

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
Tampa Division**

**UNITED STATES OF AMERICA**

v.

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

**SAMI AMIN AL-ARIAN, *et al.*,**

**Defendants.**

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**DEFENDANT AL-ARIAN'S OPPOSITION TO THE  
GOVERNMENT'S SECOND MOTION FOR A PRETRIAL CONFERENCE  
AND A PROTECTIVE ORDER PURSUANT TO  
THE CLASSIFIED INFORMATION PROCEDURES ACT**

COMES NOW the Accused, Dr. Sami Amin Al-Arian, by counsel, and opposes the government's second request for a pretrial conference and protective order relevant to disclosures of purportedly classified information that the government has recently discovered and/or generated.

1. It is impossible for the Accused to respond fully to the government's request at this point, since we are completely in the dark as to the substance and nature of the so-called "discoverable" yet "classified" material. If the material is exculpatory in nature, for example, our response would be different than if it is Rule 16 material. At minimum, we ask to know under what rubric the government contends the information is discoverable: Brady v. Maryland or Rule 16.
2. Counsel also does not know what portion of the massive indictment to which this classified, discoverable material relates. As such, pursuant to Section 6(b)(2) of CIPA, we request that the Court order the Government to provide "such details as

to the portion of the indictment or information at issue in the hearing as are needed to give the defendant fair notice to prepare for the hearing.”

3. We also request that, before setting a CIPA hearing, the Court require the government to certify that, unlike the FISA translations, this “new” classified discoverable information cannot be declassified. The Court will recall the first motion for a pretrial CIPA proceeding filed by the government on July 7, 2003, seeking to impose restrictions upon the defense with regard to the then-classified FISA intercepts. (Doc.168). At the time, the government insisted that the material must remain classified. Yet, after the Court expressed a measure of concern about the classified status of the translations, the government suddenly declassified the documents. To undersigned counsel’s knowledge, the government has never clarified the reasons that it suddenly flip-flopped on the necessity of the classified status for the FISA intercepts. Given the FISA episode and the government’s pattern of discovery-foot-dragging throughout this case, it is reasonable for the defense to suspect that the “new” evidence the government now wishes to cloak in secrecy can also be de-classified, as the FISA intercepts were. We ask the Court, as a threshold matter, to insure that declassification is not the proper course here.
4. We must also state that we are perplexed as to why the government has not come forward earlier with this information. If the information has been in the government’s hands all along, why has it not been disclosed according to the discovery schedule or Brady principles? If the government is conducting further investigation(s) to bolster the instant case, how much more evidence in support of



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been

served this 27th day of July, 2004 upon:

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