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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)	CR. NO. S-05-240 GEB
)	
11 Plaintiff,)	GOVERNMENT'S WRITTEN MOTION
)	FOR ORDER EXCLUDING TIME
12 v.)	UNDER THE SPEEDY TRIAL ACT
)	
13 HAMID HAYAT, and)	Hearing Date: 15 July 2005
14 UMER HAYAT,)	Hearing Time: 10:00 a.m.
)	Court: Hon. G.E. Burrell, Jr.
15 Defendants.)	

16 The United States of America, by and through its undersigned
17 counsel, respectfully files this written motion in support of its
18 previous oral motion to enter an order excluding time under the
19 Speedy Trial Act, from the date of the filing of this motion through
20 August 19, 2005. The government further moves this Court to vacate
21 the trial date currently set for August 23, 2005. Both motions are
22 based on the attached memorandum of points and authorities as well

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1 as the entire record of this case.

2 DATED: July 6, 2005

Respectfully submitted,

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4 United States Attorney

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The United States of America respectfully requests the Court to
5 declare that this is a complex case for the purposes of the Speedy
6 Trial Act and to enter an order excluding time from July 1, 2005
7 through August 19, 2005. The government further moves this Court to
8 vacate the trial date currently set for August 23, 2005.

9 II.

10 PROCEDURAL HISTORY

11 On June 16, 2005, a Grand Jury returned an indictment against
12 both defendants, charging defendant Hamid Hayat with two separate
13 counts of making false statements, and defendant Umer Hayat with one
14 count of making false statements, all in violation of 18 U.S.C.
15 § 1001. On June 21, 2005, defendants were arraigned on the
16 indictment.

17 On July 1, 2005, the parties appeared before this Court for a
18 status conference. At that time, the government: 1) orally
19 indicated that it was invoking the procedures set forth under the
20 Classified Information Procedures Act ("CIPA") and requested this
21 Court to set a Section 2 status conference under CIPA; 2) orally
22 moved this Court to declare that the case was complex or unusual for
23 the purposes of the Speedy Trial Act, and to exclude time between
24 July 1 and the status conference on those grounds; and 3) orally
25 moved the Court to declare that the time between the making of the
26 government's motions and their resolution constituted excludable
27 time under the Speedy Trial Act as well.

28 Defendants opposed the government's requests for excludable

1 time findings, and asked the Court to set a trial within the
2 requirements of the Act.

3 The Court calendared a CIPA hearing for August 19, 2005. The
4 Court further calendared a trial date for August 23, 2005¹, while
5 indicating that it did not know how realistic that date was. The
6 Court asked the parties to brief the issues related to the
7 government's request for a finding of excludable time. The Court
8 further invited the government to file an additional motion with
9 respect to its invocation of CIPA.

10 III.

11 STATEMENT OF FACTS

12 A. The Required Process to Search for and Potentially Produce
13 Discovery for this Case

14 On June 20, 2005 and June 23, 2005, defendants sent the
15 government two separate requests for discovery. Copies of the
16 discovery requests are attached hereto as Exhibits A, B, C, and D.
17 Among other things, defendants requested discovery from over forty
18 federal, state and local governmental agencies, including, among
19 others, the Department of Homeland Security, the Department of
20 Justice, the Department of State, the Department of Treasury, the
21 Department of Commerce, the Department of Defense, the National
22 Security Agency, and the Central Intelligence Agency.

23 The government is responding to the pertinent defense requests
24 and its discovery obligations as expeditiously as possible. As the
25 Court is aware, when dealing with national security information,

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27 ¹Under the Speedy Trial Act, defendants are required to have a
28 trial within seventy days of their indictment (excluding the date
they were arraigned). 18 U.S.C. § 3161 (c) (1). Hence, defendants
were originally entitled to a trial prior to August 25, 2005.

1 there are certain procedures set forth under the Classified
2 Information Procedures Act which must be followed in order to ensure
3 that the defendants' rights to a fair trial are honored, and to
4 ensure that the government can protect its national security
5 interests. Below is a description of the multi-step process which,
6 by necessity, is involved with the discovery process in this case.

