

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	)	

**GOVERNMENT’S MOTION TO WITHHOLD PLACES OF ABODE  
OF PROSPECTIVE WITNESSES PURSUANT TO 18 U.S.C. § 3432**

The United States respectfully requests the Court to allow the Government to withhold the places of abode for prospective witnesses pursuant to 18 U.S.C. § 3432. This section states:

A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each veniremen and witness, **except that such list of the veniremen and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person.**

18 U.S.C. § 3432 (emphasis added). The place of abode means the county or township of residence for the witness, not their street address. United States v. Walker, 910 F. Supp. 837, 861 (N.D.N.Y. 1995); see also United States v. Wills, Criminal Number 99-396-A, Order dated July 31, 2001 at 2 (E.D. Va. 2001) (Government need only provide county or city of residence).

Congress amended 18 U.S.C. § 3432 in 1994 to add the exception in the emphasized language, which permits the Court to make a finding that the list of witnesses need not be provided to the defendant where the life or safety of any person may be jeopardized. This amendment empowers the trial judge in a capital case with the same authority and discretion as trial judges in non-capital cases to protect jurors and witnesses against intimidation, threats, and

violence, and to protect the integrity of the judicial process against tampering, corruption, or obstruction. Importantly, this amendment came at the same time that Congress either passed the statutes for which defendant is charged or amended existing statutes to authorize death as a penalty. By doing so, Congress understood that terrorism cases, such as the current prosecution, represent a unique danger to witnesses and, therefore, authorized the Court to withhold the names and places of abode of potential witnesses upon a proper showing by the Government.

The current case involves a unique threat to prospective witnesses. The indictment charges defendant with participating in one of the most heinous and enormous crimes ever perpetrated in the United States. The indictment further alleges that defendant committed the crime in conjunction with an international terrorist organization against whom the United States is currently waging a war, and that this terrorist organization seeks out and kills those it suspects of cooperating with hostile foreign governments. The indictment alone may demonstrate by a preponderance of the evidence that the defendant represents a danger to government witnesses. See United States v. Edelin, 128 F. Supp.2d 23, 29 (D.D.C. 2001) (indictment in violent drug trafficking case demonstrated danger to witnesses). Members of *al Qaeda* continue to threaten that the citizens of the United States will suffer future attacks carried out by members of this terrorist organization. See Sam F. Ghattas, Al Qaeda: Bin Laden Still Alive, Wash. Post, June 23, 2002 at A1. During a hearing on April 22, 2002, defendant declared: “I pray to Allah, the powerful, for ... the destruction of the United States of America.” April 22 Tr. at 10. Consequently, there can be little question of the potential danger to witnesses in this case.

Indeed, the Court has already indicated that it intends to select an anonymous jury to hear this case. See 6/13/02 Tr. at 36. This decision is well supported by case law, see e.g. United

States v. Peoples, 250 F.3d 630, 635 (8<sup>th</sup> Cir. 2001), and the facts of this case. The same concern for the safety of the jury should apply to the Government's witnesses. Cf. United States v. Tipton, 90 F.3d 861, 889 (4<sup>th</sup> Cir. 1996) (delay in providing access to protected witnesses in capital case justified due to threat of violence).

Compounding the danger to witnesses is the extensive and nearly contemporaneous media coverage of this prosecution. Indeed, in response to the overwhelming media interest in this case, the Court created an internet site that provides copies of all pleadings not placed under seal. Thus, unless the witness list is sealed, the names and places of abode of the Government's witnesses will be made available to the world shortly after the Government files its witness list. At the very minimum, any witness list filed by the Government should be sealed.

The Government believes, however, that the Court should go further and withhold the places of abode of all of the Government's witnesses due to the obvious security issues in this case. In making this request, the Government notes that it has already given unprecedented discovery to the defendant including Jencks material on CD-ROMs with electronic search capability with the first names of the witnesses redacted. The Government submits that the prudent course here is to have the Government produce a witness list to defendant at least three days prior to trial as required by 18 U.S.C. § 3432, but without the places of abode for the witnesses. The statute clearly contemplates that there will be cases, such as the current case, where there is such a danger to prospective witnesses that the Court may order that their places of abode need not be produced. The indictment, the defendant's own words, and the on-going war easily establish by a preponderance of the evidence that disclosure of the place of abode of Government witnesses could endanger their lives. Therefore, the Government respectfully

requests the Court to allow the Government to file its witness list without the places of abode of its witnesses.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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

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