

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED

2003-03-20 14:14

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

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN, et al.

:
:
:
:
:

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

UNITED STATES' MOTION TO EXCLUDE TIME
FROM THE SPEEDY TRIAL CALCULATION
AND MEMORANDUM OF LAW

The United States of America, by Paul I. Perez, United States Attorney for the Middle District of Florida, moves this Court pursuant to the provisions of the Speedy Trial Act for an Order excluding certain amounts of time from its calculations as to when the trial in this case must commence, and also submits a memorandum of law in support thereof:

1. On February 19, 2003, a fifty-count sealed indictment was returned charging SAMI AL-ARIAN, SAMEEH HAMMOUDEH, GHASSAN BALLUT, HATIM FARIZ and several others with conspiracy to commit racketeering, alleging two hundred and fifty-six overt acts encompassing a wide variety of activities. D-1,2. The indictment further alleges conspiracy to commit murder, maim or injure persons outside the United States; conspiracy to provide material support to or for the benefit of terrorists; use of interstate facilities to promote unlawful activity; obstruction of justice; perjury; and immigration violations. D-1.

2. Defendants AL-ARIAN, HAMMOUDEH, and FARIZ were arrested in the Middle District of Florida on February 20, 2003. Dkt. entry -2/20/03; D-16-18. All three had initial appearances on that same date during which time the government moved for

149

detention. D-12. Their detention hearing was continued until February 25, 2003. Id. At the February 25, 2003, detention hearing, the court reset the hearing for March 24, 2003 at the defendants' request. D-22. The detention hearing was rescheduled again, this time to March 20, 2003. D-32.

3. Defendant BALLUT was also arrested on February 20, 2003, in Illinois. Dkt.entry -2/20/03; D-15. Rule 40 documents from the Northern District of Illinois indicate that BALLUT had an initial appearance in that district on February 20, 2003. BALLUT arrived in the Middle District of Florida on March 4, 2003. Counsel was appointed for BALLUT on March 11, 2003; notice of appearance by counsel was filed on March 18, 2003. D-35, 38. BALLUT's first appearance in this district was March 20, 2003, at the detention hearing. D-44.

4. The March 20, 2003, detention hearing consumed four days. D-44, 46-47, 54. Following the detention hearing, on March 26, 2003, the government was ordered to file a brief statement outlining the grounds for the INS's notice of action was to why defendants AL-ARIAN and HAMMOUDEH may be subject to removal. D-56. The government filed its response on March 28, 2003. D-58. Two affidavits and one declaration in support of pre-trial release were filed as to AL-ARIAN on April 1, 2003. D-59-62. On April 4, 2003, AL-ARIAN filed a response to the court's March 26th order and the government's March 28th response. D-64. On April 7, 2003, the government filed a factual supplement to the record. D-71.

5. On April 10, 2003, Magistrate Judge Mark Pizzo issued his detention order, detaining AL-ARIAN and HAMMOUDEH and setting bond conditions for FARIZ and BALLUT. D-74. The government filed, then withdrew, an emergency motion to stay Judge

Pizzo's detention order. D-80, 85. In the meantime, HAMMOUDEH filed a notice of appeal (on April 15, 2003) of Judge Pizzo's detention order, which is still pending. D-84, 91, 105, 142. FARIZ was released on bond on April 23, 2003; BALLUT was released on May 1, 2003. D-96, 112.

6. Also on April 10, HAMMOUDEH filed a motion for appointment of counsel. D-82. This motion remained pending until May 16, 2003, when it was denied without prejudice by Magistrate Judge Tom B. McCoun. D-126.

7. All defendants participated in a discovery hearing on April 16, 2003. D-90. On April 21, 2003, AL-ARIAN and HAMMOUDEH filed motions to modify their conditions of detention. D-92, 93. Numerous affidavits in support of AL-ARIAN's motion were filed. See D-99-100, 120-121, 123-124, 139. On May 28, 2003, the magistrate court denied both defendants' motions without prejudice. D-140. Meanwhile, BALLUT's motion to modify conditions of release, filed April 23, 2003, was granted on April 30, 2003. D-101, 107.

