

EXHIBIT F

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Reply to: Tampa

September 17, 2007

Thomas K. Kahn, Clerk
Att: Matt Davidson, Calendar Clerk
Clerk's Office - Appeal No. 06-16008-E
U.S. Court of Appeals - Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Re: United States v. Sami Amin Al-Arian
Appeal No. 06-16008-E

Dear Mr. Kahn:

Pursuant to the Court's order at oral argument in this case on September 11, 2007, in Jacksonville, Florida (Judges Barkett, Birch, and Trager), the United States submits this letter and four-page attachment.

During oral argument in this case on September 11, 2007, the Court ordered the United States to provide it within a week with the "standard cooperation provision" used in the United States Attorney's Office for the Middle District of Florida at the time that Al-Arian and the United States engaged in plea negotiations. Attached is a copy of all provisions regarding cooperation that appeared in the standard form plea agreement in use in the Middle District of Florida during spring 2006. As is clear from the provisions themselves, many of the provisions are used only in the alternative.

Also during oral argument, the Court inquired as to whether the attorney arguing for the government had any knowledge outside the record regarding the plea negotiations. That attorney wishes to reiterate that she had no such knowledge during oral argument and to inform the Court that, in anticipation of further inquiry, she has since conferred with an attorney who handled the plea


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negotiations that none of the provisions attached to this letter was offered to or placed before Al-Arian for perusal during negotiations; the mention of a "cooperation provision" in the transcript of the motion hearing, see Doc. 1672 at 22-23, was a reference in the abstract.

Very truly yours,

JAMES R. KLINDT
Acting United States Attorney

By:


KARIN B. HOPPMANN
Assistant United States Attorney
Appellate Division

cc: Jack E. Fernandez, counsel for Al-Arian (provided via facsimile before filing)

ATTACHMENT

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38. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

39. Cooperation Ongoing - Substantial Assistance Motion to be Filed

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. Based on the cooperation provided, at the time of sentencing, the government will file a motion for a departure from the applicable sentencing guideline range, pursuant to USSG §5K1.1 recommending that the defendant receive a KEYBOARD([Enter--number])-level downward departure and/or for the imposition of a sentence below a statutory minimum pursuant to 18 U.S.C. § 3553(e) for providing substantial assistance to the government in the investigation and prosecution of another person who has committed an offense. If additional cooperation is provided subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion

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for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

40. Cooperation Complete-Substantial Assistance Motion to be Filed

At the time of sentencing, the United States will file a motion for a departure from the applicable sentencing guideline range, pursuant to USSG §5K1.1, recommending that the defendant receive a ~~KEYBOARD([Enter--number])~~-level downward departure, or for the imposition of a sentence below a statutory minimum pursuant to 18 U.S.C. § 3553(e), or both, for providing substantial assistance to the government in the investigation and prosecution of another person who has committed an offense.

41. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

42. Cooperation - Substantial Assistance Not to be Considered

The defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify fully and truthfully before any and all federal grand juries and at any trials or other proceedings in connection with any of the cases, charges, or matters noted herein, and any related cases. The defendant further agrees to be reasonably available for all interviews which the United States may require. The defendant further agrees to make full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in the defendant's possession or control. The defendant understands and agrees that the United States will not file a motion at the time of sentencing recommending a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or subsequent to sentencing, pursuant to Fed. R. Crim. P. 35(b), for the defendant's cooperation, regardless of whether or not defendant's cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida.

43. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

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b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by rescission of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

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44. Cooperation - Family Member

While defendant agrees to cooperate fully with the United States, the United States will not require defendant to testify against family members on direct examination at trial. However, defendant understands that it may be asked on cross-examination or rebuttal about the criminal activities of family members and understands and agrees to fully and truthfully answer any such questions.