FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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

UNITED STATES OF AMERICA CASE NO.: 8:03-CR-77-T-30TBM

vs.

SAMEEH HAMMOUDEH
_____/

DEFENDANT SAMEEH HAMMOUDEH'S MOTION
BILL OF PARTICULARS

Defendant, SAMEEH HAMMOUDEH, by and through his undersigned counsel, respectfully moves this Honorable Court to order the filing of a bill of particulars pursuant to Federal Ruleof Criminal Procedure 7(f), and states the following:

1. Mr. Hammoudeh is unable to ascertain from the face of the Indictment the particular facts constituting the case against him.

2. The Indictment fails to provide the identities of certain individuals, and the dates, times, and circumstances of certain events relevant to the charges brought against Mr. Hammoudeh.

3. The Indictment's lack of specificity will prejudice Mr. Hammoudeh in the preparation of his case for trial.

4. The Indictment's lack of specificity will prejudice Mr. Hammoudeh creating a substantial risk of unfair and prejudicial surprise at trial.

5. For these reasons, Mr. Hammoudeh respectfully moves this Court to order the United States to file a bill of particulars in which it responds to the following questions:

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CONSPIRACY TO COMMIT RACKETEERING - COUNT ONE

1. With respect to Count One of the Indictment, in its entirety, state the identity of all unnamed or unindicted co-conspirators;

2. State the exact date on which Defendant Hammoudeh became a member of the conspiracy;

3. State the time, date, and place of the first act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

4. State the time, date, and place of the last act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

5. State in what manner Defendant Hammoudeh was "employed by and associated with the enterprise described in Section A of this County," as alleged in paragraph 26[1] of the Indictment;

6. State the exact language, word, or words, or actions allegedly taken, by Defendant Hammoudeh and others which allegedly indicated, or tends to indicate, that Defendant Hammoudoeh "knowingly, willfully, and unlawfully did combine, conspire, confederate, and agree" to violate 18 U.S.C. section 1962(c), as alleged in paragraph 26 of the Indictment;

7. State the time, place, nature and names of all victims murdered in the alleged

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[1] The Indictment begins with Count 1, which includes 43 numbered paragraphs, with paragraph 43 containing 256 subparagraphs constituting Overt Acts. Later counts of the Indictment incorporate Overt Acts from Count 1, simply listing the subparagraphs of paragraph 43 as "paragraphs," and using the subparagraph number alone as identification. Thus there is the potential for confusion in citing the first 43 paragraphs of the Indictment in that "paragraph 25" could potentially refer to paragraph 25 or subparagraph 25 of paragraph 43. To minimize the risk of confusion, Defendant Hammoudeh will refer to subparagraphs 1 through 256 of paragraph 43 as such: "Paragraph 43(1); Paragraph 43(2);" and so forth. All other paragraphs will be numbered consistent with the government's system.

"multiple acts involving murder" cited in paragraph 26(8) of the Indictment, and state under what subsection the government contends Defendant Hammoudeh violated "Florida Statutes 777.04;"

8. State the time, place, and nature of Defendant Hammoudeh's involvement, if any, in the alleged "multiple acts involving extortion" cited in paragraph 26(b) of the Indictment;

9. State the names of the individuals and entities from whom Defendant Hammoudeh allegedly extorted property, if any, as alleged in paragraph 26(b) of the Indictment, and state under what subsection the government contends Defendant Hammoudeh violated "Florida Statutes 777.04;"

10. State the specific property, if any, allegedly taken through extortion, as alleged in paragraph 26(b) of the Indictment, and state in what manner Defendant Hammoudeh violated "Florida Statutes 836.07;"

11. State the "acts indictable" and the time, place, and nature of Defendant Hammoudeh's involvement, if any, in the alleged "money laundering" cited in paragraph 26(c) of the Indictment;

12. State the "acts indictable" and the time, place, and nature of Defendant Hammoudeh's involvement, if any, in the alleged violations of 18 U.S.C. section 1952 cited in paragraph 26(d) of the Indictment;

13. State the "acts indictable" and the time, place, and nature of Defendant's involvement, if any, in the alleged "conspiracy to kill, kidnap, maim or injure persons in a foreign country" cited in paragraph 26(e) of the Indictment;

14. State the "acts indictable" and the time, place, and nature of Defendant

Hammoudeh's involvement, if any in the alleged providing of "material support or resources to designated foreign terrorist organizations" cited in paragraph 26(f) of the Indictment;

15. State the nature of the "material support or resources" allegedly provided by Defendant Fariz, as cited in paragraph 26(f) of the Indictment;

16. State the name or names of all alleged "designated foreign terrorist organizations" to which Defendant Hammoudeh allegedly provided material support;

17. State the "acts indictable" and the time, place, and nature of Defendant Hammoudeh's involvement, if any, in the alleged "fraud and misuse of visas, permits, and other documents" cited in paragraph 26(g) of the Indictment;

