

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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

**MOTION TO AMEND BRIEFING SCHEDULE AS TO
GOVERNMENT’S NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH**

Defense counsel moves the Court to amend the briefing schedule set forth in its Order of April 17, 2002, to allow him to file a reply brief in relation to *Defendant’s Motion to Strike Government’s Notice of Intent to Seek a Sentence of Death* (hereinafter “Motion to Strike”).

In its Order, the Court stated that, consistent with practice in this Court, the defendant would not be allowed to file a reply brief. In fact, this Court has allowed reply briefs on this issue in another case. In *United States v. Wills*, 99-CR-396-ALL, this Court not only allowed Wills to file a reply brief, but it allowed the government to file an additional response (see attached Docket Report, Docket entries 127, 141, 143 and 145). With the exception of that final response, the briefing schedule was consistent with undersigned counsel’s experience in this district and the Western District of Virginia.

Moreover, it is consistent with sound judicial practice, since the government’s *Notice of Intent to Seek a Sentence of Death* (hereinafter “Notice”) is, in essence a charging document, equivalent to an indictment. The defendant’s Motion to Strike is, therefore, equivalent to a motion to dismiss. A motion to dismiss is the first pleading which contains citation to authority and legal analysis; the Notice itself does not. The first time the government sets forth its argument and the authority upon which it relies is in its memorandum opposing the Motion to Strike. Consequently,

the first time the defendant would have the opportunity to respond to the government's argument would be in his reply, as is always the case in motions practice. Absent that reply, the Court would not have the benefit of the defendant's first response to the government's argument and authority until the argument in court. For example, the *Memorandum in Support of the Motion to Strike* is limited when discussing possible acts on which the government might predicate a death sentence to those alleged in the indictment. Should the government seek to rely on other acts not alleged in the indictment, we would, of course, want to address those as well in addition to being able to address the entire issue in the context of *U.S. v. Apprendi*, 530 U.S. 466 (2000). It is to the defendant's and the Court's advantage to have the final briefing from the defense once the government has articulated its death penalty theory.

Therefore, to aid the Court in a fair resolution of the critical death notice objections in this case, which address the issue of death eligibility itself, the Court should amend its Order to allow for the filing of a reply brief by the defendant. The proceedings need not be delayed, since the denial of Mr. Moussaoui's request for consultation with an Islamic scholar have resulted in the Objections being filed well before they are due.

Respectfully submitted,
ZACARIAS MOUSSAOUI
By Counsel

/S/

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Amend Briefing Schedule as to Government's Notice of Intent to Seek a Sentence of Death 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 25th day of April, 2002.

_____/S/
Frank W. Dunham, Jr.

Docket as of March 18, 2002 6:07 pm

Web PACER (v2.3)

U.S. District Court
Eastern District of Virginia (Alexandria)
CRIMINAL DOCKET FOR CASE #: 99-CR-396-ALL

USA v. Wills

Filed: 11/03/99
Dkt# in other court: None

Case Assigned to: Judge Leonie M. Brinkema

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aka
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aka
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[term 03/16/01]

