S.D. Fla. 1999) (citing United States v. Beckford, 962 F. Supp. 780, 787-88 (E.D. Va. 1997)). Impeachment evidence normally does not require counsel to be given substantial time in advance to review. Id. Exculpatory evidence, however, may require additional time for investigation and research. Id.

B. Timing of Brady and Giglio Disclosures

In this case, the Court has already prescribed a timetable for disclosure of information "favorable to the Defendant on the issue of guilt and punishment" and "the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements made to prospective government witnesses," by ordering that disclosure occur "at an appropriate time, but at least thirty (30) days prior to the Defendant's trial." (See Doc. 152 § II.) Thus, the Discovery Order represents a determination of the amount of time necessary for Brady and Giglio materials to be effectively used by Defendant at trial. Due process requires no more. See Coppa, 267 F.3d at 142.

Defendant advances no reason whatsoever justifying alteration of the Discovery Order. Courts have held that disclosure of exculpatory Brady evidence one month before trial is sufficient to permit its effective use at trial. See e.g. United States v. Walters, 351 F.3d 159, 169 (5th Cir. 2003) (finding disclosure one month before trial of the identity of another suspect to the alleged crime complied with Brady because there was enough time to investigate and put evidence to sufficient use). Production of Giglio materials at least thirty days before trial is even more reasonable, given that the nature of such materials does not require substantial time in advance to use it effectively. To the extent that specific Brady materials, if they exist, may require additional investigation, the government recognizes, and will comply with, its obligation to present them at an appropriate time sufficient to allow Defendant to effectively use them at trial.

C. Defendant Fariz's Requests

1. *Information concerning the scope and duration of indicted and indictable co-conspirators as governmental agents.*

Although he broadly claims entitlement to information about "indicted and indictable coconspirators," (see Def. Mem. at 3), the substance of Defendant Fariz's argument focuses on discovery of information about Defendant Al-Arian as a source of information for the FBI citing Sears v. United States, 343 F.2d 139, 142 (5th Cir. 1965).¹ The Court should reject Defendant's request on several grounds.

First, such information is only discoverable under Brady to the extent it is material to the charges in the Indictment. As can be determined from the content of the statements, Defendant Al-Arian was not an FBI informant or government agent with

¹Defendant's reliance on Sears is misplaced because Sears only applies where the sole alleged co-conspirator is a government agent. See United States v. Fincher, 723 F.2d 862, 863 (11th Cir. 1984) (rejecting defendant's argument under Sears where other co-conspirators were not government agents); United States v. Seelig, 498 F.2d 109, 112 (5th Cir. 1974) (interpreting Sears as holding that "there can be no indictable conspiracy when the only other supposed co-conspirator is a government informant"). As in Seelig, Sears is "wholly inapplicable" to this case since the Indictment alleges that several persons other than Defendant Al-Arian were participants in the alleged conspiracies. See Seelig, 498 F.2d at 112 (finding no factual basis for reliance on Sears where four persons who were not government agents were indicted as co-conspirators). Even if Defendant Al-Arian were a government agent with respect to the crimes alleged in the Indictment, the conspiracy allegations would not be substantially affected because the Indictment alleges that Defendant Fariz conspired with several other people in addition to Defendant Al-Arian. Furthermore, Defendant Al-Arian did not act as an FBI informant or agent in connection with the crimes alleged in the Indictment and accordingly could have conspired with Defendant Fariz to commit them. See e.g. United States v. Lively, 803 F.2d 1124, 1126 (11th Cir. 1986) (noting that a jury could properly find that the defendant conspired with a co-conspirator who cooperated with the government after arrest to commit crimes occurring before the arrest).

respect to the charges and activities alleged in the Indictment and accordingly his statements to the FBI are not material to Defendant Fariz's guilt or innocence under Brady.^{2,3}