8. More recently, on May 27, 2003, BALLUT filed a motion seeking to extend the time to file a motion to dismiss the indictment. D-137. HAMMOUDEH has moved to adopt BALLUT's motion. D-141. Both of these motions are still pending.

9. A discovery hearing involving all four defendants was conducted on May 7, 2003. D-117. On May 8th, AL-ARIAN filed a motion to appropriate funds to facilitate duplication of discovery audio tapes. D-119. This motion was granted on May 9, 2003. D-122. Another discovery hearing was held on May 29, 2003.

10. Numerous other pretrial motions have been filed by HAMMOUDEH, AL-ARIAN and BALLUT in late May 2003 and are still pending. See D-130-131, 135-137, 141-143.

Therefore, for the reasons given in the memorandum of law, this Court should exclude each and every day thus far from the Speedy Trial calculations.

Memorandum of Law

The purpose of the Speedy Trial Act (18 U.S.C. §§ 3161-3174) is to give effect to a defendant's constitutional right to a speedy indictment and trial, and to serve the public interest in initiating and prosecuting criminal cases promptly. See, e.g., United States v. Gonzales, 137 F.3d 1431, 1432 (10th Cir. 1998). The Speedy Trial Act requires that the trial of any indicted defendant commence within seventy days from the later of either the filing date of the indictment or the date on which the defendant first appears before the court in which the case is pending. 18 U.S.C. § 3161(c)(1); United States v. Schlei, 122 F.3d 944, 985 (11th Cir. 1997); United States v. Vasser, 916 F.2d 624, 626 (11th Cir. 1990). The defendant's initial appearance before a judicial officer of the court in which the charges are pending constitutes an appearance for purposes of the speedy trial clock. United States v. Brown, 183 F.3d 1306, 1309 (11th Cir. 1999).

While the Speedy Trial Act is intended to accelerate the prosecution of criminal cases, it provides in its provisions flexibility to allow the Court, in the management of the case, to take into account the realities involved during the course of the proceedings. Thus, certain types of pretrial delays resulting from other proceedings concerning the defendant are automatically excluded from the Speedy Trial Act's time limits. See 18 U.S.C. § 3161(h). Some of the most common ones are: (1) delays caused by the absence or unavailability of the defendant or an essential witness, see § 3161(h)(3)(A); (2) delays resulting from any pretrial motion, from its filing through the conclusion of a hearing on the motion, or other prompt disposition of, such motion, see § 3161(h)(1)(F); (3) delays

resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district, see § 3161(h)(1)(G); (4) delays reasonably attributable to any period not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court, see § 3161(h)(1)(J); (5) a reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and no motion for severance has been granted, see § 3161(h)(7); and (6) any period of delay resulting from a continuance if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial, see § 3161(h)(8).

In a multi-defendant prosecution, such as we have in this case, the seventy-day clock begins to run when the last co-defendant is indicted or arraigned. Schlei, 122 F.3d at 985, citing Henderson v. United States, 476 U.S. 321, 323 n.2 (1986); 18 U.S.C. § 3161(h)(7). See also United States v. Davenport, 935 F.2d 1223, 1229 (11th Cir. 1991); United States v. Tobin, 840 F.2d 867, 869 (11th Cir. 1988); United States v. Wilkerson, 170 F.3d 1040, 1042 (11th Cir. 1999) (clock started to run on date defendant was actually brought before judicial officer, not date defendant should have been brought before judicial officer nor on date defendant was brought before federal magistrate where charges were not pending); United States v. O'Bryant, 775 F.2d 1528 (11th Cir. 1985) (same). The date of indictment or arraignment is not counted as one of the seventy days. Schlei 122 F.3d at 985, citing Vasser, 916 F.2d at 627. In this case, among the defendants presently before the Court, co-defendant BALLUT was the last to appear (on March 20, 2003, twenty-eight days after the other defendants).

