

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
MUBARAK HAMED,)	
ALI MOHAMED BAGEGNI,)	No. 07-00087-02/07-CR-W-NKL
AHMAD MUSTAFA,)	
KHALID AL-SUDANEE,)	
ABDEL AZIM EL-SIDDIG)	
and)	
MARK DELI SILJANDER,)	
)	
Defendants.)	

**GOVERNMENT'S CONSOLIDATED RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTIONS FOR BILL OF PARTICULARS**

The United States of America, by and through Matt J. Whitworth, the Acting United States Attorney for the Western District of Missouri, and the undersigned Assistant United States Attorneys, files this Response in Opposition to the defendants' various Motions for Bills of Particulars (DE 193, 197, 198, 201, 204), and states as follows:

Due to the similarity of the defendants' various Motions for Bills of Particulars, the Government has consolidated its response into two parts: the first pertains to the motions filed by defendants Mubarak Hamed, Ahmad Mustafa and Ali Mohamed Bagegni (DE 197, 198, 201); the second pertaining to the motions filed by defendants Mark Deli Siljander and Abdel Azim El-Siddig (DE 193,

204).

Response to Motions for Bills of Particulars
By Defendants Hamed, Mustafa and Bagegni

With regard to information the Government is declining to provide at this time, the Government maintains that the purpose of an indictment, and a bill of particulars, is to inform defendants of the charges against them, protect against double jeopardy, and to avoid undue surprise at trial. *United States v. Shepard*, 462 F.3d 847, 860 (8th Cir. 2006); *see also United States v. Cavins, Jr.*, 543 F.3d 456, 458 fn2 (8th Cir. 2008) (not abuse of discretion to deny motion for bill of particulars in tax evasion case). A bill of particulars is not intended to be used for obtaining discovery. *Id.* Here, the Government's 41-count Second Superseding Indictment, charging these defendants with four groups of criminal violations, which are specifically outlined in the Government's 50-page Indictment, provides more than sufficient detail for the defendants to comprehend and respond to the charges against them. The groups of violations are: 1) Counts 1 through 24 - transmission of funds into Iraq in violation of sanctions; 2) Counts 25 through 32 - theft of funds from USAID programs and the obstruction of justice regarding investigation of the same; 3) Count 33 - an ongoing corrupt endeavor to obstruct, impair and impede the due administration of the Internal Revenue Code regarding the operation of the non-profit organization IARA; and 4) Counts 34 through 41 - transmission of funds to the Shamshatoo refugee camp in Pakistan

for the benefit of Specially Designated Global Terrorist Gulbuddin Hekmatyar. In addition, over the last two years, as attorneys for the defendants point out, the Government has provided a great deal of discovery, including but not limited to: thousands of documents seized from defendant IARA's offices and defendant Hamed's home; over 85,000 intercepted phone calls from defendant IARA's offices and defendant Hamed's home; hundreds of pages of bank records; and accounting records from ISRA pertaining to defendant IARA funds being transmitted into Iraq. The Government submits that its Indictment, together with the discovery provided, more than adequately informs the defendants of the specific transactions that the Government alleges violate the statutes charged. Contrary to the assertions contained in some of the defendants' Motions, the conspiracies charged in Counts 1, 13 and 28 do not involve "thousands of parties." This allegation seems to be a reference to defendant IARA's donors and other minor volunteers. The Government has not alleged that every donor to defendant IARA who indicated that they wanted their contribution "to go to Iraq" is a co-conspirator. Accordingly, with the exception of a few un-indicted co-conspirators and other key witnesses, whose identities the Government will provide to the defendants under seal, details regarding the "thousands of parties" referred to in the defendants' Motions are irrelevant.

Notwithstanding the Government's position that it has properly informed the defendants of the pending charges, in response to the defendants' Motions, the Government is providing the following information:

1) Request regarding paragraph 77E: The financial records supporting this allegation have been provided in discovery, more particularly, the "\$47,000 check" is Bank of America check 5120 drawn on an IARA account, dated December 5, 2001, Bates Stamp number LD-28-0108. The 11 cashier's checks are numbered sequentially 656203 to 656213, are all dated December 15, 2001, and are in the amounts of either \$6,000 or \$4,000;

2) Request regarding paragraph 77E, person A.M.: The identity of this individual will be provided to the defendants under seal in a separate pleading;

3) Request regarding paragraph 77M: The identity of this individual will be provided to the defendants under seal in a separate pleading;

4) Request regarding paragraph 79: The identity of this individual will be provided to the defendants under seal in a separate pleading;

5) Request regarding paragraph 81: The identity of this individual will be provided to the defendants under seal in a separate pleading;

6) Request regarding paragraph 84: The identity of this individual will be provided to the defendants under seal in a separate pleading;

7) Request regarding paragraph 89: The identity of these individuals will be provided to the defendants under seal in a separate pleading, to the extent that those identities are known to the Government;

8) Request regarding paragraph 76 and "false public statements": The Government responds that copies of all statements of the defendants have been provided to the defendants as part of the Government's Rule 16 discovery. In addition, however, the Government further answers that, in answer to specific questions posed to defendant Hamed by federal agents regarding funds sent to Iraq, defendant Hamed repeatedly stated that he and defendant IARA did not send money or property into Iraq, but instead sent funds to Jordan for disbursement to Iraqi refugees then residing in Jordan.¹ The Government alleges that these statements were intentionally false;

¹Additionally, in a letter to OFAC dated August 17, 2001, defendant Hamed stated, among other things, "IARA-USA has no activities inside Iraq and Sudan." The letter also states, "IARA-USA did not export merchandise to Iraq. None of our staff has paid an official visit to Iraq. IARA-USA is trying to help the Iraqi people outside Iraq."

