

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

vs.

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

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

**DEFENDANT GHASSAN BALLUT'S OBJECTIONS TO MAGISTRATE'S  
ORDER FOR DISCOVERY OF TRANSCRIPTS AND MOTION FOR  
RECONSIDERATION AND MEMORANDUM OF LAW**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, pursuant to the Court's Order of September 9, 2004, (Doc. 617) hereby presents his objections to those portions of the Magistrate's Order of August 18, 2004, (Doc. 605) concerning the scheduling of discovery production for English language translations of intercepted communications in the form of transcripts, and the Defendant further requests a reconsideration and modification of this same scheduling, and as grounds therefore would state:

1. The Magistrate's Order (Doc. 605) states in pertinent part:

On or before October 1, 2004, the government shall produce to each Defendant no less than 100 transcripts containing the English language translations of communications intended to be offered by the government in its case-in-chief at trial. By November 1, 2004, an additional 100 (minimum) of such transcripts shall be provided to the Defendants. Finally, by December 1, 2004, the balance of all such transcripts intended to be used by the Government in its case in chief shall be turned over to the Defendants. On or before December 31, 2004, any counter translations which the Defendants will seek to offer in rebuttal to the government's translations shall be provided to the Government. Additionally, by this date, all other transcripts reflecting English language translations of intercepted communications which any Defendant seeks or may seek to introduce in his case-in-chief shall be provided to the Government.

2. Based upon representations by the Government on the record at the discovery hearing on August 17, 2004, upon which the Order (Doc. 605) is based, the Order contemplates the discovery production of at least three hundred transcripts of translations by the Government.

3. The Order also contemplates a similar number of translations to be discovered by one or more of the defendants.

4. Many but not all of the anticipated Government transcripts contain intercepted communications generally described in the Overt Acts set out in Count One of the Indictment in this cause, and these communications appear to be the most crucial in proving the allegations in the Indictment.

5. Presumably all translations presented in these transcripts from both the Government and the defendants are from Arabic into English, but there is reason to believe that the spoken Arabic will be influenced and affected by the dialects of the individual speakers who represent a variety of nationalities.

6. During the course of pretrial hearings and discussions, issues have arisen concerning these translations as described in the Indictment, including the misidentification of speakers in the intercepted communications and the relative accuracy of the translations.

7. The Court and all parties anticipate that there may be conflicts in the content and nuance of the translations presented by the Government and the individual defendants.

8. Because most of the charges in the Indictment are based largely upon communications between the defendants with each other and with third parties, the content and nuance of the intercepted communications are crucial to the Government's ability to prove the allegations and

the defendant's ability to defend against the allegations.

9. In determining whether the many translations produced on behalf of the defendants need to be introduced into evidence to counter the content and nuance of the Government's many transcriptions, the defendants and their counsel will need as much time as possible for plenary review of all such translations and transcriptions.

10. Because the individual defendants who speak both Arabic and English are alleged to have participated to varying degrees in nearly all of these conversations, it is contemplated that in the event any defendant exercises his right to testify in his own behalf, he may be required to offer his own translation of statements in conjunction or conflict with transcriptions offered by either the Government or the defendants.

11. Because many but not all of the intercepted communications are described in the Overt Acts, the defendants may have difficulty determining the relevance and relative significance of those communications not described in the Indictment until such time as the Government chooses to utilize transcripts of such communications in the presentation of its case in chief in combination with testimonial commentary on the context, circumstances, meaning and purpose of such communications.

12. Because of the number of translations and interpretations of each intercepted communication, and because of the likelihood of varying opinions on the content and nuance of these communications, it will be difficult or impossible for counsel for the Government and the defendants to stipulate to any one transcript as an accurate translation of any given communication prior to trial.

13. It is therefore unlikely that pretrial disclosure by the defendants of any defense

transcripts will facilitate stipulations on the uncontested introduction of transcripts into evidence.

14. The defendants and their counsel have been advised that the Government's case in chief will likely require six months or more to present.

15. The Order of the Court (Doc. 605) does not distinguish among the Government's transcripts and does not set out any prioritization of the transcripts in terms of their relationship to the Indictment, the order of their introduction, and their relative significance to any one of the defendants.

16. Although counsel for the Defendant is making a good faith effort to prioritize and expedite the translation of as many of these communications as possible prior to the commencement of trial, the Order of the Court does not consider the availability of all of the defendant's transcripts as of the deadline of December 31, 2004.

17. Federal Rule of Criminal Procedure 16(b) does not require the general disclosure of all transcripts which may be produced by translators on behalf of the defendants.