18. State the exact language, word, or words, or actions allegedly taken, by Defendant Hammoudeh and others which allegedly indicated, or tends to indicate, that Defendant Hammoudeh "agreed that a conspirator would commit at least two acts of racketeering in the conduct and the affairs of the enterprise," as alleged in paragraph 27 of the Indictment;

19. State the time, place, and manner in which Defendant Hammoudeh allegedly "did secretly establish cells or sections of the PIJ in different countries," as alleged in paragraph 28 of the Indictment;

20. State the time, place, and manner in which Defendant Hammoudeh allegedly "did commit acts of violence, intimidation, and threats against Israel, its inhabitants and others," as alleged in paragraph 29 of the Indictment;

21. State the time, place, and manner in which Defendant Hammoudeh allegedly "did videotape statements of the PIJ members who were planning to participate personally in acts of violence," as alleged in paragraph 30 of the Indictment;

22. State the time, place, and manner in which Defendant Hammoudeh allegedly "did make public statement and issue press releases," as alleged in paragraph 31 of the Indictment;

23. State the time, place, and manner in which Defendant Hammoudeh allegedly "did actively solicit and raise monies and funds," as alleged in paragraph 32 of the Indictment;

24. State the time, place, and manner in which Defendant Hammoudeh allegedly conducted and/or attended fund-raising conferences and seminars, as alleged in paragraph 32(1) of the Indictment, and further state the date, time, and location of any such "conferences and seminars" to which paragraph 32(a) refers:

25. State the time, place, and manner in which Defendant Hammoudeh allegedly "invit[ed] known terrorists from outside the United States to speak at ... conferences and seminars," as alleged in paragraph 32(b) of the Indictment, and further state the names of any alleged "known terrorists" to which paragraph 32(b) refers;

26. State the time, place, and manner in which Defendant Hammoudeh allegedly traveled "within the United States and to places outside the United States," as alleged in paragraph 32(c) of the Indictment, including but not limited to a statement of the dates of travel and destinations;

27. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in "sending letters and other documents requesting funds," as alleged in paragraph 32(d) of the Indictment;

28. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in the utilization of "the Internet computer facilities to publish and catalog acts of violence committed by the PIJ," as alleged in paragraph 32(e) of the Indictment,

including but not limited to a statement of the location of computers used and a list of violent acts allegedly catalogued;

29. State the exact language, word, or words, or a actions allegedly taken, by Defendant Hammoudeh, if any, to advocate orally and/or in writing "death to Israel and its supporters," as alleged in paragraph 32(f) of the Indictment;

30. State the time, place, and manner in which Defendant Hamoudeh allegedly was involved, if at all, in producing, drafting, or disseminating writings or articles concerning the PIJ, as alleged in paragraph 32(g) of the Indictment;

31. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in drafting and/or holding the wills of PIJ members or others, and the names of those for whom wills were allegedly held, as alleged in paragraph 33 of the Indictment;

32. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in generating, maintain, or distributing lists of "PIJ" 'martyrs' and 'detainees,'" and the names of such "martyrs" and "detainees," as alleged in paragraph 33 of the Indictment;

33. State the time, place, and manner in which Defendant Hammoudeh allegedly "did "transfer monies and funds by wire ... or the purpose of promoting PIJ activities and paying compensation to the families of PIJ 'martyrs' and 'detainees,'" as alleged in paragraph 34 of the Indictment, including but not limited to a statement of the means of transfer and identities of any and all individuals or institutions which took part in such transfers, and the names of "martyrs," "detainees," and their families;

34. State the time, place, and manner in which Defendant Hammoudeh allegedly was

involved, if at all, in "determining the organizational structure of the PIJ," as alleged in paragraph 35 of the Indictment;

35. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in "determining the goals, strategies and policies of the PIJ," as alleged in paragraph 35 of the Indictment;

36. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in "administering the financial affairs of the PIJ," as alleged in paragraph 35 of the Indictment;

37. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in "ordering and conducting an accounting of all PIJ monies and property, real and personal, held by enterprise members," as alleged in paragraph 35 of the Indictment;

38. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in "settling disagreements amongst members of the PIJ and other terrorist organizations," as alleged in paragraph 35 of the Indictment, including but not limited to a statement identifying the persons constituting "members of the PIJ" and entities constituting "terrorist organizations;"

39. State the time, place, and manner in which Defendant Hammoudeh allegedly worked and associated with terrorist organizations, alleged in paragraph 36 of the Indictment, including but not limited to a statement identifying allegedly terrorist organizations (besides Hamas and Hizballah) with which Defendant Hammoudeh allegedly associated himself;

40. State the time, place, and manner in which Defendant Hammoudeh allegedly utilized the "instrumentalities and facilities of interstate and foreign commerce" listed in

paragraph 37 of the Indictment to communicate and promote and conduct the affairs of the enterprise," as allege din paragraph 37 of the Indictment, including but not limited to the types of instrumentalities and facilities utilized;

41. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in the facilitation of communications with alleged enterprise members in the United States, Israel, Syria, and elsewhere, as alleged in paragraph 38 of the Indictment;

42. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in any alleged attempt to obtain urea, as alleged in paragraph 39 of the Indictment;

43. State the time, place, and manner in which Defendant Hammoudeh allegedly provided "assistance to terrorists" through false statements or documents, or otherwise, as alleged in paragraph 40 of the Indictment, including but no limited to the names of the "terrorists" to whom assistance was allegedly given;

44. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in the use of "codes" to "conceal and disguise the enterprise's true activities and identities of members," as alleged in paragraph 41 of the Indictment, including but not limited to the exact code word or code words used by Defendant Hammoudeh and the exact word or words to which such alleged code words allegedly correspond;

45. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in any attempt to "obtain support from influential individuals in the United States under the guise of promoting and protecting Arab rights," as alleged in paragraph 42 of the Indictment;

46. State the identities of the "influential individuals" referred to in paragraph 42 of the Indictment;

47. State the time, place, and manner in which Defendant Hammoudeh allegedly "did make false statements and misrepresent facts to representatives of the media, as alleged in paragraph 42 of the Indictment, including but not limited to a statement of the identities of the persons or entities with whom Defendant Hammoudeh communicated, if any;

48. State the time, place, and manner in which Defendant Hammoudeh allegedly "did misrepresent, conceal, and hide, and caused to be misrepresented, concealed, and hidden, the purpose of acts done in furtherance of the conspiracy," as alleged in paragraph 42 of the Indictment;

49. State the identity of the "associate" with whom Defendant Al-Arian allegedly stated (to Defendant Hammoudeh) he would not call on his (Al-Arian's phone, as alleged in paragraph 176 of the Indictment.

CONSPIRACY TO MURDER, MAIM, OR INJURE PERSONS AT PLACES OUTSIDE THE UNITED STATES - COUNT TWO

1. State the exact date on which Defendant Hammoudeh became a member of the conspiracy;

2. State the names of all alleged conspirators;

3. State where is "elsewhere," as that term is used in this Count;

4. State the exact language, word, or words allegedly used, or any actions allegedly taken, by Defendant Hammoudeh and others which allegedly indicated, or tends to indicate, that Defendant Hammoudeh willfully and knowingly agreed to violate 18 U.S.C. section 956(a)(1)

with respect to:

A. "a bombing at the Mahane Yehuda Market in Jerusalem, Israel," on or about November 2, 2000, as alleged in paragraph 43(230) of the Indictment;

B. "a shooting attack on a bus ... in the French Hill area of Jerusalem, Israel," on or about November 4, 2001, as alleged in paragraph 43(234) of the Indictment,

C. "a suicide car bombing of a bus in the vicinity of Megiddo Junction near Afula, Israel," on or about June 5, 2002, as alleged in paragraph 43(237) of the Indictment,

D. "a suicide car bombing of a bus at the Karkur Sttion on Route No. 65 between Afula, Israel and Hadera, Israel," on or about October 22, 2002, as alleged in paragraph 43(252) of the Indictment, and

E. "a suicide shooting attack in the vicinity of Hebron in the Occupied Territory," on or about November 15, 2002, as alleged in paragraph 43(245) of the Indictment;

5. State the time, date, and place of the first act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

6. State the time, date, and place of the last act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

7. With respect to paragraph 4(A)-(E) above, state what group or groups claimed responsibility for the shooting and bombing incidents listed in the Indictment;

8. Pursuant to this charge, under 18 U.S.C. section 956, state under what statute or

statutes the actions taken by Defendant Hammoudeh "would constitute the offense of murder, kidnaping, or maiming if committed in the special maritime and territorial jurisdiction of the United States;"

9. State the time, date, place, and manner in which Defendant Hammoudeh allegedly became a "PIJ" member.

10. Please state a specific act that Sammeh Hammoudeh allegedly committed to modify the computer file at WISE/ICP which contained the wills of Nizar Mahmoud, Abdel Damel Daagr and Khaled Muhammed Hassan on April 27, 1992 when the Defendant Sammeh Hammoudeh was not even in the United States.

11. Please state the evidence which would indicate that the Defendant, Sammeh Hammoudeh was present for the December 25, 1992 speech by Ramadan Abdullah Shallah as alleged in Overt Act 17.

12. Please state the evidence to indicate that on January 22, 1994 as alleged in Overt Act 31 that the telephone conversation which was recorded referred to the Defendant Sammeh Hammoudeh when only a fist name of Sammeeh, which is very common in the Arabic world was utilized.

13. Please state the identity of the person or persons who can place the Defendant Sammeeh Hammoudeh at the WISE/ICP in Tampa, Florida on January 26, 1995 to receive a facsimile as alleged in Overt Act 123 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

14. Please state the identity of the person or persons who can place the Defendant Sammeeh Hammoudeh at the WISE/ICP in Tampa, Florida on February 22, 1995 to receive a

facsimile as alleged in Overt Act 133 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

15. Please state the identity of the person or persons who can place the Defendant Sammeeh Hammoudeh at the WISE/ICP in Tampa, Florida on March 4, 1995 to receive a facsimile as alleged in Overt Act 138 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

16. Please state the name of the person whose name was listed as the sender for the facsimile on March 18, 1995 alleged in Overt Act 125 and further state the person who could identify the Defendant, Sammeeh Hammoudeh as being present when this facsimile was being sent during a time when the Defendant was not employed by WISE/ICP.

H. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on March 18, 1995 to receive a facsimile as alleged in Overt Act 146 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

17. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on March 19, 1995 to receive a facsimile as alleged in Overt Act 147 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

18. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on March 21, 1995 to receive a facsimile as alleged in Overt Act 148 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

19. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on March 21, 1995 to receive a facsimile as alleged in Overt Act 149 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

20. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on April 9, 1995 to receive a facsimile as alleged in Overt Act 152 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

21. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on April 11, 1995 to receive a facsimile as alleged in Overt Act 153 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

22. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on April 18, 1995 to receive a facsimile as alleged in Overt Act 160 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

23. Please state the identity of the person or persons who can place the Defendant Sameeh Hammoudeh at the WISE/ICP in Tampa, Florida on October 31, 1995 to receive a facsimile as alleged in Overt Act 183 at a time when the Defendant Sammeeh Hammoudeh was not employed at WISE/ICP in Tampa.

24. Please state the identity or identities if known, of a person who would state that the Defendant, Sammeh Hammoudeh was present on November 20, 1995 at WISE/ICP to possess

documents and computer files alleged in Overt Act 185.

CONSPIRACY TO PROVIDE MATERIAL SUPPORT - COUNT THREE

1. State the exact date on which Defendant Hammoudeh became a member of the conspiracy;

2. State the time, date, and place of the first act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

3. State the time, date, and place of the last act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

4. State the names of all alleged conspirators;

5. State where is "elsewhere," as that term is used in this Count;

6. State the exact language, word, or words allegedly used, or any actions allegedly taken, by Defendant Hammoudeh and others which allegedly indicated, or tends to indicate, that Defendant Hammoudeh knowingly agreed to violate 18 U.S.C. section 2339B;

7. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, with WISE, ICP, and IAF, as alleged in paragraph 3(a) of Count Three;

8. State the time, place, and manner in which Defendnat Hammoudeh allegedly was involved, if at all, in the raising of funds for "the PIJ and their [sic] operatives in the Middle East," as alleged in paragraph 3(a) of Count Three, including but no limited to a statement of the identities of PIJ "operatives;"

9. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in any alleged coordination between PIJ and Hamas, as alleged in paragraph

3(b) of Count Three;

10. State the time, place, and manner in which Defendant Hammoudeh allegedly was involved, if at all, in "PIJ fund-raising and support activities in a manner designed to conceal the nature o what they were doing and the source and recipients of the support," as alleged in paragraph 3(s) of Count Three;

11. State the dates and times that co-defendant Sameeh Al-Arian relied upon Sameeh Hammoudeh to continue fund raising activities as alleged in paragraphs 3(b) of the Indictment;

12. Please state any time an date of any fund raising activity that the Defendant Hammoudeh conducted for Tig as alleged in 3(b);

CONSPIRACY TO MAKE AND RECEIVE CONTRIBUTIONS OF FUNDS, GOODS, OR SERVICES TO OR FOR THE BENEFIT OF SPECIALLY DESIGNATED TERRORISTS - COUNT FOUR

1. State the exact date on which Defendant Hammoudeh became a member of the conspiracy;

2. State the time, date, and place of the first act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

3. State the time, date, and place of the last act that Defendant Hammoudeh is charged with having committed in furtherance of the conspiracy;

4. State the names of all alleged conspirators;

5. State where is "elsewhere," as that term is used in this Count;

6. State the exact language, word, or words allegedly used, or any actions allegedly taken, by Defendant Hammoudeh and others which allegedly indicated, or tends to indicate, that Defendant Hammoudeh knowingly agreed to violate 50 U.S.C. section 1701, *et seq.*, and/or 31

C.F.R. section 595, *et seq*, as alleged in paragraph 9 of Count Four;

7. State the identity of the person who can establish the presence of the Defendant Hammoudeh when the facsimile was received as alleged in Counts 5-44 in the Indictment;

8. State the person or persons who say that Defendant Hammoudeh had engaged in or conspired to engage in or provided material support to the Palestinian Islamic Jihad.

MEMORANDUM OF LAW

Federal Rule of Criminal Procedure 7(f) states in relevant part that "[t]he court may direct the government to file a bill of particulars." Fed. R. Crim. P. 7(f). The purpose of a bill of particulars is to inform the defendant of the nature of the charge with sufficient precision to enable him to prepare his defense, to avoid or minimize danger of surprise at trial, and to facilitate a plea of double jeopardy in the event of prosecution for the same offense. *United States v. Cole,* 755 F.2d 748, 760 (11th Cir. 1985); *United States v. Harbin,* 601 F.2d 773 (5th Cir. 1979); *Castro v. United States,* 248 F. Supp.2d 1170 (S.D. Fla. 2003). Although the granting of a bill of particulars is addressed to the sound discretion of the trial court, Rule 7(f) was expressly designed "to encourage a more liberal attitude by the courts towards bills of particular." Charles Alan Wright, *Federal Practice and Procedure,* section 129, citing Advisory Committee Note to 1966 Amendment.