7 The government has initiated the first step of this process.
8 It has contacted various federal agencies and/or sent letters to
9 pertinent federal agencies, including the Department of Homeland
10 Security, the Federal Bureau of Investigation, the Department of
11 Treasury, the Department of State, the Department of Defense, and
12 agencies in the intelligence community, requesting that they review
13 their files to determine if they have information potentially
14 subject to discovery in this case.²

15 Second, once agencies, particularly those in the intelligence
16 community, are contacted, they will initiate a search for and
17 retrieve potentially relevant documents. Although it is impossible

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19 ²The government has contacted those agencies which, in its
20 belief, potentially have information germane to the prosecution. As
21 for the remaining federal agencies, the government believes that the
22 defense will need to make a threshold showing of materiality before
23 the government has an obligation to initiate a review in connection
24 with these agencies, i.e., presentation of facts which would tend to
25 show that the government agency in question is in possession of
26 information helpful to the defense. See United States v. Santiago,
27 46 F.3d 885, 894-95 (9th Cir. 1995), cert. denied, 515 U.S. 1162
28 (1995). At present, the defense has made no such showing. As for
the various state agencies, the government has no obligation to
search for records, as requested by the defense, that are in the
custody, possession, and control of state or local law enforcement
agencies. See United States v. Dominguez-Villa, 954 F.2d 562,
565-66 (9th Cir. 1992) (government's has a discovery obligation
"only with respect to documents within the federal government's
actual possession, custody, or control.") If, for some reason, the
defense believes otherwise, this is an issue that will need to be
adjudicated before the Magistrate Court.

1 to estimate with precision how long searches will take, the
2 government believes, based on the nature of the allegations in this
3 case and its experience in similar cases, that it will take a
4 minimum of *thirty to sixty days* for the agencies to complete their
5 search.

6 Third, if an agency finds information that is potentially
7 germane, the prosecution team from this District likely will have to
8 travel to Washington, D.C., to review material at the agencies'
9 headquarters.

10 Fourth, if the prosecution team concludes that there is
11 relevant classified information at a particular agency that is
12 subject to discovery, the prosecution team will then need sufficient
13 time to discuss these issues with the agency involved and formulate
14 its litigation position with respect to this information, taking
15 into account issues related to the government's national security
16 interests.

17 Fifth, assuming the government concludes that there is
18 classified material subject to discovery, or arguably subject to
19 discovery, the government would need to make submissions to this
20 Court under CIPA. The Court would be asked, in an ex parte and in
21 camera motion specifically allowed under CIPA, to make
22 determinations regarding what, in fact, is subject to discovery.
23 See 18 U.S.C. App. III, §4 ("[t]he court, upon sufficient showing,
24 may authorize the United States to delete specified items of
25 classified information from documents to be made available to the
26 defendant through discovery under the Federal Rules of Criminal
27 Procedure, to substitute a summary of the information for such
28 classified documents, or to substitute a statement admitting the

1 relevant facts that classified information would tend to prove.");
2 United States v. Sarkissian, 841 F.2d 959, 965 (9th Cir. 1988) (ex
3 parte proceedings under CIPA concerning national security
4 information appropriate).

5 Sixth, the Court would then need to adjudicate these discovery
6 matters. By necessity, all members of the Court's staff who will be
7 required to receive, store and/or review classified information will
8 need to have appropriate security clearances. (In all likelihood,
9 thus, this could include any Magistrate Judge, secretary, law clerk,
10 clerk's office personnel, and court reporters involved in any part
11 of this process. Additionally, arrangements will have to be made
12 for storage of classified documents with the assistance of a court
13 appointed Court Security Officer).

14 Seventh, if the Court determines that classified information
15 shall be disclosed, and the government agrees that the information
16 can be disclosed, the defense would then need sufficient time to
17 review the materials. Moreover, if the Court determined that
18 information had to be disclosed to the defense in a classified form
19 (because no other non-classified substitute form is deemed
20 sufficient), then the defense attorneys, as well as their pertinent
21 staff members, also would need to have the appropriate security
22 clearances in order to see or handle these classified materials
23 pursuant to appropriate protective orders limiting the use of this
24 information.

