

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

MUFID ELFGEEH,

Defendant.

SCHEDULING ORDER
14CR6147
15CR6052

The above named defendant was arraigned on Indictment 14-CR-6147 (the "2014 Indictment") on September 18, 2014 and on Indictment 15-CR-6052 (the "2015 Indictment") on April 29, 2015. The 2015 Indictment concerns an alleged assault that occurred while the defendant was detained on the 2015 Indictment. The 2014 indictment involves a complex case involving allegations of providing material support to a foreign terrorist organization. The discovery is voluminous and much of the information is in Arabic which requires translation. In addition, access to some of the discovery material is difficult because of security clearances. The Court has held periodic conferences with counsel on the status of discovery and is confident that both sides are proceeding in good faith and as expeditiously as possible given the volume and nature of the materials that have or will be disclosed.

By letter dated May 26, 2015, defense counsel has described the "extraordinary" volume of discovery that has and will be

disclosed, the additional resources that have been deployed to review the disclosed materials in order to be useful for the formulation of pretrial motions. Defense counsel has requested that motions for both indictments be filed by December 4, 2015 and the government does not oppose this request. Good cause having been demonstrated, it is hereby:

I. Scheduling Order.

(1) All pretrial motions, both dispositive and non-dispositive, shall be filed by **December 4, 2015**. Defense motions should be filed in accordance with Part III of this Order.

(2) All responses to pretrial motions filed in accordance with the preceding paragraph shall be filed by **January 15, 2016**.

(3) Oral argument on any pretrial motions shall be heard on **February 3, 2016** at **10:00 a.m.**

II. Motion Papers.

1. Defense counsel need not move for disclosure of evidence which has already been ordered disclosed under the terms of this Order.

2. With respect to motions to suppress, defense counsel is advised that "boilerplate" motion papers, devoid of facts, seeking suppression of unspecified evidence or asserting generic claims of constitutional violations may be rejected by this

Court. The Sixth Amendment does not require counsel to file a suppression motion in every case "merely to vindicate their professional competence without regard for the grounds supporting such motions." United States v. DiTommaso, 817 F.2d 201, 215 (2d Cir. 1987). "It is sufficient that counsel exercise[] 'professional discretion in deciding whether there are sufficient grounds' to file a motion." Id., quoting LiPuma v. Commissioner, Dep't of Corrs., 560 F.2d 84, 93 (2d Cir.), cert. denied, 434 U.S. 861 (1977). Accordingly, motions to suppress must allege facts with sufficient detail and definiteness to allow this Court to conclude that issues of fact or law exist which require Court to consider the suppression motion or hold a fact-finding hearing to resolve disputed factual issues. For example, with respect to alleged Fourth Amendment violations the motion papers must provide facts sufficient for this Court to conclude that the defendant had a cognizable expectation of privacy in the place searched. Failure to make such a showing risks denial of the suppression motion without a hearing. United States v. Ruggiero, 824 F. Supp 379, 393-94 (S.D.N.Y. 1993), aff'd, 44 F.3d 1102 (2d Cir. 1995). See also United States v. Gillette, 383 F.2d 843, 848 (2d Cir. 1967)(suppression hearing properly denied where motion was supported only by affidavit of defense counsel).

3. All counsel are reminded of their continuing duty to disclose discovery material pursuant to Rule 16(c) of the Federal Rules of Criminal Procedure.

III. Speedy Trial Exclusion Order.

Defense counsel and government counsel have made a joint motion to exclude the period of time from the date of this order until the date motions are filed from the "speedy trial clock." In accordance with the Second Circuit Speedy Trial Guidelines, Part I (C)(3)(a)-(b), and upon the authority of United States v. Mejia, 82 F.3d 1032, 1035-36 (11th Cir. 1996); United States v. Hoslett, 998 F.2d 648, 654-57 (9th Cir. 1993); United States v. Crawford, 982 F.2d 199, 203 (6th Cir. 1993); United States v. Barnes, 909 F.2d 1059, 1064-65 (7th Cir. 1990); United States v. Wilson, 835 F.2d 1440, 1444 (D.C. Cir. 1987); United States v. Montoya; 827 F.2d 143, 153 (7th Cir. 1987); United States v. Jodoin, 672 F.2d 232, 238 (1st Cir. 1982), the period of time from the date of this order until the date defense motions are due to be filed is excluded under 18 U.S.C. §3161(h)(1). In addition, the court finds that the government's and the public's interest in a speedy trial is outweighed by the defendant's interest in obtaining voluntary discovery and having sufficient time to review that discovery in order to frame appropriate motions. Therefore, the time period from the date of this order

until the date motions are due to be filed is excluded under 18 U.S.C. §3161(h)(7).

If no motions are filed by the filing date set forth in paragraph (1), the case shall be referred to the District Court Judge to whom the case is assigned for trial and the speedy trial exclusion set forth above shall terminate as of that date.

Failure by any party to raise defenses or objections, or to make requests which must be made prior to trial at the time set forth in this scheduling order or prior to any extension made by the court, shall constitute a waiver thereof. Fed. R. Crim. P. 12(f).

SO ORDERED.

/s/ Jonathan W. Feldman
JONATHAN W. FELDMAN
UNITED STATES MAGISTRATE JUDGE

Dated: May 26, 2015
Rochester, New York