

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

09 CR 663 (RJD)

v.

NAJIBULLAH ZAZI,

Defendant.

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**MOTION FOR DISCOVERY**

COMES NOW the Defendant, Najibullah Zazi, by and through his attorney, J. Michael Dowling, and respectfully requests the Government disclose, pursuant to Rule 16, F.E.D.R.Crim.P., the Fifth Amendment to the United States Constitution, *Brady v. United States*, 405 U.S. 105 (1972), *United States v. Bagley*, 473 U.S. 667 (1985), and *Kyles v. Whitley*, 514 U.S. 419 (1995), the following:

1. Although the Government has indicated it intends to invoke the procedural guidelines of the Classified Information Procedures Act (“CIPA”), at 18 U.S.C. App. III, this Act does not limit the Government’s discovery obligations.
2. In an ordinary criminal case the Government has an obligation under *Brady v. Maryland*, 373 U.S. 83, and its progeny to produce information that is favorable to the defense.
3. The Government’s *Brady* obligation extends to all exculpatory information in the possession of the Government. That means, in a terrorism prosecution, the Government must normally inquire of the Intelligence Community Agencies that may reasonably be expected to possess information concerning the defendant.
4. In addition, the United States Attorney’s Manual prescribes procedures that prosecutors must follow in complying with CIPA.

5. The Defendant requests the Government disclose the procedures it took to comply with the United States Attorney's Manual. In particular, the Defendant requests the names of the Intelligence Community Agencies contacted pursuant to the Manual's directive.
6. In addition, the Defendant requests the Government disclose the following information:
  - a. Any evidence, material, or information within the possession, custody, or control of the government, or that by the exercise of reasonable diligence may be obtained by the government, including any information in the possession of any investigative agency, that is favorable to or exculpates the Defendant in any way; that tends to establish a defense in whole or in part to the allegations in the Information; that impeaches any witness the government intends to call; or that may help the Defendant avoid conviction or mitigate punishment;
  - b. Any written or recorded statements (including summaries) in its possession made by the Defendant, including, without limitation, any statement, whether inculpatory or exculpatory elicited from or attributable to the Defendant; any statements of co-conspirators that are attributable to the Defendant pursuant to F.R.E. 801(d)(2)(E); any oral statements made by the Defendant before or after his arrest to any person the Defendant knew to be a government agent at the time the statement was made; any pre-arrest statement made by the Defendant during the course of the commission of the crimes(s) charged; any recorded conversations to which the Defendant was a party or which occurred in the Defendant's presence and which were obtained by electronic surveillance; and all notes of agents' interviews with the Defendant [*United States v. Layton*, 564 F.Supp. 1391, 1395 (D.Or. 1983); *United States V Robinson*, 546 F.2d 309 (9<sup>th</sup> Cir.) *cert. denied*, 430 U.S. 918 (1977)];
  - c. Any notes, writings, audio recordings, or video recordings or recordation's in any form, pertaining to the investigation and/or prosecution of this case which tend to exculpate the Defendant or would tend to mitigate punishment in any way;

- d. Any evidence of drug abuse or mental deficiency relating to any person whom the government intends to call as a witness, or who assisted the investigation or reported information which led to the filing of charges in this case, including, but not limited to, any evidence of drug or alcohol abuse, mental health analysis or treatment of any such person;
- e. A list of potential and non-prospective witnesses and their addresses [*Nipp v. United States*, 422 F.2d 509 (10<sup>th</sup> Cir. 1970)];
- f. The names and addresses of experts the government intends to use at the trial of this matter and copies of all such expert reports;
- g. Results or reports of any scientific tests or experiments made in connection with this case;
- h. and all statements of persons who have been interviewed in connection with the subject matter of this case;
- i. memoranda or summaries of any oral statements made by any person to an agent of the government or any other law enforcement agency in connection with the subject matter of this case and not included above regardless whether the statement, if in writing, has been signed, adopted, or approved by the witness(es) or the statement relates to the proposed subject matter of the direct examination of the witness(es) at trial;
- j. evidence seized from the Defendant in this case;
- k. and all information relating to agreements or promises, express or implied, made to individuals in exchange for or as a result of cooperation with the government, including, but not limited to, any understanding regarding leniency by the government, recommendations or representations by the government, and promises of protection or other favorable treatment by the government;
- l. financial consideration or offers of assistance, financial or otherwise, by any public or governmental authority which is linked, in any way, to assistance

provided by the recipient in the investigation and/or prosecution of the within case.

Dated this 17<sup>th</sup> day of November, 2009.

Respectfully submitted,

LAW OFFICE OF J. MICHAEL DOWLING

/s/ J. Michael Dowling

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of November, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following via email:

Benton J. Campbell  
United States Attorney

Jeffrey H. Knox  
Assistant United States Attorney

Berit W. Berger  
Assistant United States Attorney

David Bitkower  
Assistant United States Attorney

James P. Loonam  
Assistant United States Attorney

/s/ J. Michael Dowling  
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