18. The Defendant therefore objects to specific aspects of the Magistrate's Order of August 18, 2004, (Doc. 605) as set out above and proposes reconsideration and amendment of the Order as follows:

- (1) In meeting the disclosure schedule now set out in the Order requiring the release of transcripts on October 1, November 1, and December 1, 2004, the Government should additionally be directed to prioritize these transcripts primarily by accelerating the release of those transcripts pertaining to the communications described in the Overt Acts of Count One so that all such transcripts are provided not later than November 1, 2004, and then secondarily by accelerating the release

of remaining transcripts generally in the order in which the Government anticipates introducing them into evidence during its case in chief to maximize the time available to defense counsel to compare transcripts to determine the necessity of discovering any given transcript to the Government, with all such transcripts to be discovered by December 1, 2004. The Government should also be directed to provide with these transcripts an index or directory identifying the date and time of the communication, the number of the Overt Act describing the communication (if applicable), and the identity of the speakers to facilitate comparisons with transcripts produced by the defendants.

- (2) Although the Defendant will make a good faith effort to provide all available counter translations which the Defendant intends to offer in rebuttal to the Government's translations as of December 31, 2004, the Order should be amended to reflect that the defendants will not be barred from introducing into evidence any other such transcripts discovered to the Government between the commencement of trial and the commencement of the defendants' case in chief upon a determination by the defendants that such transcripts are relevant to any material issue in the case and are necessary to the presentation of the defense. The Defendant would be willing to provide information on the date and time of the communication, the number of the Overt Act describing the communication (if applicable), and the identity of the speakers to facilitate comparisons with the Government's transcripts.

- (3) In the event that the Government cannot timely meet its assigned discovery

obligation as set out in the Order, or in the event that the Government objects to the proposed additional discovery of defense transcripts after the commencement of trial, then the appropriate remedy would be to continue the commencement of the trial to allow the Government to complete discovery or to allow the defendants sufficient time to obtain and review transcripts of all communications and to determine which transcripts will be used in rebuttal or in the defendants' case in chief.

WHEREFORE, the Defendant requests this Honorable Court to reconsider and modify the scheduling of the discovery of all Government and defense transcripts as contemplated in the Order of the Magistrate's Order of August 18, 2004 (Doc. 605).

#### **Memorandum of Law**

The Defendant acknowledges that the law provides a procedure for the presentation of disputed or contrary transcripts in evidence. See United States v. Onori, 535 F.2d 938 (5th Cir. 1976); United States v. Cruz, 765 F.2d 1020 (11th Cir. 1985); United States v. Le, 256 F.3d 1229 (11th Cir. 2001). These cases and others propose that the Government and the defendants should attempt to stipulate to a particular transcript prior to trial. Onori, 535 F.2d at 948. But if no one transcript can be agreed upon, then the jury must resolve as a factual issue which of the competing transcripts should be accepted as the most accurate. Id.

The present case presents exceptional problems in strict compliance with this procedure. First, a large number of competing transcripts are being produced by both the Government and the individual defendants. Second, the Arabic spoken in these communications and its

translation is substantially affected by the varying nationalities and dialects of the speakers.

Third, all of the defendants who are alleged to be the speakers in most of these communications are fluent in both Arabic and English and are in a position to offer their own testimony as to the translation, meaning, context, content, and nuance of these communications. The procedure contemplated by the case law is far better suited where there are relatively few communications, the speakers are of a distinct nationality, and the defendants are not competent to produce adequate translations.

The Order (Doc. 605) anticipates that counsel for the Government and the defense will be able to stipulate to a large number of these transcripts and to determine where conflicts among the transcripts remain. The Order, particularly where it imposes the discovery obligation on the defendants, assumes that the defendants and their counsel will be able to make such determinations prior to the commencement of trial. The facts of this case demonstrate, however, that it is very unlikely that many stipulations can be reached and that many conflicts can be identified prior to trial.

The determination of such conflicts in a case with so many communications among so many speakers over such a substantial period of time will be an ongoing process. The defendants must be permitted to make these determinations as the Government's case develops and unfolds. The defendants must be given timely discovery of the Government's transcripts prior to trial to initiate this process and must be allowed an opportunity to perceive the utilization of the Government's transcripts at trial before concluding that a specific transcript is relevant and should be discovered to the Government, or that no material conflict exists between transcripts and therefore discovery is not required. The Government would not be prejudiced by this

procedure. Both the Government and the defense should have their respective transcripts produced and available in a timely fashion, and the Government will have sufficient time to review and counter the defense transcripts even if they are discovered during the course of the Government's case in chief. The barren hope that stipulations can be reached on conflicting transcripts should not drive this discovery agenda.

Respectfully submitted,

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**Certificate of Service**

I HEREBY CERTIFY that on September 15, 2004, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants:

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