Because of the often vague and skeletal nature of the averments in the Indictment, the government has failed to satisfy its obligation to inform Defendant Hammoudeh sufficiently to allow him to prepare his defense, to prevent prejudicial surprise at trial, or to facilitate a plea of double jeopardy. *See United States v. Haas,* 583 F.2d 216 (5th Cir. 1978), *cert denied* 440 U.S. 981 (1979). Because clarification is needed, a bill of particulars is the appropriate method of

securing information. *Id.* At p. 221. With respect to the allegations of conspiracy in the Indictment, a bill of particulars is the appropriate manner in which to require the government to specify with particularity the "time, place, circumstance, causes, etc., in stating the manner and means of effecting the object of the conspiracy." *Glasser v. United States*, 315 U.S. 60, 66 (1942); *United States v. Mobile Materials, Inc.* 871 F.2d 902, 908 (10th Cir. 1989) (quoting *Glasser*).

"Once one focuses, however, on the details of a particular case, it becomes apparent that the foregoing, oft-repeated generalities provide little guidance" to the court with respect to its consideration of a motion for bill of particulars. *United States v. Bin Laden,* 92 F. Supp.2d 225, 234 (S.D.N.Y. 2000). In overly-complex, far-reaching cases, such as the one at bar, the court should be "hesitant ... to place any significant weight on the conclusions reached in earlier cases in which courts were presented with an Indictment alleging a more specific type of criminal conduct, occurring over a shorter period of time, in a more circumscribed geographical area." *Id.* at 235. In complex cases, different standards thus necessary in determining the necessity of a bill of particulars, especially in light of the "seemingly unprecedented and unique burden on the Defendants and their counsel in trying to answer the charges that have been made against them." *Id.*

In light of the fact that the usual standards for granting or denying a motion for bill of particulars are difficult, if not impossible, to apply such cases, the *Bin Laden* court addressed the uniquely liberal standard to be applied to motions for bills of particulars in overly-complicated, far-reaching conspiracy cases in which voluminous discovery is expected. In *Bin Laden*, the defendants were charged, among other things, with conspiracies and other crimes associated

with the bombing of the United States embassies in Kenya and Tanzania. *Id.* at 227-28. The *Bin Laden* Indictment charged fifteen named defendants with 267 distinct criminal acts, including five conspiracies and 144 Overt Acts - such acts allegedly taking place over the course of ten years across a vast geographical scope including eleven nations and four state. *Id.* at 235. The court set trial for two years after the defendants' arrests, and expected trial to last at least six months. *Id.* at 232.

Similar to *Bin Laden*, the case at bar involves extremely complex allegations of conspiracy and other illegal conduct that span the globe, involves numerous alleged conspirators (both indicted and unindicted) acting over an extended period of time, involves a wide and diverse range of predicate acts, and will require an enormous discovery and investigative effort. The Indictment charges eight named defendants with fifty distinct criminal acts, including four conspiracies and 213 Overt Acts - with all of this alleged criminal activity taking place in at least five nations and two state over the course of over fourteen years. Discovery is so voluminous that trial will take place nearly two years from the time of defendants' arrests, with such trial to last at least six months - if not a year. Judge Sand, writing in *Bin Laden* might as well have been writing about Defendant Hammoudeh's case when he wrote:

> The process of preparing for a trial in this case has been unusually protracted. The complexity of the charges, the voluminous discovery that needs to be exchanged, the location of many relevant documents and witnesses in various countries around th world, special procedures for handling classified material, the need to translate literally thousands of documents... have combined to require an extraordinary amount of work on the part of all parties involved.

Id. at 231. As such, many of the factors that the *Bin Laden* court considered i ordering the filing of a bill of particulars in that case warrant the granting of Defendant Hammoudeh's present

motion. Therefore, Defendant Hammoudeh respectfully asks the Court to consider the following factors in consideration of his present motion:

Voluminous Discovery

First and foremost, the mountain of discovery under which Defendant Hammoudeh is now and will be buried and efficiently review the materials as they are made available by the government. Only such a narrowing of the facts and issues will allow Defendant Hammoudeh to adequately prepare a defense and avoid prejudicial surprise at trial.