- Christopher Andaryl Wills for [12-2] motion by Christopher Andaryl Wills for Jencks Material, set for 9:00 5/11/01 for Christopher Andaryl Wills for [7-1] motion by Christopher Andaryl Wills for Speedy Trial, set for 9:00 5/11/01 for Christopher Andaryl Wills for [5-1] motion by Christopher Andaryl Wills to proceed Pro Se. (clar)
[Entry date 04/13/01]
- 4/13/01 121 Letter from USCA as to Christopher Andaryl Wills that a petition for writ of certiorari has been filed in this case. (psco) [Entry date 04/17/01]
- 4/16/01 122 Proposed Jury Questionnaire and Motion and Memorandum of Law in support of Inclusion of Capital Questions in Proposed Jury questionnaire and Inclusion of Capital questions during pretrial voir dire by USA as to Christopher Andaryl Wills (psco) [Entry date 04/17/01]
- 4/16/01 123 MOTION by Christopher Andaryl Wills to Dismiss the Indictment as Insufficiend and Defective for failure to comply with Fed. R. Crim. P. 7(c) and Provisions of the fifth and sixth Amendment's Indictment clause and/or in the Alternative renewed Motion request for a Bill of Particulars (jcup) [Entry date 04/19/01]
- 4/16/01 124 MOTION by Christopher Andaryl Wills for Disclosure and/or in-camera inspection of Grand Jury Minutes (with Exhibit's A-E) (jcup) [Entry date 04/19/01] [Edit date 04/19/01]
- 4/16/01 125 MOTION by Christopher Andaryl Wills for Restrictions on Admission of Victim Impact Evidence (jcup)
[Entry date 04/19/01]
- 4/16/01 126 MOTION by Christopher Andaryl Wills to Bar Admission of Oral Statements (jcup) [Entry date 04/19/01]
- 4/16/01 127 MOTION by Christopher Andaryl Wills to Strike Death Notice (jcup) [Entry date 04/19/01]
- 4/16/01 128 Listing of Unresolved Motions by Christopher Andaryl Wills (jcup) [Entry date 04/19/01]
- 4/16/01 129 MOTION by Christopher Andaryl Wills challenging the Constitutionality of 18 U.S.C. 3591, Et Seq., or to Strike all or part of the government's Notice of Intent to seek the Death Penalty, by Christopher Andaryl Wills for Discovery and an Evidentiary Hearing regarding the application of the Federal Death Penalty (filed with Exhibit's A-J) (jcup)
[Entry date 04/19/01] [Edit date 04/19/01]
- 4/16/01 130 MOTION by Christopher Andaryl Wills SEALED MOTION (psco)
[Entry date 04/20/01]
- 4/20/01 131 MOTION as to Christopher Andaryl Wills by USA to Extend Time to Respond to Defendant's Death Penalty Motions (psco)
[Entry date 04/20/01]
- 4/20/01 138 ORDER as to Christopher Andaryl Wills granting [131-1] motion by USA to Extend Time to Respond to Defendant's Death Penalty Motions as to Christopher Andaryl Wills (1) Ordered

that the U.S. file any rebuttal briefs by close of business Monday, May 7, 2001. All death penalty related motions will be heard on May 11, 2001 at 9:00 a.m. Defendant pro se should notice those motions (not death penalty related) for hearing after June 1, 2001. The Government need not respond to those motions until deft. notices them for hearing.

(Signed by Judge Leonie M. Brinkema) Copies Mailed: yes (psco) [Entry date 04/26/01] [Edit date 04/26/01]

- 4/23/01 132 ORDER as to Christopher Andaryl Wills granting [130-1] SEALED MOTION as to Christopher Andaryl Wills (1) (Signed by Judge Leonie M. Brinkema) (psco) [Entry date 04/24/01]
- 4/23/01 135 RESPONSE by Christopher Andaryl Wills to [131-1] motion by USA to Extend Time to Respond to Defendant's Death Penalty Motions (psco) [Entry date 04/24/01]
- 4/23/01 136 TRANSCRIPT filed in case as to Christopher Andaryl Wills for dates of February 22, 2001 for Status Conference before LMB (psco) [Entry date 04/24/01]
- 4/23/01 137 TRANSCRIPT filed in case as to Christopher Andaryl Wills for dates of March 23, 2001 Motion Hrg. before LMB (psco) [Entry date 04/24/01]
- 4/24/01 133 TRANSCRIPT filed in case as to Christopher Andaryl Wills for dates of December 13, 1999 Arraignment before CMH (psco) [Entry date 04/24/01] [Edit date 04/25/01]
- 4/24/01 134 TRANSCRIPT filed in case as to Christopher Andaryl Wills for dates of November 22, 1999 Arraignment before CMH (psco) [Entry date 04/24/01] [Edit date 04/25/01]
- 4/26/01 -- Motion hearing as to Christopher Andaryl Wills re: [129-1] motion by Christopher Andaryl Wills challenging the Constitutionality of 18 U.S.C. 3591, Et Seq., or to Strike all or part of the government's Notice of Intent to seek the Death Penalty, [129-2] motion by Christopher Andaryl Wills for Discovery and an Evidentiary Hearing regarding the application of the Federal Death Penalty (filed with Exhibit's A-J), [127-1] motion to Strike Death , [126-1] motion to Bar Admission of Oral Statements. (psco) [Entry date 04/26/01]
- 4/30/01 139 UNDER SEAL MOTION by Christopher Andaryl Wills by Christopher Andaryl Wills (psco) [Entry date 05/03/01]
- 4/30/01 140 UNDER SEAL MOTION by Christopher Andaryl Wills by Christopher Andaryl Wills (psco) [Entry date 05/03/01]
- 5/1/01 141 RESPONSE by USA to Defendant's Motion and Memorandum in support of his motion challenging the constitutionality of 18 USC 3591. Et. Seq., or to strike all or part of the Government's Notice of intent to seek the death penalty and for discovery and an evidentiary heargin regarding the application of the federal death penalty in this district and elsewhere and for an evidentiary hearing on the sufficiency of the statutory and non-statutory aggravating circumstances. (psco) [Entry date 05/03/01]

