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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

  
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CLERK U.S. DISTRICT COURT  
TAMPA, FLORIDA

UNITED STATES OF AMERICA

vs.

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

GHASSAN ZAYED BALLUT  
\_\_\_\_\_ /

**DEFENDANT GHASSAN BALLUT'S MOTION FOR AMENDMENT  
OF ORDER CONCERNING APPLICABILITY OF LIMITATIONS TO COUNT 19**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, requests this Honorable Court to amend its Order of March 31, 2004 (Dkt. 497), to reflect that the Defendant's Motion to Dismiss (Dkt. 200) as to Count 19 of the Indictment is denied without prejudice to renew to allow the Defendant to reopen the issue upon receipt of additional discovery, and as grounds therefor states:

1. On March 31, 2004, the Defendant served his Request for Oral Argument on the Applicability of Limitations to Count 19 based upon the Government's response that 18 U.S.C. § 3292, the In Camera and Ex Parte Order of March 21, 2000, and the Mutual Legal Assistance Treaty extended the limitations period for Count 19.

2. On the same date, the Court issued its Order (Dkt. 497) denying the Defendant's Motion to Dismiss relating to Count 19 of the Indictment, finding that 18 U.S.C. § 3292 and the In Camera and Ex Parte Order of March 21, 2000, extended the limitations period.

3. The Defendant recognizes that the Court's Order would moot his Request for Oral Argument.

4. The Government in its Response on the applicability of limitations to Count 19 asserted

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that the Government submitted an official request for evidence to the Israeli government in "March, 2000," without specifying the date on which the official request for evidence was sent.

5. Pursuant to 18 U.S.C. § 3292(b), the date on which the official request for evidence was sent is the operative date that begins the suspension of the limitations period.

6. The Government's application for a suspension of limitations pursuant to 18 U.S.C. § 3292 must be substantiated with evidentiary facts rather than proffers or assertions.

7. With his Request for Oral Argument, the Defendant attached as an exhibit his request to the Government dated December 3, 2003, to provide the Defendant with the documents, including the official request for evidence, submitted to obtain the In Camera and Ex Parte Order of March 21, 2000, and later used by the Government to support its factual assertions in its Response on the limitations issue.

8. As of this date, the Government has not responded to the Defendant's request.

9. Because these documents, including the official request for evidence, pertain to the suspension of the limitations period, and because limitations is a defense to be raised by the Defendant, these documents are material to the preparation of the defense and are therefore discoverable under Federal Rule of Criminal Procedure 16(a)(1)(E)(i).

10. The Defendant requests the opportunity to obtain and examine these documents, including the official request for evidence, and renew his motion to dismiss Count 19 on limitations grounds if it is determined that the Government's request to extend the limitations period pursuant to 18 U.S.C. § 3292 was not substantiated with evidentiary facts.

WHEREFORE, the Defendant requests this Honorable Court to amend its Order of March 31, 2004 (Dkt. 497), to deny the Defendant's Motion to Dismiss (Dkt. 200) as to Count

19 without prejudice to renew, or alternatively to make such orders as the Court deems appropriate to permit the Defendant to reopen this issue upon the completion of further discovery.

**Memorandum of Law**

The Court has the discretion to amend its pretrial orders. Mutual Service Ins. Co. v. Frit Industries, Inc., 358 F.3d 1312, 1323 (11th Cir. 2004). The Defendant requests the Court amend its Order of March 31, 2004 (Dkt. 497), only to the extent of permitting the Defendant to renew his Motion to Dismiss upon the receipt of additional discovery.

The limitations period for an offense can be suspended for up to three years upon application of the United States “indicating that evidence of an offense is in a foreign country,” but only if

the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

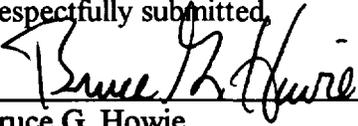
18 U.S.C. § 3292(a)(1). In order for the Court to make findings by a preponderance of the evidence, the Government’s application for a suspension of limitations pursuant to 18 U.S.C. § 3292 “must be sworn or verified, or must be accompanied by affidavits, declarations, exhibits, or other materials of evidentiary value,” because “an unsworn proffer of facts in an application or motion will not do.” United States v. Trainor, 277 F.Supp.2d 1278, 1286-87 (S.D. Fla. 2003).

The Government in its Response on the applicability of limitations to Count 19 submitted only the In Camera and Ex Parte Order of March 21, 2000, and its assertion that the Government submitted a request to the Israeli authorities for evidence some time in “March, 2000.” The

specificity of the date of the request to the Israeli government is crucial, because that would be the operative date on which the period of suspension under 18 U.S.C. § 3292 would begin. 18 U.S.C. § 3292(b). Admittedly, if the request were properly submitted in March of 2000 as asserted, the date of the request would precede May 24, 2000, the fifth anniversary of the alleged telephone conversation in Count 19. But if the request were not submitted until after March 18, 2000, then this would have implications for other counts in the Indictment. The Government should be required to specify the date on which the request to the Israeli government was made and to discover all information pertaining to both the request to the Israeli government and the ex parte motion to extend the statute of limitations.

In addition, if the Government's application to the Court for a suspension of limitations under 18 U.S.C. § 3292 proves to be legally insufficient, then the findings in the Order of March 21, 2000, are implicated. It should also be noted that the offense alleged in Count 19 occurred entirely within the United States, raising the question whether any evidence of "the offense" would have "reasonably appeared" to be in the possession of the Israeli government. These issues can be resolved by the Government discovering the items requested by the Defendant in his letter of December 3, 2003, and by permitting the Defendant to renew his Motion to Dismiss.

Respectfully submitted,



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**Certificate of Service**

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

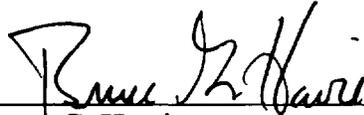
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