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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10 (HON. ANTHONY J. BATTAGLIA)

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 MOHAMAD SAEED KODAIMATI,)
15 Defendant.)
16)
17)
18)
19)

Case No. 15-CR 1298-AJB

Date: June 26, 2015
Time: 9:00 A.M.

NOTICE OF MOTIONS AND
MOTIONS TO:
1) COMPEL DISCOVERY;
2) PRESERVE EVIDENCE
3) LEAVE TO FILE FURTHER
MOTIONS

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23 TO: LAURA E. DUFFY, UNITED STATES ATTORNEY, AND
24 JOHN PARMLEY, ASSISTANT UNITED STATES ATTORNEY:

25 PLEASE TAKE NOTICE that on June 26, 2015, at 9:00 a.m., or as soon thereafter as
26 counsel may be heard, Defendant Kodaimati, by and through his attorney, Barbara M. Donovan,
27 will ask this Court to issue an order granting the motions listed below.

28

MOTIONS

The defendant, Mohamad Saeed Kodaimati, by and through his attorney, Barbara M. Donovan, asks this Court pursuant to the United States Constitution, Federal Rules of Criminal Procedure, and all other applicable statutes and local rules for an order to:

1. Compel discovery;
2. Preserve Evidence
3. Leave to file further motions.

These motions are based upon the instant motions and notice of motions, the attached memorandum of points and authorities, the files and records in the above-captioned matter, and any and all other materials that may come to this Court's attention prior to or during the hearing of these motions.

Dated: June 10, 2015

Respectfully submitted,

S/ Barbara M. Donovan

BARBARA M. DONOVAN
Attorney for Defendant Kodaimati

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Attorney for Defendant Kodaimati

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HON. ANTHONY J. BATTAGLIA)

UNITED STATES OF AMERICA,)
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Plaintiff,)
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MOHAMAD SAEED KODAIMATI,)
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Defendant.)

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STATEMENT OF FACTS
AND MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF
DEFENDANT'S MOTIONS

I.

STATEMENT OF FACTS

The following statement of facts is based, in part, on information received from the government. The facts alleged in these motions are subject to amplification and/or modification at the time these motions are heard.

On April 22, 2015, Mr. Kodaimati was arrested in San Diego, California.

On April 23, 2015, a two count complaint was filed in the above-captioned case charging defendant Mohamed Saeed Kodaimati, with False Statements

1 Involving International Terrorism in violation of Title 18 United States Code
2 Section 1001(a)(2).

3 The complaint alleges that on or about March 10, 2015 and March 11, 2015,
4 at the United States Embassy, in Ankara, Turkey, the defendant knowingly and
5 willfully made materially false, fraudulent and fictitious statements and
6 representations to the F.B.I. and the Department of State's Diplomatic Security
7 Service ("DSS") when Mr. Kodaimati was questioned about his activities and
8 relationships with various terrorist organizations and individuals while he was
9 living in Kafr Hama, Syria, with his family in 2013 and 2014.

10 On May 15, 2015, Mr. Kodaimati was indicted on two counts of 18 U.S.C.
11 1001(a)(2), False Statements Involving International Terrorism. On May 21, 2015,
12 Mr. Kodaimati was arraigned on the indictment and entered a plea of not guilty.

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14 **II.**

15 **MOTION TO COMPEL DISCOVERY**

16 Mr. Kodaimati moves for the production by the government of the following
17 discovery. This request is not limited to those items that the prosecutor knows of,
18 but rather includes all discovery listed below that is in the custody, control, care, or
19 knowledge of any "closely related investigative [or other] agencies" under United
20 States v. Bryan, 868 F.2d 1032 (9th Cir. 1989):

21 **A. Mr. Kodaimati is Entitled to Discovery of His Statements.**

22 Pursuant to Rule 16(a)(1)(A), Brady v. Maryland, 373 U.S. 83 (1963), and
23 the Fifth and Sixth Amendments to the United States Constitution, Mr. Kodaimati
24 requests disclosure of any statements, whether oral, written, or recorded made by
25 him which are in the possession, custody, or control of the government, or which
26 by the exercise of due diligence may become known to the government, regardless
27 of to whom made. This includes copies of any written or recorded statements he
28