25 Of significance, Government counsel have been informed that
26 there is at least one document that is in the possession, custody
27 and control of the government which is potentially discoverable. It
28 is reasonably likely that the government will submit this document

1 to the Court ex parte, and in camera, pursuant to CIPA, for a
2 determination of whether it is discoverable. The government's
3 request for and review of pertinent agency evidence has just
4 commenced. Thus, it is reasonably foreseeable that additional
5 classified and potentially discoverable information will be
6 encountered.

7 In sum, the process to obtain and review discovery for this
8 matter, particularly classified materials, will be complicated and
9 time consuming. The government will not be in a position to
10 reasonably assess how much unclassified and classified information
11 exists in these agencies for at least 30-60 days. Thereafter, it
12 will need to review these materials, determine what is discoverable,
13 and file appropriate motions with the Court in connection with the
14 materials deemed subject to or potentially subject to discovery.

15 B. The Government's Need to Translate and Review Items Seized from
16 Defendants' Home

17 On June 7, 2005, a search warrant was executed at the home
18 occupied by defendants at 302 Acacia Street, Apartment A, Lodi,
19 California. Among other thing, agents seized the following items:

- 20 1. Documents in various forms totaling approximately 2000
21 pages: According to the F.B.I., the majority of these
22 materials are in foreign languages, including Urdu,
23 Pashtu, and Arabic. Some of the materials are in English.
24 The F.B.I. (including linguists) is in the process of
25 reviewing these materials and estimates that it needs 3-4
26 weeks to complete the necessary review.
- 27 2. A computer hard drive. According to the F.B.I., there are
28 approximately 371 files on this computer drive, all

1 apparently in the English language. The F.B.I. is in the
2 process of reviewing these materials and estimates that it
3 needs 3 weeks to complete the necessary review.

4 3. A facsimile machine. The F.B.I. is still processing and
5 reviewing this evidence. The F.B.I. likely will know by
6 July 7 or July 8 whether any of the information thereon is
7 in a foreign language. The government will then provide
8 an estimate regarding how much time is needed for the
9 review of this evidence.

10 4. A cell phone. The F.B.I. is still processing and
11 reviewing this evidence. The current review suggests that
12 relevant data is in the English language. The F.B.I.
13 likely will know by July 7 or July 8, 2005, the nature and
14 quantity of data stored on this phone. The government
15 will then provide an estimate regarding how much time is
16 needed for the review of this evidence.

17 5. Approximately 400 forms of loose media (such as VHS tapes,
18 cassettes, and CDs). Presently, the F.B.I. has reviewed
19 all of these materials (which were in a variety of
20 languages) and has located what appears to be three
21 pertinent VHS tapes.

22 A thorough and complete review of all these items, including
23 translation of the same, is essential to the just prosecution of
24 this case to determine whether any material is inculpatory,
25 exculpatory, or otherwise relevant to the case. At present, the
26 government estimates that it needs approximately 3 to 4 weeks to
27 complete the necessary review.

28 The defense, of course, suggested at the July 1 hearing that

1 they have reviewed these materials and that, in their judgment,
2 these materials are "fluff." The government cannot agree. Take,
3 for example, what the government has learned based on its
4 examination of the items seized from defendant Hamid Hayat at the
5 time of his arrest. Defendant's wallet contained various
6 identification documents, as well as a scrap of paper which included
7 a brief statement in a non-English language. On first blush, one
8 might have assumed that there was nothing of evidentiary
9 significance in the wallet. In fact, when the phrase was translated
10 from Arabic, it read, "Lord let us be at their throats, and we ask
11 you to give us refuge from their evil". Such a piece of evidence,
12 in the government's view, is quite relevant to the question of
13 whether Hamid Hayat falsely denied that he had attended a terrorist
14 camp. It corroborates defendant Hamid Hayat's videotaped admission
15 that he, in fact, had attended such a camp. The point is this: the
16 government must review all of these seized materials; it must turn
17 over every stone. The government, perhaps unlike the defense,
18 cannot and will not simply assume that these seized materials are
19 immaterial.

20 IV.

21 ARGUMENT

22 A. Time Is Excluded Under the Speedy Trial Act From July 1, 2005,
23 the Time the Government Filed Its Motion, Through the Court's
24 Ruling Thereon

25 Pursuant to the Speedy Trial Act (the "Act"), a defendant must
26 be brought to trial within seventy days of his indictment or of his
27 initial appearance before a judicial officer, whichever is later.
28 18 U.S.C. § 3161(c)(1). The Act allows certain periods of delay to

1 be excluded from the seventy day limit, based on, among other
2 things, either a request by the defense or the government. 18
3 U.S.C. § 3161(h)(1-8).

