

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

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

GHASSAN ZAYED BALLUT
HATIM NAJI FARIZ

ORDER

This cause came on for consideration without oral argument upon Defendants Ballut's and Fariz's motions for reconsideration of Magistrate's order denying motion for grand jury transcripts (Dkts. #372, 379) and the government's response (Dkt. #396) thereto. After close consideration, this Court concludes that the motions should be denied because the Magistrate's Order (Dkt. #338) is not clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A).

The Magistrate denied Defendants' motions for grand jury transcripts, concluding that Defendants failed to make the requisite showing that disclosure of grand jury transcripts was necessary or appropriate. More specifically, the Magistrate concluded that Defendants stated reason to challenge the sufficiency of the indictment was an improper basis to seek grand jury transcripts. Further, the Magistrate noted that Defendants: (a) did not allege any irregularity in front of the grand jury was the result of prosecutorial misconduct; (b) already have or will have, through discovery, copies of the intercepted communications. In such

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circumstances, the Magistrate held that Defendants' interest in the disclosure of the transcripts did not outweigh the public interest in the secrecy of grand jury proceedings.

After the Magistrate entered his Order, the Eleventh Circuit decided United States v. Aisenberg, ___ F.3d ___, 2004 WL 225538 (11th Cir. Feb. 6 2004). In Aisenberg, the Eleventh Circuit reversed a district court's unsealing of grand jury transcripts. See id. at * 18. The Aisenbergs alleged that prosecutors and sheriff deputies engaged in a pattern of misconduct in front of the grand jury resulting in their wrongful indictment. See id. at * 2-4. During the criminal case, the district court dismissed the indictment and awarded the Aisenbergs their attorneys' fees under the Hyde Amendment for the government's bad faith.¹ See id. at * 3-4. The Aisenbergs continued to seek the grand jury transcripts for use in the Hyde Amendment proceeding (and later for a civil suit against the government). See id. at * 4-5. The district court granted the request. The Eleventh Circuit reversed finding that the Aisenbergs failed to show a compelling and particularized need for the grand jury transcripts because the Aisenbergs had a wealth of knowledge about the government's conduct before the grand jury. See id. at * 16-17. The Eleventh Circuit's opinion stressed the substantial interest that the government has in grand jury secrecy, including the effects that disclosure could have on future grand juries. See id. at *17.

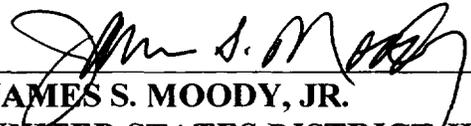
While Aisenberg does not signal a change in law relating to requests grand jury transcripts, it does provide this Court with some strong guidance on how the Eleventh Circuit

¹The government conceded that an award of attorneys' fees and costs was appropriate under the Hyde Amendment. See id.

views such requests and the relative strengths of the competing interests at issue in this case.

Here, both Defendants concede that the Magistrate applied the right standard and test to their request for grand jury transcripts. Further, Both Fariz and Ballut concede that they have already been provided with the intercepted communications that are allegedly incorrect or suspect. Neither Fariz nor Ballut have made any allegation of prosecutorial misconduct or bad faith. In such circumstances, this Court concludes that the Magistrate was not clearly erroneous in holding that Defendants' interest in disclosure did not clearly outweigh the public's interest in grand jury secrecy. Therefore, Defendants' motions for reconsideration ^{361.366} (Dkt. #372, 379) are **DENIED**.

DONE and ORDERED in Tampa, Florida on this 3 day of March, 2004.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record
Thomas B. McCoun, III, United States Magistrate Judge
Law Clerk

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