Although *adequate* discovery generally argues against ordering the filing of a bill of particulars, the courts have made clear that *voluminous* discovery argues in favor of granting such a motion. *See, e.g., United States v. Bortnovsky*, 820 F.2d 572, 575 (2nd Cir. 1987) (in fraud case, government did not fulfill its obligations regarding particularity "merely by providing mountains of documents [over 4,000] to defense counsel who were left unguided as to which documents would be proven falsified"); *United States v. Santiago*, 174 F. Supp.2d 16, 37 (S.D.N.Y. 2001) (recognizing voluminous discovery as factor warranting bill of particulars); *Bin Laden*, 92 F. Supp.2d at 234, 236 (granting motion for bill of particulars partly "in light of the voluminous amount of material" produced by the government, and stating that "sometimes, the large volume of material disclosed is precisely what necessitates a bill of particulars")' *United States v. Vasquez-Ruiz*, 136 F. Supp.2d 941 943 (N.D. Ill. 2001) ("The defense should not be left to its own devices and a sifting of the voluminous materials that have been provided in order to diving the particulars of these critical allegations, which have not yet been disclosed."); *United States v. Lino*, 2001 WL 8356, at *7 (S.D.N.Y. 2001) (granting particular request for bill of particulars due in part to "voluminous audiotapes")' *United States v. Nachamie*, 91 F. Supp.2d

565, 571 (S.D.N.Y. 2000) (ordering filing of bill of particulars based in part upon voluminous discovery, including "over 200,000 pieces of paper in hundreds of boxes and files, relating to 2,000 Medicare claims"); *United States v. Trie*, 21 F. Supp.2d 7, 21 n.12 (D.D.C. 1998) ("The open file discovery, amounting to making available for inspection at a central location approximately 1.9 million documents, is no substitute for adequate specification of the crimes with which [defendant] is charged.")' *United States v. Upton*, 856 F. Supp. 727, 753 (E.D.N.Y. 1994) (ordering filing of bill of particulars in part because unfair to "allow the government to introduce allegedly falsified maintenance records buried in thousands of documents already produced without prior notice of those documents upon which the government intends to rely;" otherwise, "defendants are unduly hampered in the preparation of their defense and there is the risk of unfair trial surprise").

In Defendant Hammoudeh's case, the volume of discovery is especially troublesome, and thus particularly necessitates the filing of a bill of particulars, with respect to the complex RICO count alleged in the Indictment. As the Second Circuit recognized in *United States v. Davidoff*, 845 F.2d 1151, 1154 (2nd Cir. 1988), the principles relevant to consideration of motion for bill of particulars "must be applied with some care when the Government charges criminal offenses under statutes as broad as RICO." Such is the case because "[w]ith the wide latitude accorded the prosecution to frame a charge that a defendant has 'conspired' to promote the affairs of an 'enterprise' through a 'pattern of racketeering activity' comes an obligation to particularize the nature of the charge to a degree that might not be necessary in the prosecution of crimes for more limited scope." *Id. See also, e.g., Lino*, 2001 WL 8356, at *4 (noting thta bills of particulars are especially necessary where there is voluminous discovery pertaining to RICO

charges).

Defendant Hammoudeh faces the highest of discovery hurdles in this case. Thus far, the government has identified as discoverable, with respect the to RICO and other counts, more that 21,000 hours of telephone conversations[2] which were intercepted by the government in 152 separate wiretap applications, 550 videotapes, a number of foreign documents (many of which are Israeli documents written in Hebrew), at least a couple hundred boxes of further documentary evidence, and approximately thirty computers which were seized from the defendants.

An order requiring the government to file a bill of particulars is the way for the Court to ensure, in light of the volume and nature of discovery related to this very complicated Indictment, that Defendant Fariz is able to adequately prepare his defense and avoid prejudicial surprise at trial. For example, the government in this case has seized and examined Defendant Hammoudeh's bank records. There are a number of checks within those records, written to both individuals and entities. One or more of those checks may possibly be written to an unidentified, unindicted co-conspirator - a fact that would be apparent from the face of the check. Unless this Court ordered the government to reveal the names of such alleged co-conspirators, Defendant Hammoudeh is not in a position to prepare a defense or avoid prejudicial surprise at trial with respect to why such a check was written.

Complexity of the Offense

The complexity of the facts and charges brought against Mr. Hammoudeh in this

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[2] All or most of the telephone and video recordings in this case are in Arabic, which makes them particularly burdensome to review.

Indictment argue strongly in favor of the Court ordering the government to file a bill of particulars. Indeed, this Court recently found this case to be complex, stating: "I find tht this is a complex case involving multiple defendants, the nature of the prosecution dealing with terrorism is a fact-intensive prosecution, there's the existence of novel question of fact and law ...." (Doc 167, p.17). Moreover, Magistrate Judge Thomas McCoun, addressing co-defendant Al-Arian at his Faretta hearing, stated: "You are charged, as you know, in an Indictment that has, what, 50 counts? It is full of complexity, maybe not factually. Although I think the facts actually, because of the sheer volume of them, make this a complex case. But the nature of the allegations themselves, the particulars of the criminal statutes involved, make this a highly complex and technical case." (Doc 208, p. 11).

As previously stated, RICO indictments are particularly complex and thus require at more liberal application of Rule 7(f). *See Davidoff*, supra, at 1154. Moreover, any indictment which charges multiple conspiracies or a large number of schemes particularly calls for the filing of a bill of particulars. *See, e.g., Santiago*, 174 F. Supp.2d at 34 (recognizing complexity of the indictment as factor warranting bill of particulars); *Vasquez-Ruiz*, 136 F. Supp.2d at 942-43 (ordering bill of particulars in part because charges were "complex"); *Bin Laden*, 92 F. Supp2d at 229 (same); *Trie*, 21 F. Supp..2d at 21 (bill necessary where portions of indictment "difficult to follow").