4 Under § 3161(h)(1)(F), any delay that results from pending
5 motions, from the time of filing to the conclusion of the hearing,
6 is automatically excludable from the Speedy Trial Act time
7 limitations. United States v. Henderson, 746 F.2d 619, 622 (9th
8 Cir. 1984), aff'd, 476 U.S. 321 (1986). In addition, an oral
9 motion, as well as a written motion, is sufficient to trigger the
10 exclusionary provisions of § 3161(h)(1)(F). See United States v.
11 Rodriguez, 63 F.3d 1159, 1164 (1st Cir. 1999), cert. denied, 516
12 U.S. 1032 (1995); United States v. Arbelaez, 7 F.3d 344, 347 (3d
13 Cir. 1993); United States v. Noone, 913 F.2d 20, 27, n. 11 (1st
14 Cir. 1990), cert. denied, 500 U.S. 906 (1991); United States v.
15 Louis, 814 F.2d 852, 857 (2d Cir. 1987); United States v. Richmond,
16 735 F.2d 208, 212 (6th Cir. 1984); United States v. Cobb, 697 F.2d
17 38, 43 (2d Cir.1982), disapproved on other grounds by United States
18 v. Matsushita, 794 F.2d 46, 51 (2d Cir. 1986); see also United
19 States v. O'Bryant, 775 F.2d 1528, 1532 (11th Cir. 1985)³.

20 In this case, the government made an oral motion for excludable
21

22 ³ Contrary to defense counsel's suggestion at the July 1, 2005
23 hearing, this Court is not required to address the merits of a filed
24 motion to determine whether its filing triggers application of the
25 Speedy Trial Act. See United States v. Springer, 51 F.3d 861, 865
26 (9th Cir. 1995) ("The statute [related to excludable time for the
27 filing of a motion under 18 U.S.C. § 3161(h)(1)(F)] does not contain
28 a requirement that the merits of a motion be assessed before a delay
is permitted. In fact, we have eschewed requests that we assess the
reasonableness of a delay that results from the making of a pretrial
motion. We now decline to further complicate an already complicated
area of the law by requiring a district court to assess the merits
of a motion before it determines that an exclusion of time will be
permitted."), cert. denied, 516 U.S. 861 (1995).

1 time on July 1, 2005 during the status conference. As such, the
2 oral motion triggered an exclusion of time from July 1 through the
3 date the Court adjudicates the motion.

4 The Court, of course, is not obligated by law to make a
5 specific finding with respect to an exclusion premised on pending
6 motions. United States v. Aviles-Alvarez, 868 F.2d 1108, 1112 (9th
7 Cir. 1989) (Because delay due to the pendency of a pretrial motion is
8 automatically excluded, a district court is not required to enter an
9 order reflecting excludable delay due to a pending motion). This
10 notwithstanding, the Court is requested to make such a finding so
11 that all parties to this litigation plainly know, for planning
12 purposes, when the Speedy Trial Act exclusion commenced.

13 B. Time Should Be Excluded From July 1, 2005 to August 19, 2005
14 Because The Case Is Unusual or Complex

15 Excludable delays include those where the court finds that the
16 ends of justice served by the continuance outweigh the best
17 interests of the public and the defendant in a speedy trial. 18
18 U.S.C. § 3161(h)(8)(A). There are multiple and non-exclusive
19 factors which a Court may consider in making an ends of justice
20 excludable time determination:

21 The factors, among others, which a judge shall consider in
22 determining whether to grant a continuance under
[§3161(h)(8)(A)] in any case are as follows:

23 (i) Whether the failure to grant such a continuance in the
24 proceeding would be likely to make a continuation of such
25 proceeding impossible, or result in a miscarriage of
justice.

26 (ii) Whether the case is so unusual or so complex, due to
27 the number of defendants, the nature of the prosecution,
28 or the existence of novel questions of fact or law, that
it is unreasonable to expect adequate preparation for
pretrial proceedings or for the trial itself within the
time limits established by this section.

