

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SEP -5 PM 4:00  
U.S. DISTRICT COURT  
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

CASE NUMBER: 8:03-CR-77-T-30TBM

HATIM NAJI FARIZ  
\_\_\_\_\_ /

**DEFENDANT HATIM NAJI FARIZ'S MOTION TO STRIKE SURPLUSAGE**

Defendant, HATIM NAJI FARIZ, by and through undersigned counsel, respectfully moves this Court to strike as surplusage the portions of the highlighted Indictment which is attached as Exhibit "A," and states the following:

- 1) On February 19, 2003, the Grand Jury returned its Indictment against Mr. Fariz.
- 2) The Indictment contains a number of words, sentences, and paragraphs which are irrelevant to the facts and issues involved in this case.
- 3) These irrelevant portions of the Indictment are prejudicial to Mr. Fariz.
- 4) The Indictment contains a number of words, sentences, and paragraphs which the government does not intend to prove at trial.
- 5) For these reasons, pursuant to Federal Rule of Criminal Procedure 7(d), the highlighted portions of the Indictment attached hereto as Exhibit "A" should be stricken.

251

## MEMORANDUM OF LAW

Rule 7(c)(1) of the Federal Rules of Criminal Procedure states that an indictment “must be a plain, concise, and definite written statement of the essential facts constituting the offense charged ...” In addition, Rule 7(d) states: “Upon the defendant’s motion, the court may strike surplusage from the indictment or information.” Fed. R. Crim. P. 7(d). The purpose of Rule 7(d) is to provide a “means of protecting the defendant against immaterial or irrelevant allegations in an indictment or information, which may, however, be prejudicial.” *Id.*, Note to Subdivision (d).

The appropriate remedy for counts which contain prejudicial surplusage is a motion to strike the surplusage, rather than the dismissal of the indictment or a count within an indictment. *United States v. Goodman*, 285 F.2d 378, 379 (5th Cir.), *cert denied*, 366 U.S. 930, 81 S. Ct. 1651 (1961).<sup>1</sup> The courts have recognized that the “inclusion of clearly unnecessary language in an indictment that could serve only to inflame the jury, confuse the issues, and blur the elements necessary for conviction under the separate counts involved surely can be prejudicial.” *United States v. Bullock*, 451 F.2d 884, 888 (5th Cir. 1971). In *Bullock*, the court stated that in determining whether to strike language from an indictment, the court must determine whether the language is irrelevant, inflammatory, and prejudicial. *Id.* This approach was adopted by the Eleventh Circuit in *United States v. Huppert*, 917 F.2d

---

<sup>1</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions handed down by the former Fifth Circuit before October 1, 1981.

507, 511 (11th Cir. 1990). Furthermore, striking surplusage may be particularly appropriate where the government has no intention of proving the allegations at trial. *See, e.g., United States v. Hill*, 799 F. Supp. 86, 88-89 (D. Kan. 1992); *United States v. Wecker*, 620 F. Supp. 1002, 1007 (D. Del. 1985).

The Court should strike as surplusage the portions of the Indictment which are highlighted within the copy of the Indictment attached hereto as Exhibit "A." These portions of the Indictment are irrelevant or are not intended to be proven at trial, and are prejudicial to Mr. Fariz. Mr. Fariz discusses below in more detail his reasons for moving to strike as surplusage certain portions of the Indictment.

Portions of the Indictment in which the government editorially characterizes as "terrorism" alleged actions taken by the defendants, the PIJ, or others should be stricken. Although "prosecutors have been known to insert unnecessary allegations for 'color' or 'background' hoping that these will stimulate the interest of the jurors," *United States v. Brighton Bldg. & Maintenance Co.*, 435 F. Supp. 222, 230 (D.C. Ill. 1977), such practice is inappropriate and Mr. Fariz objects. The use of the term "terrorism" is irrelevant except when it has independent legal significance. Use of the term "terrorism" in the instant Indictment is irrelevant and highly prejudicial to Mr. Fariz. Many of these references to "terrorism" undoubtedly unfairly insinuate that the speaker in a telephone conversation, often a defendant, used the term "terrorism" to describe actions and events, which is highly unlikely. The irrelevancy and editorial nature of these comments is further demonstrated by the fact that the government uses the term on some occasions, but not others. For example,