5/1/01 142 RESPONSE by USA as to Christopher Andaryl Wills re [125-1] motion by Christopher Andaryl Wills for Restrictions on Admission of Victim Impact Evidence (psco) [Entry date 05/03/01]

5/7/01 143 Reply by Christopher Andaryl Wills to Government's Response [142-1] to Motion Challenging the Constitutionality of 18 USC 3591, ET SEQ., or to strike all or part of the Government's Notice of Intent to seek the death penalty and for discovery and an evidentiary hrg. regarding the application of the federal death penalty in this district and elsewhere and for an evidentiary hrg. on the sufficiency of the statutory and non-statutory aggravating circumstances. (psco) [Entry date 05/08/01]

5/7/01 144 RESPONSE by Christopher Andaryl Wills to Government's Response [142-1] to motion for Restrictions on admission of victim impact evidence. (psco) [Entry date 05/08/01]

5/8/01 145 RESPONSE by USA as to Christopher Andaryl Wills re [129-1] motion by Christopher Andaryl Wills challenging the Constitutionality of 18 U.S.C. 3591, Et Seq., or to Strike all or part of the government's Notice of Intent to seek the Death Penalty (psco) [Entry date 05/08/01]

5/11/01 146 ORDER as to Christopher Andaryl Wills, Appointing Expert regarding the jury selection process (Signed by Judge Leonie M. Brinkema) Copies Mailed: yes (psco) [Entry date 05/14/01]

5/11/01 147 SEALED ORDER as to Christopher Andaryl Wills granting [139-1] motion by Christopher Andaryl Wills as to Christopher Andaryl Wills (1) [Filed Underseal] (Signed by Judge Leonie M. Brinkema) Copies Mailed: 05.11.01 (rtra) [Entry date 05/17/01]

5/11/01 148 SEALED ORDER as to Christopher Andaryl Wills granting [140-1] motion by Christopher Andaryl Wills as to Christopher Andaryl Wills (1) [Filed Underseal] (Signed by Judge Leonie M. Brinkema) Copies Mailed: 05.11.01 (rtra) [Entry date 05/17/01]

5/11/01 149 NOTICE by Christopher Andaryl Wills as to Christopher Andaryl Wills-FILED UNDERSEAL (rtra) [Entry date 05/17/01]

5/11/01 150 SEALED MOTION by Christopher Andaryl Wills (rtra) [Entry date 05/17/01]

5/11/01 151 SEALED ORDER as to Christopher Andaryl Wills granting [150-1] motion as to Christopher Andaryl Wills (1) (Signed by Leonie M. Brinkema) Copies Mailed: 05.11.01 (rtra) [Entry date 05/17/01]

5/11/01 -- Minute entry as to Christopher Andaryl Wills : before Judge Leonie M. Brinkema (Reporter: Thomson) USA appeared through: Kevin DiGregory/James Trump Dft(s) appeared through: Pro Se w/stand-by counsel Alan Yamamoto/Jonathan Shapiro. Matter came on for: Deft's motion to Bar Oral statements-Denied; Deft's renewed motion for in-Camera Disclosure-Denied; Deft's motion to Dismiss Indictment as