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2 (iv) Whether the failure to grant such a continuance in a
3 case which, taken as a whole, is not so unusual or so
4 complex as to fall within clause (ii), would deny the
5 defendant reasonable time to obtain counsel, would
6 unreasonably deny the defendant or the Government
continuity of counsel, or would deny counsel for the
defendant or the attorney for the Government the
reasonable time necessary for effective preparation,
taking into account the exercise of due diligence.

7 18 U.S.C. § 3161(h) (8) (B) .

8 Significantly, an ends of justice continuance may be granted
9 only if it satisfies two requirements: (1) the continuance must be
10 specifically limited in time; and (2) it must be justified on the
11 record with reference to the facts as of the time the delay is
12 ordered." United States v. Lloyd, 125 F.3d 1263, 1268 (9th Cir.
13 1997) .

14 The case at bar is unusual and complex based on the nature of
15 the prosecution, defendants' discovery requests, and legal and
16 factual issues in connection with potentially discoverable
17 classified information in the case (including application of the
18 Classified Information Procedures Act) .

19 As a preliminary matter, the charges in this case, standing
20 alone, are unusual. Defendants are charged with making a false
21 statement in a matter "involving international and domestic
22 terrorism." Indictment, Counts 1-3⁴. This is not a "garden-variety"

24 ⁴Defendant Hamid Hayat is charged with falsely denying on June
25 3, 2005: that he was not involved in any way with any type of
26 terrorist organization, that he never attended any type of terrorist
27 training camp, that he never attended a jihadist training camp, that
28 he never attended a terrorist training camp in Pakistan, and that he
would never be involved in anything related to terrorism.
Indictment, Count 1. Hamid Hayat is further charged with falsely
denying on June 4, 2005: that he never attended a terrorist camp,
that he never received any training directed toward a Jihad against

1 false statement case, by any stretch of the imagination.

2 More to the point, the case, because it relates to
3 international terrorism, has raised complex and unusual factual and
4 legal issues. Discovery, and likely pre-trial litigation related
5 thereto, are and will be complicated and extraordinary in this case.
6 Defendants have asked the government for discovery from numerous
7 government agencies, including our nation's intelligence agencies.
8 At present, the government is aware of at least one classified
9 document which is in the possession of the government which arguably
10 may be discoverable in this case. Moreover, it is reasonably
11 foreseeable that additional classified and potentially discoverable
12 information will be encountered.

13 This now triggers a complex, but nevertheless necessary, review
14 process due to the scope of the search involved and due to the
15 potential sensitivity of the information subject to review. To
16 recap, the government has contacted various federal agencies to
17 commence collection of information potentially germane to this case.
18 The government will not be in a position to reasonably assess how
19 much unclassified and classified information exists in these
20 agencies for at least 30-60 days. Thereafter, the government will
21 need to review these materials, determine what is discoverable, and
22 file appropriate motions with the Court in connection with the
23 materials deemed subject to or potentially subject to discovery.

24 _____
25 the United States, and that he never received any weapons training
26 at a jihadist camp. Indictment, Count 2.
27 Defendant Umer Hayat is charged with falsely denying on June 4,
28 2005: that he had no first hand knowledge of terrorist training
camps in Pakistan that would prepare people to fight for Jihad, and
that his son, Hamid Hayat, did not attend any terrorist or jihadist
training camps. Indictment, Count Three.

1 Also for present purposes, the Court will need to have sufficient
2 time to initiate those procedures required under CIPA.

3 Given all this, it is clear that this case is unusual and
4 complex for the purposes of the Speedy Trial Act, due to the nature
5 of the prosecution, and the existence of novel and difficult
6 questions of fact and law related to discovery of information from a
7 large number of governmental agencies, potential discovery of
8 classified information, and application of CIPA.

