

UNITED STATES OF AMERICA,)
)
v.) Crim. No. 01-455-A
)
ZACARIAS MOUSSAOUI)

Undersigned counsel, in response to the Government’s April 8, 2002 “Motion and Incorporated Memorandum Regarding Mental Health Evidence and Order”, and for the reasons set forth below, objects to the government’s requested June 21, 2002 deadline for filing notice of the intent to introduce testimony by a mental health professional, or evidence based on a mental health examination (“mental health testimony”). The requested notice date does not take into consideration the events of today’s hearing—that Mr. Moussaoui has now asked that he be permitted to represent himself, and advised the court that he did not want to present a mental health defense. This Court has ordered that Mr. Moussaoui be examined for competency to make that decision, an examination to be conducted by a psychiatrist to be appointed by the Court.¹

¹ The Court directed counsel to meet and confer to propose an order to guide the competency evaluation, and to recommend a psychiatrist to conduct the examination.

understanding of the proceedings against him”). However, it is impossible for counsel to now acquiesce in Mr. Moussaoui’s stated determination to not proceed with a mental health presentation at the penalty phase especially in light of developments in open court today, until the Court resolves the question of competency and Mr. Moussaoui’s request to proceed pro se.²

For the foregoing reasons, undersigned counsel object to the June 21, 2002 date requested by the government for a mental health notice, and to paragraph 5 of the proposed order.

/S/

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²Counsel also object to paragraph 5 of the proposed order. Failure to submit to an examination as ordered or to confirm the first notice should not result in forfeiture of the right to present mental health testimony. Instead, the Court should consider an appropriate sanction, given the nature of the refusal, the grounds for refusal, and the impact on the government’s right to rebut.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Response to the Government's Motion and Incorporated Memorandum Regarding Mental Health Evidence and Order was served via facsimile and first class mail upon AUSA Robert A. Spencer, AUSA David Novak, and AUSA Kenneth Karas, U.S. Attorney's Office, 2100 Jamieson Avenue, Alexandria, Virginia 22314 this 22d day of April, 2002.

/S/

Frank W. Dunham, Jr.