Assuming *arguendo* that the information has value as impeachment evidence (what witness could be impeached is not apparent to the government), the government need not disclose any additional materials. As Defendant notes, the government has already acknowledged that Defendant Al-Arian was a source of information for the FBI for a brief period of time. Disclosure of this fact is all that Brady requires because it puts Defendant Fariz on notice that the issue of the extent of Defendant Al-Arian's cooperation may warrant additional investigation. See Darwin, 757 F.2d at 1201 (finding that the government is not required by Brady to disclose information other than the fact that a witness might have been involved in a narcotics transaction still under investigation because it "put on notice that evidence possibly relevant for impeachment was developing"); Zackson v. United States, 6 F.3d 911, 918-19 (2d Cir. 1993) (determining that Brady is satisfied where the defendant knew of the essential facts permitting him to initiate additional investigation of the exculpatory information).

²Although it may not be clear from the defense pleadings, the government provided defendant Al-Arian with the substance of his statements to the FBI and the dates when those statements were made. Subsequently, the government inquired of defendant Al-Arian whether he intended to rely on the public authority defense. The government notes that Defendant Al-Arian has not as yet provided notice of assertion of a public authority defense pursuant to Fed. R. Crim. P. 12.3.

³Thus, a motion to sever would be far from "unassailable" as Defendant Fariz asserts. (See Def. Mem. at 2 n.2.) It would totally lack any merit.

To this end, "the government is not obliged under Brady to furnish a defendant with information which . . . , with reasonable diligence, he can obtain himself." United States v. Campagnuolo, 592 F.2d 852, 861 (5th Cir. 1979); see also United States v. Valera, 845 F.2d 923, 927-28 (11th Cir. 1986). In this case, Defendant Fariz is perfectly capable of obtaining information about Defendant Al-Arian's brief activities as an FBI source on his own. Defendants Fariz and Al-Arian have shared discovery information throughout the proceedings thus far, so information about Defendant Al-Arian's activities is readily accessible directly from Al-Arian himself. Under these circumstances, the government should not be obliged to furnish additional information. See Zackson, 6 F.3d at 919 (rejecting claim of Brady violation regarding further information of co-defendant's role as a confidential informant because the defendant knew before trial that the co-defendant was an informant and had a mutual agreement with the co-defendant to share information concerning their case).

With respect to information whether other coconspirators acted as government informants, Defendant Fariz's request is entirely speculative and inconsistent with the government's informant privilege pursuant to Rovario v. United States, 353 U.S. 53 (1957).⁴ When the defendant has access to an individual who, unbeknownst to the defendant is an informant, Rovario does not place an obligation on the government to disclose the individual's status as an informant. See, e.g., United States v. Persico, 1997 WL 867788 at 39 (E.D.N.Y. 3/13/97), rev'd in part on other grounds sub nom.,

⁴The government incorporates its discussion of Rovario on pages 9-11 in its Response to Defendant Sami Amin Al-Arian's Motion to Compel (Doc. 499).

United States v. Orena, 145 F.3d 551, 553 (2d Cir. 1998), cert. denied, 525 U.S. 1072 (1999); United States v. LaRouche Campaign, 695 F.Supp. 1290, 1307-08 (D. Mass. 1988); United States v. LaRouche Campaign, 695 F.Supp. 1265, 1279-80 (D. Mass. 1988). Analyzing the issue under Brady yields the same result: information about a coconspirator's, whether unindicted or indicted, role as a government agent is not subject to disclosure under Brady where the defendant knows the coconspirator's identity and potential for exculpatory testimony. See Campagnuolo, 592 F.2d at 860-61 (finding no Brady violation where the defendant knew that a person named as an unindicted coconspirator was a potential witness and could provide exculpatory evidence).

2. *All translations utilized by the government in preparation of the indictment that are erroneous or inconsistent with the translations the government used to obtain the indictment and/or intends to offer at trial.*

Fariz reiterates arguments raised in prior motions. The government has declined to provide these materials and hereby incorporates by reference the reasons stated in footnote 2 on page 6 of the Government's Response to Defendant Hatim Naji Fariz's Motion for Reconsideration of the Magistrate Judge's Order Denying in Part Mr. Fariz's Motion to Compel Production of English-Language Transcripts (Doc. 469) and on pages 13-14 of the Government's Response to Defendant Sami Amin Al-Arian's Motion to Compel (Doc. 499).