in paragraph 43(254) of the Indictment, the government describes a “suicide shooting attack,” yet in paragraph 43(255), the government characterizes the *same attack* as a “terrorist attack.” If the word “terrorist” is unnecessary in paragraph 43(254), it is unnecessary in paragraph 43(255). This example most readily demonstrates the unnecessariness of the word “terrorism.” Variations, such as “terrorist” and “terrorist activities” also appear throughout the Indictment and should be similarly stricken.

Portions of the Indictment which allege that the defendants, or others allegedly associated with them, held some animus toward the United States of America, the United States Armed Forces, the 1991 Gulf War, President William Clinton, or the United Nations should be stricken. Such references, including ones in which it is alleged that the PIJ’s goal was destroy “the ‘Great Satan-America’” and to establish a hostile intelligence organization within this country, are irrelevant to the issues of this case, in which there is no allegation of terrorist activity directed at the United States, its military, or the United Nations. Furthermore, such references are extremely prejudicial to Mr. Fariz because it is likely that a jury will incorrectly form the impression that Mr. Fariz is an enemy of the country of his citizenship, its military, or the United Nations - or that such an animus is even an issue in this case. A jury comprised of United States citizens, who support the United States and its foreign policies, will become prejudiced against Mr. Fariz as a result. This prejudice will be magnified by the United States’ recent and ongoing military actions in Iraq and the September 11, 2001, attacks on the Pentagon and World Trade Center.

Paragraphs 43(208), (209), (211), (215), and (244) should be stricken because they are irrelevant. None of these paragraphs contain an allegation of conduct in furtherance of the conspiracy, or any other illegal activity or intent to commit an illegal act. Rather, the allegations in these paragraphs amount to no more than descriptions of patently innocent behavior which do not purport to be tied to the criminal allegations in the Indictment. For example, paragraph 43(215) does not allege that the “institution in Chicago” referred to in that paragraph is related to the PIJ, co-defendants, or any illegal activity, charged or uncharged. In fact, nowhere in the Indictment does the government even *mention*, or otherwise allege, the existence of a Chicago organization related to the criminal allegations of the Indictment.

Paragraph 43(238) and the last sentence of paragraph 43(239) should be stricken because they are irrelevant and prejudicial. These portions of the Indictment do no more than: 1) allege that Mr. Fariz knew after the fact of a June 5, 2002, bus bombing in Afula, Israel, and 2) suggest or insinuate that Mr. Fariz was pleased with that event. Without proof that the bombing was an act contemplated and agreed-to by Mr. Fariz in any of the conspiracies alleged, its occurrence is irrelevant. Given its irrelevance, the act and Mr. Fariz’s alleged reaction to it are extremely prejudicial.

Paragraphs 43(236), (240), (247), and (253) should be stricken for the reasons set forth in Mr. Fariz’s separately filed Motion to Strike as Surplusage Paragraphs 43(236), (240), (247), and (253) of the Indictment, and to Dismiss Counts 35, 37, 41, and 43 of the Indictment. Moreover, the last sentence of paragraph 3(v) of Count 3 states: “Throughout

2002, HATIM NAJI FARIZ spoke by telephone with ABD AL AZIZ AWDA, who was overseas, about transfers of funds to ABD AL AZIZ AWDA to be used for PIJ.” This sentence is based wholly upon, or merely references, what the government has admitted are either erroneous or “suspect” allegations in paragraphs 43(236), (240), (247), and (253). For this reason, the above-quoted sentence should be stricken.

