

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
2004 FEB 10 10:35
JH
2004 FEB 10 10:35
2004 FEB 10 10:35

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT
_____ /

**DEFENDANT GHASSAN BALLUT'S MOTION FOR
RECONSIDERATION OF MOTION FOR BILL OF PARTICULARS
AND MOTION TO ADOPT DEFENDANT HATIM FARIZ'S MOTION
FOR RECONSIDERATION AND MEMORANDUM OF LAW**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, pursuant to 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Criminal Procedure 7(f), submits this memorandum in support of his request to reconsider the Magistrate Judge's Order of January 21, 2004 (Doc. 428), denying the Defendant's Motion for Bill of Particulars and Memorandum of Law (Doc. 193), and further, pursuant to the Defendant's Motion to Adopt Defendant Hatim Fariz's Motion for Bill of Particulars (Doc. 296) granted by the Court in its Order of January 21, 2004 (Doc. 428), the Defendant moves to adopt Defendant Hatim Fariz's Motion for Reconsideration of the Court's denial of Defendant Hatim Fariz's Motion for Bill of Particulars (Doc. 252), but only to the extent that the Motion, the incorporated law and argument, or the evidence in support are beneficial and not adverse to the Defendant's interests, and as grounds therefor states:

1. The Motions for Bill of Particulars filed by all Defendants were collectively granted in part by the Court ordering the Government:

a. To identify each of the unindicted coconspirators numbered one through

441

twelve.

b. To identify the individual with whom Hatim Fariz spoke as described in Overt Acts 236 and 253 and about whom the Defendant and Hatim Fariz spoke as described in Overt Acts 240 and 247.

c. To disclose all investigative material relating to acts of violence in Israel alleged in the Indictment and the identities of coconspirators associated with the P.I.J. if known to the Government.

2. In all other respects, the Defendants' Motions for Bill of Particulars were collectively denied.

3. The Defendant made the following requests in his Motion for Bill of Particulars which were denied by the Court's Order:

a. As to Count One of the Indictment, the Defendant requested the Court to direct the Government to state with particularity (a) the first date on which the Defendant is alleged to have joined the conspiracy described in Count One, and (b) the source and nature of the Defendant's legal obligation, if any, to reveal information concerning his membership in PIJ in the INS document described in Count One, Overt Act 8.

b. As to Count Two of the Indictment, the Defendant requested the Court to direct the Government to state with particularity the first date on which the Defendant is alleged to have joined the conspiracy described in Count Two.

c. As to Count Three of the Indictment, the Defendant requested the Court to direct the Government to state with particularity (a) the first date on which the

Defendant is alleged to have joined the conspiracy described in Count Three, and (b) if the date is prior to October 7, 1997, to state the authority or factual basis for the allegation that the P.I.J. was a designated foreign terrorist organization prior to that date.

d. As to Count Four of the Indictment, the Defendant requested the Court to direct the Government to state with particularity (a) the first date on which the Defendant is alleged to have joined the conspiracy described in Count Four, and (b) if the date is prior to January 25, 1995, to state the authority or factual basis for the allegation that the P.I.J. was a Specially Designated Terrorist organization prior to that date.

4. Of the seven requests for statements of particulars that were denied, four requests are for a specific date on which the Defendant is alleged to have joined the conspiracies, two are requests for particulars as to legal authority for prosecution for crimes alleged to have occurred prior to a particular date, and one is a request for legal authority to determine if the Defendant violated the law by failing to perform a legal obligation for which he is not yet charged in the Indictment. In short, four dates and three citations of authority are requested.

5. All of the Defendant's denied requests for particulars implicate the authority of the Government to prosecute these charges, the jurisdiction of the Court to determine these charges, and the ability of the Defendant to defend himself against these charges and raise double jeopardy as a bar to future prosecutions.

6. These same denied requests for particulars would not be unduly burdensome to the Government and could be answered by the Government immediately and succinctly with a

modicum of review and little expense of resources.