As explained in those pleadings, this request is overly broad as a matter of law because only a translation which does not reasonably convey the intent or idea of the

thought spoken (or misidentifies the speaker) can truly be considered potentially Brady, not a transcript which is merely inconsistent or different in some way. Defendant's effort to distinguish United States v. Zambrana, 841 F.2d 1320 (7th Cir. 1988) is misguided because the impossibility of achieving exact translations logically impacts the materiality of any inconsistencies between translations. Brady only mandates disclosure of "evidence which, in the eyes of a neutral and objective observer, could alter the outcome of the trial." Jordan, 316 F.3d at 1252. Inconsistencies that do not alter the intent or idea of the thought spoken or misidentifies the speaker cannot rise to this level of materiality.

To the extent that the government identifies a translation to which the Brady doctrine truly applies, the government will comply with its constitutional obligation, as it did with respect to Overt Act 253.

Furthermore, the defendant is not entitled to a translation of a communication the government used to prepare the indictment. Such a translation is exempt from discovery pursuant to Fed. R. Crim. P. 16(a)(2).

3. (Fariz 1) *All evidence, including statements, 18 U.S.C. § 3503(a) depositions, form 302s, handwritten notes, or documents of any kind which contradict any of the allegations in the Indictment.*

To the extent that this constitutes material information favorable to Defendant Fariz on the issue of guilt or punishment, the government understands and accepts its obligation to search for and produce exculpatory information, and if there is any Brady

information, the government will produce it.⁵ This affirmation in itself presents a sufficient basis for denying Defendant's motion to compel. See United States v. Hanna, 198 F. Supp. 2d 236, 247 (E.D.N.Y. 2002).

4. (Fariz 2) *All documents which contradict the allegations in the Indictment and otherwise: (a) relate in any way to the lawful transfer of funds to or from Hatim Naji Fariz during the relevant periods of the instant investigation and prosecution; (b) indicate, record or demonstrate a lack of knowledge on the part of Hatim Naji Fariz as to an illegitimate purpose of the transactions at issue; (c) indicate a lack of ratification of the actions of the PIJ and/or its agents by the Defendant concerning the transactions alleged in support of the Indictment; and (d) indicate, record, or demonstrate a lack of knowledge on the part of Hatim Naji Fariz as to an illegitimate purpose of transactions or related money transfers alleged or related to the allegations of the Indictment.*

Section (a) of this request is overbroad because it seeks non-exculpatory information. For example, information regarding the lawful transfer of funds between Fariz and entities or people which are completely unrelated to any of the allegations or charges in the Indictment is not material under Brady.

⁵As the Court noted during a prior discovery conference, no additional court order is necessary to impose an obligation on the government to disclose Brady or Giglio material. At a hearing on January 22, 2004, the Court stated:

If, in fact you have identified particular areas of concern with regards to potentially exculpatory information, I think the case law very clearly indicates to the government that they have got a duty to inquire as to particulars, and they have got a duty to respond. That, frankly, doesn't require Court intervention in my view of the law related to Brady.

(See Doc. No. 456 at 60-61.)

Otherwise, with respect to subsections (b) through (d), as stated previously, a court order is unnecessary because the government is cognizant of its responsibilities under Brady and will produce material exculpatory information, if any exists, pursuant to the Discovery Order. Furthermore, no justification exists for altering the current Discovery Order.