Lastly, several portions of the Indictment contain surplusage in the form of extraneous, unnecessary language which alleges or implies that: 1) there are other unmentioned co-conspirators involved in the conduct alleged in the Indictment, and 2) the defendants are responsible for additional, undescribed criminal conduct. For example, paragraph 43 states that “... defendants and their co-conspirators committed, *among others*, the following Overt Acts ...” (emphasis added). Such language invites the jury to infer improperly that Mr. Fariz was involved in acts, or with persons, in an illegal manner not articulated within the charging document. The many similar provisions within this Indictment constitute surplusage and should be stricken from the Indictment pursuant to Rule 7(d). *See, e.g., United States v. Freeman*, 619 F.2d 1112, 1118 (5th Cir. 1980) (noting district court should have treated indictment’s reference to events that “included, but were not limited to, the following” as surplusage pursuant to Rule 7(d)), *cert. denied*, 450 U.S. 910 (1981); *Marsh v. United States*, 344 F.2d 317, 319-22 (5th Cir. 1965) (upholding district court’s striking from indictment of “and other offenses” language); *United States v. Hubbard*, 474 F. Supp. 64, 82 (D.D.C. 1979) (striking litany of similar terms as surplusage); *United States v. Vastola*, 670 F. Supp. 1244, 1256 (D.N.J. 1987) (striking as surplusage “and

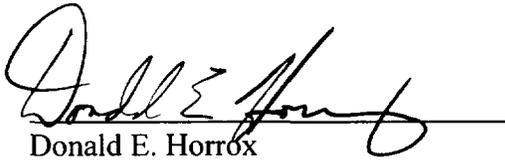
with others” and “and others,” as well as “and other criminal means”); *United States v. DeFabritus*, 605 F. Supp. 1538, 1547 (S.D.N.Y. 1985) (striking “among others” and “among other things” from indictment because “they serve no useful purpose and allow the jury to draw the inference that the defendant is accused of crimes not charged in the indictment”); *Brighton Bldg. & Maintenance Co.*, 435 F. Supp. at 430 n.14 (“use of the words ‘among others’ serves no purpose and can only inflame a jury into believing that the alleged crime is of greater magnitude than the evidence presents”).

In summary, for the reasons set forth in this motion, all those portions highlighted in the copy of the Indictment attached hereto as Exhibit “A” constitute surplusage which is irrelevant and prejudicial to Mr. Fariz which, if not stricken, will result in denial of his right to a fair trial. Accordingly, this Honorable Court should strike those highlighted portions as surplusage.

WHEREFORE, the Defendant, Hatim Naji Fariz, moves this Honorable Court to strike as surplusage those highlighted portions of the Indictment attached hereto as Exhibit "A."

Respectfully Submitted,

R. FLETCHER PEACOCK  
FEDERAL PUBLIC DEFENDER



Donald E. Horrox  
Florida Bar No. 0348023  
Assistant Federal Public Defender  
400 North Tampa Street, Suite 2700  
Tampa, Florida 33602  
Telephone: (813) 228-2715  
Facsimile: (813) 228-2562



Mark Rankin  
Florida Bar No. 0177970  
Assistant Federal Public Defender  
400 North Tampa Street, Suite 2700  
Tampa, Florida 33602  
Telephone: (813) 228-2715  
Facsimile: (813) 228-2562

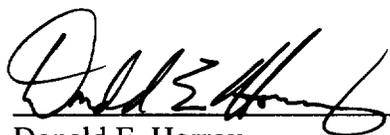
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of September, 2003, a correct copy of the foregoing has been furnished by hand delivery to Walter E. Furr, Assistant United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602 and to the following by U.S. Mail:

Bruce G. Howie, Esquire  
5720 Central Avenue  
St. Petersburg, Florida 33707  
(Attorney for Ghassan Zayed Ballut)

Daniel M. Hernandez, Esquire  
902 North Armenia Avenue  
Tampa, Florida 33609  
(Attorney for Sameeh Hammoudeh)

Sami Amin Al-Arian #40939-018  
Coleman USP  
846 NE 54<sup>th</sup> Terrace  
P.O. Box 1032  
Coleman, Florida 33521  
(Pro-Se)



Donald E. Horrox  
Assistant Federal Public Defender