1 made; the substance of any statements made by Mr. Kodaimati which the
2 government intends to offer in evidence at trial. Mr. Kodaimati also specifically
3 requests that all arrest reports which relate to the circumstances surrounding his
4 arrest or any questioning, if such reports have not already been produced in their
5 entirety, be turned over to him. This request includes, but is not limited to, any
6 rough notes, records, recordings (audio or visual), reports, transcripts or other
7 documents in which statements of Mr. Kodaimati are contained. It also includes
8 the substance of any oral statements which the government intends to introduce at
9 trial, and any written summaries of the defendant's oral statements contained in the
10 handwritten notes of the government agent. This is all discoverable under Fed. R.
11 Crim. P. 16(a)(1)(A) and Brady v. Maryland, 373 U.S. 83 (1963). See also United
12 States v. Johnson, 525 F.2d 999 (2d Cir. 1975); United States v. Lewis, 511 F.2d
13 798 (D.C. Cir. 1975); United States v. Pilnick, 267 F. Supp. 791 (S.D.N.Y. 1967);
14 Loux v. United States, 389 F.2d 911 (9th Cir.), cert. denied, 393 U.S. 867 (1968).
15 Mr. Kodaimati also requests any response to any Miranda warnings which may
16 have been given to him, on the date of his arrest. See United States v. McElroy,
17 697 F.2d 459 (2d Cir. 1982).

18 **B. Prior Convictions or Prior Similar Acts.**

19 Rule 16(a)(1)(B) of the Fed. R. Crim. P., provides that "upon request of the
20 defendant, the government shall furnish to the defendant such copy of his prior
21 criminal record, if any, as is within the possession, custody, or control of the
22 government" Mr. Kodaimati, therefore, requests all evidence, documents,
23 records of judgments and convictions, photographs and tangible evidence, and
24 information pertaining to any prior arrests and convictions or prior bad acts.
25 Evidence of prior record is available under Fed. R. Crim. P. 16(a)(1)(B). Evidence
26 of prior similar acts is discoverable under Fed. R. Crim. P. 16(a)(1)(C) and Fed. R.
27 Evid. 404(b) and 609;

28 Mr. Kodaimati also requests the government be ordered to provide discovery

1 of any prior similar acts which the government intends to introduce into evidence
2 pursuant to Fed. R. Evid. 404(b). The Defendant must have access to this
3 information in order to make appropriate motions to exclude the use of such
4 evidence at trial. See United States v. Cook, 608 F.2d 1175 (9th Cir. 1979), cert.
5 denied, 444 U.S. 1034 (1980).

6 Mr. Kodaimati requests a pre-trial conference on the morning of trial in
7 order to resolve any issues raised by the government's intention of introducing
8 evidence pursuant to Fed. R. Evid. 404 and 609.

9
10 **C. Mr. Kodaimati is Entitled to Examine the Evidence the Government Intends**
to Rely Upon at Trial.

11 Rule 16(a)(1)(C) authorizes a defendant to inspect and copy or photograph
12 all books, papers, documents, photographs, and tangible objects which are in the
13 possession, custody or control of the government and which are material to the
14 preparation of the defense or intended for use by the government as evidence in it
15 case during trial.

16 (1) Specifically, Mr. Kodaimati requests the opportunity to inspect and
17 photograph all evidence seized from Mr. Kodaimati, all fingerprint analysis done
18 on any of the evidence in this case, all identification procedures utilized by the
19 government agents.

20 (2) The defense requests all evidence seized as a result of any search, either
21 warrantless or with a warrant, in this case. This is available under Fed. R. Crim. P.
22 16(a)(1)(C); and any books, papers, documents, photographs, tangible objects, or
23 copies or portions thereof which the government intends to use as
24 evidence-in-chief at trial;

25 (3) Mr. Kodaimati requests all arrest reports, investigator's notes, memos
26 from arresting officers, dispatch tapes, sworn statements, and prosecution reports
27 pertaining to Mr. Kodaimati. These are available under Fed. R. Crim. P.
28 16(a)(1)(B) and (C), Fed. R. Crim. P. 26.2 and 12(I). The Defendant specifically

1 requests that all dispatch tapes or any other audio or visual tape recordings which
2 exist and which relate in any way to his case and or his arrest be preserved and
3 provided in their entirety; and

4 (4) Mr. Kodaimati requests all other documents and tangible objects,
5 including clothing, notes, books, papers, documents, photographs, and copies of
6 any such items which were obtained from or belong to Mr. Kodaimati.

7 (5) The defense requests all photographs, video tapes or other material used
8 to memorialize the surveillance done in this case.

9
10 **D. Mr. Kodaimati is Entitled To All Evidence Tending To Affect The**
Credibility of The Prosecution's Case.

11 Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), United States v. Agurs,
12 427 U.S. 97 (1976), and Giglio v. United States, 405 U.S. 150 (1972), Mr.
13 Kodaimati requests the Court to order the government to immediately disclose all
14 evidence in its possession favorable to Mr. Kodaimati on the issue of guilt and
15 which tends to affect the credibility of the prosecution's case. This request
16 specifically includes any impeaching evidence such as the prior records, of any
17 material witnesses in this case. This request also includes any expressed or implied
18 promises made by the government to any material witnesses in exchange for their
19 testimony in this case. See, e.g., United States v. Bagley, 473 U.S. 667 (1985);
20 Napue v. Illinois, 360 U.S. 264 (1959); United States v. Gerard, 491 F.2d 1300 (9th
21 Cir. 1974).