5. (Fariz 3) *All witness statements, testimony, or documents which reveal any oral or written statements or expressions by Hatim Naji Fariz to the effect that Mr. Fariz was unaware that funds were (in relation to the matters referred to in the Indictment) being transferred to entities in violation of those State and Federal statutory prohibitions alleged in the Indictment.*

This request is similarly overbroad since mistake of law, i.e. whether Defendant Fariz knew that his actions or those of his coconspirators violated the law, is not a viable defense to criminal prosecutions. Staples v. United States, 511 U.S. 600, 621 (1994) (mistake of law is no defense); United States v. Thompson, 25 F.3d 1558, 1567 n.7 (11th Cir. 1994). What matters is whether Defendant Fariz knew the nature of the support provided and the entity or person receiving the funds. Court's March 12th Order at page 25 (Doc. 479). To the extent that the request seeks information about his lack of knowledge that funds were transferred to the entities alleged in the Indictment, the government is cognizant of its responsibilities under Brady and will produce material exculpatory information, if any exists, pursuant to the Discovery Order. No court order is required to impose that obligation upon the government and no justification exists for altering the current Discovery Order.

6. (Fariz 4) *All witness statements taken from witnesses as to matters related to the allegations of the Indictment which contradict the eventual testimony of those witnesses before the Grand Jury or in any final statement taken from the witnesses, including the initial field notes prior to preparation of Form 302 statements taken by agents of the government, including but not limited to State, Federal and Israeli law enforcement, security or intelligence agents.*

This request is largely directed at Giglio information of prior inconsistent statements. The government is cognizant of its responsibilities under Giglio and will produce such impeachment materials, if any exist, pursuant to the Discovery Order. No court order is required to impose that obligation upon the government and no justification exists for altering the current Discovery Order to require immediate production.

To the extent that the Defendant's request encompasses prior witness statements that do not contain material inconsistencies, such statements qualify only as Jencks Act materials.⁶ The Jencks Act requires production of any statements of witnesses (other than the defendant) that are in the government's possession and that relate to the subject matter of the witnesses' testimony after the witnesses have testified on direct examination. See Fed. R. Crim. P. 26.2(a). It is clear from the face of the statute that the United States cannot be ordered to produce Jencks statements before trial:

⁶The government notes that such reports would only constitute Jencks materials of the agent taking the statement and not of the witness unless they are substantially verbatim and were contemporaneously recorded or were signed or otherwise ratified by the witness. See United States v. Jordan, 316 F.3d 1215, 1252, 1255 (11th Cir. 2003).

In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

18 U.S.C. § 3500(a); see also Fed. R. Crim. P. 26.2(a) (“After a witness other than the defendant has testified on direct examination, the court, on motion . . . , must order . . . produc[tion of] . . . any statement of the witness that is in [the government’s] possession and that relates to the subject matter of the witness’ testimony.”). Thus, there is no legal basis for compelling the United States to produce these statements now with trial nearly eight months away. Production of these witness statements at the time prescribed by the Federal Rules of Criminal Procedure and 18 U.S.C. § 3500(a) will not prejudice the defendant’s ability to investigate and prepare his defense. In contrast, early disclosure of prospective witness statements under Jencks would force the United States to determine its trial witness list at an extraordinarily early stage of the proceedings and thus prematurely reveal, or in some instances confirm, the government’s trial strategy to the defendant. Early disclosure could also expose prospective witnesses to acts of intimidation or obstruction of justice. Such a result would undermine the adversary system that underlies the heart of our present system of criminal justice and hamper the government’s ability to present its case. See United States v. Bagley, 473 U.S. 667, 675 n.6 & n.7 (1985).

7. (Fariz 5) *All financial and immunity and other arrangements with any potential government witnesses, including but not limited to domestic and foreign*

agents, investigators and intelligence personnel, confidential informants and all other fact witnesses, translators and transcriptionists, and expert witnesses. . . .

This request has 6 subparagraphs, each seeking detailed Giglio information regarding benefits provided to potential witnesses. (See Doc. 511 at page 9-10.) A court order directing disclosure, immediate or otherwise, is unnecessary because the government has repeatedly stated its intention to comply with its constitutional obligations under Giglio and Brady and the Court's Discovery Order. Furthermore, there is no justification for altering the discovery order and requiring immediate production.

WHEREFORE, for the foregoing reasons, defendant Al-Arian's motion should be denied.

Respectfully submitted,

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