

**UNITED STATES DISTRICT COURT  
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.***

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**ORDER**

This cause came on for consideration without oral argument upon Defendant Fariz' Motion for Clarification and Objections to the Magistrate's Order for Discovery of Transcripts (Dkt. #626)<sup>1</sup>. The Magistrate's Order for Discovery (Dkt. # 605), entered on August 18, 2004, sets forth periodic deadlines for the Government's production of English language translations of communications the Government intends to offer into evidence during its case-in-chief. The Magistrate's Order for Discovery directs the Government to provide such translations in installments of at least one-hundred (100) transcripts by October 1, 2004, November 1, 2004, and December 1, 2004. It also sets forth a December 31, 2004 deadline for the Defendants' production of any alternative translations they wish to offer in rebuttal to the Government's translations, as well as any other English-language translations the Defendants may seek to introduce in their case-in-chief. The case is scheduled for trial on January 5, 2005.

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<sup>1</sup> The portion of Defendant Fariz's Motion seeking a "clarification" of the Magistrate's Order for Discovery was appropriately addressed by the Magistrate during the discovery hearing on September 17, 2004.

Defendant Fariz proposes two amendments to the Magistrate's Order for Discovery. First, Defendant Fariz asks this Court to compel the Government to disclose a list of the approximately 200 to 300 FISA intercepts it intends to use at trial and the order in which English-language translations of such intercepts will be produced. Defendant Fariz does not suggest a particular deadline upon which such disclosure should be made, but the Court presumes that Defendant Fariz seeks a deadline prior to December 1, 2004, which represents the date upon which the Government will have disclosed to the Defendants all of its English-language translations of the FISA intercepts that it intends to use at trial. Second, Defendant Fariz asks that a deadline be set for the Government to produce any counter-transcripts to the defense transcripts. As with Defendant's proposed amendment for a Government list of FISA intercepts, this request does not include a deadline upon which the Government should be required to produce such transcripts. A deadline for such counter-proposals from the Government will be problematic since the Defendants' deadline for production of their translations is December 31, 2004. Thus, there is very little time between December 31, 2004, and the start of trial on January 5, 2005.

Due to the nature of the Defendant's two proposed amendments, this Court finds that they should be appropriately considered by the Magistrate, who has been responsible for scheduling discovery deadlines in this case. If the Defendant considers pursuing such requests with the Magistrate, the Defendant is advised to propose specific dates that the Magistrate can consider in making his determination. Defendant Fariz's requests for amendments, therefore, should be DENIED WITHOUT PREJUDICE.

Defendant Fariz also objects to the December 31, 2004, production deadline imposed

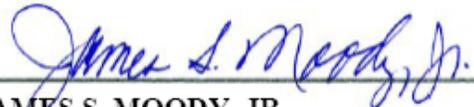
on the Defendant by the Order for Discovery. The Defendant argues that he should not be precluded from introducing into evidence transcripts of communications whose relevance or necessity becomes apparent during trial based on arguments made by the Government at trial, or transcripts that the Defendant is simply unable to translate prior to the December 31, 2004 deadline. The Government already provided the Defendants in March 2004 with summaries of all 800 intercepts it considers “pertinent” to the case, and the approximately 200 to 300 intercepts that the Government intends to use at trial will be produced to the Defendants in installments of 100 beginning on or before October 1, 2004 and ending on December 1, 2004.

This Court believes that the December 31, 2004 deadline offers the Defendant sufficient time to present his own English-language translations of communications that he will seek to introduce at trial. Additionally, because the Order for Discovery directs the Government to produce all of the English-language translations of communications it plans to use in its case-in-chief to the Defendant, the Court does not perceive any purpose to be served by granting such a request. To the extent the Defendant anticipates being surprised by the Government at trial with English-language translations of communications that were not disclosed pre-trial, the Court considers such surprises highly unlikely in light of the Magistrate’s Order for Discovery. Notwithstanding this unlikelihood, the Defendant will be able to seek relief from the Order for Discovery at trial if he can prove the Government has, in fact, introduced English-language translations that were not disclosed pre-trial. Accordingly, Defendant Fariz’s objection to the Magistrate’s Order should be DENIED.

It is therefore ORDERED AND ADJUDGED that Defendant Fariz’s Objection and

Motion for Reconsideration of Magistrate's Order for Discovery of Transcripts (Dkt. #626)  
is **DENIED**.

**DONE** and **ORDERED** in Tampa, Florida on September 28, 2004.

  
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**JAMES S. MOODY, JR.**  
**UNITED STATES DISTRICT JUDGE**

Copies furnished to:  
Counsel/Parties of Record

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