This Indictment's complexity particularly burdens Defendant Hammoudeh's ability to adequately prepare a defense and prevent prejudicial surprise at trial because, as similarly recognized in *Bin Laden*, "many of the Overt Acts alleged consist of seemingly non-criminal conduct - such as ... engaging in business transactions - which, according to the Indictment,

facilitate the violent attacks and thereby constitute Overt Acts in furtherance of the conspiracies." 92 F. Supp.2d at 229. For example, Overt Acts 43(208), 43 (215), 43(239), 43(244), 43(250), and others allege behavior on the part of Defendant Hammoudeh that is seemingly innocent in nature.[3] Defendant Hammoudeh is thus not on notice as to how these potentially innocent acts supposedly furthered the alleged conspiracy, if at all, without the benefit of having the government answer the questions posed by this motion.

Broad Geographical Scope and Wide-ranging Predicate Acts of the Alleged Conspiracy

The broad geographical scope and wide-ranging predicate acts of the conspiracies alleged in the Indictment require the filing of a bill of particulars in order to afford Defendant Hammoudeh the ability to adequately assess the facts and law pertinent to the preparation of his defense, and to prevent unfair, prejudicial surprise at trial. The Indictment in this case alleges (1) a conspiracy which allegedly covers three continents, several nations, and various locations within the United States, and (2) an incredibly wide range of overt or predicate acts, ranging from seemingly innocent telephone conversations to alleged plots to murder and maim persons abroad. Both factors argue in favor of the Court granting Defendant Hammoudeh's present motion. *See, e.g., Lino*, 2001 WL 8356, at *12-13 (noting wide-rnging nature of predicate acts);

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[3] Paragraph 43(208) of the Indictment alleges that an unnamed person called Sameeh Hammoudeh's home and stated that he, the caller, had been "trying to reach Hatim Naji Fariz for several days." Paragraph 43(215) of the Indictment alleges Defendant Fariz's election to the Executive Board of "an institution in Chicago." Paragraph 43(239) of the Indictment alleges that Defndant Hammoudeh had a conversation in which he discussed hearing news of a suicide bombing and then allegedly laughed and explained how he'd heard about the event. Paragraph 43(244) of the Indictment alleges that Defendant Hammoudeh and Defendant Ballut discussed preparations made in the event Defendant Al-Arian was arrested. Paragraph 43(250) of the Indictment alleges that Defendant Hammoudeh made two unsuccessful attempts to contact Defendant Shallah in Syria.

Santiago, 174 F. Supp.2d at 36 (noting "wide-ranging nature of the Overt Acts" and "geographical scope" of the conspiracy as factors); *Bin Laden*, 92 F. Supp.2d at 235 (noting geographical scope of Indictment and the breadth and diversity of alleged criminal behavior).

Extended Length of Alleged Conspiratorial Conduct

The lengthy period of time during which the government alleges that Defendant Hammoudeh and others conspired to commit the various crimes listed in the Indictment warrants the Court ordering the government to file a bill of particulars. The alleged conspiracies at issue in this case, according to the Indictment, lasted more than fourteen years. Courts have ordered the filing of a bill of particulars based, in part, upon the length of the alleged conspiracy in cases involving similar, or even much shorter, periods of time. *See, e.g., Bin Laden*, 92 F. Supp.2d at 235 (10 years); *Trie*, 21 F. Supp.2d at 22 (three and a half years); *United States v. Mariani*, 90 F. Supp.2d 574, 593 (M.D. Pa. 2000) (seven years). *See also Santiago*, 174 F. Supp.2d at 37 (recognizing length of conspiracy as factor).

Allegations of Numerous Aliases, Code Names, and Coded Communications

The allegations in the Indictment of numerous aliases, code names, and coded communications by Defendant Hammoudeh and others further argues in favor of the Court ordering the government to file a bill of particulars. First, the Indictment lists twenty-nine aliases allegedly attributed to defendants, two of which allegedly apply to Defendant Hammoudeh. Secondly, the Indictment alleges the use of code names and coded communications as part of the alleged conspiracies charged. *See, e.g.*, Indictment paragraph 41 (codes in conversations and communiques to conceal and disguise activities and members), subparagraph 3(d), (n) of Count 3 ("code words"), and subparagraphs 26, 84, 103, 131, 132, 134,

143, 150, 153, 155, 164, 165, 176, 178, 194, 197, 199, 200, 203, 205, 207, 219, 221, 222, 236, 240 of paragraph 43 (alleging coded telephone conversations).