9) Request regarding Ziyad Khaleel, Gulbuddin Hekmatyar, Qutbuddin Hillal and W-1: With regard to W-1, see response number 5 above. The Government further responds that W-1's statements will be provided with the Government's *Jencks* Act production sixty (60) days prior to trial. Regarding the remaining individuals referenced in this response, Ziyad Khaleel is deceased, and the Government does not possess any statements of Gulbuddin Hekmatyar or Qutbuddin Hillal. These individuals do not reside in the United States, and the Government does not possess any contact information for these two individuals;

10) Request regarding paragraph 77B: The defendants have requested each of the improperly accepted monetary contributions designated for Iraq. The Government responds, as averred in the Indictment, that the defendants transmitted funds into Iraq over a number of years in many forms, and that all of these financial records have already been provided to the defendants as part of its Rule 16 discovery. In addition, however, the Government further responds that in its Indictment, paragraph 55, Counts 2-12, the Government has narrowed these IEEPA violations to a specific subset of financial transactions. The Government is preparing a chart which cross-references these specific transactions with supporting documents. As soon as the chart is completed and

verified it will be provided to the defendants;

11) Request regarding paragraph 77L and Ziyad Khaleel: The Government responds that it has already provided to the defendants copies of evidence responsive to this request, most particularly, IARA payroll records which reflect that Khaleel was an employee of IARA in 1996 and 1997. Notwithstanding, the Government further responds that the documents containing the following Bates Stamp Numbers are responsive to this request:

IARA 4-49_00334 to 00339

IARA 4-D3-40_0012

IARA E99-29_00024

IARA 4-65_00022

IARA 4-65_00006 TO 00032

IARA_E99-29_00080;

12) Request regarding paragraph 77M and Ziyad Khaleel: The Government primarily relies on evidence from the case *United States v. Usama Bin Laden, et al*, 98-CR-01023-05-KTD (SDNY 1998), tried in February 2001, for the assertion that Khaleel was a procurement agent for Bin Laden. This action charged individuals in connection with the bombing of the United States embassies in Kenya and Tanzania;

13) Request regarding paid informants: Other than as follows, the Government did not use paid informants in this

case. The person identified as W-1 (whose identity will be provided under separate cover under seal) had their travel and living expenses paid by the Government for a period of time. Details regarding this arrangement will be provided as soon as practicable;

14) Request regarding basis of OFAC designation of IARA as a Specially Designated Global Terrorist (SDGT) organization: The Government responds that the basis of OFAC's designation of defendant IARA as an SDGT is irrelevant to this criminal proceeding. The designation of defendant IARA as an SDGT has been fully litigated and is not an issue in this case. See *IARA v. Unidentified FBI Agents*, 394 F. Supp. 2d 34 (D.D.C. Sep. 15, 2005), *aff'd in part and remanded by IARA v. Gonzales*, 477 F.3d 728 (D.C. Cir. 2007), *cert. denied by IARA v. Keisler*, 128 S. Ct. 92, Oct. 1, 2007. Moreover, the Government is not in possession of the "OFAC designation file," nor is the Government relying on the contents of this file in its case-in-chief.

Response to Motions for Bill of Particulars
by Defendants Siljander and El Siddiq

1) Names of co-conspirators will be disclosed under separate cover under seal.

2) Regarding matters occurring before the Grand Jury, other than copies of transcripts constituting witnesses' prior relevant statements, the Government respectfully declines to

provide the Grand Jury material requested. Such non-witness Grand Jury proceedings are privileged and protected by the secrecy provisions of Fed. R. Crim. P. 6. Moreover, defendant Siljander has not set forth a compelling need for the disclosure of these Grand Jury proceedings. There is a strong presumption of the regularity of Grand Jury proceedings. *United States v. McKie*, 883 F.2d 819 (9th Cir. 1987). General disclosure of Grand Jury proceedings is not warranted absent a showing of a particularized need which outweighs the policy of Grand Jury secrecy. *United States v. Murillo-Conreras*, 81 Fed. Appx. 690 (9th Cir. 2003).

Here, defendant Siljander argues that the disclosure of Grand Jury proceedings is needed for the defendant to understand the charges against him and adequately prepare a defense. This argument is belied by a simple reading of the Indictment. Count 32 of the Indictment charges defendant Siljander with obstruction of justice, in violation of 18 U.S.C. §§ 1503(a) and 1512(i). Specifically, paragraph 73 states that, from on or about December 13, 2005, and continuing until at least April 26, 2007, defendant Siljander made a number of false statements to FBI Special Agents. Paragraph 73 continues to specifically identify that, on December 13, 2005, defendant Siljander made a number of allegedly false statements, to wit: that he had not been hired

to perform any lobbying or advocacy work for defendant IARA; that he had not performed any such work; and that the payment defendant Siljander received from defendant IARA was for a book he was writing. The Indictment continues that, on April 26, 2007, defendant Siljander allegedly made additional similar false statements to FBI Special Agents. Copies of the reports prepared by the Special Agents regarding these interviews have been provided to defendant Siljander. The Government submits that the detailed information contained in the Indictment, together with the Special Agents' reports regarding the statements in question, is more than adequate for defendant Siljander to understand the nature of the offense with which he has been charged, and to prepare his defense. In addition, the transcripts of the Grand Jury proceedings which have been requested are irrelevant to these charges. The specific Grand Jury transcripts requested have no bearing on the central question regarding these charges, i.e., whether or not defendant Siljander intentionally made material false statements to FBI Special Agents. Accordingly, defendant Siljander cannot make a showing of compelling need for the disclosure of these Grand Jury proceedings.

CONCLUSION

For the reasons stated above, the defendants' various Motions for Bills of Particular should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on May 27, 2009, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/S/

Anthony P. Gonzalez
Assistant United States Attorney