9 Indeed, a number of district courts have held, in similar
10 circumstances, that prosecutions involving classified information
11 and application of CIPA are complex or unusual cases for the
12 purposes of the Speedy Trial Act. See United States v. Noriega, 746
13 F. Supp. 1548, 1559 (S.D. Fla. 1990) (ruling on a separate motion for
14 severance by co-defendant, "[T]he Court, by separate order, granted
15 an "ends of justice" continuance of the trial to January 28, 1990.
16 The continuance was sought by Defendant Noriega Pursuant to §§
17 3161(h) (8) (A) and 3161(h) (8) (B) (ii), the Court entered its finding
18 that this case is both unusual and complex and accordingly warranted
19 a continuance. Specifically, the Court found that this case
20 involved several novel issues due to the presence of Noriega, the
21 former leader of Panama, and that discovery would be both
22 complicated and extensive, covering thousands of documents, many of
23 which are sensitive or classified and therefore subject to elaborate
24 security measures as well as the time-consuming procedures set forth
25 in the Classified Information Procedures Act ("CIPA"), 18 U.S.C.
26 App. §§ 1- 16." (emphasis added); United States v. North, 1988 W.L.
27 148511 (D.D.C. Sept. 22, 1988) (granting government motion for
28 excludable time for approximately four months, with the consent of

1 defendant, on the basis of complexity; "It is further found that the
2 case is extremely unusual and complex, involving numerous and novel
3 issues of law and fact, including but not limited to issues
4 involving the Classified Information Procedures Act (CIPA), such
5 that it is in the interests of justice to exclude time as to the
6 defendant North until the time when defendant North submits notice
7 under Section 5 of CIPA"); United States v. Al Arian, 267 F.
8 Supp. 2d 1258, 1263 (M.D. Fla. 2003) (finding case complex, among
9 other things, because, "The government is making available to the
10 Defendants 21,000 hours of telephone recordings. Almost all of the
11 conversations are in Arabic and have to be translated. Most of the
12 21,000 hours of recorded conversations are still classified . . . ,
13 meaning that interpreters hired by Defendants will likely have to
14 obtain a security clearance. In addition to the telephone
15 recordings, the government is in possession of five hundred fifty
16 videotapes, thirty hard drives from computers, hundreds of boxes of
17 documentary evidence, and numerous foreign documents (most in Hebrew
18 from Israel.").

19 At the July 1, 2005 hearing, defense counsel opposed the
20 government's request for excludable time arguing, in part, that the
21 government should have already collected this discovery information
22 before charging defendants. This argument misses the mark for a
23 number of reasons. First, it should be noted that this is an
24 extremely fast moving and evolving investigation and prosecution
25 which is in its early stages. Defendant Hamid Hayat was first
26 interviewed by the F.B.I. on or about May 30, 2005, when his plane
27 was diverted to Japan. Defendants Hamid Hayat and/or Umer Hayat
28 were then interviewed at various times between June 3rd and 5th in

1 the Eastern District. Defendants were indicted on June 16th.
2 Defendants made their wide-ranging discovery requests on June 20th
3 and 23rd of this month. And, at present, the government has already
4 initiated contacts with relevant federal agencies to begin the
5 collection of potential discoverable information. Given this, it is
6 wholly unreasonable for the defense to suggest that the government
7 somehow has not acted diligently with respect to the defense
8 discovery requests.

9 More importantly, the defendants cannot have it both ways.
10 They cannot task the government to undertake what promises to be an
11 arduous, lengthy and time consuming search for discovery information
12 and, at the same time, deprive the government of the reasonable
13 amount of time to complete that task.

14 In sum, given the nature of the prosecution, and the complex
15 legal and factual issues related to discovery of information from a
16 large number of governmental agencies, potential discovery of
17 classified information, and application of CIPA, it is wholly
18 reasonable to exclude time through August 19, 2005, to allow the
19 government to conduct the initial discovery process described
20 herein, and to provide the Court with adequate time to implement
21 procedures necessary for probable CIPA litigation related. The ends
22 of justice served by a continuance through August 19, 2005 outweigh
23 the best interests of the public and the defendant in a speedy trial
24 within the normally required 70-day time limitation.

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1 C. This Case Is Also Unusual Or Complex Based On the Nature of the
2 Prosecution, and the Need For the Government To Review
3 Voluminous Seized Materials in Multiple Foreign Languages

4 This case is also complex and unusual for the purposes of the
5 Speedy Trial Act due to the nature and volume of evidence seized
6 from the Hayat home and the government's need to review the same.
7 As described above, the government has seized thousands of pages of
8 potentially germane documents (and other items) from the Hayat home,
9 many of which are in Urdu, Pashtu and Arabic. The government needs
10 to thoroughly review this evidence. At present, the government has
11 begun the process of reviewing and, as appropriate, translating
12 these materials. It is estimated that the government will need 3-4
13 weeks to complete this process. Given this, it is wholly reasonable
14 to exclude time through August 19th to allow the government
15 sufficient time to complete its review of these materials.