Delay between a defendant's indictment and trial **caused** by the filing and hearing of pretrial motions is automatically excluded from the **Speedy Trial Act** calculation by two provisions: 18 U.S.C. §§ 3161(h)(1)(F) and 3161(h)(1)(J). **These** automatic exclusions are necessary because "although the Act is meant to speed prosecutions, it is not intended to ensnare trial judges . . . and force judges to race to decisions." United States v. Molt, 631 F.2d 258, 262 (3rd Cir. 1980). Motions have been made **and/or** filed so these provisions must be explored.

Pursuant to 18 U.S.C. § 3161(h)(1)(F), the filing of **any** pretrial motion tolls the computation of the seventy-day limit, until the hearing on, or other prompt disposition of, the motion. See United States v. Twitty, 107 F.3d 1482, 1487 (11th Cir. 1997); United States v. Mastrangelo, 733 F.2d 793, 796 (11th Cir. 1984); United States v. Severdija, 723 F.2d 791, 792 (11th Cir. 1984). The day that a pretrial motion is filed and the day that the motion is decided by the court are excluded from the **seventy-day** clock. Twitty, 107 F.3d at 1487.

When a pretrial motion requiring no hearing is filed, **section** 3161(h)(1)(F) excludes the time from the filing of the motion until the time the court receives all the papers it reasonably expects; then section 3161(h)(1)(J) **excludes** up to thirty additional days thereafter up to and including disposition of the motion. E.g., Davenport, 935 F.2d 1223, 1228 (11th Cir. 1991). A motion not requiring a hearing is **deemed** "under advisement" as soon as the response is due, no matter when the **response** was filed, United States v. Thomas, 788 F.2d 1250, 1259 (7th Cir. 1986), or when the court otherwise receives all necessary submissions its needs to decide the issue, United States v. Stafford, 697 F.2d 1368, 1372 (11th Cir. 1983); United States v. Johnson, 29 F.3d 940, 943 (5th Cir. 1994).

For pretrial motions requiring hearings, the Act excludes the period of delay between the filing of any pretrial motion and the conclusion of the hearing on, or other prompt disposition of that motion, regardless of the reasonableness of the delay. See Henderson, 476 U.S. at 326-327; United States v. Mendoza-Cecelia, 963 F.2d 1467, 1476 (11th Cir. 1992); Davenport, 935 F.2d at 1228.

This analysis applies to any pre-trial motion. For **example**, the period of time from the government's motion for pre-trial detention through its resolution is excluded. See United States v. Wright, 990 F.2d 147 (4th Cir. 1992); United States v. Noone, 913 F.2d 20, 25 (1st Cir.1990) (same); United States v. Moses, 15 F.3d 774, 777 (8th Cir. 1994) (government's motion for detention is a pretrial motion within the meaning of section 3161(h)(1)(F)); United States v. Morales-Rivera, 203 F.Supp.2d 92, 97 (D.P.R. 2002) (same). In addition, motions for release from pretrial detention and motions for continuance, Davenport, 935 F.2d at 1231, as well as motions to suppress, see Henderson, 476 U.S. at 332, all toll the Speedy Trial clock pursuant to §§ 3161(h)(1)(F) and (h)(7). Likewise, when the district court grants a defendant's motion for an extension of time for filing additional pretrial motions, the extension period is excluded from the Speedy Trial calculations. See United States v. Mejia, 82 F.3d 1032, 1035-36 (11th Cir. 1996). Also, oral pretrial motions made on the record are **generally** considered motions for purposes of 3161(h)(1)(F). United States v. Broadwater, 151 F.3d 1359, 1361 (11th Cir. 1998) (other citations omitted).

Section 3161(h)(7) provides that under certain circumstances delays not caused by a defendant may nevertheless be excludable as to that defendant. Delay caused by a motion filed by one co-defendant is generally excludable as to all other co-defendants.

