UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO.: 8:03-CR-77-T-30-TBM

SAMI AMIN AL-ARIAN

UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO FILE MOTION AND SUPPORTING AFFIDAVITS UNDER SEAL

The United States of America by Paul I. Perez, United States Attorney, Middle District of Florida, hereby responds in opposition to defendant Sami Amin Al-Arian's Motion to File Motion and Supporting Affidavits Under Seal, or in the alternative, moves this Court to lift the sealing order, and in support thereof states the following:

1. On October 26, 2006, defendant Al-Arian filed a Motion to Enforce the Plea Agreement and simultaneously moved to file it under seal. This Court granted the motion to seal. This response is in opposition to defendant's attempt to proceed with this litigation in camera. Therefore, the United States requests that this Court treat this response as a motion to unseal all the pleadings and orders associated with the current matter on referral from the Eastern District of Virginia, place all such documents in the public docket, and conduct all hearings in open court.

2. The defendant's motion to file under seal is based solely on the fact that it deals with (a) a grand jury appearance in the Eastern District of Virginia and (b) the issuance of an order under seal by the Court supervising that grand jury setting deadlines and directing the defendant to file a motion before this Court.

S-79

3. The defendant's motion requests that this Court interpret a document filed in the public record, namely, defendant Sami Amin Al-Arian's plea agreement, D-cr-1563, which has been repeatedly and publicly acknowledged and discussed by the parties, the news media and the Court. Throughout the seemingly endless litigation surrounding this case, the Court has endeavored mightily to conduct these matters in the open and has only utilized in camera proceedings where absolutely necessary and after careful tailoring. To a large extent the government's argument can be summed up as follows: since the document to be interpreted is public, then litigation that addresses what that document means should be conducted in public, not in camera.

4. There remains the issue of grand jury secrecy. As a general proposition, enforcement of the grand jury secrecy rules is vital to the proper workings of the criminal justice system. It is sometimes necessary for the United States to seek the assistance from the courts in enforcing them in order to protect ongoing criminal investigations. Yet, with respect to the instant motion, the disclosure of the bare fact that Al-Arian has been called to testify before a grand jury in another district need not violate those grand jury secrecy rules because Al-Arian's connection to that investigation has been previously disclosed in open court as part of the Middle District of Florida plea agreement. Moreover, as discussed below, the fact that Al-Arian has been called to testify before a grand jury in another district has been widely reported in the news media. "The cat is already out of the bag." The defendant has already commented about this publicly. *See* Washington Post, "Muslim Anger Burns Over Lingering Probe of Charities", www.washingtonpost.com, Oct. 11, 2006; St. Petersburg Times, "Al-Arian to be Subpoenaed for Virginia Case", 2006 WLNR 16694279, Sept.

26, 2006 (copies attached as Exhibit A). In his comments to the St. Petersburg Times, the defendant alleged a breach of the plea agreement and implied government misconduct. Thus, even if the involvement of Al-Arian in the investigation was at one time protected by grand jury secrecy rules, it no longer is so protected after having been revealed in open court and widely reported. Moreover, the fact that it was Al-Arian's own attorneys who complained to the newspapers about the grand jury appearance surely undercuts his argument that this matter need remain secret. Under these circumstances, therefore, there is no reason to protect the identity of Al-Arian as a witness called to testify before the grand jury in the Eastern District of Virginia. *See, e.g.*, In Re: Sealed Case No. 99-3091 (Office of Independent Counsel Contempt Proceeding), 192 F.3d 995, 1004 (D.C. Cir. 1999) (grand jury material which becomes a matter of widespread public knowledge loses its confidential character and need for secrecy).

5. If the news media disclosures were not enough, the United States has also learned that the defendant filed a motion entitled "Motion to Vacate the Order of October 5, 2006: Pursuant to the Terms of the April 14, 2006 "Change of Plea" Colloquy before Magistrate McCoun under *U.S. v. Khoury* and *U.S. v. Bushert* and pursuant to the Government's Recent Breach of the Plea Agreement Under *Santobello v. New York*" in the Eleventh Circuit Court of Appeals, publicly docketed October 24, 2006. This pleading has been construed by the appellate court as a Motion for Reconsideration of Panel Order. In this pleading, defendant Al-Arian openly discusses his pending motion to quash the subpoena for his grand jury appearance in the Eastern District of Virginia, arguing that this action was a breach of the plea agreement,

necessitating dismissal (or denial) of the government Motion to Dismiss Al-Arian's appeal. In fact, defendant Al-Arian goes so far as to state that the action by the Eastern District of Virginia authorities "is a further breach of the plea agreement and colloquy . . . and a separate ground for appeal irrespective of the issues of improper application of judicial discretion currently before this Court." Al-Arian Motion at Page 11. So, now Al-Arian has publicly reported to the Eleventh Circuit that the United States Government breached the plea agreement by calling him to testify before the grand jury even though no Court has made such a ruling. This representation was made before Al-Arian even filed his pleading in this Court. The defendant has made his accusations publicly but now seeks to litigate them privately. This is unfair to the government and plain wrong as it leaves the impression the government has cheated on a widely publicized agreement in a high profile criminal case and begs the question what is the Court going to do about it.

6. As will become clear when the defendant's Motion to Enforce the Plea Agreement is argued, the details of the grand jury investigation in the Eastern District of Virginia are not necessary to a resolution of that motion. The government's response to the motion contains no details about the grand jury investigation. But, If the Court remains concerned about maintaining secrecy of the Eastern District of Virginia grand jury proceedings, to the extent that any tailoring is necessary to the documents filed by the defendant, it would be minimal, if required at all. Defendant Sami Amin Al-Arian's Motion to Enforce Plea Agreement is a 17-page pleading with eight Exhibits (A-H). The motion contains only one clause which may need to be redacted as it presently stands to satisfy the need for grand jury secrecy. The first paragraph of the Memorandum of

Law, Part I. Introduction, begins with the following sentence: "On October 19, 2006, Dr. Al-Arian was summoned by the United States Attorney's Office for the Eastern District of Virginia to testify before a grand jury empaneled in Alexandria, Virginia, charged with investigating an organization called IIIT." Only the last clause of the sentence "charged with investigating an organization called IIIT" needs to be excised. There is no other mention in the motion regarding the target of the grand jury.[1]

7. Likewise, the exhibits attached to the defendant's motion are nearly devoid of any reason to proceed in camera. Exhibit "A" is defendant's publicly docketed plea agreement. Exhibit "B" is the order from the Eastern District of Virginia which caused the defendant to file this motion in this Court. If the Court orders redaction of the defendant's motion as recommended by the government, this order gives away no apparent secrets as the defendant has already publicly stated as described above that he was summoned before a grand jury. Exhibits "C," "D" and "F" are declarations by the defendant, Linda Moreno, Esq. and Jack E. Fernandez, Esq. which contain nothing which needs to be considered in camera. Exhibit "E" is a portion of the April 14, 2006 guilty plea hearing conducted by Magistrate Judge McCoun. This document was previously unsealed by order of the Court dated April 17, 2006. D-cr-1560. Exhibit "G" is an unpublished opinion from the Ninth Circuit Court of Appeals and Exhibit "H" is a 43-page document available on and retrieved from the United States Department of State website. None of these exhibits provide any reason to proceed in camera.

---

[1]Generally targets of grand jury investigations are not disclosed. Both articles in Attachment A, however, identify IIIT as a target under investigation. If this court determines that the grand jury investigation target should not be revealed, the defendant's motion (as well as this response) can easily be redacted to allow filing in the public record.

Accordingly, the government respectfully submits the defendant's Motion to File his Motion and Supporting Affidavit Under Seal should be denied in its entirety, and all pleadings and orders should be placed on the public docket, and all hearings conducted in open court. In the alternative, the United States requests that this Court direct the defendant to redact his motion as recommended by the government for filing in the public record.

Respectfully submitted,

PAUL I. PEREZ
United States Attorney

By: /s Terry A. Zitek

Terry A. Zitek
Executive Assistant U. S. Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6336
Facsimile: (813) 274-6108
E-mail: terry.zitek@usdoj.gov

U.S. v. Sami Amin Al-Arian, et al. **Case No. 8:03-CR-77-T-30-TBM**

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2006, a true and correct copy of the foregoing document was sent by United States Mail to the following:

Jack Fernandez
Lee Fugate
Zuckerman Spaeder LLP
101 East Kennedy Boulevard, Suite 1200
Tampa, Florida 33602

The Honorable Gerald Bruce Lee
United States District Court Judge
District Court for the Eastern District of Virginia
Albert V. Bryan United States Courthouse
401 Courthouse Square
Alexandria, Virginia 22314

Gordon Kromberg, Esq.
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314

/s Terry A. Zitek

Terry A. Zitek
Executive Assistant U. S. Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6000
Facsimile: (813) 274-6108
E-mail: terry.zitek@usdoj.gov

Exhibit A

washingtonpost.com

Muslim Anger Burns Over Lingering Probe of Charities

By Jerry Markon
Washington Post Staff Writer
Wednesday, October 11, 2006; B01

More than four years ago, federal agents swarmed into homes and businesses in Herndon and elsewhere in Northern Virginia, carting away 500 boxes of documents they believed contained evidence of an international terrorism financing network.

The raids, which targeted some of the most established Islamic organizations in the United States, caused an immediate firestorm in the Muslim community.

So far, the March 2002 searches have led to the convictions of two people, including prominent Muslim activist Abdurahman Alamoudi, who admitted in federal court that he plotted with Libya to assassinate the Saudi ruler.

But no charges have been filed against the principals of the Herndon-based cluster of companies and charities that are at the center of the investigation, and Muslims say the raids were no more than a fishing expedition.

"They are still trying to prove that they weren't wrong in the first place," said Nancy Luque, an attorney for the Herndon charities. "You storm into people's homes, take their children's toys, terrorize the women, and 4 1/2 years later, you haven't got a scintilla of evidence against any of them."

Yet, a grand jury investigation is proceeding in Alexandria, and at least one high-profile witness has recently been called to testify. Law enforcement officials insist that the so-called Herndon charities investigation is still moving forward, with agents and prosecutors immersed in tracing what they say is a Byzantine trail of transactions between corporations and related charitable entities here and overseas. The investigation is focused on a Herndon-based network of Muslim charities, businesses and think tanks.

Federal prosecutors have strongly defended the raids, saying during a 2004 court hearing that they would file charges against some or all of the Herndon-based network, possibly under racketeering statutes once used to target the Mafia. Prosecutors declined to comment last week. Law enforcement sources said they still expect further prosecutions, but they would not comment on timing or the nature of the possible charges. They spoke on condition of anonymity because of the case's sensitivity.

Although the specifics of the investigation remain unclear, prosecutors are now seeking the testimony of a potentially key witness. Last week, the attorney for Sami al-Arian -- a former Florida professor who was acquitted in one of the nation's highest-profile terrorism cases but then pleaded guilty to a single charge -- said he had been subpoenaed to appear before a federal grand jury in Alexandria.

The lawyer, Linda Moreno, said prosecutors want to ask Arian about his ties to the International Institute of Islamic Thought, or IIIT, one of the key Herndon organizations under investigation.

The primary reason the investigation has taken nearly half a decade, according to court documents and interviews, is the complexity of trying to trace the elaborate money trail.

"Such a massive ream of documents came out of those search warrants," one law enforcement official said in an

interview last year. "It takes incredibly lengthy investigative work."

During the 2002 raids, federal agents fanned out to more than 15 sites in Falls Church, in Leesburg and in Fairfax County, including Herndon. They spent 12 hours alone at IIIT -- an Islamic think tank set up in Herndon in the early 1980s -- where they seized about 25 computers and documents that included financial records, mailing lists and staff lists.

Muslim leaders held news conferences denouncing the raids as violations of their civil rights and denying terrorist ties. One woman whose home was searched said agents, brandishing weapons, broke in and held her and her teenage daughter in handcuffs for five hours.

Federal officials believed at the time that they had ample evidence of terrorism connections, court documents show.

The searches primarily targeted a group of Middle Eastern men who operated a tightly connected Herndon-based network of more than 100 organizations, known collectively as the Safa Group, some of which existed only on paper, according to court documents.

In an affidavit filed in support of the search warrants and unsealed in 2003, Homeland Security agent David Kane wrote that he had "seen evidence of the transfer of large amounts of funds from the Safa Group organizations directly to terrorist-front organizations since the early 1990's." Kane named Palestinian Islamic Jihad, which kills Israeli civilians in suicide bombings and is considered a terrorist group by the United States, as a likely recipient of Safa Group funding.

Kane also laid out alleged ties between Arian and IIIT, writing that IIIT was once the largest contributor to what he called a Palestinian Islamic Jihad front group run by Arian. A federal jury in Tampa last year deadlocked on nine charges that Arian aided terrorists and acquitted him of eight other counts. He then pleaded guilty to one count of supporting Palestinian Islamic Jihad and was sentenced to 57 months in prison. With time already served, he is expected to be released from prison and deported next year.

Moreno characterized Arian's ties to IIIT as "extremely limited and extremely old." She said Arian had been transferred to a jail in Virginia, but she could not give a date for his grand jury appearance.

Luque said her Herndon clients are all U.S. citizens who have no terrorist ties and "have embraced this country." Some of the organizations raided in 2002 have closed, including several affiliated with Alamoudi, who is serving a 23-year prison term. But the Herndon groups, including IIIT and Safa Trust Inc., are still operating, Luque said. One of the main organizations named in the 2002 search warrant, the SAAR Foundation, dissolved in 2000.

Luque ridiculed the argument that the investigation is highly complex. "A snail could have looked through the property seized quicker than they have," she said.

Experts in terrorism financing said such investigations, which may involve layers of shell companies in offshore jurisdictions, are highly complicated. Lee Wolosky, who tracked terrorist financing for the National Security Council in the Clinton administration, said the Herndon probe should be judged more by whether it helped investigators gain crucial intelligence on terrorist ties than by how many indictments it yields.

"Just because there haven't been domestic indictments doesn't mean the government isn't advancing its interests," Wolosky said.

But Richard K. Gordon, a former specialist in money laundering and terrorist financing at the International Monetary Fund, said the Herndon probe seems "to be taking a long time."

"After 4 1/2 years, you ought to be able to get the evidence or decide you can't," Gordon said. "It's not like we're infiltrating the Mafia, where it takes five years to get insiders."

Staff writer Mary Beth Sheridan contributed to this report.

9/26/06 St. Petersburg Times 3B
2006 WLNR 16694279

St Petersburg Times

September 26, 2006

Section: TAMPA & STATE; METRO & STATE

Al - Arian to be subpoenaed for Virginia case

MEG LAUGHLIN

Sami **Al - Arian** , who is seven months away from leaving prison, is about to be subpoenaed to testify before a **grand jury** in another terrorism-related case in Virginia, according to his former attorney, Bill Moffitt.

Al-Arian, who was serving his sentence at a prison 60 miles north of Tampa, has been moved to a county jail in Virginia, where he will be summoned to testify before a **grand jury** about an Islamic think tank.

"It is a clear violation of the plea agreement, which was supposed to end Sami's business with the United States, and prosecutors know that," said Moffitt.

Steve Cole, spokesman for the U.S. Attorney's Office in Tampa, said, "We can't comment on any activity involving Sami **Al-Arian**."

Linda Moreno, Moffitt's co-counsel, said, "The plea agreement doesn't mention cooperation and that is intentional. That Dr. **Al-Arian** would not cooperate was negotiated."

What this means, said Moffitt, is that **Al-Arian** will probably take the Fifth Amendment and refuse to testify, which will result in contempt charges. This could extend his sentence by 18 months.

In May, **Al-Arian** was sentenced to 57 months in prison as part of a plea agreement in which he admitted helping associates of the terrorist group Palestinian Islamic Jihad with non-violent activities. His release date was set for April 13, 2007, because he had already spent several years in prison before and during the trial.

The agreement came five months after **Al-Arian** received not guilty verdicts in a jury trial, where he was charged with fundraising for the violent activities of Palestinian Islamic Jihad in Israel and the Occupied Territories. At the end of the six-month trial, a jury acquitted him on eight counts and hung on nine.

Al-Arian's plea agreement stated that the Department of Justice could not "charge defendant with committing any other federal offenses known ... at the time of the execution of this agreement."

At the plea agreement hearing in April, federal prosecutor Cherie Krigsman specifically said that **Al-Arian** would not be charged in the Eastern District of Virginia, "with committing any other federal crimes known ... at the time of this agreement."

Krigsman mentioned the Eastern District of Virginia because of **Al-Arian's** connections to the International Institute of Islamic Thought, a think tank in eastern Virginia that is still being investigated by the federal government.

"It's an outrageous violation of the agreement," said Moffitt. "Sami is about finished and they're piling on."

Contact Meg Laughlin at mlaughlin@sptimes.com or (727) 893-8068.

---- INDEX REFERENCES ----

NEWS SUBJECT: (International Terrorism (1IN37))

REGION: (Middle East (1MI23); USA (1US73); Americas (1AM92); Florida (1FL79); Palestine (1PA37); North America (1NO39); Arab States (1AR46))

Language: EN

OTHER INDEXING: (DEPARTMENT OF JUSTICE; INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT; OCCUPIED TERRITORIES; US ATTORNEY; VIRGINIA) (Al; Al-Arian; Arian; Bill Moffitt; Cherie Krigsman; Contact Meg Laughlin; Islamic Jihad; Krigsman; Linda Moreno; Moffitt; Palestinian; Palestinian Islamic Jihad; Sami; Sami Al; Sami Al-Arian; Steve Cole)

EDITION: 2

Word Count: 510
9/26/06 STPTFTI 3B

END OF DOCUMENT