7. As noted by Court in its Order (Doc. 428, note 3), the Defendant tailored his requests to a very limited number of essential requests.

8. The “specificity of the allegations in the Indictment and quantity of information to be produced in discovery” will not answer the Defendant’s requested particulars.

9. Answers to the Defendant’s requested particulars would potentially assist the Defendant in the review of the vast array of discovery materials by narrowing the chronological scope of that review.

10. In addition to these requests, the Defendant would request the remedies provided to the Defendant Hatim Fariz in granting his Motion for Reconsideration of his Motion for Bill of Particulars, to the extent that the same Motion, the incorporated law and argument, or the evidence in support are beneficial and not adverse to the Defendant’s interests. .

WHEREFORE, the Defendant requests the Court to reconsider and grant the Defendant’s remaining requests for particulars as presented above, and further requests all remedies granted to Defendant Hatim Fariz in the reconsideration of his Motion for Bill of Particulars.

Memorandum of Law

A District Court Judge may reconsider any pretrial matter where it has been shown that a magistrate judge’s order is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). The Court is authorized to direct the filing of a bill of particulars by the Government. Fed. R. Crim. P. 7(f). The purpose of a bill of particulars is to inform a defendant of the charge against him with sufficient precision to permit the defendant to prepare a defense, to minimize surprise at trial, and to plead double jeopardy if there is a later prosecution for the same offense. See United States v.

Warren, 772 F.2d 827 (11th Cir. 1985). A district court has broad discretion in ruling on a motion for a bill of particulars. See Will v. United States, 389 U.S. 90 (1967).

In the present case, multiple conspiracies alleged to have taken place over some 18 years are charged against eight named individuals and at least twelve unindicted coconspirators. An understanding of the initiation of the Defendant's alleged involvement in these conspiracies, given his limited alleged involvement, is essential to the preparation of his defense and his ability to raise double jeopardy as a defense to future prosecutions. An understanding of the legal status of the organizations the Defendant is alleged to have been a member of is essential to determining whether the Government has authority to prosecute these cases pursuant to 18 U.S.C. §§ 371 and 2339B, and whether the Court has jurisdiction to dispose of them. An Indictment which fails to sufficiently apprise the Defendant of the charges to avoid double jeopardy and to ascertain the authority of the Government and the jurisdiction of the Court must be supplemented with particulars or dismissed. Such an Indictment fails to contain a definite written statement of the essential facts constituting the offenses charged as required by due process. United States v. Gold, 743 F.2d 800 (11th Cir. 1984). Given the essential nature of the particulars requested in order to comport with due process, and the ease with which compliance with the requests would be accomplished, the denial of these requests was clearly erroneous. The Defendant's Motion for Particulars should be granted and the Government should be required to answer the Defendant's remaining requests.

Respectfully submitted,



Bruce G. Howie
Piper, Ludin, Howie & Werner, P.A.
5720 Central Avenue
St. Petersburg, FL 33707
Telephone (727) 344-1111
Facsimile (727) 344-1117
Florida Bar No. 263230
Attorney for GHASSAN ZAYED BALLUT

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S.

Mail to the following this 4th day of February, 2004.

Walter E. Furr, III Esq.
Office of the United States Attorney
400 North Tampa Street, Suite 3200
Tampa, FL 33602

William B. Moffitt, Esq.
Asbill, Moffitt & Boss, Chtd.
1615 New Hampshire Avenue, N.W.
Washington, DC 20009

M. Allison Guagliardo, Esq.
Office of the Federal Public Defender
400 North Tampa Street, Suite 2700
Tampa, FL 33602

Stephen N. Bernstein, Esq.
P.O. Box 1642
Gainesville, FL 32602-1642



Bruce G. Howie
Piper, Ludin, Howie & Werner, P.A.
5720 Central Avenue
St. Petersburg, FL 33707
Telephone (727) 344-1111
Facsimile (727) 344-1117
Florida Bar No. 263230
Attorney for GHASSAN ZAYED BALLUT