Schlei, 107 F.3d at 985 n.15; Twitty, 107 F.3d at 1488; Mejia, 82 F.3d at 1035; Mendoza-Cecelia, 963 F.2d at 1476 (citing other cases); 18 U.S.C. § 3161(h)(7). “In adopting subsection (h)(7), however, Congress specifically determined that the efficiency and economy of multi-defendant criminal trials far outweigh the granting of a severance where the reason was simply the passage of time.” Schlei, 122 F.3d at 985 n.15, citing United States v. Varella, 692 F.2d 1352, 1359 (11th Cir. 1982). In United States v. Franklin, 148 F.3d 451, 457 (5th Cir. 1998), the Fifth Circuit stated that the test was whether the delay was necessary to achieve its purpose. The Fifth Circuit relied, in part, on United States v. Darby, 744 F.2d 1508 (11th Cir. 1984). The Fifth Circuit went on to state that it had to give proper consideration to the purpose behind Section 3161(h)(7): accommodating the efficient use of prosecutorial and judicial resources in trying multiple defendants in a single trial. Only delay occasioned by another co-defendant’s motion that is “reasonable”, however, is applicable to a co-defendant. Mendoza-Cecelia, 963 F.3d at 1476 (other citations omitted); 18 U.S.C. 3161(h)(7). There are three measures to determine whether delay is reasonable: (1) the totality of the circumstances of the delay; (2) the extent to which defendant’s defense suffered prejudice; and (3) the sheer duration of the delay. Id., citing Davenport, 935 F.2d at 1236; Darby, 744 F.2d 1at 1518-19. The application of Section 3161(h)(7) to this case will be discussed more thoroughly below.

Section 3164 governs speedy trial for persons **detained** or designated as being of high risk. This statute requires that a detained person or **released** person who has been designated “high risk” proceed to trial not later than **ninety days** following the beginning of his detention or designation of high risk. Failure to **commence** trial with the ninety-day time period shall result in the automatic review by the court **of the** conditions of release. 18

U.S.C. § 3164(c). However, the periods of delay listed in **section 3161(h)** are excluded in computing the time limitation specified in section 3164. 18 U.S.C. § 3164(b); United States v. Noreiga, 746 F.Supp. 1548 (S.D. Fla. 1990). **Therefore**, Section 3164 contributes nothing to the analysis.

Speedy Trial Calculations

The Speedy Trial clock in this case began to run on **March 20, 2003**, the first day of the detention hearing and the date **BALLUT** first appeared in federal court in this district. 18 U.S.C. § 3161(c)(1). Alternatively, if this Court **determines** that the speedy trial clock started on **February 21, 2003** (the day after defendants **AL-ARIAN**, **HAMMOUDEH**, and **FARIZ** had initial appearances in this district), all time up to the date of the detention hearing (**March 20**) is excluded. The government **requested** detention on **February 20, 2003**, and a hearing was scheduled for **February 25, 2003**. D-12. At the **February 25** detention hearing, however, the defendants **requested and received** a continuance until **March 24, 2003**. D-19, 22. Accordingly, all days from **February 20, 2003**, through **March 20, 2003**, the first day of the detention hearing, **are excluded**. All time from **March 20, 2003** through **April 10, 2003**, the date the **magistrate** court issued its detention order, is excluded from the seventy-day speedy trial clock. 18 U.S.C. § 3161(h)(1)(F).

On **April 11, 2003**, the government filed an **emergency** motion to stay the magistrate judge's order of release as to defendants **BALLUT** and **FARIZ**. D-80. That motion was granted on **April 11, 2003**, D-83, but subsequently **withdrawn** by the government on **April 15, 2003**, when it abandoned its plan to appeal the **portions** of the order releasing **FARIZ** and **BALLUT**. D-85. These days are excluded from the speedy trial calculation. 18 U.S.C. § 3161(h)(1)(F).

On April 15, 2003, HAMMOUDEH filed an appeal from the magistrate judge's April 10, 2003, detention order. D-84. On April 21, 2003, this Court ordered HAMMOUDEH to file a more thorough motion and memorandum of law by May 5, 2003. D-91. On April 25, 2003, HAMMOUDEH filed motion to extend to the time to file his memorandum in support of his appeal, D-103, which was granted. D-105. On May 29, 2003, defendant HAMMOUDEH filed a second motion to extend time to file a supporting memorandum regarding his appeal. D-142. This motion is still pending. Accordingly, this motion, as well as Hammoundeh's appeal from the detention order, stays the speedy trial clock as to all defendants. 18 U.S.C. § 3161(h)(1)(F).

