

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 8:03-CR-77-T-30-TBM

SAMI AMIN AL-ARIAN,
SAMEEH HAMMOUDEH,
GHASSAN ZAYED BALLUT,
HATIM NAJI FARIZ

**GOVERNMENT'S MOTION FOR CONSIDERATION OF REQUEST MADE BY
UNITED STATES DISTRICT JUDGE SHADUR, NORTHERN DISTRICT OF ILLINOIS**

The United States of America, by Paul I. Perez, United States Attorney, Middle District of Florida, hereby requests that the Court consider an issue raised by United States District Judge Shadur, Northern District of Illinois, during a recent hearing in an unrelated federal criminal matter involving defendant Hatem Naji Fariz, United States v. Hatem Fariz, No. 04 CR 63, N.D. Ill ("the Chicago case"). The United States makes this request at the behest of Judge Shadur.

The government has attached a transcript of a hearing convened on September 28, 2004, in the Chicago case, during which the Court specifically asked the parties in that case to contact the parties in the instant matter and have them seek the guidance of this Court. See Transcript at p. 13, attached hereto as Attachment A.¹ The question raised in the Chicago case is whether or not that case should be continued in light of the implications it may or may not have on defendant FARIZ's exposure on cross-examination, should he decide to testify in the instant matter. Defendant FARIZ has

¹The government also submits an article from the Chicago Sun-Times, dated September 29, 2004, as Attachment B.

expressed his willingness to plead guilty to the charges in the Chicago case (food stamp fraud and money laundering). Defendant FARIZ, however, does not wish to be cross-examined in the instant matter about the conviction in the Chicago case, pursuant to Fed. R. Evid. 609. As the government argued in the Chicago case, whether or not the defendant FARIZ has been convicted of those charges when he proceeds to trial in Florida, the government may nevertheless cross-examine him as to the underlying conduct, pursuant to Fed. R. Evid. 608. If the defendant has not been convicted, and the government cross-examines him about the underlying criminal conduct pursuant to Rule 608, the defendant may deny the conduct, and the government would not be able to use extrinsic evidence to prove that conduct.

The Court in the Chicago case believes that this decision, whether or not defendant FARIZ should face cross-examination in the instant matter under Rule 608 or 609, is one that should be made by the Court here. In accordance with Judge Shadur's request, the government hereby submits this issue to this Court for consideration.

The government attorney in the Chicago case has informed us that he is ready to proceed to trial against defendant FARIZ and that he anticipates the case will require three trial days. It is our position that these two cases are distinct from one another and should be considered separately. The case in Chicago is a standard fraud case that does not involve Arabic language translation issues or legal issues related to the terrorism charges in this case. Since the defendant has apparently indicated a willingness to plead guilty, we believe that the Court in Chicago should ask the defendant to enter his plea or proceed to trial forthwith.

The parties in the Chicago case next appear before Judge Shadur on October 14th. The government requests that the Court here consider Judge Shadur's request prior to that date. Transcript, pp. 13-14.

We have discussed Judge Shadur's request with the defendant FARIZ's defense counsel here in Tampa, and attempted to file this motion jointly with them, but scheduling issues have prevented them from being able to review the materials and join in the motion.

Respectfully submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 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:

Kevin T. Beck
Stephen N. Bernstein
M. Allison Guagliardo
Bruce G. Howie
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