16 Numerous courts have found, in circumstances similar to the
17 case at hand, that it is appropriate to exclude time under the
18 Speedy Trial Act based on the existence of voluminous evidence and a
19 party's need to review such evidence. See, e.g., United States v.
20 Thomas, 774 F.2d 807, 810 (7th Cir. 1985), cert. denied, 475 U.S.
21 1024 (1986) (affirming excludable time finding where "the case
22 involved six defendants and thousands of financial documents which
23 had been secured through discovery."); United States v. Ruggiero,
24 726 F.2d 913, 925 (2d Cir.) ("The continuances granted ... were
25 proper in light of the large volume of evidence, the complexity of
26 the case, and the continuing investigation."), cert. denied, 469
27 U.S. 831 (1984), abrogated on other grounds, 522 U.S. 52 (1997)
28 (emphasis added); see also United States v. Jean, 25 F.3d 588, 594

1 (7th Cir. 1994) (affirming exclusion of time to file charges; "The
2 record reveals that the government had a large amount of evidence to
3 review and that [defendants] could have been involved in a
4 significantly larger conspiracy than was eventually charged. Given
5 these circumstances, it was completely within the court's discretion
6 to determine that the government would need more time to file an
7 indictment against [defendants].") (emphasis added); United States v.
8 Golomb, 754 F.2d 86, 88 (2d Cir. 1985) ("The District Court properly
9 concluded that a brief period of time [for the filing of charges]
10 was excludable in the interests of justice because of the need to
11 complete ongoing grand jury investigations that were unraveling
12 Golomb's complex transactions.").

13 Moreover, it is appropriate to exclude time based on the
14 existence of voluminous evidence in a foreign language and a party's
15 need to review such evidence. See Al Arian, 267 F. Supp. 2d at 1263
16 (excluding time based, in part, on need to review voluminous
17 discovery in foreign languages).

18 In sum, given the nature of the prosecution, and the complex
19 factual issues related to review of voluminous seized materials
20 currently in foreign languages, it is wholly reasonable to exclude
21 time through August 19, 2005, to allow the government sufficient
22 time to review these materials.

23 D. The Court Should Vacate the August 23, 2005 Trial Date

24 For all the reasons stated above, the government does not
25 believe that an August 23rd date, to quote the Court, "is realistic"
26 and does not believe that the setting of fictional trial dates
27 serves the best interests of the parties or the Court.

28 Firstly, as described above, adequate time is required for the

1 government to conduct its discovery review (including review of
2 potential classified materials), for the Court to initiate required
3 procedures in preparation for CIPA litigation, and for the
4 government to review the materials seized from the defendants' home.

5 Secondly, one would assume that the defense intends to file at
6 least some pre-trial motions in this case. At the status
7 conference, defense counsel for Umer Hayat suggested that he was
8 considering a motion for bail review. Moreover, it is commonplace
9 for defendants, in cases such as this one, to seek suppression of
10 statements and/or seized evidence. Perhaps defendants wish to
11 proceed to trial without filing motions. That, of course, is their
12 decision. If, however, defendants wish to file pre-trial motions,
13 adequate time must be allowed for this litigation. And, of course,
14 the time between the filing of any motion and its adjudication will
15 be automatically excluded from the Speedy Trial Act computations.

16 In short, an August 23rd trial date does not appear to be
17 genuinely feasible. Given that, the trial date should be vacated.
18 The government stands ready to try this matter as soon as it is
19 possible, and certainly within the legal time limits of the Speedy
20 Trial Act. There is no reason at this juncture, however, to set a
21 trial date when it is clear that it is not realistic.

22 V.

23 CONCLUSION

24 In conclusion, for the reasons stated, the Court should enter
25 an order excluding time from July 1, 2005 through August 19, 2005
26 based on the pendency of the government's motion to exclude time,
27 and based on case complexity. In addition, this Court should vacate
28 the August 23, 2005 trial date.