22 The defense requests any and all evidence including but not limited to:

23 (1) any evidence that any prospective government witness is biased or
24 prejudiced against the defendant, or has a motive to falsify or distort his or her
25 testimony. Pennsylvania v. Ritchie, 480 U.S. 39 (1987); United States v. Strifler,
26 851 F.2d 1197 (9th Cir.), cert. denied, 489 U.S. 1032 (1988); United States v.
27 Brumel-Alvarez, 991 F.2d 1452 (9th Cir. 1992) (Ninth Circuit Court reversed
28 Judge Enright for failure to turn over the "Levine Memorandum" which contained

1 information critical about a government witness);

2 (2) any evidence that any prospective government witness has engaged in
3 any criminal act whether or not resulting in a conviction. See Rule 608(b), Federal
4 Rules of Evidence and Brady; any evidence that any prospective witness is under
5 investigation by federal, state or local authorities for any criminal conduct. United
6 States v. Chitty, 760 F.2d 425 (2d Cir.), cert. denied, 474 U.S. 945 (1985);

7 (3) any evidence, including any medical or psychiatric report or evaluation,
8 tending to show that any prospective witness' ability to perceive, remember,
9 communicate, or tell the truth is impaired; and any evidence that a witness has ever
10 used narcotics or other controlled substance, or has ever been an alcoholic. United
11 States v. Strifler, 851 F.2d 1197 (9th Cir. 1988); Chavis v. North Carolina, 637
12 F.2d 213, 224 (4th Cir. 1980);

13 (4) the name and last known address of each prospective government
14 witness. See United States v. Napue, 834 F.2d 1311 (7th Cir. 1987); United States
15 v. Tucker, 716 F.2d 576 (9th Cir. 1983) (failure to interview government witnesses
16 by counsel is ineffective); United States v. Cook, 608 F.2d 1175, 1181 (9th Cir.
17 (1979) (defense has equal right to talk to witnesses).

18 (5) the name and last known address of every witness to the crime or crimes
19 charged (or any of the overt acts committed in furtherance thereof) who will not be
20 called as a government witness. United States v. Cadet, 727 F.2d, 1453 (9th Cir.
21 1984);

22 (6) the name of any witness who made an arguably favorable statement
23 concerning the defendant or who could not identify him or who was unsure of his
24 identity, or participation in the crime charged. Jackson v. Wainwright, 390 F.2d
25 288 (5th Cir. 1968); Chavis v. North Carolina, 637 F.2d 213, 223 (4th Cir. 1980);
26 Jones v. Jago, 575 F.2d 1164, 1168 (6th Cir.), cert. denied, 439 U.S. 883 (1978);
27 Hudson v. Blackburn, 601 F.2d 785 (5th Cir. 1979), cert. denied, 444 U.S. 1086
28 (1980).

1 **E. Mr. Kodaimati is Entitled to Any Information That May Result in a Lower**
2 **Sentence Under The Guidelines.**

3 This information is discoverable under Brady v. Maryland, 373 U.S. 83
4 (1963). This request includes any cooperation or attempted cooperation by the
5 defendant, as well as any information that could affect any base offense level or
6 specific offense characteristic under Chapter Two of the Guidelines. Also included
7 in this request is any information relevant to a Chapter Three adjustment, a
8 determination of the defendant's criminal history, or any other application of the
9 Guidelines;

10 **F. The Defense Requests the Preservation of All Evidence.**

11 The defendant specifically requests that all audio or video tapes such as
12 dispatch tapes or any other physical evidence that may be destroyed, lost, or
13 otherwise put out of the possession, custody, or care of the government and which
14 relate to the arrest or the events leading to the arrest in this case or in the other
15 charges alleged in the indictment be preserved. This request includes, but is not
16 limited to, any samples (including but not limited to blood, urine, fingerprints or
17 narcotics) used to run any scientific tests, any narcotics, and any evidence seized
18 from any third party.

19 It is requested that the government be ordered to question all the agencies
20 and individuals involved in the prosecution and investigation of this case to
21 determine if such evidence exists, and if it does exist to inform those parties to
22 preserve any such evidence;

23 **G. The Defense Requests All Jencks Material.**

24 The defense requests all material to which Defendant is entitled pursuant to
25 the Jencks Act, 18 U.S.C. § 3500, reasonably in advance of trial, including audio
26 and visual tape recordings, such as dispatch tapes, and all notes or reports with
27 regard to his preparation for testifying. A verbal acknowledgment that "rough"
28 notes constitute an accurate account of the witness' interview is sufficient for the

1 report or notes to qualify as a statement under § 3500(e)(1). Campbell v. United
2 States, 373 U.S. 487, 490-92 (1963). In United States v. Boshell, 952 F.2d 1101
3 (9th Cir. 1991) the Ninth Circuit held that when an agent goes over interview notes
4 with the subject of the interview the notes are then subject to the Jencks Act;

5 **H. Mr. Kodaimati requests all other information relevant to his defense.**

6 The defendant requests disclosure of evidence including but not limited to
7 the following:

8 (1) Any statement that may be "relevant to any possible defense or
9 contention" that he might assert. United States v. Bailleaux, 685 F.2d 1105 (9th
10 Cir. 1982);

11 (2) Notice and a Written Summary of Any Expert Testimony.