Clarifications and particularization of such information in an Indictment is necessary to ensure that the defendant has ample information upon which to prepare his defense and prevent unfair surprise at trial. *See, e.g., Santiago*, 174 F. Supp.2d at 36 (recognizing danger of unfair surprise at trial if government permitted to conceal information concerning defendants' alleged aliases and code names); *Bin Laden*, 92 F. Supp.2d at 243 (granting bill of particulars with respect to the identities of alleged co-conspirators, in part because Indictment listed numerous aliases and code names; granting bill of particulars also with respect to Overt Act in Indictment alleging "coded correspondence").

Numerous Unnamed and Unindicted Co-conspirators

The large number of unnamed and unindicted co-conspirators listed in the Indictment requires a bill of particulars, and especially warrants the Court ordering the government to identify by name each and every such person.[4] There are 12 unnamed, unindicted co-conspirators listed in the Indictment. *See, e.g.*, Indictment, subparagraph 43(5) (unindicted co-conspirator one), 43(37) (unindicted co-conspirator two), 43(86) (unindicted co-conspirator three), 43(124) (unindicted co-conspirator four), 43(185)(3) (unindicted co-conspirator five, 43(188) (unindicted co-conspirator six), 43(196) (unindicted co-conspirator seven), 43(194) (unindicted co-conspirator eighth, 43(196) (unindicted co-conspirator nine), 43(220) (unindicted

[4] Defendant Hammoudeh has no objection to the names of alleged co-conspirators being revealed under seal, if necessary to protect such persons from harm. *See. e.g, United States v. Stoneman*, 776 F.2d 1104 (3rd Cir. 1985) (affirming district court's sealing of bill of particulars that contained the names of unnamed co-conspirators, where revealing the names publicly would have been career-threatening).

co-conspirator ten), 43(240) (unindicted co-conspirator eleven, 43(14) (unindicted co-conspirator twelve). Unless the Court orders the government to identify these individuals, Defendant Hammoudeh will be unable to adequately prepare for trial or prevent prejudicial surprise at trial.

A bill of particulars is the proper procedure for discovering the names of unindicted co-conspirators. *See United States v. Anderson*, 799 F.2d 1438, 1439 (11th Cir. 1986) (bill ordered with respect to "unnamed an unindicted participants"); *United States v. Fernandez*, 780 F.2d 1573, 1575 (11th Cir. 1986) (bill ordered with respect to "the names of the unindicted co-conspirators known to the Government"); *United States v. Williams*, 113 F.R.D. 177, 178 (M.D. Fla. 1986) (ordering government to file bill of particulars listing "the names of all unindicted co-conspirators"). This is especially true where the government intends to call unindicted co-conspirators as witnesses. *United States v. Barrentine*, 591 F.2d 1069, 1077 (5th Cir. 1979) (citing *Will v. United States*, 389 U.S. 90, 99 (1967)). Courts in other circuits have also granted defendants' motions for bills of particulars naming unindicted co-conspirators. *See, e.g.*, *Santiago*, 174 F. Supp.2d at 37; *Bin Laden*, 92 F. Supp.2d at 241; *Nachamie*, 91 F. Supp.2d at 572-73; *Mariani*, 90 F. Supp.2d at 591-92; *Trie*, 21 F. Supp.2d at 22; *United States v. Strawberry*, 892 F. Supp. 519, 526-27 (S.D.N.Y. 1995); *United States v. DeGroote*, 122 F.R.D. 131, 137 (W.D.N.Y. 1988).

Particularly vague portions of this Indictment are those in which the government refers to co-conspirators and other individuals (as well as events) in general terms, again without identifying them. *See, e.g.*, Indictment, subparagraph 24 (defendants and others known and unknown"), 26 (defendants "and others, known and unknown"), 43 ("defendants and their co-

conspirators committed, among others, the following Overt Acts"), 2 (Count 2) ("agreed together and with each other and with other persons, who are known and unknown"). Defendant Hammoudeh is particularly entitled to a bill of particulars with respect to these vague paragraphs. *See, e.g., Davidoff* 845 F.2d at 1153 (granting new trial to defendants in part due to trial court's denial of defendants' motion for bill of particulars asking government to "state with particularity to the unspecified violations indicted [in the RICO conspiracy count] by the phrase 'but were not limited to'"); *Williams*, 113 F.R.D. at 178 (granting defendant's motion for bill of particulars as to identity of co-conspirators described in Indictment as "other persons known and unknown to the grand jury").

WHEREFORE, Defendant, Sameeh Hammoudeh, respectfully moves this Honorable Court to grant the particulars requested in this motion in order to allow him to prepare his defense, to prevent prejudicial surprise at trial, and to facilitate a plea of double jeopardy.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion has been furnished to

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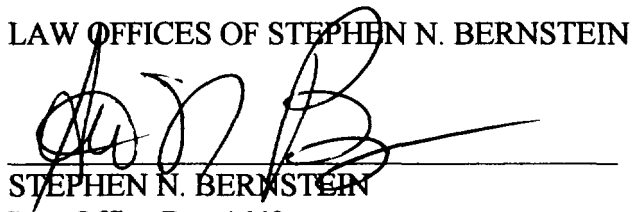

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