AL-ARIAN filed a motion to modify conditions of detention on April 21, 2003. D-92. The motion has been supplemented four times, the latest filed on May 27, 2003. D-139. This motion was recently denied on May 28, 2003. Dkt. entry -5/1/03.

More recently, however, defendant BALLUT has filed a motion seeking to extend the time to file a motion to dismiss by 120 days. D-137. Defendant HAMMOUDEH has moved to adopt BALLUT's motion. D-141. These motions are still pending.

Furthermore, several other pre-trial motions were just recently filed by HAMMOUDEH and AL-ARIAN. See D-130, 131, 135, and 143. These motions involve a variety of issues and may result in hearings prior to their disposition. These motions stay the speedy trial clock as to all defendants.

All the days that have passed since February 20, 2003, are excluded and toll the seventy-day speedy trial clock as well as a ninety-day speedy trial clock applicable to HAMMOUDEH and AL-ARIAN. Indeed, as discussed above, numerous pretrial motions are pending which continue to toll the clock. For the reasons discussed above, it is the

government's determination there is no speedy trial concern as to any defendant at this time, and we request the Court to so find.

Speedy Trial Waiver

The Speedy Trial Act does not explicitly provide for waiver of the right to a speedy trial. The Eleventh Circuit Court of Appeals has, however, recognized such waiver. See United States v. West, 142 F.3d 1408, 1412-13 (11th Cir. 1998) (defendant's waiver of right to speedy trial under Speedy Trial Act was valid given that it was executed within the limits of the Act and was given knowingly and intelligently), vacated and remanded on other grounds, 201 F.3d 1312 (11th Cir. 2000); Twitty, 107 F.3d at 1487 (three defendants executed indefinite speedy trial waivers; one defendant executed a waiver with a date limitation).¹ Several courts have allowed for the exclusion of delays where they were caused or furthered by a defendant's waiver. United States v. Pringle, 751 F.2d 419, 434 (1st Cir. 1984); see also United States v. Kucik, 909 F.2d 206, 210 (7th Cir. 1990); United States v. Kington, 875 F.2d 1091, 1108 (5th Cir. 1989) (dicta called Pringle exception to general rule a "sensible maxim"); United States v. Mentz, 840 F.2d 315, 331 (6th Cir. 1988) (dicta quoting Pringle favorably); United States v. Williams, 314 F.3d 552, 559 (11th Cir. 2002) (defendant was complicit in effecting a waiver of questionably validity, a document which gave the government reason to believe the clock was tolled [as to the time to file an indictment], while it negotiated a plea agreement).

¹Other circuits have held to the contrary, finding that a defendant cannot generally waive his right to a speedy trial under the statute, in part because Congress passed the Act not only for the benefit of criminal defendants but also out of concern for the public's interest in the speedy disposition of criminal cases. See United States v. Kucik, 909 F.2d 206, 210-11 (7th Cir. 1990) (citing cases).

Three defendants, HAMMOUDEH, BALLUT and FARIZ, “waived” their right to a speedy trial for two years at their March 25, 2003, arraignments. As grounds for such waiver, the defendants claim that the case is unusual and highly complex, the discoverable evidence is voluminous and includes hundreds of documents in two foreign languages, thousands of hours of intercepted telephone conversations in a foreign language, and there is the possibility that some evidence will be subject to treatment under the Classified Information Procedures Act (CIPA). The fifty-count indictment charges the numerous defendants with very serious and unusual crimes, which is likely to prompt the defendants to file various motions attacking the indictment. For those reasons, the defendants advised the court that the seventy day time limit did not permit the defense sufficient time to prepare pretrial motions or for trial.

Even if this court were to determine that the waivers made by HAMMOUDEH, BALLUT and FARIZ are invalid or have no legal effect on AL-ARIAN, the reasons given for the waivers would support an ends-of-justice continuance which also tolls the Speedy Trial clock.

