

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 /

**NOTICE OF DEFENDANT GHASSAN BALLUT'S OBJECTION
TO USE OF EVIDENCE PURSUANT TO 50 U.S.C. § 1801 ET SEQ.**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, hereby gives notice of his objection to the United States Government's use at the pre-trial detention hearing in this cause of any evidence obtained or derived from electronic surveillance conducted pursuant to the Foreign Intelligence Surveillance Act (FISA) at 50 U.S.C.A. § 1801 et seq., and as grounds therefor would state:

1. The Defendant is a citizen of the United States and is therefor a "United States person" as that term is defined by FISA at 50 U.S.C.A. § 1801(i).
2. As a United States citizen and a "United States person," the Defendant is entitled to certain protections involving the use of evidence obtained or derived from electronic surveillance, **alternatively under the First, Fourth, Fifth, and Sixth Amendments of the United States Constitution or under FISA itself.**
3. The Defendant through his undersigned counsel has had insufficient time to determine the extent to which those same protections apply to evidence obtained or derived from electronic surveillance intended for use by the Government in this cause, and the Government has not yet

discovered or disclosed such evidence to the Defendant.

4. The Defendant has reason to believe, based on allegations contained in the indictment filed in this cause, that use such evidence would violate the provisions of 18 U.S.C. § 2709(b), as the investigation of the Defendant as a United States person appears to have been conducted solely upon the basis of activities protected by the First Amendment to the Constitution of the United States. Further, pursuant to 50 U.S.C. § 1805(a)(3)(A), as a United States person the Defendant cannot be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the First Amendment to the Constitution of the United States, and therefor such activities cannot constitute a basis for such surveillance. As a result, such evidence may constitute a violation of FISA itself, including the limitations described at 50 U.S.C. §1805(e)(2).

5. The Defendant also has reason to believe that the provisions of FISA under which the evidence was obtained by electronic surveillance violate the Defendant's rights against unreasonable search and warrantless search under the Fourth Amendment and the Defendant's right to due process under the Fifth Amendment.

6. Certain provisions in FISA delegating certain described powers to the Attorney General of the United States is an unconstitutional delegation of power in violation of the doctrine of the separation of powers and the Sixth Amendment of the United States Constitution.

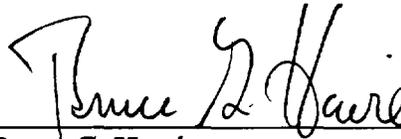
7. There is no evidence that this surveillance was obtained pursuant to an emergency order under 50 U.S.C. § 1805(f) which limits the use of evidence obtained in such a surveillance in a proceeding before a court of law.

8. The Defendant through his undersigned counsel is aware of other protections provided

by FISA at 50 U.S.C.A. § 1806(e) et seq., pursuant to which the Defendant can move to suppress this evidence on the grounds that the information was unlawfully acquired or the surveillance was not made in conformity with an order of authorization or approval, but the Defendant does not have sufficient information at this time, due to lack of discovery and lack of disclosure, to determine the specific grounds on which such evidence can be suppressed, and therefore the Defendant wishes to reserve any such motions to suppress and object to the use of any electronic surveillance evidence until such discovery or disclosures are made and such motions are considered and determined.

WHEREFORE, the Defendant requests the Court to exclude from the pretrial detention hearing in this cause any evidence obtained against the Defendant by electronic surveillance.

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.

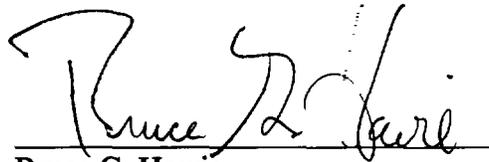
Mail to the following this 17th day of March, 2003:

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

Nicholas M. Matassini, Esq.
The Matassini Law Firm, P.A.
2811 West Kennedy Boulevard
Tampa, FL 33609

Donald E. Horrox, Esq.
Office of the Federal Public Defender
400 North Tampa Street
Suite 2700
Tampa, FL 33602

Daniel M. Hernandez, Esq.
902 North Armenia Avenue
Tampa, FL 33609



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