12 Under Rule 16(a)(1)(E), effective December 1, 1993, "[a]t the defendant's
13 request, the government shall disclose to the defendant a written summary of
14 testimony the government intends to use under Rules 702, 703 or 705 of the
15 Federal Rules of Evidence during its case-in-chief at trial. This summary must
16 describe the witness' opinions, the basis and the reasons therefore, and the witness'
17 qualifications."

18 Mr. Kodaimati specifically requests the government give him a written
19 summary and notice of any expert testimony the government intends to introduce;

20 (3) Giglio Information. Pursuant to Giglio v. United States, 405 U.S. 150
21 (1972), the defendant requests all statements and/or promises express or implied
22 made to any government witnesses, in exchange for their testimony in this case,
23 and all other information which could arguably be used for the impeachment of any
24 government witnesses; and

25 (4) Henthorn Search. The defense requests that the prosecutor or some other
26 attorney familiar with the case be ordered to examine the personnel files for
27 evidence of perjurious conduct or other like dishonesty, or any other material
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1 relevant to impeachment, or any information that is exculpatory to Mr. Kodaimati
2 and that material be provided to the defense. United States v. Henthorn, 931 F.2d
3 29 (9th Cir. 1991); United States v. Dominguez-Villa, 954 F.2d 562 (9th Cir.
4 1992).

5 (5) Reports of Scientific Tests or Examinations

6 Pursuant to Fed. R. Crim. P. 16(D), Mr. Kodaimati requests the reports of all
7 tests and examinations conducted upon the evidence in this case, including but not
8 limited to any **fingerprint testing** done upon any evidence seized in this case;

9 (6) Brady Material

10 The defendant requests all documents, statements, agents' reports, and
11 tangible evidence favorable to the defendant on the issue of guilt and/or **which**
12 **affects the credibility** of the government's case. Impeachment as well as
13 exculpatory evidence falls within Brady's definition of evidence favorable to the
14 accused. United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427
15 U.S. 97 (1976);

16 (7) Personnel Records of Government Officers Involved in the Arrest

17 _____ The defendant requests all citizen complaints and other related internal
18 affairs documents involving any of the immigration officers or other law
19 enforcement officers who were involved in the investigation, arrest and
20 interrogation of him, pursuant to Pitchess v. Superior Court, 11 Cal.3d 531, 539
21 (1974).
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23
24 **III.**

25 **MOTION TO PRESERVE EVIDENCE**

26 Mr. Kodaimati requests that the government preserve all physical evidence
27 that may be destroyed, lost or otherwise put out of the possession, custody, or care
28 of the government and which relates to the alleged offenses, investigation, arrest or

1 the events leading to the arrest in this case.

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3 **IV**
4 **MR. KODAIMATI REQUESTS LEAVE TO FILE FURTHER**

5 **MOTIONS**

6 It is also requested that defense counsel be allowed the opportunity to file
7 further motions based upon information gained through the discovery process.

8 **CONCLUSION**

9 For the foregoing reasons, it is respectfully requested that the court grant the
10 above motions.

11 DATED: June 10, 2015

Respectfully submitted,

12 S/ Barbara M. Donovan

13 **BARBARA M. DONOVAN**
14 Attorney for Defendant Kodaimati

1 DONOVAN & DONOVAN
2 Barbara M. Donovan
3 Attorney at Law
4 The Senator Building
105 West F. Street - 4th floor
San Diego, CA 92101

U.S.D.C. No. 15-CR-1298 -AJB

5 DECLARATION OF SERVICE

6 I, undersigned, say: I am over 18 years of age, employed in the County of
7 San Diego, California, in which county the within mentioned delivery occurred,
8 and not a party to the subject cause. My business address is 105 West F. Street, San
9 Diego, California. I served the defendant's Notice of Motion and Memorandum of
10 Points and Authorities, of which a true and correct copy of the documents filed in
11 this cause is affixed, by electronic filing as follows:

12
13 John Parmley, Assistant U.S. Attorney
14 Office of the United States Attorney
880 Front Street, Room 6293
San Diego, CA 92101

15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on June 10, 2015 at San Diego, California

17 S/ Barbara M. Donovan

18 Barbara M. Donovan
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