Ends-of-justice continuance

Section 3161(h)(8)(A) excludes any period of delay resulting from a continuance granted by a judge at the request of a defendant, his counsel, an attorney for the government, or upon the judge’s own motion if the continuance serves the “ends of justice”. Williams, 134 F.3d at 556. The court need not “explicitly enunciate its findings” when it grants an ends-of-justice continuance “so long as there is sufficient evidence in the record indicating that it considered the factors identified in the statute when it granted the continuance.” Id., citing United States v. Vasser, 916 F.2d 624, 627 (11th Cir. 1990).

The factors the court must consider when granting an ends-of-justice continuance are set forth in Section 3161(h)(8)(B), and include: (1) whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice; (2) whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or trial itself within the time limits established by section 3161(c); and (3) whether the failure to grant such a continuance in a case which is not so unusual or complex would deny the defendant reasonable time to obtain counsel, deny the defendant or the government continuity of counsel, or would deny counsel for the defendant or the attorney for the government reasonable time for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. 3161(h)(8)(B); Williams, 314 F.3d at 556 n.2, citing United States v. Russo, 741 F.2d 1264, 1267 (11th Cir. 1984). The reasons given by HAMMOUDEH, FARIZ and BALLUT when waiving their speedy trial rights would clearly support an ends-of-justice continuance. See United States v. Moussaoui, 2001 WL 1887910 (E.D. Va. 2001) (Speedy Trial Act will not permit either the government or the defense sufficient time to prepare adequately for either pretrial motion or trial so continuance pursuant to 18 U.S.C. §3161(h)(8)(B)(ii) granted).

Furthermore, an ends-of-justice continuance would be applicable to AL-ARIAN for the same reasons, pursuant to 18 U.S.C. § 3161(h)(7). Section 3161(h)(7) provides that a reasonable period of delay is excludable when the defendant is joined for trial with a co-defendant as to whom speedy trial has not run and no motion for severance has been granted. "Congress enacted this provision recognizing that multidefendant trials are

desirable because they promote efficiency in the disposition of trials. If the Act imposed rigid time limits without applying exclusions to codefendants, courts would be forced to 'grant severances which would otherwise not be required.'" Stafford, 697 F.2d at 1372, citing United States v. Varella 692 F.2d 1352, 1359 (11th Cir. 1982) (quoting legislative history of Speedy Trial Act). No severance motion has been filed by AL-ARIAN to date and, it is the government's position, that any such motion would be without merit. An ends-of-justice continuance would be proper in this instance, even as to AL-ARIAN, because such a continuance constitutes "a reasonable period of delay".

Under section 3161(h)(7), the excludable delay of one defendant may be ascribed to all co-defendants if the delay is reasonable. United States v. Neville, 82 F.3d 750, 763 (7th Cir. 1996); Noriega, 746 F.Supp. at 1558-59 (other citations omitted); Davenport, 935 F.2d at 1236. Reasonableness under section 3161(h)(7) may be determined either by reference to the reasons for delay and whether the amount of delay is justified in light of those reasons, or in terms of prejudice caused to a defendant when his trial is delayed through no fault of his own. Noriega, 746 F.Supp. at 1560 (other citations omitted). See Davenport, 935 F.2d at 1236-1237 (pursuant to § 3161(h)(7), lengthy delay was reasonable because continuances were based on co-defendants need for additional time to prepare for trial, unavailability of defense counsel, and need for additional time to prepare an adequate defense, among other reasons).

Reasonableness may also be judged in terms of prejudice to the defendant. Darby, 744 F.2d at 1519. A delay would not impair any defendant's ability (particularly AL-ARIAN's) to defend himself. To the extent that AL-ARIAN (or HAMMOUDEH) may claim prejudice due to prolonged pretrial incarceration, such prejudice would not render the

period of delay unreasonable. *Id.* See also, Noreiga, 746 F.Supp. at 1561 (sixteen-month delay not unreasonable given complexity of pretrial issues, voluminous and sensitive nature of the evidence, serious nature of the charges, and defendant is a flight risk); Mendoza-Cecelia, 963 F.2d at 1476 (eighteen-month delay reasonable because defendant suffered no prejudice); United States v. DeLuna, 763 F.2d 897, 922-23 (8th Cir. 1985) (eighteen-month delay excludable because it was a result of pretrial motions of co-defendants); Davenport, 935 F.2d at 1239 (delay of twenty-three months not prejudicial to incarcerated defendant).

