

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA		§	
		§	
VS.		§	CRIMINAL NO. 3:02-CR-052-L
		§	
BAYAN ELASHI	(1)	§	
GHASSAN ELASHI	(2)	§	
BASMAN ELASHI	(3)	§	
HAZIM ELASHI	(4)	§	
INFOCOM CORPORATION	(8)	§	

UNITED STATES' MOTION AND BRIEF FOR ISSUANCE
OF AN ORDER OF FORFEITURE

_____The United States of America respectfully submits this motion and brief for issuance of an order of forfeiture as to defendants Bayan Elashi, Ghassan Elashi, Basman Elashi, Hazim Elashi, and Infocom Corporation. As grounds therefore, the United States would show the Court the following:

1. On August 21, 2003, a federal grand jury sitting in this District returned a 46 Count Superseding Indictment in this case charging defendants Bayan Elashi, Ghassan Elashi, Basman Elashi, Hazim Elashi, Ihsan Elashyi and Infocom Corporation with the following offenses: Conspiracy to violate the Export Administration Regulations and the Libyan Sanctions Regulations (18 U.S.C. § 371); False Statement (18 U.S.C. §§ 1001 and 2); Syrian Export Violations (50 U.S.C. §§ 1701-1706); Conspiracy to file false Shipper's Export Declaration forms

(18 U.S.C. § 371); Conspiracy to deal in the Property of a Specially Designated Terrorist (18 U.S.C. § 371); Dealing in the Property of a Specially Designated Terrorist (50 U.S.C. §§ 1701-1706); Conspiracy to commit Money Laundering (18 U.S.C. § 1956(h)); and Money Laundering (18 U.S.C. §§ 1956(a)(1)(B)(I) and 1957).

2. The Superseding Indictment also alleged forfeiture pursuant to 18 U.S.C. 982(a)(1) upon the conviction of defendants Bayan Elashi, Ghassan Elashi, Basman Elashi, Hazim Elashi, Ihsan Elashyi, and/or Infocom Corporation of the offense alleged in Count 14 (18 U.S.C. § 1957), and Counts 37 through 46. The forfeiture allegation included all property, real and personal, involved in the money laundering, and all property traceable to such property, including but not limited to approximately \$181,953 in United States currency. That sum represents 1) the sum of monies or value of property greater than \$10,000 involved in the financial transaction(s) in violation of 18 U.S.C. § 1957 using money derived from a specified unlawful activity, to wit; an illegal shipment of technology, goods and commodities, in violation of 50 U.S.C. §§ 1701 through 1706 (IEEPA) and 2) the sum of monies or value of property involved in the financial transactions in violation 18 U.S.C. § 1956(h) and § 1956(a)(1)(B)(1) for engaging in financial transactions with money that was the property of a Specially Designated Terrorist in violation of 50 U.S.C.

§§ 1701 through 1706 (IEEPA). The defendants will be jointly and severally liable for the money judgment.

3. On July 7, 2004, a jury found defendants Bayan Elashi, Ghassan Elashi, Basman Elashi, Hazim Elashi, and Infocom Corporation guilty of the money laundering offense alleged in Count 14 of the Superseding Indictment.¹ Defendants waived a jury on the forfeiture issue, and the Court was to consider and decide the forfeiture allegation. On April 13, 2005, a jury found the defendants Infocom Corporation, Ghassan Elashi, Bayan Elashi and Basman Elashi guilty of conspiracy to commit money laundering as alleged in Count 12 of the revised second superseding indictment (originally count 37 in the second superseding indictment). The jury also found the defendants Ghassan Elashi, Bayan Elashi and Infocom Corporation guilty of money laundering and aiding and abetting as charged in counts 13 through 21 of the revised second superseding indictment (originally counts 38 through 46 in the second superseding indictment).
4. The Court's jurisdiction is founded on 18 U.S.C. 982(a)(1), which provides that the Court, in imposing sentence on a person convicted of an offense in violation of 18 U.S.C. §§ 1956, 1957, or 1960, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property

¹ Defendant Ihsan Elashyi was found not guilty on Count 14 and was not charged in Counts 37 through 46. The defendant Hazim Elashi was not charged in Counts 37 through 46.

traceable to such property. *See United States v. Libretti*, 516 U.S. 29, 41 (1995) (criminal forfeiture is an element of the sentence imposed.)

5. In addition, 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b), provides that if any of that property as a result of any act or omission of the defendant —

- (A) cannot be located upon the exercise of due diligence;
- (B) has been transferred or sold to, or deposited with, a third party;
- (C) has been placed beyond the jurisdiction of the court;
- (D) has been substantially diminished in value; or
- (E) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in sub-paragraphs (A) through (E).

6. In accordance with Fed. R. Crim. P. 32.2(b)(1), the Court, as soon as practicable after a verdict or finding of guilty on any count in an indictment or information with regard to which criminal forfeiture is sought, shall determine what property is subject to forfeiture, which can be either specific property or a money judgment. With regard to a money judgment, the Court must determine the amount of money that the defendant will be ordered to pay. The Court's determination may be based on evidence already in the record, a plea agreement, or if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt. The United States' burden is preponderance of the evidence. *United States v. Gasanova*, 332 F.3d 297, 301 (5th Cir. 2003).

7. In accordance with Fed. R. Crim. P. 32.2(b)(2), if the Court finds the property is subject to forfeiture, it must promptly enter an order of forfeiture setting forth the amount of any money judgment. Rule 32.2(b)(3) provides that at sentencing, or at any time prior to sentencing if the defendant consents, the order of forfeiture becomes final as to the defendant and shall be made part of the judgment.
8. With regard to the amount of money requested to be forfeited based on the conviction of Bayan Elashi, Ghassan Elashi, Basman Elashi, Hazim Elashi, and Infocom Corporation for the offense alleged in Count 14, the evidence in the record establishes that \$55,703 in United States currency was property involved in that offense. Therefore, \$55,703 is forfeitable in accordance with 18 U.S.C. 982(a)(1).

With regard to the amount of money requested to be forfeited based on the convictions of Bayan Elashi, Ghassan Elashi, Basman Elashi², and Infocom Corporation for the offense alleged in Count 12 through 21, the evidence in the record establishes that \$126,250 in laundered funds was property involved in that offense. Therefore, an additional \$126,250 is forfeitable in accordance with 18 U.S.C. 982(a)(1). The total amount of funds forfeitable is \$181,953.

²The defendant Basman Elashi was acquitted in Counts 38 through 46 (Counts 13 through 21 of the revised second superseding indictment).

9. No third party notice or ancillary hearing is required, however, to the extent that the forfeiture consists of a money judgment unless and until the government locates property that may be used to satisfy it. Fed. R. Crim. P. 32.2(c)(1); (e).

CONCLUSION

THEREFORE, the United States respectfully requests that this Court enter an order directing a money judgment in the amount of \$181,953 against defendants Bayan Elashi, Ghassan Elashi, Basman Elashi, Hazim Elashi, and Infocom Corporation, for which the defendants are jointly and severally liable.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

This is to certify that the undersigned served, via electronic mail, a copy of this motion and proposed order upon counsel for each of the respective defendants. Trial counsel for defendant Hazim Elashi advised that he no longer represents Hazim Elashi and referred counsel to Hazim Elashi's appellate attorney. No other counsel responded and their position as to this motion is unknown.

/s/ James T. Jacks
JAMES T. JACKS
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2006, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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