

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN, et al.

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Case No. 8:03-cr-77-T-30TBM

UNITED STATES' MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION TO STRIKE DEFENDANT
AL-ARIAN'S MOTIONS REGARDING DISCOVERY MATERIALS

The United States moves this Honorable Court to dismiss or, in the alternative, strike, defendant Al-Arian's motion to produce remainder of audio tapes (D-214) and supplement to motion to produce remainder of tapes (D-219) for the reasons discussed below:

1. The Honorable Thomas B. McCoun court entered the second amended pretrial discovery order on June 4, 2003. D-152. This order governs all parties including defendant Al-Arian who is now proceeding pro se. The order was entered by the court to "facilitate a self-executing procedure to regulate discovery proceedings in the instant action and minimize the number of 'routine or standard discovery motions' . . . ". Id.

2. In addition to establishing various time tables for the production of discovery materials by the parties, the order addresses the parties duty to cooperate. Specifically, "[a]bsent good cause, the court will not entertain any motion relating to discovery unless counsel for the moving party certifies that counsel for the parties have been unable to resolve their differences or reach agreement after holding a conference,

226

or that opposing counsel has refused to confer without good cause.” Id. at 4.

3. In this instance, the pro se motions filed by defendant Al-Arian fail to comply with the “duty to cooperate” requirement of the second amended pretrial discovery order and should be dismissed or, in the alternative, struck from the record.

ARGUMENT

Defendant Al-Arian has filed several motions regarding discovery in his pending case. See D-170, 183, 204, 214, 216, 219. Two of the recent motions, docket numbers 214 and 219, specifically address missing and/or problematic audio tapes produced by the United States. Because these motions specifically address discovery matters, defendant Al-Arian is compelled to comply with the “duty to cooperate” paragraph contained within the second amended pretrial discovery order.

To comply with the “duty to cooperate” paragraph, defendant Al-Arian simply needs to notify the United States by letter that he has discovered a potential problem with the discovery material provided by the United States. The United States is well aware of its discovery obligations as outlined by the court's second amended discovery order (D-152) and as discussed at the June 5, 2003, discovery hearing (D-157), as well as Rule 16, Federal Rules of Criminal Procedure. To that end, defendant Al-Arian's concerns regarding problems with the audio tapes discussed in his pending motions are being thoroughly investigated. Indeed, initial investigation reveals that some of defendant Al-Arian's claims are correct. Once a complete review has been conducted, a letter will be sent to all parties and, if necessary, corrected audio tapes will be provided to all parties.

Defendant Al-Arian's motions, docket numbers 214 and 219, should be dismissed due to failure to comply with the second amended pretrial discovery order. In the alternative, the United States' requests that these motions be struck from the record. Furthermore, the United States respectfully requests that the court remind defendant Al-Arian that he shall communicate his discovery concerns to the United States by letter and that unless and until he can certify that the parties have been unable to resolve their differences or reach agreement, or that the government has refused to confer with Al-Arian without good cause, he should refrain from filing these types of motions with this Court.

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 this 21ST day of AUGUST, 2003, to the following:

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