

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES OF AMERICA)
)
v.)
)
SAMI AMIN AL ARIAN, ET AL)
_____)

CASE NO: 8.03-CR-77-T-30-TBM

DEFENDANT, SAMI AL ARIAN'S RESPONSE TO COURT'S ORDER OF MARCH 26, 2003 AND GOVERNMENT'S REPLY DATED MARCH 28, 2003

The Defendant, SAMI AMIN AL-ARIAN, by Counsel, Nicholas M. Matassini, submits the following statement in response to the Court's order dated March 26th and the Government's Response to the Court order dated March 28, 2003, concerning the potential effects of an Immigration and Customs Enforcement detainer being lodged against Dr. Sami Al Arian:

1. Defendant stipulates that the procedure outlined in the Government's Response, specifically paragraphs one (a, b, and c), describe generally the detainer process.
2. The government cites to Title 8, United States code, section 1226(c)(1), as to when certain aliens are subject to mandatory detention for **certain criminal convictions** as delineated under sections 1182(a)(2) and 1227(a)(2). This has no application here as Mr. Al-Arian is merely an accused.
3. The detainer process, as described in the Government's Response, occurs subsequent to a conviction of an alien.
4. Thus, the applicability of a detainer by the Immigration and Customs Enforcement is moot.
5. If the court enters an Order of pre-trial release of Dr. Al-Arian, and the government seeks to detain him for alleged immigration violations, he would receive additional safeguards in Immigration Court. Under 8 CFR 236.1(c)(8), a two-pronged objective test is established whereby the alien must demonstrate that release from custody would "not pose a danger to property or persons, and that the alien is likely to appear for any future proceedings." *Id.* The statute does not (1) create a great burden upon the alien, nor does it (2) grant arbitrary and unfettered discretion with the ICE.
6. The Board of Immigration Appeals set forth in the *Matter of Drysdale, 20 I & N Dec. 815 (1994)*, that release is warranted for a matter conferred onto the Immigration Court by application of 8 CFR 1252(a)(2)(B), and

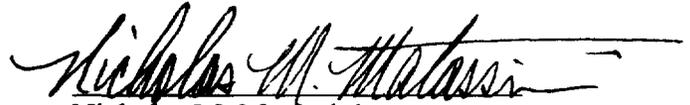
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that only an alien **convicted of an aggravated felony** [defined under 8 CFR 1101(a)(43)] need demonstrate that he "is not a threat to the community." *Id.* at 818 [*Emphasis added*].

7. Should the Immigration Court deny release, then the matter can be heard again in Federal District Court by way of writ of habeas corpus. Specifically by application of 28 USC §2241, Art. I §9, cl.2 of the United States Constitution (Suspension Clause), and 28 USC §1331.
8. It appears that the Government's response fails to directly provide the information requested by the Court in its Order.

WHEREFORE, based on the record and the evidence submitted and the constitutional issues raised herein, we request that the Defendant, Sami Amin Al-Arian, be released from detention with a reasonable bond and conditions imposed that are reasonable under the circumstances.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by facsimile and U.S. Mail on this 3rd day of April, 2003, to the following:

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