As discussed above, numerous pre-trial motions are pending, several defendants sought or are presently seeking extension of the pre-trial motion deadline, discovery of a voluminous amount of evidence has just begun, defense counsel need to locate Arabic and Hebrew translators and obtain security clearances, as well as the reasons given when the court granted speedy trial waivers to HAMMOUDEH, FARIZ, and BALLUT, all justify delay.

Sixth Amendment Considerations

Likewise, there is no danger of violation of the defendants' Sixth Amendment constitutional right to a speedy trial. The Supreme Court has established a four-part balancing test to determine whether there has been a violation of the Sixth Amendment: (1) the length of the delay, (2) the reason for the delay; (3) whether and how the defendant asserted his right to a speedy trial, and (4) the prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530-32 (1982). If any of the first three factors does not weigh heavily against the government, the defendant must demonstrate actual prejudice from the delay. Davenport, 935 F.2d at 1239; United States v. Register, 182 F.3d 820, 827 (11th Cir. 1999).

In Register, the court determined that while "38 months is an extraordinary period

of time to force a defendant to wait for trial", there was no constitutional speedy trial violation because the second and third Barker factors did not weigh heavily against the government. Id. at 828. The court determined that all parties contributed to the delay in trial, the complex nature of the charges and number of defendants and issues accounted for some delay, and Register did not actively demand a speedy trial. Id. at 828-29. The delay between arrest and trial is expected to be considerably less than thirty-eight months in this case.

Conclusion

Not a single day has ticked off the Speedy Trial clock in this case due to the various pretrial motions. Even if the Speedy Trial clock were running, this Court could determine that an ends-of-justice continuance is essential given the unusual and highly complex nature of the case, the voluminous evidence (much of which is in two foreign languages), CIPA issues, Speedy Trial waivers by three of the four defendants, and the strong preference for joint trials.

Respectfully submitted,

PAUL I. PEREZ
United States Attorney

By: 
TERRY A. ZITEK
Assistant United States Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6336
Facsimile: (813) 274-6246

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by United States Mail this 30 day of June, 2003, to the following:

Jeffrey Brown, Esq.
Florin, Roebig & Walker, PA
777 Alderman Road
Palm Harbor, Florida 34683

Franklyn Louderback, Esq.
Louderback & Helinger
150 2nd Avenue N.
Southtrust Bank Bldg., Suite 840
St. Petersburg, Florida 33710

Counsel for Sami Al-Arian

Donald E. Horrox
Assistant Federal Public Defender
400 N. Tampa St., Suite 2700
Tampa, Florida 33602

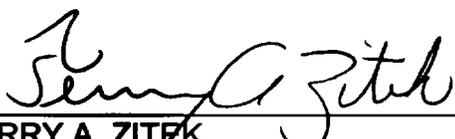
Counsel for Hatim N. Fariz

Daniel M. Hernandez, Esq.
902 N. Armenia Avenue
Tampa, Florida 33609

Counsel for Sameeh Hammoudeh

Bruce G. Howie, Esq.
Piper, Ludin, Howie & Werner
5720 Central Avenue
St. Petersburg, Florida 33707

Counsel for Ghassan Ballut



TERRY A. ZITEK
Assistant United States Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

SAMI AMIN AL-ARIAN, et al.

:
:
:
:
:

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

ORDER

This cause is before the Court on the Motion of the United States to Exclude Time from the Speedy Trial Act Calculations. The Court, having heard argument of counsel and having fully considered the motion,

It is hereby ORDERED, for the reasons stated in the Motion of the United States, that the period from and including February 20, 2003, to and including June 5, 2003, is excluded from the Speedy Trial Act calculations to determine the appropriate commencement date for the trial in this case, as provided in 18 U.S.C. § 3161(c).

JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE