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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 United States of America,
14 Plaintiff,
15 v.
16 Abdul Malik Abdul Kareem,
17 Defendant.

No. CR 15-00707-PHX-SRB

**DEFENDANT’S MOTION FOR
JUDGMENT OF ACQUITTAL PURSUANT
TO RULE 29**

18 Defendant, Abdul Malik Abdul Kareem (“Mr. Abdul Kareem”), by and through
19 undersigned counsel, respectfully requests this Court to enter a judgment of acquittal under
20 Rule 29 of the Federal Rules of Criminal Procedure based on insufficiency of the evidence and
21 on the United States of America’s (“the Government”) misconduct in failing to meet its *Brady*
22 obligations and failure to make timely disclosures.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 Mr. Abdul Kareem adopts all of the factual allegations and legal arguments set forth in
25 Defendant’s Motion for New Trial Based on Prosecutorial Misconduct.

26 Outrageous government misconduct can result in a violation of due process when the
government suppresses evidence at trial that is material to guilt. *Brady v. Maryland*, 373 U.S.
83, 86 (1963). Whether the Government acted in good or bad faith is irrelevant to the analysis,
for *Brady* is concerned not with prosecutorial intent, but with defendant’s right to a fair trial.
The constitutional guarantee of due process affords criminal defendants the right to a fair trial,

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1 and that includes access to evidence that allows them “to present a complete defense.”
2 *California v. Trombetta*, 467 U.S. 479, 485 (1984).

3 If government misconduct does not rise to the level of a constitutional violation, a
4 federal court is permitted to dismiss the indictment in an exercise of its supervisory powers if
5 the misconduct is sufficiently egregious. *See United States v. Simpson*, 927 F.2d 1088, 1090
6 (9th Cir. 1991). The supervisory power allows federal courts “within limits, [to] formulate
7 procedural rules not specifically required by the Constitution or the Congress.” *United States*
8 *v. Williams*, 504 U.S. 36, 45 (1992). These judge-made rules are designed “to implement a
9 remedy for violation of recognized rights; to preserve judicial integrity by ensuring that a
10 conviction rests on appropriate considerations validly before a jury; and finally, as a remedy
11 designed to deter illegal conduct.” *United States v. Tucker*, 8 F.3d 673, 674-76 (9th Cir. 1993);
12 *United States v. WR Grace*, 526 F.3d 499, 511 n. 9 (9th Cir. 2008)(*en banc*)(district court had
13 authority to issue pretrial order requiring government to disclose finalized list of witnesses
14 more than a year in advance of trial). The Supreme Court has emphasized that courts should
15 proceed “with some caution” and with an eye toward “balancing the interests involved” before
16 using the supervisory power to put an end to a criminal prosecution. *United States v. Hasting*,
17 461 U.S. 499, 506-07 (1983)(quoting *United States v. Payner*, 447 U.S. 727, 734-36 (1980).

18 Judges exercise substantial discretion over what happens *inside* the courtroom. *Simpson*,
19 927 F.2d at 1090-91. It is important to note, however, that the misconduct need not have
20 occurred during the trial itself. The exercise of a court’s supervisory power is intended “to
21 prevent parties from reaping benefit or incurring harm from violations of substantive or
22 procedural rules governing matters apart from the trial itself.” *Williams*, 504 U.S. at 46.

23 Additionally, the evidence that Mr. Abdul Kareem knew of the Mohammad Drawing
24 contest in Garland, Texas came from three totally unreliable witnesses, Stephen Verdugo and
25 the minors, Juan and Carlos who were all thoroughly impeached during cross-examination, and
26 the evidence was totally unreliable. This jury verdict is predicated on fear, not fact and the

1 Government did not prove its claims against Mr. Abdul Kareem beyond a reasonable doubt
2 except for the count alleging felon in possession.

3 **Conclusion**

4 As set forth in the Defendant's Motion for New Trial Based on Prosecutorial
5 Misconduct, the Government's failure to provide required discovery in a timely fashion and the
6 Government's failure to provide all *Brady* material justifies this Court entering a judgment of
7 acquittal as does the lack of credible evidence against Mr. Abdul Kareem.

8 RESPECTFULLY SUBMITTED this 31st day of March, 2016.

9 **MAYNARD CRONIN ERICKSON**
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11 By /s/Daniel D. Maynard

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16 **ORIGINAL** of the foregoing e-filed this 31st day of March, 2016 via ECF with:
17 Clerk of the Court
18 United States District Court
19 401 W. Washington
20 Phoenix, AZ 85003

21 **COPY** of the foregoing e-delivered this 31st day of March, 2016 via ECF to:

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