IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
V.	)	Crim. No. 01-455-A
	)	Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI	)	
Defendant	)	

GOVERNMENT'S RESPONSE TO DEFENDANT'S
***PRO SE* MOTION TO DELAY RULE 15 DEPOSITION**

The United States respectfully requests the Court to deny defendant's *pro se* motion to delay the Rule 15 deposition of a Government witness, which the Court ordered to be held on June 24, 2002.

Defendant seeks to delay the deposition for the following reasons: (1) he did not receive discovery material related to the witness until June 20, 2002; (2) he does not want standby counsel to be present at the deposition; (3) he will be denied the assistance of attorney Charles Freeman, who has not entered his appearance; and (4) he needs more time to prepare in light of the return of the superseding indictment. None of these claims merits the delay of the deposition.

Only two types of discovery exist for the witness: the witness' Giglio material (which consists of his plea agreement and the Government's statement that it intends to ask the INS to re-admit the witness into the United States so that he can testify at trial) and FBI-302 reports regarding interviews of the witness. The plea agreement was provided to defendant on June 20, 2002 – four days before the deposition. The FBI-302s, to which defendant is not even entitled, were provided in hard copy last week but were also produced to the defense several weeks ago in

electronic format, but, because the defendant repeatedly refused a computer, he could not view them.[1] In any event, as a matter of law, defendant is not entitled to this material until the completion of direct examination of the witness. See 18 U.S.C. § 3500; United States v. Lewis, 35 F.3d 148, 152 (4th Cir. 1994) (Jencks material not required to be produced until cross-examination); United States v. Beckford, 962 F. Supp. 780, 788 (E.D. Va. 1997) (nature of Giglio material "usually does not require substantial advance time to prepare for its effective use at trial."). Because defendant was provided this material before the deposition, there is simply no question that defendant can be prepared for the deposition on June 24, 2002.

Defendant next complains that he does not want standby counsel to be present at the deposition. Of course, this has no impact on the timing of the deposition. The deposition should go forward with standby counsel present assuming whatever role the defendant desires. If defendant does not want standby counsel to ask questions, standby counsel can sit silently while the deposition occurs. In any event, defendant's concerns about standby counsel provide no barrier to the deposition going forward on schedule. See McKaskle v. Wiggins, 485 U.S. 168, 180 (1989) (approving appointment of standby counsel to be available to assist defendant throughout trial).

Defendant next asserts that he will be denied the assistance of attorney Charles Freeman, who has not entered his appearance, if the deposition goes forward as scheduled. As set forth in the Government's Omnibus Response to Defendant's *Pro Se* Motion Regarding Attorney Charles

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[1]The defendant is not entitled to the FBI-302s because the witness has not adopted the reports; therefore, they do not constitute Jencks material. See United States v. Roseboro, 87 F.3d 642, 645 (4th Cir. 1996).

Freeman, Mr. Freeman has no role in this case as of this writing because he has not entered his appearance. Therefore, there is no basis to delay the deposition for this reason.

Finally, defendant says that he needs more time to prepare in light of the return of the superseding indictment. The superseding indictment contains no material changes to the original indictment. Moreover, the testimony of the witness will only address the formation of the "Hamburg cell" in Germany, which the minor changes in the superseding indictment do not implicate. Therefore, the return of the superseding indictment has no impact on the deposition of this witness.

The Government closes by noting that the defendant asked to represent himself as he is allowed to do under Faretta. This right, however, does not allow him to delay the proceedings in this case. See United States v. Singleton, 107 F.3d 1091, 1102 (4th Cir. 1997) (right to self-representation not an "instrument to distort the system."). This case must go forward on the schedule set by the Court and defendant's *pro se* status should not be allowed to work as an instrument of delay. Therefore, defendant's request to delay the deposition scheduled for June 24, 2002, should be denied.

Respectfully Submitted,

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UNITED STATES ATTORNEY

By: _____
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CERTIFICATE OF SERVICE

I certify that on June 24, 2002, a copy of the attached Government's Response was provided to the defendant and sent via Overnight Delivery and facsimile to defense counsel below:

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