

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
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**DEFENDANT FARIZ' RESPONSE TO GOVERNMENT'S
MOTION FOR A PRETRIAL CONFERENCE AND
A PROTECTIVE ORDER PURSUANT TO THE
CLASSIFIED INFORMATION PROCEDURES ACT**

The Defendant Hatim Naji Fariz, through counsel, responds as follows:

1) The government's proposed order is overly broad and not particularized to the instant case. It is merely a copy of the protective order issued in United States v. Moussaoui, Case No. Crim. 01-455A, E.D. Va. As proposed, the order would seriously and unduly impair the Defendant's right to a fair trial and this Court's efficient administration of justice.

2) Initially, the government admits that its proposed order is taken directly from the Moussaoui case. Gov. Motion, pg. 3, paragraph 6. Such is not the particularized application of the Classified Information Procedures Act (CIPA) that Congress intended. The legislative history of CIPA states that in fashioning a protective order: "The details of each order are fashioned by the trial judge according to the circumstances of the particular case." S. Rep. No. 96-823, reprinted in 1980 U.S. Code Cong. & Ad. News 4294, 4299 (96th Cong. 2d Sess.).

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3) The government provides no factual analogy or reasoning on why the Moussaoui order is applicable to this case. There is no comparison of the respective security concerns. Indeed, the government asks the Court to impose an incredibly restrictive order based on nothing more than the bare assertion of “national security.”

4) The defense suggests that a comparison of the cases clearly shows that the Moussaoui order is not appropriate in this case. Based on the government’s allegations in that case, Moussaoui is a member of Al Qaeda and is one of the September 11 terrorists responsible for several thousand deaths. Reportedly, Mr. Moussaoui has admitted Al Qaeda membership, professes loyalty to Osama bin Laden, and continues to support violence against the United States. Obviously, the security concerns in Moussaoui go directly to the present war against Al Qaeda and the war in Afghanistan.

5) In contrast, Mr Fariz is a United States citizen accused of sending a relatively small amount of money to the Palestinian Islamic Jihad (PIJ), an organization involved in a totally foreign conflict with Israel. The classified material consists solely of phone conversations to which he and/or other defendants were a party. Moreover, the government has conveniently declassified the conversations that it intends to use against the defendants. The two cases are not even similar and the proposed order is not appropriate.

6) The government also provides no specific reasoning as to why the defendants should be excluded from the process. Without discussing any particular reasons, the government likens this case to United States v. Rezaq, 156 F.R.D. 514 (D.D.C. 1994). There, Rezaq was arrested after hijacking an airliner and causing the deaths of fifty-eight

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people. The court found that Rezaq was himself a terrorist who “is accused of committing political crimes against Americans as part of a campaign to destroy the United States.” The court also relied upon the fact that Rezaq had never been privy to the classified information, unlike the defendants in the instant case. Thus, the undersigned respectfully requests that Rezaq, like Moussaoui, is not apposite to this case.

7) In addition to copying the Moussaoui order, the government adds restrictions which the Moussaoui court did not even order. Paragraph seven of the proposed order is extremely unclear, but could be read as seeking to prevent the defense from investigating, or even discussing, information which is on the classified tapes, but may also be public knowledge. The defense requests clarification of this paragraph and the right to object to any clarification.

8) The defense objects to the overly restrictive process laid out in the proposed order. Specifically, the defense objects to the following items in the proposed order:

- a) the Court Security Officer’s designation of a secure defense area (pg. 8, paragraph 15);
- b) “procedures” established by the Court Security Officer (id.);
- c) an area open only during normal business hours or as approved by the Court Security Officer (id.);
- d) no documents are allowed to be removed from the secure area without the Court Security Officers approval (id.);

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- e) Court Security Officer supervision of attorney-client meetings in the secure area (pg. 10, paragraph 16);
 - f) the filing of all defense pleadings through the Court Security Officer, who will then consult with “appropriate agencies” and immediately send the pleading to the government (pg. 9, paragraph 17);
 - g) the lack of any such requirement for government pleadings (pg. 10, paragraph 18);
 - h) all defense documents containing any classified information must be prepared and stored in the secure area (pg 10, paragraph 19 (d));
 - i) the defense can only discuss classified information in the secure area and may not do so on any telephone (pg. 11, paragraph 19(e));
 - j) counsel may not disclose classified information to his client without the government’s approval (pg 12, paragraph 19(g));
 - k) classified information may not be “used by” defense counsel except under extremely restrictive conditions (pg 12, paragraph 20);
 - l) persons who indirectly or negligently divulge classified information could be subject to criminal liability (pg. 13, paragraph 21); and
 - m) all notes, summaries and other defense prepared documents containing classified information must remain with the Court Security Officer (pg. 14, paragraph 22).

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9) Finally, the government seeks to restrict even the information which has been declassified in this case. See pg. 14, paragraph 23. They seek to prevent counsel from disclosing that unclassified information to anyone but a select few. Further, they seek the return of that information when the case is closed. It should be noted that the government has not even attempted this degree of control in Moussaoui. The defense objects.

10) The undersigned also urges the Court to view the question of a protective order in the context of the defense's discovery plan in this case. As the Court and the government are aware it was the intention of the defense, due to the extremely large volume of discovery, to centralize the processing of that discovery. Much time and effort has been expended preparing such a plan. The overly restrictive provisions of the proposed protective order threaten to derail that plan. If adopted by the Court, the proposed order will undoubtedly dramatically increase the time and expense necessary to prepare for trial.

11) The undersigned has attempted to negotiate and resolve the disputes over the order. However, the government declined to do so.

12) In conclusion, the government's proposed order is not particularized to the instant case. It appears that little or no effort has been made to draft such an order.

Accordingly the Court should deny the motion and order the parties to negotiate to devise an order which is particularized to this case and truly addresses the concerns of all parties.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2003, a correct copy of the foregoing has been furnished by hand delivery to Walter E. Furr, Assistant United States Attorney, 400 N. Tampa Street, Ste 3200, Tampa, Florida 33602 and to the following by U.S. Mail:

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